

PSC Monthly Meeting - 1-24-2017

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Tuesday, January 24, 2017  
10:34 a.m.  
Three Empire State Plaza  
Agency Building 3, 19th Floor  
Albany, New York

COMMISSIONERS

AUDREY ZIBELMAN, Chair  
GREGG C. SAYRE  
PATRICIA L. ACAMPORA  
DIANE X. BURMAN

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2 (The meeting commenced at 10:34 a.m.)

3 CHAIR ZIBELMAN: Good day, everyone. So  
4 I'm going to bring the session of the Public Service  
5 Commission to order.

6 Are there any changes to the agenda,  
7 Secretary Burgess?

8 SECRETARY BURGESS: Good morning. There  
9 are no changes to the final agenda.

10 CHAIR ZIBELMAN: So we're going to begin  
11 today, actually, with Item 401, which is the Joint  
12 Proposal for the Suez Water New York. And we have a  
13 number of people presenting today. Primarily, it will be  
14 Administrative Law Judge Michelle Phillips, but we have  
15 Mike Rieder, who is our Chief of Gas and Water Rates, Tim  
16 Canty, Chief of Water Policy in the Office of Accounting  
17 and Finance, Doris Stout, our Director of the Office of  
18 Accounting, and Peter McGowan, Chief Policy Advisor are  
19 all available and -- and for questions.

20 So Judge Phillips, good morning and please  
21 begin.

22 A.L.J. PHILLIPS: Good morning, Chair and  
23 Commissioners.

24 You have before you a draft order  
25 establishing a multi-year rate plan in the Suez New York

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2 Water Rate case. The proposed multi-year plan is based,  
3 in large part, on a Joint Proposal that was submitted by  
4 Suez and DPS Staff. However, the multi-year rate plan  
5 that is described in the order differs in numerous  
6 respects from that Joint Proposal. Therefore, the draft  
7 order also contains an alternative 1-year rate plan that  
8 would be adopted by the Commission should Suez decline to  
9 unconditionally accept the proposed multi-year rate plan.

10 While this is a rate case, it is mostly  
11 about water supply. Water supply has been and is a  
12 critical issue for Rockland County. And so you'll hear a  
13 lot of discussion today about the Haverstraw Water Supply  
14 Project, conversation and efficiency planning, and non-  
15 revenue water efforts. Before turning to the Joint  
16 Proposal, which I do want to go through very quickly and  
17 then also to the multi-year rate plan that's outlined in  
18 the order, I would like to discuss procedural history of  
19 this case.

20 On February 26th, Suez filed a 1-year rate  
21 case that would establish new rates that would take effect  
22 on February 1st of this year. In that initial rate  
23 filing, they proposed to increase their annual revenues by  
24 \$11.6 million, or 13.7%. The equity ratio would have been  
25 50% and overall return on equity would have been 9.3 under

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2 their proposal.

3 Although it was a 1-year rate case, several  
4 components of the rate filing were supposed to be  
5 implemented over several years. These multi-year  
6 components include a water conservation plan, efforts to  
7 address water leakage, and the request to begin  
8 recovering, in rates, expenditures associated with the  
9 Haverstraw Water Supply Project.

10 Numerous local parties requested and were  
11 granted party status in this proceeding. And several of  
12 those parties, along with Department Staff, filed  
13 testimony in July as part of the litigated phase of this  
14 proceeding. The DPS Staff filing, among other things, was  
15 also a 1-year rate case with the revenue increase of \$4.27  
16 million, or 5.1%, with an overall return on equity of  
17 8.5%, an equity ratio of 47% percent, and disallowance  
18 recommended of over \$1 million of the Haverstraw Water  
19 Supply costs. And the recovery of that adjusted level  
20 would be over 15 years instead of 20, as proposed by the  
21 Company.

22 The main issues addressed by other parties  
23 in their filings were Suez' conservation plan, their  
24 efforts to address non-revenue water, especially leak  
25 reduction and increasing the pace of main replacements,

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2 and the appropriate rate treatment of Haverstraw -- I'm  
3 sorry -- the cost associated with Haverstraw.

4 Shortly after the Company and other parties  
5 filed their rebuttal, settlement discussions ensued and  
6 were held in July and August. And a Joint Proposal was  
7 submitted on September 2nd.

8 At this time, I do want to turn to slide 2  
9 of the presentation. And you'll note there that the Joint  
10 Proposal that was submitted called for levelized increases  
11 on a 3-year plan of approximately \$5 million per year or  
12 roughly 5.6% per year, on average.

13 Signatories were the Staff and the Company,  
14 and then later Rockland Business Association, and Jan  
15 Degenshein, who is both a pro se individual, who is also  
16 affiliated in the past with the Rockland Business  
17 Association. And briefs -- however, briefs in opposition  
18 were filed by numerous parties and I've listed them on  
19 slide 2.

20 Again, there was a lot of interest in this  
21 case. And so the Commission held an additional public  
22 statement hearing in order to solicit comments and to hear  
23 from people concerning the proposals in the Joint  
24 Proposal. Approximately -- at the public statement  
25 hearing, about 50 or so people spoke on the record. And

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2 in response to the notice that was issued, we have  
3 probably received in excess of an additional 200 comments,  
4 either in e-mail, written, or some by phone, as well.

5 If you turn to slide 3, the major issues  
6 that are contested by both the Intervenors and the  
7 commenters include the Haverstraw recovery provisions,  
8 there's significant opposition to that; conversation  
9 planning, there's a recognized need that that needs to be  
10 robust and strong; non-revenue water, it's recognized that  
11 there needs to be significant and aggressive leak  
12 reduction. Several commenters also questions water  
13 quality and water service provided by the Company. And  
14 finally, some requested some of the rate design changes  
15 that were proposed in the J.P.

16 I'd like to turn to slide 3 -- oh, sorry --  
17 4. So now I'm going to talk about the major provisions  
18 that were in the J.P. starting with the conservation and  
19 efficiency program.

20 That program was filed in response to a  
21 call by the Commission as part of its order approving  
22 Suez' abandonment of the Haverstraw Water Supply Project.  
23 The conservation and efficiency plan is designed to  
24 achieve a range of 1 to 2 million gallons per day in  
25 savings, using rebates and other incentives, along with

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2 workshops and training education and a tiered  
3 conservation-oriented rate structure.

4 In order to ensure the success of this  
5 program, it also includes a mechanism that provides for  
6 positive and negative financial incentives. As indicated  
7 on this slide, as well, the J.P. included a plan designed  
8 to reduce non-revenue water, leakage due -- I'm sorry --  
9 to address non-revenue water by reducing the amount of  
10 leakage that would consist of increasing the transmission  
11 and distribution main replacement to 1% per year by 2020,  
12 subject to spending caps, the rollout of advanced metering  
13 infrastructure and the implementation of district metering  
14 areas.

15 If you could turn to the next slide,  
16 please. With respect to Haverstraw Water Supply costs,  
17 the J.P. provides for recovery of an amount that reflects  
18 total Staff adjustments that were made both as a result of  
19 the surcharge case and in this case that in total amount  
20 to almost \$8.2 million, which is about 13% less than was  
21 requested by the Company. And they would be allowed to  
22 recover those costs over 15 years, using -- with a return  
23 on investment that's calculated using full rate of return.

24 If you could turn to the next slide,  
25 please. The J.P. also provides a process for creating a

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2 low-income rebate program. That would be a component of  
3 the overall conservation and efficiency program. It would  
4 continue a service -- a customer service performance  
5 incentive mechanism using an existing survey. It would  
6 promote conservation efforts by replacing seasonal rates  
7 with the conservation oriented inclining block rates. And  
8 it provides for the institution of a drought rate that  
9 would be triggered when the County of Rockland Health  
10 Department or any other dully authorized government entity  
11 enacts mandatory county-wide water use restrictions due to  
12 a drought.

13 The J.P. would also establish a system  
14 improvement charge. This is designed to provide the  
15 Company with flexibility to undertake significant  
16 necessary construction projects that have been identified  
17 as part of this rate case, but for which the in-service  
18 dates are not fixed.

19 If you could please turn to the next slide.  
20 Because the J.P. covers a multi-year period, it also  
21 includes revenue production costs and property tax  
22 reconciliation mechanism that would provide for the  
23 recovery or refund of variances between actual and  
24 targeted levels of metered revenues, production costs, and  
25 property taxes. It includes a return on equity of 9%, an



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2 equity ratio of 46%, and an earnings sharing mechanism.

3 If we could proceed to the next slide.

4 This slide simply demonstrates the levelized increases per  
5 year, overall amount each year, and the percentages, which  
6 are on average, as I may have already said, -- 5.6%.

7 If you'd please turn to the next slide.

8 This slide highlights the major drivers or reasons why the  
9 increases are needed. And as you'll see, Haverstraw is a  
10 significant portion of that, the cost associated with it,  
11 net plant and related depreciation, M and S fees, the  
12 conservation program, and sales revenues. And there are  
13 some offsetting costs, but not enough to offset an  
14 increase in total that are indicated on this chart.

15 I guess I would like to just note, before  
16 we turn to the next slide, when setting rates for water  
17 service, the Commission's task is to ensure that the  
18 utility furnishes facilities and provides service that's  
19 safe and adequate and at a cost that's just and  
20 reasonable. And when reviewing a J.P., the Commission  
21 must determine, among other things, whether the rate plan  
22 presented by the signatories meets that standard and  
23 achieves a reasonable balance among the protection of  
24 ratepayers, fairness to investors, and the utility's long-  
25 term viability.

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2 Based on the evidence that was presented in  
3 this proceeding and with this standard in mind, we  
4 recommend that the rate plan should be modified with  
5 respect to the provisions that are indicated on the next  
6 slide. As you'll see, they address the Haverstraw Water  
7 Supply Project provisions, the conservation and efficiency  
8 program incentive, certain elements of the non-revenue  
9 water provisions. It addresses issues on low income by  
10 making some requests or recommended modifications to the  
11 rebate program and discount -- and including a low-income  
12 discount program, which is not in the J.P., slight  
13 modifications to the system improvement charge, adding  
14 provisions to address water quality, which were not  
15 addressed in the J.P., and providing for a more definitive  
16 date for providing the next service classification study,  
17 recommending that certain documents, mainly the annual  
18 notification of rights and responsibilities, termination  
19 and disconnection notices be translated upon request when  
20 needed, and finally a net plant reconciliation mechanism,  
21 which also was not included in the J.P..

22 So overall, these are designed to  
23 strengthen that balancing and hopefully approach a more  
24 reasonable outcome.

25 So, as I promised, we're again going to

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turn to the Haverstraw Water Supply Project because that is a big component. And I just wanted to talk a little bit about the history of that project. In 2006, there was substantial local concern regarding supply, which led to the P.S.C. directing Suez to develop a major new source of supply.

Over the course of time, there was a changing in the timing of need for a major new long-term supply source. And after an extensive review and process by the P.S.C. in 2 cases, the P.S.C. ultimately determined that, in fact, circumstances had changed. Specifically, demand had been reduced.

This led them to conclude that the Haverstraw Water Supply Project could be abandoned, that Suez was not imprudent in pursuing or selecting the Haverstraw Water Supply Project, and that Suez could ask for recovery of its prudent expenditures, which at the time of the order, December 15, were approximately \$3.97 million -- I'm sorry. That would be nice. \$39.7 million.

So really, the -- I'm sorry, turning to the next slide. Really, the issue that remains in the rate case is what is the appropriate prospective rate treatment of those costs? Parties were heard on that issue and allowed to argue that there should -- what the Commission

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should do with respect to prospective rate recovery. And I will note there were some minor additional costs between December 15 and the rate case that parties were also allowed to be heard on.

After a significant amount of process and a lot of testimony and briefs on this issue, Staff and the Company recommended that there be return on this investment using our what we call normal rate based treatment, which would be allowing them to recover it with a weighted average that reflects an amount that considers the long-term debt rate and the 9% ROE.

Intervenors -- and I will summarize this. We're focusing more on what -- I guess the return on this investment, that aspect. There were some parties that I think went even beyond that, saying there should be no recovery. We're focusing on return-on because I think that's -- I guess we don't want to consider things that probably are not reasonable and would not be appropriate to consider in that they would significantly harm potentially the Company's bond ratings and its financial liability, but -- so the Intervenors' positions were a lower debt rate.

We've considered all of these things. We do have to consider the credit quality and customers and

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2 reach a reasonable balance. The Commission has discretion  
3 in that regard. And here, taking all of those factors  
4 into consideration, we're recommending an overall rate of  
5 return using an ROE that is at the lower range of  
6 reasonableness and using that blended with long-term debt  
7 rate to come up with a lower return on this investment  
8 than is proposed in the Joint Proposal.

9 If you could, please, turn to the next  
10 slide? It's going to be critically important to the  
11 success of this Company and to water -- addressing water  
12 supply issues that the conservation and efficiency program  
13 be strong. The mechanisms that were proposed here have a  
14 target of 1 to 2 MGD. There was significant argument  
15 about what the baseline was. This target focuses on -- on  
16 measurable activities and results that we can verify.

17 Other conservation is expected. And  
18 indeed, we continue to hope that there will be  
19 complementary local ordinances, for example, that will  
20 also help achieve maximum conservation. And we know that  
21 the success in getting to the higher end of this range is  
22 going to require significant customer participation.  
23 However, we heard the concerns about this needing to be a  
24 critical and successful endeavor.

25 And therefore, we're recommending that the

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2 incentive around it be strengthened so that on the lower  
3 end, we make sure that they don't fall below 1 MGD by  
4 increasing the negative part of that incentive to start at  
5 .9 MGD, instead of .8, as provided in the J.P. And on the  
6 top end, the last 10 basis points that would be earned  
7 under the J.P. could have been earned for a less than .1 -  
8 - full .1 increment over the 2 MGD. We think, in  
9 fairness, it should be also a full .1 MGD to get that last  
10 10 basis point range that would get you to 63.

11 We also heard significant concerns, given  
12 the importance of this issue, that there should be more  
13 periodic check-ins. So we recommend a 3-year milestone  
14 that's based, in part, on a ramp-up suggestion in the  
15 testimony of the Sierra Club and Municipal Consortium  
16 witness, Jonathan Kleinman.

17 The next slide, NRW, again, there was a lot  
18 of testimony and concern around this issue. And I think  
19 when you get to -- through all of the briefs and through  
20 everything that happened at the hearing, most of the  
21 parties agree that there should be some sort of incentive  
22 mechanism and they agree that the ultimate target should  
23 be somewhere between 15 to 18% non-revenue water.

24 The Company, in its brief, pledged to  
25 reconcile their production-related costs, which are

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2 energy, chemicals, and waste residuals, to an actual -- or  
3 to an NRW level of 18% regardless of what the actual level  
4 is. That, in and of itself, if it's used, creates that --  
5 an incentive that has both a positive and negative aspect  
6 to it when you impose it.

7 The slide indicates roughly what that would  
8 consist of. To the extent the Company is over 18%, when  
9 you use that reconciliation level, it could be up to an  
10 18-basis-point adjustment using the test year levels.

11 If they are able to succeed in getting  
12 below 18%, they would accrue savings. And this, we think,  
13 benefits both shareholders and ratepayers because the  
14 ultimate -- it's consistent and in line with the ultimate  
15 goal and it protects customer -- ratepayers from excess  
16 costs when and if NRW levels exceed 18%.

17 If you could, please, turn to the next  
18 slide. I wasn't going to say a lot about these except  
19 that we do have some of these recommendations address what  
20 I would call gaps in the J.P. Those include, for example,  
21 the discount program for low-income customers, water  
22 quality requiring -- reporting and monitoring. This is  
23 also designed to be -- to have the Company be more  
24 responsive to customers when they have issues concerning  
25 smell, taste, odor of their water. That would include a

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2 quarterly reporting requirement, as well as a more  
3 immediate report within 30 days as to the efforts that  
4 they're talking to address those types of issues and  
5 create more accessible means for their customers to get in  
6 contact with them and notify them of these types of  
7 issues.

8 Translation issue, again, that's a gap  
9 measure. And the net plant reconciliation mechanism was  
10 something that was not included in the J.P.

11 The low-income rebate program, we're  
12 recommending that they be directed to and study a direct  
13 install program as part of that to -- and that also  
14 responds to some of the concerns about taking full  
15 advantage of the flexibility of the conservation and  
16 efficiency program that's in the J.P. And to the extent  
17 this could be cost effectively implemented, it would allow  
18 for that.

19 If you could go to the next slide. This  
20 slide basically highlights, again, the differences based  
21 on the recommendations that are in the draft order between  
22 a 3-year J.P. case and a 3-year draft order case. And  
23 you'll see that, cumulatively, over the 3-year period, it  
24 leads to a reduction of almost a million dollars.

25 One of the issues that we did not recommend



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2 to change to was the rate design. And the main reason for  
3 that, you'll see by looking at both slide 17 -- the next  
4 slide. As you'll see, the single family, when you combine  
5 it with multi-family customers, comprise 75% of this  
6 company's customers. So by having a conservation oriented  
7 year-round rate that would apply to these customer classes  
8 and focus in on their discretionary water use, it's  
9 completely consistent with the goal that we're trying to  
10 achieve here, which is to reduce -- sorry -- incent  
11 conservation.

12 And if you look at the final slide, 18, it  
13 shows that -- what the typical customer bill impacts would  
14 be under the proposed conservation oriented rate.

15 At this time, I do want to return to  
16 something that I noted at the outset. I believe that we  
17 indicated, at the very start, that there are quite a few  
18 changes that are recommended in the draft order.

19 And so the process that's set forth in that  
20 order is to have an alternative in the event that Suez  
21 does not unconditionally accept these proposed  
22 modifications, which would be a 1-year rate case with the  
23 revenue requirement set at \$6.47 million. However, the  
24 types of reconciliation mechanisms that obviously would be  
25 appropriate in the multi-year case would not be continued

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2 as part of that 1-year case.

3 So there would be no earnings sharing  
4 mechanism, for example, and no reconciliation for things  
5 such as property tax or net plant additions. The system  
6 improvement charge would operate only to the extent  
7 necessary to accommodate the conservation and efficiency  
8 program and incentive mechanism. And we would recommend  
9 that this alternative 1-year rate plan be placed into  
10 effect on a temporary basis until we could have further  
11 process that would -- would result in a permanent rate  
12 order.

13 I do want to note that it is very likely  
14 that if this avenue is pursued, the ultimate ROE that  
15 would be adopted would -- generally is updated when you're  
16 doing a litigated proceeding. We expect that it would be  
17 higher. There would be additional rate uncertainty if we  
18 go with the 1-year rate option. And I don't think that  
19 there would be that long-term opportunity that you have in  
20 a multi-year rate plan for both the Company and its  
21 customers and local municipalities to focus on what is a  
22 critical issue here and that is addressing the water  
23 supply issues and concerns.

24 At this point, this concludes my  
25 presentation and we are available for questions.

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2 CHAIR ZIBELMAN: Thank you, Judge Phillips.

3 That was an excellent summary of a very  
4 complex case. So I appreciate all the work that I know  
5 you and the Staff have put into helping us get through  
6 this.

7 Let me just start. I know that all my  
8 fellow Commissioners have a lot -- you know, a lot of  
9 concern about this matter, and I want to give everybody  
10 enough time. So I'm going to try to be brief in my own  
11 comments.

12 The -- you know, ultimately the Commission  
13 is always concerned with respect to the reliability of  
14 water supply, just like we're concerned about the  
15 reliability of any of the services that we oversee. We're  
16 also, in the case of water, of course, particularly  
17 concerned not just about safety, but also about the health  
18 of the community. And we're also concerned about the  
19 price that people pay, as well as the reliability of the  
20 Company.

21 And so, in fact, price has sort of an  
22 effect of both the efficiency of the Company in delivering  
23 services, but also the financial health of the Company  
24 because if companies are financially unhealthy, investors  
25 see more risk, they charge more money, which ultimately

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2 then means rates are higher. So it's important not just  
3 for the shareholders of the Company, but the ratepayers of  
4 the Company that we maintain a financial health of the  
5 utilities that we oversee.

6 I want to, in this case, you know, again,  
7 thank the people who have been involved in this  
8 proceeding. The issues that have confronted us with  
9 respect to Rockland County Water have been very  
10 significant. It's been a matter of concern both for this  
11 -- sitting Commissioners today, as well as previous  
12 Commissions. It's been a longstanding issue, particularly  
13 the concern around the adequacy of water supply, something  
14 we worry about a lot.

15 I also want to note -- I think  
16 Assemblywoman Cornell is in the audience. I want to  
17 appreciate her coming today, as well as other members of  
18 the Rockland County Task Force, and people who have been  
19 involved in this proceeding. I know that this is an issue  
20 that is very significant for the community. We have  
21 appreciated the efforts that people have made to be  
22 involved in our proceedings and the seriousness in which  
23 they've taken this. We take it seriously, as well. And I  
24 know my fellow Commissioners have been in attendance at  
25 the public hearing, but this, as a matter, has been a

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2 great concern.

3 As well as I appreciate the work of the  
4 Company because I know that that's -- this has been an  
5 issue that they've been trying to tackle, as well as to  
6 gain the confidence of the community they serve.

7 With that then, let me just start as to why  
8 I'm in favor of not accepting the J.P., which is a very  
9 unusual step for this Commission. We typically encourage,  
10 in these complex matters, for parties to work together.  
11 We often find that creativity and problem solving occurs  
12 in a format where there's settlement where people --  
13 there's a give and take. That often means that not every  
14 -- nobody gets everything they want, but in composite you  
15 get an outcome that drives us in the right direction.

16 And I know Staff -- our Staff, in  
17 particular, along with the Company's, but particularly our  
18 Staff often has the burden that they don't get to pick and  
19 choose the issues they want to get involved in. They have  
20 to get involved in every issue. And so when they're  
21 involved in these proceedings and trying to put together a  
22 settlement, they either -- they have to look at the whole  
23 package. That's a luxury that they don't -- that they  
24 have or if they would say probably somewhat of a burden  
25 that they have because other parties get to pick and

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2 choose their issues and can say, well I agree on that, and  
3 I disagree on that. We can't do that.

4 So I know, for us, when we -- because our  
5 staff works very, very hard to put together these  
6 settlements, they're like a really delicate recipe, and  
7 all the ingredients have to work together. When we act to  
8 undo pieces of it, it makes it difficult in the future for  
9 Staff to actually engage in settlement discussions because  
10 people will worry, then, do you have the votes of the  
11 Commission behind you?

12 So in this case, it was really a difficult  
13 decision for the Commission to think about this because we  
14 knew this was hard fought and a lot of things -- a lot of  
15 ink on paper or a lot of taps on keyboards to try to get  
16 us where we are. But with that, I think that this is a  
17 really difficult case. And one of the advantages that the  
18 Commission has because we're not in the settlement  
19 discussions, we have that ability to look objectively at  
20 these proceedings and make a determination on the entirety  
21 of the record and maybe away from the emotion of the back-  
22 and-forth that goes as to whether or not the J.P. landed  
23 exactly where we wanted it to be.

24 And I would say 99% of the time, the Staff  
25 gets it right. We spend a lot of time talking to them.

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2 They know exactly where our minds are they are able to  
3 gauge very accurately where the Commission is going to  
4 want to land on a position.

5 In this instance, I think that the -- that  
6 the nature of this proceeding, the difficulty that we have  
7 in Rockland County in addressing the questions of water  
8 supply adequacy, and the question of rates, and the issue  
9 around Haverstraw, has certainly led me to agree that we  
10 needed to make some modifications. And so for that  
11 reason, I am going to vote in favor of the modified J.P.,  
12 which is, again, I just want to stress, is a very unusual  
13 step for us to take in a complex rate case like this.

14 And then I want to go through why I think  
15 the modifications we're looking at are appropriate in this  
16 instance. And then I'm going to turn it over to my fellow  
17 Commissioner.

18 So one is in terms of the Haverstraw Plant.  
19 Now, you know, the fact is -- is that the Commission did  
20 ask the Company to look at a supply source. We were very  
21 concerned, in 2006 timeframe, that we were going to run  
22 out of water. And that is obviously a big concern.

23 Things change -- facts change. That happens a lot in our  
24 proceedings. And so historically, the Commission has  
25 always looked at abandoned plant as something that is used

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2 and useful. We have case law about this.

3 And it really is a practical issue for us  
4 because, if you think about it, anytime an organization  
5 that is not rate regulated like our organizations are,  
6 will look at an investment in a project and then just  
7 subsequently decide an investment doesn't make sense and  
8 they abandon it, those costs end up in the price  
9 somewhere. We hear about it in pharmaceuticals all the  
10 time. They abandon a product. It's not like the price  
11 doesn't show up. It shows up in another form.

12 In our cases, because we regulate on cost,  
13 there is no way to do that, but it would be foolhardy for  
14 us to simply say to a utility, we're going to tell you to  
15 go do something and then if things change, lots of luck,  
16 you lost, because they're never going to do anything  
17 again. So we need to make sure our companies can have our  
18 trust -- we're trustworthy, and they understand when --  
19 particularly when we're looking at a world of innovation  
20 and technology, that we're looking for people and we're  
21 not -- and as the law requires that this is plant that  
22 gets to be recovered.

23 And so for -- you know, and this is an  
24 issue, frankly, and I don't want to revisit it, but it was  
25 an issue that the Commission considered. We went through



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2 a prudency proceeding. We looked at the expenses. If I  
3 recall, we had a very significant reduction in the allowed  
4 expenses. So we've gone through all this.

5 The issue in this rate case was really the  
6 treatment of expenses that the Commission had previously  
7 approved for rate recovery and how -- and the amount we  
8 would allow recovery of. So in the case, what happened in  
9 the J.P. is -- is that the return that was going to be  
10 allowed on the Haverstraw Plant is consistent with the  
11 overall return, which is consistent with the mechanism of  
12 we're looking at the ROEs, really, across the board. It's  
13 the same formula.

14 But because, again, of this other issue in  
15 terms of rates and the size of the amount of the abandoned  
16 plant, I do think it was important for us to take a look  
17 at whether the return on this particular asset should be  
18 at the level that we're allowing on other assets. The law  
19 gives us some level of discretion. I think we talk about  
20 -- in the order we talk about, in fact, other agencies  
21 particularly FERC will often look at ranges.

22 And -- but I think in exercising that  
23 discretion, it's very important that the Commission,  
24 itself, acknowledge and recognize that we don't want to do  
25 things that harm the financial integrity of the Company

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2 because, again, that will just yield higher rates in the  
3 future.

4 So for that reason, I'm supportive of  
5 reducing the return down to a lower level for the project.  
6 I think that's a balance of our concerns about the impact  
7 on customers, but also recognize that this is an asset for  
8 which the Company is entitled to a return.

9 Now the level that the order sets, I would  
10 acknowledge is probably the lowest level that is  
11 reasonable, given the fact that we don't want to  
12 negatively affect the bond ratings. So it's -- but so  
13 it's maybe not as far as some Intervenors would want, but  
14 I think it would be certainly inappropriate for us not to  
15 take a long-term view of this and recognize that what we  
16 do today can impact the health of the Company in the  
17 future, which would then impact the rates in the future.

18 So I'm comfortable in being at the low  
19 level, but I don't think we should go any lower as to what  
20 is reasonable under the circumstance in terms of the range  
21 that we've looked at.

22 The other area is the area of conservation.  
23 And I think we can't stress enough that we have to be  
24 maximizing everything we're doing in this region and this  
25 community around conservation. That's for the Company to

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2 take a look at aggressive action. And I think what we've  
3 modified is to make sure that we have good touch points,  
4 so we see that we're achieving what we need to -- where we  
5 need to go.

6 It's also looking at non-revenue water and  
7 making sure we're aggressive around leaks. It's also in  
8 terms of rate design. One of the things, though, that is  
9 missing, and I really hope we can move this forward, is  
10 the issue of municipal code changes. And I know there's  
11 action that's going on today, but frankly, you know, to  
12 saddle ratepayers -- water ratepayers with all the cost of  
13 conservation and trying to get there simply on the backs  
14 of ratepayers is probably not going to be sufficient in  
15 this case, nor is it fair.

16 One of the things we know is that code  
17 changes can be the most lowest cost and effective way of  
18 getting conservation. So I hope, and I would urge  
19 everyone to say what we need to do is work as a community  
20 with the water company and the local municipals, as well  
21 as the State to get to where we need to go in conservation  
22 because what we've done here is done everything we can on  
23 a cost effective side, but we want to basically leverage  
24 those ratepayer dollars by looking at code changes so we  
25 can get to where we want to go. And, you know, I think we

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2 will all sleep better at night knowing we're maximizing  
3 what we can do on conservation, but we can't get there on  
4 the utility alone.

5 So I really want -- I hope, after this,  
6 people can get together and start working on the other  
7 side of this equation.

8 The other thing is I want to stress it's in  
9 this -- these changes is the question of water quality.  
10 There's a lot of concern about smell and health of the  
11 water. That is obviously a significant concern. We've  
12 all had experiences now in seeing what happens to  
13 communities. I had -- there is no -- nothing in the  
14 record to suggest that the quality of the water has a  
15 health issue. But that doesn't necessarily address  
16 people's concerns when smell and color are not good  
17 because it gets people worried about what else is there  
18 and are we there.

19 So obviously monitor the health in terms of  
20 the chemical component is an issue that's non-  
21 jurisdictional with this agency. It's more the Department  
22 of Health and EPA, who take -- and the DEC, but we are  
23 concerned that the Company do everything in its power to  
24 make sure that the community is satisfied that the Company  
25 is doing everything in its power to ensure the health of

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2 the water. And that's the reporting and taking care of  
3 these other issues so that people are aware and that the  
4 Company is aware and concerned. And I think that's a very  
5 important part of the change that we're looking at.

6 There are a number of other changes in the  
7 order. I think, again, Judge Phillips did a superb job of  
8 going through them, and I don't want to repeat them. But  
9 the point here, and I just sort of want to leave it on  
10 this, is that the way this works from a procedural  
11 standpoint is that we can accept the J.P. If we don't  
12 accept the J.P., then we need to do something else.

13 And so that means what we suggest is  
14 putting in a temporary rate. But it really is up to the  
15 Company to accept these modifications. We -- I'm really  
16 hoping that they do that. I think that it's the best  
17 thing for both the Company and the community. I think  
18 having a long-term rate plan where people can get on it  
19 and start looking at conservation and working on these  
20 issues is really critical.

21 I am also concerned, because we are seeing  
22 interest rates go up, is that if we do put in a 1-year  
23 rate case, we will see higher rates of return, which will  
24 basically not help what we want to do, which is put as  
25 much money as we can into conservation and so that -- so

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2 having a levelized rate in the rate plan is a good idea --  
3 is -- is the best way forward.

4 So I urge the Company to take a look at  
5 what we're doing. I think it results in a fair result and  
6 allows us all to sort of move to the future. And I hope  
7 that this future also includes work in the local  
8 communities to work with the Company to get where we want  
9 to go on conservation and combine that with these code  
10 changes, which I think are going to be critical if we're  
11 going to be successful.

12 So with that, I will take other questions  
13 and comments.

14 Commissioner Sayre, do you want to begin?

15 Thanks.

16 COMMISSIONER SAYRE: I agree with the Chair  
17 and everything she just said. This is the hardest case  
18 for me on the agenda today. It's really mostly about the  
19 originally proposed and subsequently abandoned desal plant  
20 at Haverstraw. There's a settlement in front of us. But  
21 unlike the Con Ed settlement that we are going to be  
22 considering later today, most of the parties are opposing  
23 it.

24 I'm sorry that more parties could not reach  
25 a resolution. I recognize that Staff and the Company and

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2 two other parties were able to reach concurrence. But for  
3 me, that's not enough of a critical mass for me to be  
4 comfortable at the outset that the settlement is probably  
5 in the public interest. There are many good proposals in  
6 the Joint Proposal, but given the opposition, I'm just not  
7 ready to give it as much weight as, for example, the Con  
8 Ed Joint Proposal.

9 In my experience in private industry, in  
10 contentious cases in front of this Commission, we  
11 frequently have the choice of rolling the dice with the  
12 Commission, as we called it, or slogging our way through  
13 to complete or nearly complete settlement. In my  
14 experience, we got better results when we went through the  
15 process to get a settlement because we ended up with  
16 something we could live with, even though it wasn't  
17 necessarily something that we particularly liked.

18 But in this case, I'd say effectively most  
19 of the parties have chosen to roll the dice with the  
20 Commission. That's fine. That's entirely their right.  
21 But now it's our job to make the decision. We're making  
22 it now, and I anticipate that nobody is going to like it  
23 very much.

24 You've heard it explained very well by  
25 Judge Phillips. We're declining to revisit our previous

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2 decision that the Company acted prudently in pursuing the  
3 desal project and incurring costs in furtherance of it.  
4 20-20 hindsight is terrific.

5 If the perfectly reasonable estimates back  
6 in 2006, when the project started, the water supply on one  
7 hand and water usage and demand, on the other hand, had  
8 come through, in my view Rockland County would be in a  
9 whole lot of trouble right now, very close to a a serious  
10 water shortage in the next few years, and people would be  
11 crying out for new sources and supply.

12 But as it turned out, the demand -- on the  
13 demand side, there was less usage than anticipated, mostly  
14 due to the economic downturn that started in 2008. And on  
15 the supply side, the droughts we were afraid of have not  
16 materialized yet. So that's why we directed the Company  
17 to stop work on the project, but this was hindsight, not  
18 something that we or anybody else knew at the outset of  
19 the project.

20 My message to Rockland County is the same  
21 as the Chair's. You're not out of the woods. I was at  
22 the public statement hearings a couple of years ago in  
23 this case, the ones that ran until 2:00 in the morning.  
24 And I heard loud and clear statements from both elected  
25 officials and members of the public that Rockland County



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2 can conserve its way out of any need for a major new water  
3 supply source like the desal plant. That may be the case  
4 -- I hope it's the case, but there hasn't been an  
5 ordinance yet, and I'm not sure exactly how much  
6 conservation is taking place and how much more will be  
7 achieved.

8 So like the Chair, I would like to urge in  
9 the strongest possible terms that the county, the  
10 municipalities, and interested members of the community to  
11 work on strong and enforceable conservation policies. And  
12 I urge you to work with Suez in doing so. I think you'll  
13 find you can work with them. I think you're going to get  
14 a lot farther in solving Rockland County's water needs by  
15 cooperating and negotiating than litigating. And I really  
16 think you can work together.

17 But all that being said, we have to decide  
18 what to do with this rate case. I've already said we're  
19 not going to revisit our previous decision. Based on our  
20 settle policy, that means that Suez is entitled to a  
21 recovery of its prudently incurred costs, even though the  
22 project has been cancelled, because of the changes in  
23 circumstances.

24 We've already disallowed, in the course of  
25 these proceedings, substantial amounts of the claim costs,

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2 cut down the amount to be recovered by roughly 13% from  
3 the initial request. We're also deciding to spread the  
4 recovery of these costs over a period of 15 years, which  
5 is what the Joint Proposal recommends.

6 So the big rate making question in this  
7 case is what allowance, if any, we're going to give the  
8 Company on those costs while they're being in the process  
9 of recovery. A Joint Proposal would give recovery at the  
10 overall weighted cost of capital. The opposing parties  
11 argue for a lower recovery all the way from 0 to the cost  
12 of short-term debt without any allowance for equity.  
13 We're reaching a decision in between those extremes.

14 We'll allow a return on the funds,  
15 including the long-term cost of debt and a return on  
16 equity, but as the Chair said, we're allowing a return on  
17 equity significantly lower, even though it's within the  
18 reasonable range then the return that we're allowing on  
19 the rest of the assets, assuming that the Company allow --  
20 accepts the modifications to the Joint Proposal.

21 At this point, I'd like to say that, for  
22 me, my decision that its proper to reduce the equity  
23 return on the desal project costs is based on the unique  
24 facts of this particular case. Other facts could lead to  
25 other results. Particularly important to my decision, in

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2 this case, is the fact that the modified Joint Proposal,  
3 if accepted by the Company, has an upward incentive, that  
4 the Company can earn by achieving the maximum amount of  
5 water conservation.

6 The potential earnings incentives for  
7 conservation and efficiency is fairly close to the impact  
8 of the downward equity adjustment for the desal plant  
9 costs. And I am considering these two issues as two sides  
10 of the same coin. We need to address Rockland County's  
11 water supply issues on both the supply side and the demand  
12 side, and we need to look at both sides at the same time.

13 There are many good things in the Joint  
14 Proposal, including, in particular, the conservation and  
15 efficiency incentives. The proposed order makes a lot of  
16 adjustments to the Joint Proposal that, in my view,  
17 improve the incentives and make them stronger. And we're  
18 adopting, as the Chair and Judge Phillips have said, many  
19 of the suggestions that have been raised by the  
20 Intervenors. In particular, I'll mention PULP's proposal  
21 of starting to develop a low-income program.

22 And we're extremely concerned, as the Chair  
23 has said, about the reported instances of poor water  
24 quality. Although, there doesn't appear to be any health  
25 issue at this point, we are requiring in the order for the

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2 Company to work with Staff and other interested parties.

3 Please work with the Company to nail down exactly what and  
4 where these problems are and file a report with us that  
5 identifies the root causes and solutions.

6 Because we're making such significant  
7 changes in the Joint Proposal, we're giving the Company an  
8 opportunity to accept or reject the changes. If the  
9 Company accepts the changes, then we have a plan, and  
10 we'll move forward on that basis. I hope they will.

11 If the Company rejects the changes, then we  
12 don't have an agreement in front of us that we're prepared  
13 to accept. So we will establish, in that situation,  
14 temporary rates subject to refund or recoupment in either  
15 direction and the parties will go back into a litigated  
16 rate case of some sort, procedure to be set in the future.

17 The order sets out what the temporary plan  
18 will be if we go back into litigation. But I'll note, as  
19 the Chair has, that the return on equity on assets other  
20 than the desal plant, in the event of temporary rates,  
21 would be significantly lower than the rate of return on  
22 equity that the Company would receive under the Joint  
23 Proposal as modified by the Commission. But those  
24 temporary rates would lead to only a 1-year plan and  
25 likely very significant increases in the future, possibly

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2 the need for yet another rate case, back to back, with the  
3 one that would have to be held in the event of temporary  
4 rates.

5 So I warned you earlier. Nobody is likely  
6 to be very happy with our decision. It's not an easy one.  
7 We're doing our utmost to achieve a fair and reasonable  
8 balance that's in the public interest. And, in fact, if  
9 everybody turns out to be unhappy with it, I'll personally  
10 take it as an indication that we probably came close to  
11 the right balance of results for all the parties,  
12 including the shareholders, the ratepayers, and  
13 Intervenors.

14 But however we go forward with this case,  
15 the water supply issue has not been solved. Please work  
16 together. You're going to get some more industry coming  
17 into Rockland County that uses water. It hasn't happened  
18 yet. It was forecast to happen. But it's likely to  
19 happen. And sometime in the future, the rains may stop  
20 coming.

21 There's some issues that we can do here at  
22 the Commission by creating utility-based conservation  
23 plans, but there's some problems that need to be solved  
24 locally. And I sincerely hope you will proceed to do so.

25 That's all I have.

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2 CHAIR ZIBELMAN: Thank you.

3 You know, the sound of one hand clapping.  
4 This is the sound of a Commission begging. Say -- I also  
5 want to acknowledge and welcome Senator Carlucci, who's  
6 also here. I appreciate you coming today. This is  
7 obviously an important matter for all of us.

8 Commissioner Burman, do you want to  
9 proceed?

10 COMMISSIONER BURMAN: I'll defer first to  
11 Commissioner Acampora.

12 CHAIR ZIBELMAN: She's asked to go last.

13 COMMISSIONER BURMAN: Well, I actually --  
14 my comments are reflective of what we're hearing today  
15 because I do have some comments so.

16 CHAIR ZIBELMAN: Could you proceed with  
17 your comment and then if you have responsive --?

18 COMMISSIONER BURMAN: Yeah. So right now,  
19 my comments are that I'm taking in all that the  
20 Commissioners here are saying, and looking, and have some  
21 questions for Staff, likely afterwards. And then I will  
22 formulate my thoughts in succinct comments.

23 So thank you.

24 CHAIR ZIBELMAN: Do you have some comments?

25 COMMISSIONER ACAMPORA: First, I have a

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2 question.

3 Judge, could you please go over the low-  
4 income program as proposed in the J.P.?

5 A.L.J. PHILLIPS: Actually, the low-income  
6 discount program is a new provision. There was not a low-  
7 income discount proposal in the J.P.

8 COMMISSIONER ACAMPORA: And do we have any  
9 particulars as to, you know, what will be the low-income  
10 discount program, considering there never was one before?

11 A.L.J. PHILLIPS: I don't think so. It's  
12 one --.

13 CHAIR ZIBELMAN: If I recall -- yeah,  
14 LuAnn?

15 MS. SCHERER: The proposal is to have a  
16 collaborative process to develop a proposal and bring it  
17 back -- a filing would have to be made to the Commission  
18 within nine months and the Commission would then vote on  
19 it.

20 COMMISSIONER ACAMPORA: Okay. I just  
21 wanted, you know, to just go through what the procedure  
22 would be in order to institute a low-income program, which  
23 I think is really important. It's something that we go  
24 over in all rate cases.

25 And I really would be remiss if I did not

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mention the participation of someone who's no longer here at the Commission. And that's our former executive deputy, Judy Lee, who really, I think, did a yeoman's job of again, trying to bring parties together. And really this is about bringing people together. This has been 11 years of really struggling with a very, very tough issue.

And, you know, I have attended those public statement hearings, too. And it's really uplifting when you hear the interest of the public in the county who have said for many years that they felt they could conserve and they could solve this problem.

But, you know, we're here at a point right now where all the years of finger pointing and people blaming one another has really not taken us to where we need to go to resolve this issue. And I think that the groundwork that has started between the Company and all the interested parties still has to continue. And as was said very eloquently by Commissioner Sayre and our Chair, local ordinances that are enforceable really do need to be passed in order to make the conservation efforts work. That, to me, is extremely important.

And I've been here long enough to know that, as was mentioned before, that modifying a J.P. is not often done, but because we have such interest in this



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2 matter and, of course, I've always taken an interest in  
3 the water matters and, you know, I certainly agree with  
4 the public deserves to know with what they're ingesting is  
5 safe and is not going to do harm to them or their  
6 families.

7 And so I believe that this is a point of  
8 interest that -- making sure that we are checking with the  
9 Company every 3 years to make sure that everything is  
10 right. And as I hope most of the public knows, while  
11 we're here at the Commission and we look at the rates, we  
12 share responsibilities with other sister agencies, the DEC  
13 and the Department of Health, also, in these matters.  
14 And, of course, there are the county health departments,  
15 too, that I know are interested in making sure that water  
16 is safe. It's a huge issue and very important issue.

17 So as we vote on this today, yes, it was  
18 agonizing. It's been very hard, but again, it's time to  
19 move forward. It's time to work together. And so much  
20 more can be accomplished when people work together to try  
21 and reconcile the differences than it is than just calling  
22 each other names and finger pointing at this.

23 So I will be voting in favor of this  
24 modified J.P. and hoping, as has been said previously,  
25 that people do come together, stay together, and make this

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2 a workable solution because no one knows what the future  
3 has. And there may be rain and there may not be rain.

4 And we know that the Company, I'm hoping  
5 continues to try to communicate and work as a partner with  
6 the community. That was something that was lacking in the  
7 past. And I'm hoping that it will continue to work at  
8 better relationships with the constituencies that they  
9 serve.

10 CHAIR ZIBELMAN: Thank you.

11 First of all, thank you for acknowledging  
12 Judy's work. And I know that the Task Force and -- also  
13 has met many times. So it's been hard fought, and I think  
14 that people are committed.

15 One of the things that's not in the order,  
16 though, that I would like us to get a report on -- and  
17 Peter, you and I have chatted about this. I think it's  
18 going to be important that we have a renewed baseline of  
19 where we are in terms of the analysis that's been done as  
20 to what are we in the comfort zone of having adequate  
21 water. And Mike, I know your staff can work on this.

22 And I think that what we need to do is set  
23 up a process so that there's periodic reporting back to  
24 the Commission. I don't think we want to wait. And if,  
25 seasonally, we're seeing directionally that it's not going

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2 in the right direction, I think that's something the  
3 community is going to want to know, as well as in terms of  
4 the actions that are taken. So this -- you know, I know I  
5 don't want to beat a -- beat this argument too much, but  
6 we are very, very concerned about the supply issue. And  
7 this is not something that we think can -- you know, let's  
8 let it go and in 10 years we'll look back and see if we  
9 were right.

10 I think we have to be constantly on this,  
11 and seeing if this is -- we're getting the effects that we  
12 want. Otherwise, we really do need to look at alternative  
13 plans.

14 So I would urge -- I would ask -- actually  
15 direct Staff to work together and let's get a reporting  
16 going on so that we stay on top of this.

17 Commissioner Burman, you had some  
18 responsive comments?

19 COMMISSIONER BURMAN: Thank you.

20 So on the last point that you raised about  
21 the reporting and looking at that, how does that fit into  
22 the actual order and shouldn't it be part of the order?  
23 What happens if it's not on track? How does that affect  
24 the rates and others on that? Is there some action that  
25 we take on that? How does that work?

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2 CHAIR ZIBELMAN: In my mind, just -- but  
3 I'll let -- it's not -- it's not in the order, but I think  
4 this -- we can direct the staff to do this kind of  
5 analysis. And if the evaluation indicates a concern that  
6 we're not on track, the Commission can take action on its  
7 own.

8 So it doesn't have to be necessarily in the  
9 order. It's just part of our ongoing supervisory  
10 responsibilities to, you know, keep them on track and keep  
11 us informed.

12 Is that -- Peter, Paul? I'm seeing nods.

13 MR. AGRESTA: Yeah, that's fine, Chair.

14 COMMISSIONER BURMAN: Okay. The other  
15 thing is you had mentioned that there was, going on today,  
16 something related to the municipal code changes. And I'm  
17 not sure I have that in the record. I'm just trying to  
18 understand what that is, specifically.

19 CHAIR ZIBELMAN: Yeah. Peter brought  
20 something to my attention.

21 Peter, do you want to --?

22 MR. MCGOWAN: Yes. I'm understanding that  
23 there is activity going on at the state level to update  
24 codes and some step may have occurred, which may lead to  
25 further updating and making more efficient the statewide

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2 plumbing codes, which would be good. But it hasn't  
3 happened yet. And that's one of several things that could  
4 be done at the local level to improve water conservation  
5 efforts.

6 COMMISSIONER BURMAN: Okay. I'm guess I'm  
7 just confused because I'm looking at it from the -- what's  
8 in the record. And so that information -- I'm just trying  
9 to figure out how that dovetails and is it actually in  
10 line or are we looking at things that maybe we should have  
11 the benefit of more of a statewide focus, that then we  
12 understand what the actual policy is? I'm just trying to  
13 understand that.

14 MR. MCGOWAN: I think what the Commission  
15 is doing today is taking an important first step on the  
16 road to improving conservation. That's an essential first  
17 step. Other steps, if they come along, will be absolutely  
18 supportive and complementary to the Commission's actions  
19 today.

20 COMMISSIONER BURMAN: Okay. But we're not  
21 necessarily recommending, as a body, any municipal code  
22 changes or mandates that wouldn't be in our purview;  
23 correct?

24 MR. MCGOWAN: The Commission has previously  
25 indicated that it is looking for local ordinances to

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2 complement the overall effort to improve conservation. So  
3 that's something that the Commission has been saying for  
4 the past year. And I think I'm hearing several  
5 Commissioners say that again today. And it's something  
6 that's reflected in the order.

7 COMMISSIONER BURMAN: Okay. I'm just  
8 trying to make sure exactly what we're doing, whether  
9 we're looking at something voluntary or mandating. So  
10 thank you.

11 When I look at this, I am concerned. And I  
12 look at my role as a Commissioner from an oversight  
13 perspective focused on the water quality, water supply,  
14 water safety, cost to the ratepayer, conservation  
15 measures, and necessary infrastructure upgrades that need  
16 to happen to make all of those things flow seamlessly.

17 I am very cognizant of the fact of what can  
18 be a chilling effect if there is a Joint Proposal that is  
19 put forward to us, and we then make modifications, whether  
20 up or down to it, because we generally don't do that, and  
21 it may cause people to rethink when they go into  
22 settlement discussions, whether they are coming to the  
23 table to try to resolve things, or are they going to wait  
24 and roll the dice, I think as one Commissioner said, you  
25 know, with the Commission.

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2 And I'm not sure, and I grapple with that  
3 in what that means. And that's why, as some may know, I  
4 always ask, when we are looking at a Joint Proposal, what  
5 our legal authority is and as it relates to a Joint  
6 Proposal.

7 And here -- and I just want to make sure  
8 that I'm clear. We have several different, I guess,  
9 opportunities or pathways before us. We could accept  
10 outright the Joint Proposal with no modifications. We  
11 could accept the Joint Proposal with modifications upwards  
12 and additional or we can accept modifications of the Joint  
13 Proposal downward. Or we can have some fashion, a little  
14 bit of both where there's some additions and there's some  
15 changes or deletions.

16 We can also not accept the Joint Proposal.  
17 And that's where I'm confused. When we don't accept the  
18 Joint Proposal, what are the options that are available,  
19 just forgetting about modifications off the table -- not  
20 accepting the Joint Proposal and not looking for any more  
21 modifications. What does that mean?

22 CHAIR ZIBELMAN: Paul, do you want to go  
23 through it? I'm not sure -- if you can explain that?

24 MR. AGRESTA: Okay. So when a company  
25 files for a rate case, there's a suspension period in

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2 effect. And if the Commission takes no action before the  
3 end of suspension period, the rates proposed by the  
4 company go into effect. So if the Commission was to not  
5 accept the Joint Proposal and take no action whatsoever,  
6 the rates that the Company originally filed for would go  
7 into effect.

8 It wouldn't be a multi-year rate case; it  
9 would just be a one-time thing. That would result in even  
10 higher rates than any of the proposals that are before you  
11 today.

12 Here, since the Commission is proposing a  
13 modification, it is also giving the Company an opportunity  
14 to accept what they're doing or, in the alternative,  
15 accept rates on a temporary basis, which the Commission  
16 has set forth -- will have set forth in the order.

17 And if that happens, the rates will go into  
18 effect on a temporary basis. There will have to be  
19 further hearings to ultimately decide the permanent rates.  
20 And under the statute when you create temporary rates,  
21 they are subject to refunds and reparations, which means  
22 that if the ultimate rate decision is the rate should be  
23 lower than the temporary amount, the customers have to pay  
24 that money back to the Company. If they're higher, then  
25 the higher rates have to be collected and more money given



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2 to the Company.

3 We try to avoid temporary rates as much as  
4 possible because it has a bad impact on the Company on its  
5 ratings and uncertainty and all kinds of things. It's  
6 also risky because nobody knows what interest rates are  
7 going to be 6 months from now when you get around to  
8 making a decision.

9 Stability is not the friend of ratemaking  
10 process -- or instability is not the friend of rate making  
11 process. So we try to avoid that if we can. And we're  
12 hoping that the Company will accept the plan as modified.

13 CHAIR ZIBELMAN: Can I just -- just so --  
14 because I want to make sure this is clear.

15 Any modification of a J.P. -- so it's not  
16 just a rejection -- a modification, positive, negative, is  
17 a rejection, whether we call it a rejection or not. And  
18 the company has the ability to either accept it or not.  
19 If a company does not accept J.P. changes that we would  
20 make in an order, and we -- then the next thing that  
21 happens, either the -- then the Commission really hasn't  
22 acted because they haven't accepted the J.P. So either  
23 the original filing goes in place unless we put in a  
24 temporary rate.

25 So by putting in the temporary rate, we

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2 avoid the risk that the Company rejects the J.P. changes  
3 and their original filing goes into place, in which case  
4 probably our next step would be to call them in for a rate  
5 case and start a proceeding under our volition.

6 So in the end, we're going to end up in  
7 litigation in 2017, probably one way or another if they  
8 don't accept the J.P. But we have to -- but it's not just  
9 the rejection. It's any modification.

10 MR. AGRESTA: Administrative litigation.

11 CHAIR ZIBELMAN: Administrative litigation.  
12 Yes. Yes -- yes, to be clear. We'll be back -- they'll  
13 be back in front of us. But I think that the important  
14 point is I just want to make the stress. This is not any  
15 modification ends up in the same spot. The Company has to  
16 accept it because they signed onto a settlement so they  
17 gave up some rights, and they have to accept the  
18 modification. Otherwise, we're back to the original  
19 point.

20 MR. AGRESTA: That's right.

21 COMMISSIONER BURMAN: Okay. Thank you. I  
22 think it's important to clarify all of that so that folks  
23 understand sort of the process.

24 When we have accepted or when we have  
25 modified Joint Proposals before, what has been the process

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2 in doing that? Has it been the same process as this,  
3 where we modify it here for the first time or is there  
4 another step where we've modified it and sent it back for  
5 comments? Or is it just that we, as a Commission body,  
6 determine that we're going to modify that?

7 MR. AGRESTA: If this had been presented to  
8 us as a Joint Proposal 4 months ago, and you had an  
9 additional 4 months before the suspension date, it would  
10 have been possible to put a hold and send it back for  
11 additional process before you had to make a final  
12 decision. But here, you're at the end of the suspension  
13 date, and you don't have that opportunity.

14 COMMISSIONER BURMAN: Okay. Unless the  
15 parties agree to or the Company had agreed to.

16 MR. AGRESTA: Well the Company would have  
17 to agree to extend the suspension date, but all of the  
18 numbers indicate that the Company does need a rate  
19 increase of some type. And so it would not be in the  
20 Company's financial interest to do that, and I doubt they  
21 would do it.

22 COMMISSIONER BURMAN: Okay.

23 MR. AGRESTA: I wouldn't do it if I was  
24 them.

25 COMMISSIONER BURMAN: I'm asking these

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2 questions because these are the questions that people will  
3 ask, and I think it's important that we fully understand  
4 some of the ramifications. And in a minute, I'm going to  
5 ask Doris some financial questions related to the Company.

6 But before I get to that, I do want to ask,  
7 you know, when we -- the Commission, as a body, had  
8 established the Task Force or, through the order, we  
9 talked about establishing a Task Force and working with  
10 that Task Force, I do know -- and kudos to Judy Lee and  
11 other Staff who were involved in working with that Task  
12 Force. And the Company had gone done several times and  
13 worked with them.

14 What is now the current role of the Staff  
15 involved in working with the Task Force and the  
16 Commission? Formally or informally or both?

17 CHAIR ZIBELMAN: Peter, do you want to take  
18 that?

19 MR. MCGOWAN: Yes. The Commission did not  
20 establish the Task Force. The Task Force was established  
21 by the county. The Commission -- the Department has  
22 visited. The Chair actually went down and participated in  
23 a Task Force meeting.

24 So the Task Force is a creature of Rockland  
25 County, and the Commission has encouraged the Company and

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2 others to cooperate with the Task Force, and the Task  
3 Force continues its efforts of seeking solutions for  
4 Rockland County.

5 COMMISSIONER BURMAN: Okay. Thank you for  
6 clarifying that.

7 So in the order that we had done, where we  
8 mentioned the Task Force, there was some directive  
9 language to Staff.

10 MR. MCGOWAN: I don't recall. There might  
11 have been, but I don't recall what it is.

12 COMMISSIONER BURMAN: Right. Whether it  
13 was in the order or at the session, we had direction --  
14 directives on that. So I'm very cognizant of the fact  
15 that what might appear like now we're sort of stepping  
16 away from some involvement in that, and I don't believe  
17 that that -- I don't believe that that -- that that is  
18 clear, exactly what that means.

19 And the reason I ask that is that we were  
20 very -- and again, maybe I'm remembering it wrong, but I  
21 thought we were very impassioned at the session where we  
22 talked about the Task Force. We talked about the Staff  
23 going down and working with the Task Force in the  
24 companies. And I think that we still have that same  
25 passion.

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2 And so I'm trying to make sure that, while  
3 we are focused on the need for the county officials, town  
4 officials, other elected and appointed officials, locally,  
5 as well as the ratepayers and other folks who may be  
6 involved in those efforts, that we make sure that we also  
7 are involved in whatever is the appropriate role for us in  
8 looking at that, especially if we're going to be focusing  
9 on the conservation efforts, as well as -- again, this  
10 goes back to the different issues with supply and cost,  
11 safety, and quality. And while some of those issues may  
12 be non-jurisdictional to the extent that we also  
13 holistically look at what we are all doing, also at the  
14 state level I think is important.

15 So I don't have a full answer on exactly  
16 what the right approach is, but I do want to make sure  
17 that what I do believe all of us are interested in is  
18 safe, reliable, and clean water, that we take a look and  
19 make folks understand that our oversight role will be one  
20 that we will continue to enforce and continue to pay  
21 attention to.

22 I was really, you know, blessed when I went  
23 to the public statement hearing to see really such a  
24 outpouring of folks who were from the community come and  
25 talk about their concerns. And so for me, it's important

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2 that, you know, part of the reason that I try to go to  
3 public statement hearings and bring back the information  
4 to others, as well as when the other Commissioners go to  
5 public statement hearings, is really to understand what  
6 we're looking at and what the impact may be.

7 I am mindful that I am drinking bottled  
8 water. That's a luxury that I have. And in some areas  
9 it's not a luxury, but it's a necessity. And so I am glad  
10 that when we look at these issues that are first and  
11 foremost is safety. And the Chair eloquently mentioned  
12 how other entities we work with, DEC, EPA, DOH, on those  
13 issues to ensure, first and foremost, that we are taking  
14 care of all of our water quality and supply issues.

15 And so I guess I'm struck with a Joint  
16 Proposal with significant modifications. And if I felt  
17 that there would be the majority of folks feeling that  
18 these modifications were good -- there are probably some  
19 that, you know, both sides go back and forth. But what  
20 I'm hearing is that likely not everyone will be happy.

21 And or actually likely, nobody will be  
22 happy. And I -- that's just something that, for me, is a  
23 problem because it means that we've looked at a Joint  
24 Proposal and made modifications that doesn't actually have  
25 the majority, and possibly nobody, liking them. And

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2 that's really sort of my tension, which is why I listened  
3 to the other Commissioners to try to figure out what the  
4 pathway is.

5 And I welcome my other Commissioners'  
6 thoughts on sort of the pathway forward with my concerns,  
7 if you have any thoughts?

8 CHAIR ZIBELMAN: Thank you. If I -- just  
9 before. My recollection -- not my recollection, I know  
10 what we did, is that there was a Water Task Force and we  
11 felt that it would be very important for staff to meet  
12 with the Task Force and to know what was going on and to  
13 help move things. And I don't think it was an order, but  
14 it was something I know I met with the Task Force myself  
15 here, and then we met in Rockland County.

16 And so there was not a requirement in the  
17 order, but just that we wanted Staff involved -- as the  
18 conservation plan was being developed, that they be  
19 involved in it. And subsequently, Judy Lee and Bruce Alch  
20 and Kevin Manns, I think, were heavily involved in going  
21 to meetings to see -- to help and be constructive to help  
22 move things along.

23 So it wasn't a requirement. I think,  
24 moving forward, it's going to be important that Staff  
25 continue to stay up on what's going on, on the



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2 implementation of the conservation plans. But at this  
3 juncture, you know, what we want is -- because we  
4 obviously have limits on Staff time -- is not just to  
5 attend meetings, but to really, you know, provide advice  
6 or keep us informed. They're our eyes and ears in these  
7 situations and so I would expect that to continue.

8 In answer to your question, I don't know if  
9 everyone is going to be unhappy. I think there are a lot  
10 of things that we're making changes on that I'm hoping  
11 that people will say thank you, you listened to us, you  
12 understood our concerns and you took action in response to  
13 our concerns. But more importantly, you know, as much as  
14 I, like anyone else, want people to walk away happy, I  
15 really think our job here is to do the right thing by  
16 customers.

17 So if that makes a hard decision and hard  
18 decisions often lead to someone being not particularly  
19 happy and wishing we -- they had done something different,  
20 that's sort of what we get paid for is to make difficult  
21 decisions in difficult times.

22 I think this is a really, really difficult  
23 case. We -- none of us want to ever increase rates unless  
24 we're really putting in capital. That's always hard.  
25 None of us like to chastise companies. None of us like to

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2 tell Staff you didn't get -- hit it out of the ballpark.

3 So these are all things that, sort of, we  
4 have to do from time to time in order to do the right  
5 thing. This was something I think we all spent a lot of  
6 time thinking about and really pushing on have we done  
7 enough, can we do more? And I think in this instance, we  
8 had to -- we not only listened, but just not listening, I  
9 think it's our job to see are we hitting this where we  
10 need to go.

11 So I want to make it clear. This --  
12 because the Joint Proposal was not signed onto by all the  
13 parties, in my mind it meant that, rather than as  
14 Commissioner Sayre said with the Con Ed, that we looked at  
15 it and said we realized there was a lot of give and take  
16 and we don't want to upset all the various give and take.  
17 In this instance, we're essentially treating it like a  
18 rate case.

19 We're applying our own judgement and making  
20 a determination of what we think is the right outcome  
21 based on the record and based on the fact that this is our  
22 expertise. And so while I'm hoping people will see that  
23 this was a difficult case, and we've made some real  
24 strides and we're on the right path, ultimately, you know,  
25 that's why we get paid the big bucks, which we really

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2 don't get paid, but that's why we're here.

3 COMMISSIONER BURMAN: Thank you.

4 That, I think, is very helpful for having  
5 sort of a dialogue that really tries to get at the heart  
6 of what we're doing. I will point out that on -- in the  
7 order, my page 91, but it might not be -- it may not be  
8 the actual page 91 because it's -- I'm not sure I have the  
9 -- I'm just making sure I'm looking at this right.

10 There's a sentence in here that I had  
11 shared with Counsel that I had concerns with. It says --  
12 and I thought it was getting taken out. In short, we  
13 agree with Staff that while all parties want to act with  
14 the best available data, the perfect cannot be allowed to  
15 become the enemy of the good. The perfect cannot become  
16 allowed to become the enemy of good. I don't understand  
17 that sentence in this order. And I'm concerned about what  
18 that means. I did raise this, and I thought it was  
19 getting taken out.

20 I just want to, again, as I expressed, for  
21 me, orders and language should be tight. And I'm  
22 concerned about that and what that may mean because it may  
23 mean different things to different people. And I'm just  
24 wondering if there's any thought to this and if we could  
25 have some resolution on this sentence since we're all

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2 here?

3 CHAIR ZIBELMAN: This is the first I'm  
4 hearing it since I'm not participating --.

5 MR. AGRESTA: Well, this is not a legal  
6 issue. In common parlance, that sentence means that you  
7 shouldn't wait around for another 10 years, trying to come  
8 up with the perfect solution, when you have a good  
9 solution that you can implement now. And whether it's key  
10 to the order or not is for the Commissioners to decide.

11 CHAIR ZIBELMAN: What page are we on?  
12 Page?

13 A.L.J. PHILLIPS: Actually on page 92.

14 MR. AGRESTA: Yeah, it concerns rate  
15 design.

16 A.L.J. PHILLIPS: Right. On page 92, the  
17 second full paragraph, approximately midway through.

18 COMMISSIONER BURMAN: I am disheartened  
19 that it's the first time you're hearing about this because  
20 I don't think it was -- I think it was pretty clear that  
21 this was -- this sentence was a big issue for me. I also  
22 --.

23 MR. AGRESTA: I didn't say it was the first  
24 time I was hearing about this.

25 CHAIR ZIBELMAN: I said it was the first

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2 time.

3 COMMISSIONER BURMAN: I'm not saying you.

4 MR. AGRESTA: I said it's not a legal  
5 issue.

6 CHAIR ZIBELMAN: I guess --.

7 A.L.J. PHILLIPS: I will confirm that it  
8 was exactly what, as General Counsel Agresta indicated,  
9 simply a statement that we do need to move forward. We  
10 have sufficient data for moving forward on that basis.  
11 However, if the other Commissioners don't object, we can  
12 remove it. It's not of legal consequence.

13 CHAIR ZIBELMAN: I mean I --.

14 MR. AGRESTA: I'm not sure we understand  
15 what the objection is.

16 CHAIR ZIBELMAN: Yeah.

17 MR. AGRESTA: You said you had an  
18 objection, but I haven't heard what the objection is.

19 COMMISSIONER BURMAN: As I explained, I  
20 believe strongly that orders should be very clear and in  
21 plain reading. And when I look at this sentence -- let me  
22 read it. In short, we agree with Staff that while all  
23 parties want to act with the best available data, the  
24 perfect cannot be allowed to become the enemy of the good.

25 CHAIR ZIBELMAN: I guess I interpret that

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2 language to simply say -- to be what it is, which we  
3 always want data to be as good as possible. The fact that  
4 we can't achieve perfection doesn't mean that it's  
5 insufficient to act on. It's a common parlance around,  
6 you know, not trading the perfect -- not looking for the  
7 perfect and trading the good.

8 So I'm comfortable with what it is. I'm  
9 also comfortable in striking it because I don't think -- I  
10 think we could just simply say we agree with Staff that  
11 all parties want to act with the best available data, full  
12 stop, and go on and add another sentence. But I don't  
13 know it's necessary.

14 So let me -- do you want to make a motion  
15 to strike that sentence?

16 COMMISSIONER BURMAN: Well, I'm more  
17 concerned that this is one of other issues that I had  
18 raised, which I thought was going to be taken care of  
19 before public session. And so my concern is that I raised  
20 this only because I was -- I don't think anyone in the  
21 room would disagree I was pretty adamant on this issue.  
22 And I believed that there was going to be a sharing of my  
23 concern on that issue.

24 So I can let it go. I don't need to make a  
25 motion at this time. However, I want to be very clear,

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for me, it is very important that when we read orders, they are very clear and succinct and not having to explain what the meaning is or figure out what the actual intent is.

So especially when we have changes to a Joint Proposal and especially when there are many parties who are involved who will want to understand it, and especially when it is of no legal consequence, we should be very clear on things that don't necessarily need to be in there or could be written in a tighter way.

And the perfect cannot be allowed to become the enemy of good, I -- when I read it, I was very unclear where this came from and also what exactly we were trying to get at. The explanation on what it means at this time is sufficient, but -- and again, I'm not going to continue harping on the issue, however, to the extent that folks should hear what my position is on order and language, so that we're clear.

The other issue I have, when I look at this, is I just want to go over -- and this is -- I think it's a technical issue that LuAnn can answer. And then I don't think we got back to Doris on the financial. So I didn't forget about you.

And I will leave it to the Chair to decide

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2 who should answer this, but I just want to understand the  
3 low-income aspect and the next steps in that. And I know  
4 that in the order it says a low-income program for the  
5 Company was not developed in the context of the rate case.  
6 So I just want to understand what we're doing because this  
7 is the first low-income aspect in a water case, if I'm not  
8 mistaken.

9 CHAIR ZIBELMAN: Michael or LuAnn, which  
10 one of you?

11 MS. SCHERER: I can do it.

12 So yeah, there's a proposal in the New York  
13 American Water Rate Case, which you'll be deciding on in a  
14 couple months. And some of the Intervenors asked that a  
15 proposal in the Suez Case be created based on the United  
16 Water -- New York American Water Proposal.

17 Instead, they didn't create it during the  
18 rate case process. So what we're proposing or what the  
19 order states is that a collaborative process will be  
20 convened and the parties will work towards -- one of the  
21 biggest issues is how to income verify customers, and we  
22 think there's some create ways of doing it. So we're  
23 hoping that we can work towards the least expensive  
24 process for income verifying customers for the program.  
25 And the proposal will be submitted to the Commission in a



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2 form of a petition. And the Commission will decide on it  
3 within 9 months of the order.

4 COMMISSIONER BURMAN: When you say the  
5 proposal will be submitted -- and I'm sorry. I want to  
6 make sure I understand this. When you say the proposal  
7 will be submitted as a petition, who will be submitting  
8 that petition?

9 MS. SCHERER: I assume Suez. They will  
10 work with the parties to come up with a low-income  
11 proposal and they will submit a petition to the Commission  
12 outlining what the proposal is. It will be SAPA'd and the  
13 Commission will vote on it.

14 COMMISSIONER BURMAN: So will there be a  
15 case number open beforehand and that anyone who wants to  
16 be involved in it would know? And will Staff be involved  
17 in that process?

18 MS. SCHERER: I think Staff will be  
19 involved in the process. In terms of the case number, I'm  
20 not sure a new case number is necessary, but definitely  
21 when the petition is filed, we will seek comments on the  
22 petition.

23 COMMISSIONER BURMAN: And will there be  
24 notice to folks? I'm just trying to --.

25 MS. SCHERER: We can create a notice and

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2 issue it at the same time.

3 CHAIR ZIBELMAN: I think we'll follow  
4 whatever procedure we have to follow under SAPA.

5 MR. AGRESTA: Yeah. It would require SAPA  
6 notice and notice in the State Register.

7 COMMISSIONER BURMAN: I understand we may  
8 follow the minor requirements for SAPA. What I'm trying  
9 to get at and really make sure is that we're very clear  
10 that we're directing, for the first time ever, a low-  
11 income aspect that was not part of the rate case  
12 initially. So to the extent that in other cases we opened  
13 a generic proceeding on low income where low-income  
14 aspects are usually done in rate cases, and we've dealt  
15 with those low-income aspects in separate rate cases, and  
16 then there was a generic proceeding not on water, but on  
17 other utilities, electric and gas, that was looking at  
18 what the policy would be. And since we also have a  
19 pending American Water case that has aspects of low-income  
20 in that, I want to clearly understand.

21 Are we setting policy that translates into  
22 the American Water Rate Case? And to the extent that  
23 people who may be interested, including, potentially,  
24 other ratepayers and other communities and also what this  
25 may mean in terms of if it does transcend into other

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2 certain areas of water cases, that we understand there is  
3 or is not a specific docket set up before the petition is  
4 made, or is the opportunity to look for when that petition  
5 comes.

6 CHAIR ZIBELMAN: I think, from my  
7 perspective, what we're doing and what we would be voting  
8 on today is a decision for Suez to work with Staff and the  
9 parties involved in this proceeding to develop a low-  
10 income offering for Rockland County Suez system. It's not  
11 a generic proceeding. It wouldn't affect other  
12 communities.

13 Obviously, the Commission could always, in  
14 the future, make a determination that the outcome of this  
15 process has revealed a very good process for offering of a  
16 discount for low-income and make them decide to expand it  
17 to have broader application. But that would be a  
18 subsequent decision.

19 I think what we're voting -- I think that  
20 today, given the fact that we haven't done this in water  
21 previously, although it is in the American Water case  
22 that's not in front of us yet, my recommendation and  
23 reason why I'd like to do it this way is that it helps in  
24 this because it's a live issue. It will help define it.  
25 And then we can always make a determination later to open

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2 up a more generic proceeding.

3 But I would counsel against doing that  
4 today. I think we need to get something done here. And  
5 it would be done faster if we do it within the context of  
6 this particular company and this community. So I would  
7 not support a generic opening at this stage.

8 MR. SAYRE: I would agree. I think we'll  
9 get a report. We'll get a proposal. We can check mets at  
10 that point and decide what we need to do.

11 A.L.J. PHILLIPS: And if it helps, there is  
12 an ordering clause that is limited to Suez Water New York  
13 being directed to provide this proposal. So it is limited  
14 to this case and this Company.

15 MR. AGRESTA: Which makes it then a  
16 compliance filing for which it's appropriate to keep this  
17 case open until that comes in. And when it's filed,  
18 anybody who is a party will receive an electronic notice  
19 that the petition came in, as well as we would then  
20 generate a SAPA notice in the State Register.

21 CHAIR ZIBELMAN: And to me, there was a  
22 difference in the electric proceedings and gas  
23 proceedings. They all had low-income provisions. The  
24 concern we had there is there was inconsistency and there  
25 weren't good lessons learned and it was difficult because

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2 we were litigating this in every case. And actually, the  
3 Intervenors requested a way of not having to litigate the  
4 policy in every case.

5 So while I'm not suggesting we're taking  
6 starting on the new path, we were more mature in terms of  
7 where we were. So it made sense to think about is there a  
8 better approach. In this instance, I think there's an  
9 immediacy and a desire to act more quickly, and I don't  
10 think we're ready yet to start thinking about generic  
11 policy in terms of water.

12 COMMISSIONER BURMAN: Okay. Thank you for  
13 that clarification.

14 I do have a question now that Judge  
15 Phillips has raised on the ordering clauses. There is a  
16 number of ordering clauses that direct the Company to file  
17 a report and to consult with Staff. There's also an  
18 ordering clause 11, which directs the Company to file its  
19 proposal of low-income discount plan within 9 months of  
20 the issuance of the order.

21 I just -- because I don't think, while it's  
22 in -- I think it's in the body of the order, though I am  
23 making clear that it is or is not -- I don't think it  
24 notes in the ordering clauses that then that would be put  
25 out for comment and come back to the Commission to decide

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2 what is appropriate.

3 MR. AGRESTA: It doesn't need to be in the  
4 ordering clause.

5 COMMISSIONER BURMAN: And so I just want to  
6 make clear then what the process is in terms of once  
7 that's filed and what comes back to the Commission or not?

8 MR. AGRESTA: If the Commission is going to  
9 take any action at all, they have to proceed pursuant to  
10 the State Administrative Procedure Act, which requires a  
11 notice. And we don't generally put into our ordering  
12 clauses everything that's already required by state law,  
13 so.

14 COMMISSIONER BURMAN: The reason I ask this  
15 is that there has been differences of opinion under  
16 different counsels, as well, in terms of whether the  
17 ordering clause that says file means that then you file  
18 and report and the Commission does or does not have to  
19 take it up, and when you have an order -- when I'm looking  
20 at it and there's certain aspects.

21 I just want to make clear -- again, it goes  
22 back to the language in the order. I want to make clear,  
23 in this case, are we saying that this low-income process,  
24 before it is finalized and the Company has to do it and  
25 the ratepayers have to pay for it, is it going to come

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2 back to the Commission for a vote?

3 MR. AGRESTA: The way this order is  
4 written, the ordering clause, which on my draft is number  
5 12, about the low-income discount plan, that would not be  
6 something that could take effect without Commission  
7 action. So it would have to go back to the Commission and  
8 there would have to be notice.

9 A.L.J. PHILLIPS: And I would also point to  
10 the discussion. The very last sentence explicitly states  
11 a proposal shall be submitted for Commission approval  
12 within 9 months of this order.

13 CHAIR ZIBELMAN: That was my understanding  
14 when I read that sentence that's what would happen.

15 MR. AGRESTA: And there's also a rate-  
16 making aspect to it, as well. They would have to submit  
17 the cost of the program for recovery as part of the  
18 filing. So it's all very clearly intended to go back to  
19 the Commission for a vote after notice.

20 COMMISSIONER BURMAN: Thank you.

21 I would just say while it may not need to  
22 be in the ordering clauses, the ordering clauses are  
23 something that we can all know are not just dicta or, you  
24 know, information in there and that people -- sometimes  
25 people just look to what the ordering clause is. And to

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2 the extent that an ordering clause makes it clear what  
3 does or does not come back to the Commission, because in  
4 other orders sometimes when the ordering clause says file,  
5 you have to look to see if it is in the order or if it's  
6 not in the order, where the file does not come back to the  
7 Commission.

8 And so I just want to be clear, and while  
9 it may not need to be in the ordering clauses, as one  
10 Commissioner, I would rather have it very clear in the  
11 ordering clause, which one of these different ordering  
12 clauses comes back to the Commission or not, so we don't  
13 have to go through an order and figure out what it may or  
14 may not mean to everyone, even if it seems clear to  
15 everyone but me.

16 The other thing is -- that concerns me is  
17 we have different ordering clause numbers right now. So I  
18 clearly have the wrong order.

19 MR. AGRESTA: Not necessarily.

20 MR. ZIBELMAN: Paul may have the wrong  
21 order.

22 MR. AGRESTA: My book may be the wrong one.

23 COMMISSIONER BURMAN: I don't know which is  
24 more upsetting then, Counsel.

25 MR. AGRESTA: And I don't monitor my book



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2 all that carefully. So it's more likely you have the  
3 right one.

4 COMMISSIONER BURMAN: All right. So can we  
5 make sure that Commissioner -- here I am talking about  
6 myself in the third person. Can we make sure that the  
7 order that we're going to be voting on is the right one  
8 that I have? Do you want me to hand it to you or Judge  
9 Phillips?

10 CHAIR ZIBELMAN: I think that --.

11 COMMISSIONER BURMAN: It's what you sent to  
12 the Commissioners.

13 CHAIR ZIBELMAN: Then that would be the  
14 accurate one. It may have been that Paul's book was not  
15 updated. So that's just --

16 COMMISSIONER BURMAN: Okay.

17 CHAIR ZIBELMAN: -- a technicality.

18 All right. Do you have further because I'd  
19 like to move to a vote? We've got a big agenda.

20 COMMISSIONER BURMAN: Yes.

21 Ms. Stout, I'd like information on what  
22 this means, the financial impacts and looking at it from  
23 the perspective of doing this. What would, as  
24 Commissioner Acampora generally asked you, what would the  
25 street say on this?

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2 MS. STOUT: So it's very hard to figure out  
3 what the street might say on the Suez New York Case  
4 because Suez is part of an international conglomerate.  
5 Suez New York is not rated by bond rating agencies. So  
6 you have to go to its parent company to get a bond rating.  
7 So it's kind of hard to assess exactly how they might  
8 react to a Suez New York decision here.

9 That being said, when we made the  
10 recommendation to adjust the return on Haverstraw, we did  
11 an analysis of what the impact would be on the credit  
12 quality metrics of Suez New York. And we found that the  
13 adjustments that we made would still allow it to maintain  
14 the credit quality of investment grade company, consistent  
15 with what it was before making that adjustment, because  
16 all of those metrics fall in ranges. And we found that  
17 the adjustment to the Haverstraw -- we did not change  
18 those metrics.

19 So that being said, there's a lot of other  
20 things that go into bond ratings, assessments of the  
21 regulatory environment and the like. And I can't say  
22 exactly what the determination would be here, but I think  
23 we have structured this, as Commissioner Sayre mentioned,  
24 to reflect the uniqueness of the situation, that this is a  
25 very large asset in the context of Suez, as compared to

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2 other instances where we have allowed the full return.

3 COMMISSIONER BURMAN: Okay. Thank you very  
4 much.

5 I have no further questions. I do want to  
6 thank all the folks that have been involved in this and  
7 especially A.L.J. Phillips, who I know has really looked  
8 at a lot of the issues and has really done a yeoman's job.  
9 And to the extent that I'm cognizant that we have a lot of  
10 work ahead of us, and as the Chair focused on, directing  
11 Mr. McGowan to follow up on items, I look forward to the  
12 continued focus on this and appreciate.

13 Thank you.

14 CHAIR ZIBELMAN: So any further comments  
15 from any of the Commissioners?

16 All right. Thank you all for your  
17 attention and your comments on this.

18 I'm going to move to a vote then.

19 All those in favor of the recommendation to  
20 adopt a multi-year rate plan, subject to the unconditional  
21 acceptance or the 1-year rate plan in the event that the  
22 multi-year plan is not accepted as described, please  
23 indicate by saying aye.

24 COMMISSIONER ACAMPORA: Aye.

25 COMMISSIONER SAYRE: Aye.

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2 CHAIR ZIBELMAN: Aye.

3 COMMISSIONER BURMAN: And I concur in  
4 limited fashion based on my comments at session.

5 CHAIR ZIBELMAN: So there being no  
6 opposition, the recommendations are adopted.

7 Thank you, all. Thank you. Excellent job,  
8 Staff. Thank you.

9 CHAIR ZIBELMAN: It's 20 after 12. I'm  
10 going to guess these next items are going to take quite a  
11 bit. Let me ask does anyone want a break? You guys good?

12 Okay. Then we will move forward. Those in  
13 the back of the room, you can take breaks as you will.

14 Before -- while -- while we're changing, I  
15 do want to, again, express my appreciation to the people  
16 from Rockland County for being here, today. And we  
17 certainly appreciate your attendance, your help, and the  
18 fact that while it's very clear you're interested in this,  
19 your maintenance of decorum of our meeting.

20 So thank you all very much for being here  
21 and safe travels back on this snowy, snowy day. We're not  
22 adjourning, so -- but thank you and good to see you.

23 Second item for discussion today is Item  
24 201, and that's the Joint Proposal for Con Ed's rates.

25 It's presented by Mike Worden, who is the Director of

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2 Office of Electric Gas and Water and Administrative Law  
3 Judge Ben Wiles. John Scherer, who's our Deputy Director  
4 of the Office of Accounting, is also here for questions.  
5 And I think that's it. Oh -- and Marco Padula is also  
6 here for questions.

7 We also have a companion item, 201-B. And  
8 because they're closely related, I might want to -- I  
9 think we're just going to go 1 to 2 and then we'll vote on  
10 both -- both, separately.

11 Okay. Mr. Wiles -- or Judge Wiles or Mr.  
12 Worden?

13 A.L.J. WILES: Mr. Worden.

14 CHAIR ZIBELMAN: Judge Worden or Mr.  
15 Worden?

16 MR. WORDEN: Mr. Worden, today.

17 CHAIR ZIBELMAN: Okay.

18 MR. WORDEN: Thank you.

19 I'm just going to give a brief overview and  
20 then I'm going to turn it over to Judge Wiles. So Item  
21 201-A addresses Con Ed gas and electric rate case. What  
22 you have before you today recommends that you adopt a 3-  
23 year Joint Proposal that is brought to us by Staff and a  
24 number of different parties. So this is part of the 99%,  
25 which you normally would take and approve, going forward.

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2 One of the benefits of having this 3-year  
3 rate plan on the heels of a previous 3-year rate plan for  
4 gas and a 2-year rate plan for electric, followed by an  
5 extension for electric, is that many of the issues that  
6 were faced are traditional issues that we had a good  
7 handle on. And, therefore, they are much narrower maybe  
8 then they had been in the past.

9 Items such as rate of return, depreciation,  
10 taxes, sales, and infrastructure, those items probably  
11 didn't take as much effort in this case as they might have  
12 taken in a case like the KEDLI and KEDNY rate cases last  
13 month that hadn't been in for a long time.

14 And because of that, this 3-year J.P.  
15 offers stability. We had stability over the last 3-year  
16 period. Now we'll have stability going forward for  
17 another 3-year period. And another piece of good news in  
18 that is that it allows the parties to focus some efforts  
19 on moving forward.

20 So, the parties in this case, in addition  
21 to addressing those key ratemaking issues, which do have  
22 to be addressed, we're able to address some other key  
23 elements that are more forward looking. Prime amongst  
24 those is the gas safety issues associated with leak-prone  
25 pipe. So, there's some elements in here that are

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2 accelerating the leak-prone pipe -- leak-prone pipe  
3 replacement. The low income has been integrated into this  
4 order. So, the low income from the gas -- the order that  
5 recently came out, and LuAnn will be here to answer  
6 questions later on if you have questions on that, but we  
7 are going to advance that in the Joint Proposal. And we  
8 are also going to be able to address issues on energy  
9 efficiencies and earnings to the adjustment mechanism.

10 So -- so, the latter three items are areas  
11 that we probably have been able to advance as much had we  
12 been at a typical 1-year litigated rate case.

13 So with that picture looking forward, I'm  
14 going to turn it back to Ben. He's going to walk through  
15 the mechanics of the increase.

16 CHAIR ZIBELMAN: Thank you, Mike.

17 Mr. -- Judge Wiles, please proceed.

18 A.L.J. WILES: Okay. Let's try this.

19 CHAIR ZIBELMAN: Right.

20 A.L.J. WILES: My notes say the first thing  
21 I'm supposed to acknowledge is good morning, Chairman.  
22 But I'm going to try and do better on the rest of the  
23 presentation.

24 CHAIR ZIBELMAN: Okay.

25 COMMISSIONER BURMAN: Just good morning

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2 Chairman, not the rest of the Commissioners?

3 A.L.J. WILES: No. Well, I got them in  
4 here, too.

5 COMMISSIONER BURMAN: Okay.

6 COMMISSIONER SAYRE: Good afternoon, Judge  
7 Wiles.

8 A.L.J. WILES: Okay. Great. As Mike  
9 Worden said, I'm going to describe really the rate case-  
10 specific aspects of what we're dealing -- what the order  
11 deals with.

12 The -- so, the presentation I'm giving is  
13 one for -- for an order to resolve 2 cases brought by Con  
14 Edison in New York, one to raise its electric rates and  
15 the other to raise its gas rates. These rates were last  
16 addressed 3 years ago in a multi-year settlement that  
17 addressed electric, gas, and steam rates, all 3 together.

18 In that settlement, gas rates were set for  
19 a 3-year term. The third year of that plan, the gas rates  
20 plan, ended in December 2016, which was last month. The  
21 electric rate plan, which was adopted at the same time,  
22 was a 2-year plan. The second year of the plan concluded  
23 in December 2015. That plan, however, was extended for a  
24 third year so that the electric and gas plans expired at  
25 the same time and could be addressed at the same time in a



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2 new filing. And that's the filing we're looking at now.

3 Con Ed -- Con Ed made this filing to begin  
4 these cases in January of 2016, January 29th. In the  
5 filing, Con Ed sought a \$498 million revenue requirement  
6 increase for electric and a \$125 million revenue  
7 requirement for gas.

8 After the filing was made and up to the  
9 present time, 38 entities, some individuals, some not-for-  
10 profit, some authorities, some businesses, have identified  
11 themselves as parties in DMM. After the case was filed,  
12 these parties proceed, through discovery, to conduct -- to  
13 conduct their own investigations into the Company's claims  
14 that the proposed rate increases were warranted.

15 This period of discovery was lengthy, but  
16 it concluded with the filing of Staff Intervenor testimony  
17 on May 27th of 2016, and the filing shortly thereafter of  
18 rebuttal testimony on June 17th.

19 At about the same time as the filing of  
20 rebuttal testimony, the parties recognized it might be  
21 possible to settle these cases and they began what was a  
22 lengthy series of negotiations to identify the terms of a  
23 Joint Proposal which would attract a broad-range of  
24 support from the active parties.

25 Settlement process concluded with the

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2 filing of a Joint Proposal on September 19th. And it this  
3 proposal, the one from September 19th, which Staff  
4 recommends that the Commission approve without  
5 modification.

6 After the Joint Proposal was filed on the  
7 19th of September, the parties filed statements in support  
8 and in opposition. And an evidentiary hearing was held on  
9 the Joint Proposal in New York City, on November 2nd and  
10 3rd.

11 I'm on my third slide. Thank you.

12 The -- for both electric and gas, the term  
13 of the rate plan is 3 years. And as you are probably, no  
14 doubt, aware, most negotiated rate plans current -- are  
15 currently 3 years long, a length, which leaves the Company  
16 with -- and Staff with a quiet period between 2 -- between  
17 the intensity of 2 formal rate cases.

18 The rate -- the 3-year term, as proposed by  
19 the Company's filing, would begin on January 1, 2017, and  
20 end on December 31, 2019, obviously, 3 years later.  
21 During the settlement discussions and to provide more time  
22 reach agreement on a Joint Proposal, the Company agreed to  
23 a 1-month extension of the suspension period.

24 As implemented, this extension was  
25 accompanied by a make-whole provision. The make-whole

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2 does not alter the 3-year term of the rate plan, which  
3 begins on January 1st, 2017. Rather, it provides the  
4 Company with the revenue recovery -- excuse me -- it  
5 provides the Company with the revenue recovery for -- of  
6 the first year of the rate plan in the 11-month period,  
7 which begins on February 1st, 2017.

8 As this slide notes, 22 parties signed the  
9 proposal. The number of parties participating and the  
10 number that signed the agreement are an excellent  
11 illustration of the breadth of involvement by interested  
12 parties and of the diversity of viewpoints that  
13 participated and ultimately which recommended the terms of  
14 the Joint Proposal to the Commission for approval.

15 Next slide. Thank you.

16 This is the first chart, which I'm trying  
17 to show on here is the rate -- revenue requirement as it  
18 was developed during the case. The top line and in the  
19 middle, 498 is the Company's original request. Next step  
20 down is the result that was achieved in negotiations and  
21 was memorial -- would be memorialized in the Joint  
22 Proposal.

23 I should also point out the column --  
24 column 2, but the \$38 million rate credit is an -- it's an  
25 element of both -- not -- the rate credit is an element of

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both the rate case -- gas case and the electric case. This is the electric rate credit. And it was a credit -- a temporary credit provided in 2016, so that rates would not have to be adjusted in 2016. But in connection with dividing that credit, the Commission at that time also approved rates that would go into effect -- will go into effect in -- when the credit expires, which is January of 2017.

So on the Joint Proposal, horizontal, is \$195 million of the increase that's in the -- in that Joint Proposal first-year increase. That's the increase associated with the cost of doing -- doing business, cost of providing service. The \$48 million is the cost or it's really the effect of the discontinuation of the temporary rate credit. So the 2 have to be added together.

The result reaches the bottom line, which is like the middle line except it shows a levelized rate increase, \$199 million, in each year.

Next slide. The key financial parameter is probably the most influential, actually, of these factors on the result we just looked at is the agreement reached on ROE was -- and in the -- the agreement reached is an -- on a 9% ROE. And that is true applied in both electric and gas. The effect -- the -- I should say the 9% ROE is

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2 commonly -- has been commonly used in -- you've seen it in  
3 several, very recent, rate cases. And so it's not  
4 surprising, although it's very influential. The Company's  
5 proposal was for 9.75% ROE and the value of those 75  
6 places point difference is approximately \$116 million.  
7 And for gas, the difference is associated with  
8 approximately \$30 million.

9 While ROE is a very significant portion of  
10 the increased revenue requirement, there are other drivers  
11 for this rate plan.

12 Next slide. And this slide attempts to  
13 capsule -- encapsulate or display several different things  
14 at the same time. The black line, the heavy black line  
15 across the -- horizontal black line is the -- is 0.  
16 That's what -- all the boxes for expenses that are below  
17 the black line are places where there were savings and the  
18 pressure to increase the revenue requirement was  
19 diminished.

20 The boxes above the black line are places  
21 where the -- there was -- places which produced an impact  
22 intended to raise rates. So you can compare those  
23 elements -- you can identify in each one which are the  
24 major driving elements and which are -- have less of an  
25 impact. And you can compare left to right to see how the

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2 Company's plan, as it was originally formulated in  
3 rebuttal, and what were the significant elements of that,  
4 you can compare that on the right to the same boxes, which  
5 the Joint Proposal reflects.

6 CHAIR ZIBELMAN: Just -- just because this  
7 is a little bit complicated. So basically, what this is  
8 showing is that when -- when you compare to the Joint  
9 Proposal compared to the Company plan, rate of return and  
10 then other. So I assume that's some expenses and  
11 depreciation expense are the primary drivers of -- of the  
12 Joint Proposal coming out with a lower overall revenue  
13 requirement than was seen in the original filed plan. Is  
14 that correct?

15 A.L.J. WILES: Yes.

16 CHAIR ZIBELMAN: So that's -- that's how  
17 you look at these 2 slides. Thank you.

18 A.L.J. WILES: We don't have a slide for  
19 it, but similarly in the rate year 2 and rate year 3, the  
20 increases in the rate year -- those rate years are  
21 attributable to some of the same characteristics, new  
22 plant investments, depreciation expenses, and taxes.

23 Next slide. This is the slide for the gas  
24 rate plan. Here, instead of a \$47 million rate credit,  
25 there's a \$41 million rate credit. The Company's proposal

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2 is the fourth column, top number, which is 125 million.  
3 And the Joint Proposal, 2 lines down, the bottom line  
4 result, the \$36 million increase was agreed in the Joint  
5 Proposal. The little idiosyncrasies in the middle box,  
6 the minus 5 million, reflects the fact that Staff when it  
7 examined the request for a gas rate increase, actually  
8 determined that the structure of assumed expenses would  
9 justify a rate decrease.

10 So in the Joint Proposal, the agreement was  
11 on a \$5 million rate decrease -- revenue decrease and  
12 that's why the -- the minus 5 is joined to the 41 to  
13 produce a net result of 36 million.

14 The difference between this -- one -- the  
15 difference between this and the electric is that in this  
16 case, there is no levelization, the first-year increase is  
17 quite a bit lower than years 2 and 3, and years 2 and 3,  
18 themselves, are pretty much the same number so the parties  
19 never -- decided that they wouldn't need to recommend the  
20 levelization.

21 I think, next slide. This is the stacked-  
22 up bar chart for gas and corresponds -- and provides the  
23 same explanations that they want -- that we showed you for  
24 electricity rate.

25 For gas, the rate year 1 drivers are the

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2 rate base additions, unrelated depreciation, the increase  
3 in O and M expenses, these are offset by items below the  
4 line for higher sales revenues and regulatory  
5 amortizations and a lower rate of return.

6 Right. Next slide -- the next slide is  
7 over to you.

8 CHAIR ZIBELMAN: Okay. Mike, thank you.  
9 Judge Wiles, thanks.

10 Mike proceed.

11 MR. WORDEN: Okay. Thank you.

12 One thing that Ben said that I would --  
13 might contradict is there -- there's no quiet period --

14 CHAIR ZIBELMAN: Yes.

15 MR. WORDEN: -- after the 3-year rate plan.  
16 We go into other stuff and -- and, in fact, relative to a  
17 rate case, we -- we are constantly -- Staff is constantly  
18 in -- in communication with companies about their  
19 infrastructure projects and all the accounting aspects of  
20 their work, so.

21 CHAIR ZIBELMAN: You mean you're not  
22 sitting around with your feet on the desk?

23 MR. WORDEN: I am, but the others aren't.

24 CHAIR ZIBELMAN: Yes, but everyone else is.  
25 Yes.



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2 MR. WORDEN: So I -- I mentioned earlier we  
3 developed some metrics for energy efficiency and EAMs.  
4 This is an outgrowth of the Track Two order that came out  
5 last spring from the Commission. We developed 2  
6 efficiency-related EAMs. 2 are programmatic EAMs, which  
7 were an outgrowth of -- of programs that were previously  
8 in place and modified for this rate case going forward,  
9 one for energy efficiency and one for peak load reduction.

10 And then, as part of the working group  
11 effort, we developed 3 further outcome-based EAMs, one for  
12 energy intensity, which again was consistent with the  
13 Track Two order, one for DER utilization, and another one  
14 for customer load factor.

15 And I will point out this was -- there was  
16 a lot of discussion and a lot of work that went into  
17 developing these metrics and developing, not only the  
18 targets, but the incentive mechanisms associated with  
19 them. And Staff really, and the Company and the parties  
20 deserve a lot of credit for working to pull this off and  
21 make it work. And I think they've done that.

22 I would note that the city objects to some  
23 of the components on the output-based metrics. One  
24 metric, in particular, they -- in particular, they don't  
25 think the -- that NYPA should have to pay for this. We

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2 would counter -- advisory staff would counter and say well  
3 NYTRIC -- NYSEC -- NYPA uses the T and D system, then you  
4 know at -- at some point, everybody has to pay for a  
5 certain level of this -- reductions that we're trying to  
6 make.

7 NYPA raised some other questions about  
8 double counting. The city raised -- the city raised  
9 questions about double counting for the energy intensity,  
10 in particular, but what happens there is we have targets  
11 for -- stretch targets that go well beyond what the  
12 dollars that they get for the regular energy programs.  
13 And that's why advisory staff feels strongly that -- that  
14 we should move forward these metrics as they propose.

15 There will be a collaboration group to  
16 continue work on these metrics, going forward. So we look  
17 forward to them continuing their work and likely they will  
18 come back to the Commission with further -- further  
19 request for action.

20 We continued work on stand-by rates.  
21 Stand-by rates is an area that we've been working on for,  
22 it seems like forever, but at least the last 10 years,  
23 probably more like 15 to 20 years. So there are a number  
24 of parties that were very, very interested in stand-by  
25 rates and what could be done to -- to make enhancements to

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2 those rates.

3 So that was another strong working group  
4 where there are a lot of very diverse opinions on what  
5 should be done. The group was -- come up -- able to come  
6 up with some compromises that allowed them to make some  
7 improvements to the stand-by rates. One option allows a  
8 10-year exemption for an expanded list of qualifying  
9 technologies. So this is for CHP projects with specified  
10 emissions. So these are going to be cleaner units, but  
11 they're going to get more options in terms of stand-by  
12 rates.

13 We also provide an exemption for certain  
14 battery storage installations.

15 The reliability credits is -- are replacing  
16 the performance credits. The performance credits were  
17 focused more on distributed generation. The reliability  
18 credits are focused more on a holistic behind the meter.  
19 So, if a customer can manage its load better, in addition  
20 to having distributed generation, he can get a reliability  
21 credit.

22 There was some -- some parties that had  
23 some concern about the reliability credit, in that the  
24 time period coincides with the definitions of summer  
25 period that the -- the NYISO uses, which is September

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2 30th. We feel strongly that it needs to do that because  
3 we -- we can't have multiple different periods that  
4 different parties are using because then we'll get out of  
5 sync with each other. And we need to keep these parts in  
6 sync. The -- the distribution system needs to maintain a  
7 -- a synchronization with -- with the wholesale system.

8 On the low-income program -- I'm not going  
9 to read this to you, really. I'll go through just a  
10 couple of points, but I will point out that it's  
11 consistent with the recent Commission Order. The  
12 estimated cost of the programs is 55 million for electric  
13 and 11 million for gas. Some of the elements you've seen  
14 before in the previous order that you had, but it adds  
15 Medicaid recipients to the list of qualifying customers  
16 for electric. These were already included for gas. And  
17 expansion of the file matching program. So it supports  
18 the municipal costs and there's some other elements that  
19 you can read there, so -- continuation of the reconnection  
20 fee waiver. If you have specific questions, I'm going to  
21 defer to LuAnn for those.

22 One more slide is the gas safety. Again, I  
23 mentioned at the outset we were able to expand the gas  
24 safety mileage rates. So the mileage rates for leak-prone  
25 pipe are up to averaging 85 miles and -- over the 3 years.

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2 So over the last 6 years, we've changed the leak-prone  
3 pipe from being replaced in 35 years, to now being  
4 replaced over a period of 20 years. So that's a  
5 significant improvement.

6 We've tried to do that in -- in a manner  
7 that reflects and respects the cost recovery elements, but  
8 also keeps in mind customer rate impacts. So it's very  
9 important to balance those 2 aspects and keep rate in --  
10 increases to a manageable level.

11 And finally, we've made some modifications  
12 to the -- the liability and safety surcharge mechanism.  
13 So it's a -- a new mechanism, actually, here. And we've  
14 tightened other mechanisms up so that, going forward,  
15 we'll have a better representation of the new numbers and  
16 we won't have as many questions when the Company files the  
17 reports on those.

18 So that's really our report on this item  
19 and we're happy to answer any questions, both Ben and I.

20 CHAIR ZIBELMAN: Okay. First of all, thank  
21 you and thanks both Judge Wiles and -- and Mike Worden,  
22 for your presentation today. It's very helpful.

23 Before we move to questions, though, I am  
24 going to move to the next item, which is Item 201-B so  
25 that we can kind of take them up in discussion. But

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2 obviously, reserve your questions and we'll -- we'll be  
3 back.

4 So Marco, please proceed.

5 MR. PADULA: Thank you.

6 Good morning, Chair Zibelman and  
7 Commissioners.

8 Item 201-B is a draft order, addressing the  
9 filing by Consolidated Edison Company of New York, seeking  
10 approval of a proposed shareholder incentive related to  
11 its targeted demand management program. Such filing was  
12 made in compliance with the Commission's December 2015  
13 order, which adopted the TDM program, allowing the Company  
14 to engage in non-wire alternative projects which replace  
15 or defer the need for transmission and distribution system  
16 infrastructure through the use of customer-sited  
17 distributed energy resources or load reductions.

18 Separately, under the terms of the Joint  
19 Proposal in the Con Ed rate case, which you are  
20 considering as Item 201-A, the Company will replace the  
21 TDM program with a generic NWA-related provisions in the  
22 Joint Proposal and have the opportunity to earn an  
23 incentive for NWA projects pursued during the term of the  
24 rate plan subject to the terms and conditions approved in  
25 this proceeding.

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2 Con Edison seeks and pursues cost-effective  
3 NWA projects that would allow for the delay of traditional  
4 capital infrastructure investment that would otherwise be  
5 needed to accommodate the growth and peak electric demand  
6 in various areas of the Company service territory.

7 The Company's filing proposed a shareholder  
8 incentive that would provide 50% of the present value of  
9 net benefits resulting from the NWA projects pursued. The  
10 draft order adopts Con Edison's proposed incentive  
11 mechanism with modifications, the most significant of  
12 which is to allocate 30% of the net benefits to  
13 shareholders and 70% to ratepayers.

14 The mechanism includes a multi-step process  
15 for determining the final incentive that would reward the  
16 Company for maximizing customer benefits and minimizing  
17 the costs required to achieve such benefits. Under the  
18 process an initial shareholder incentive would be  
19 determined as a 30% share of the net benefits calculated  
20 on a detailed benefit cost analysis.

21 To spur the Company to manage and reduce  
22 the costs of the NWA project throughout the  
23 implementation, the Company would share the difference  
24 between the total cost assumed in the initial net benefits  
25 calculation and the actual total cost of the NWA project

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2 once completed.

3 Therefore, the final shareholder incentive  
4 would equal the sum of the initial incentive plus 50% of  
5 the cost overruns or underruns of the NWA project. The  
6 final incentive will be subject to both a floor and a cap,  
7 such that the final incentive shall neither be less than  
8 \$0, nor greater than 50% of the initial net benefits.

9 Overall, the mechanism represents a  
10 financially meaningful incentive opportunity that should  
11 encourage Con Ed to pursue innovative portfolio level  
12 approaches to implementing NWA projects while producing  
13 significant net -- net benefits to customers while  
14 reflecting the financial risk required of Con Edison's  
15 shareholders.

16 Finally, the draft order requires several  
17 checkpoints throughout the process, including the filing  
18 of operating and accounting procedures, as well as  
19 implementation plans and benefit costs analyses for each  
20 NWA portfolio.

21 This concludes my presentation.

22 CHAIR ZIBELMAN: Thank you, Marco.

23 So I think the -- the way that makes sense  
24 is I'm going to -- I'll -- I'll comment first on the  
25 proposed Joint Proposal and then on the modification for



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2 the TDM, essentially, the -- Item 201-B. And I intended  
3 to kind of discuss them in combination because they are so  
4 related, but then we can vote separately.

5 So on -- on terms of the Joint Proposal,  
6 you know, again, I -- I think these are -- it's really  
7 good to see the work that's been done in this case. And I  
8 -- I think in terms of the revenue requirements, as Judge  
9 Wiles says, is fairly much on the fairway of what we're  
10 looking for in consistency, around depreciation rates and  
11 taxes and rate of return.

12 And I appreciate all the work that parties  
13 have done to arrive at a revenue requirement that I think  
14 makes sense for the 3 years and takes into account our  
15 concerns around reasonable rates, as well as rate  
16 stability. So I -- I feel very comfortable that we are in  
17 a -- a good spot.

18 What I'm particularly of -- excited about  
19 in terms of this -- this proceeding and -- and the Joint  
20 Proposal is that the significant steps that we are making  
21 that's embraced in the rate plan around modernizing the --  
22 the system, as well as modernizing how we are approaching  
23 the -- the retail markets and the step changes in the  
24 utility business model. So taking both the EAM and the  
25 changes that we're making to the non-wires alternative

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2 incentives.

3 I mean one of the things that I think the  
4 Commission noted very in -- in the Track Two order, if  
5 we're going to ask utilities to change their business  
6 models and really start looking at alternatives to making  
7 investment in plant and really start thinking about the  
8 system-wide efficiency, the economic changes associated  
9 with really changing the business model also have to be  
10 economically rewarding and they have to be significant.

11 If it were very small changes, then it  
12 would continue to require our -- you know, to -- make  
13 those kind of model -- model changes would not be of -- of  
14 interest to the Utility and we simply wouldn't see the  
15 change. That's -- that is what we saw historically. And  
16 so being -- really stepping out and making significant  
17 changes and giving the utilities an opportunity to really  
18 align their interests with consumer interests and really  
19 promote distributed energy resources and energy efficiency  
20 as a component of their business requires really a change  
21 in regulatory approach.

22 And I think that the EAMs in this rate case  
23 really make a very significant step forward in -- in terms  
24 of that. So I -- as well as the change in the non-wires  
25 alternative. It, also, I think, reinforces our view that

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2 while we think it's fair for the utilities to have an  
3 earnings component associated with looking at alternatives  
4 that really reduce their rate base and -- and rate growth  
5 with aligning with their customers, those earnings really  
6 ought to track with the risk they're taking. So to the  
7 extent they're taking on more shareholder risks, there are  
8 more opportunities for the shareholders.

9 And that -- and I think that the approach  
10 that we're making it -- addresses that concern. With  
11 that, though, there also needs to be a maturity of the  
12 market. So I -- I do want to note, Mike, you referenced  
13 it as the concern about the changing of the date for the  
14 DER performance from September 15 to September 30th. That  
15 may seem like a small point, but it's actually a fairly  
16 significant statement by the Commission.

17 We want people to invest in distributed  
18 energy resources to realize we're moving into an era where  
19 we're going to depend on those resources for reliability.  
20 And the reason why we use September 30th as a date in the  
21 power grid is not simply just because it seemed like a  
22 good date in the calendar. It's really predicated on when  
23 we could have heat waves. And so even though we  
24 technically think of July and -- and -- and August,  
25 really, as our peak months, we can peak in September,

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2 particularly when people are back from vacation and it's a  
3 hot day and the weather goes up and all those things  
4 happen. That's why we need these.

5 We need people to adjust their businesses  
6 if they're going to be in the business and helping us  
7 maintain the reliability of the system to really recognize  
8 that we're going to be counting on you to the -- to  
9 September 30th. So having that uniformity isn't simply a  
10 regulatory convenience. It's a recognition that we're  
11 trying to mature the market and realize these are real  
12 resources that the utilities have to be able to depend  
13 upon and we're going to hold folks accountable to -- to  
14 meeting those needs.

15 So I -- I think that it -- it was  
16 mentioned, but I think it's an -- an important point.

17 I also think the -- the other aspect, in  
18 terms of equitable charging, you know, that's the other  
19 thing that we're beginning to talk about. We always talk  
20 about cost allocation equity in terms of the -- among  
21 various share -- consumer groups. We have a new consumer  
22 group now, i.e., the prosumer, people who put in these  
23 assets. And as we take a look at value of distributed  
24 resources, it's very important that we have equity among  
25 participants and non-participants and then recognizing

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2 that the costs that we're going to be putting in to drive  
3 this efficiency should be share in an equitable way. So I  
4 -- I think that's also very critical.

5 It's a -- and, again, another level of  
6 maturing -- of moving and saying distributed energy  
7 resources are not ancillary, they're going to be a big  
8 part of our system and we need to apply principles of  
9 fairness among all customers when -- when we both charge  
10 for and value these resources. So I think all of these  
11 happen.

12 Now, if you ask me, if I could have been in  
13 the room, I would have liked all of the EAMs to be  
14 determined, but I recognize these things take time. These  
15 are hard issues. They're generic for us. We can't even  
16 look at other states and say well how are they addressing  
17 that because a lot of the stuff is happening for the first  
18 time in New York.

19 So I -- I'm looking forward to the further  
20 development and -- and while I wish it would -- we -- we  
21 could be approving all of them, I recognize and appreciate  
22 the fact that we're going to have to continue to work at  
23 it. And all of these things are going to be matured over  
24 time. This is a -- a market. Markets take time. You're  
25 going -- we're going to learn while we're doing it.

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2 And so as Commissioner Acampora always  
3 notes, it's important that we remain flexible in knowing  
4 that -- that we need to make progress, but also be  
5 recognized as we also need to make adjustments. So those  
6 are, I think, very good aspects.

7 The other pieces of the rate plan, I'm --  
8 I'm excited to see is the work on gas infrastructure  
9 replacement. The Commission made a determination, a  
10 couple years ago, that it -- it just -- the timing -- the  
11 time it was taking us to replace leak-prone pipe was just  
12 not sufficient. I think the Staff and the companies have  
13 a made a huge amount of effort and we're -- we're on a  
14 trajectory now that's much better. We also made a just --  
15 raised a concern about not slowing it down. So I think  
16 the -- the recovery mechanism makes sense.

17 The other aspects of the case that I think  
18 are of note is certainly the work on standby rates. I  
19 think we have a -- you know, the idea of being able to  
20 look at DER, the flexibility that we're providing in  
21 rates, and the encouragement for a pilot that really lets  
22 us start looking at these resources, something that I know  
23 the -- the -- the development community in New York City  
24 was really interested in doing and I'm hoping that we see  
25 this now, is -- is a very exciting part of -- of this rate

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2 case.

3 And then, the other element that I'm really  
4 pleased to see is the methane detection pilot program. I  
5 -- you know, I -- I've been really excited about the idea  
6 that we may actually now, in 2017, be able to start  
7 thinking about how we can stop relying on noses to smell  
8 gas and actually use technology that can make it much  
9 safer for consumers. I'm pleased. I know that National  
10 Grid is looking at this. I'm pleased that Con Ed is. And  
11 I think, with these two large companies really starting to  
12 solve this issue, we can make real progress in this  
13 technology. So I am really glad to see that as well.

14 So we often talk about revenue  
15 requirements, but it's all the other elements of rate  
16 cases that really help change it. I think that this  
17 proceeding really sets a -- a really good path, forward.  
18 There are other pieces on it, I know, in terms of AMI and  
19 -- and data. I mean the breadth of this case, it's a -- I  
20 think the order is 120 or 130 pages. Whatever it was, I  
21 was -- it took a really long time to -- to go through it.  
22 But it's -- it's -- really all the elements are there and  
23 I just -- I think it's -- it's really a great day that  
24 we're going to be moving forward.

25 So, I'm very supportive of the J.P. and --

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2 and thank everybody for their engagement.

3 With that, let me turn it over to others.

4 Commissioner Sayre?

5 COMMISSIONER SAYRE: Well, the resolution  
6 of this case, as Mr. Worden said, is a good news story, I  
7 guess, to the extent that you can say the resolution of  
8 any rate case is good news. After the extensive  
9 negotiations that we've heard about, we had 22 parties  
10 signing on. Those 22 parties had extremely widely varying  
11 interests and viewpoints and we don't have any party  
12 that's opposing the settlement as a whole. That's  
13 wonderful work by the parties. Nobody really rolled the  
14 dice.

15 In a large rate case like this, the 3-year  
16 plan lets us levelize the rates, feathers in the rate  
17 impact, gives the customers and -- and the utility  
18 predictability and -- and stability.

19 But I definitely agree with the Chair that  
20 on the electric side, the most significant area of this  
21 Joint Proposal is that it is a big step on the way to  
22 implementing REV. I think most experts in the utility  
23 field agree with the Commission, that the distribution  
24 grid needs to be modernized to integrate distributed  
25 energy resources of all kinds to be more resilient, to



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encourage clean energy, to make more efficient use of the generation and transmission resources that we already have, and to foster energy efficiency, just to name a few of the goals of rev.

Our REV orders only give a framework and policy guidance on this process. And it's in cases like this where the rubber meets the road and real progress is made. So I commend the parties and especially Staff for the hard and difficult work that they put into the proposed plan. This is how progress happens. And I expect that we will see similar progress in future rate cases that come up before the Commission.

I also agree with the Chair that the -- the most significant part of the -- the Joint Proposal on the gas side is gas safety. It's wonderful that we're taking advantage of low commodity prices in order to accelerate the process of leak-prone pipe replacement and it's great to be using new technology and -- and detect leaks sooner because they're always a problem.

In 201-B, the petition to implement REV-related non-wires alternative projects, they're doing what we asked them to do. They are finding innovative solutions that reduce or delay the need for new investments in traditional infrastructure like substations

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2 and lines. Con Ed's proposal establishes a mechanism --  
3 an incentive mechanism for these projects as we directed  
4 them to do that includes benefit cost analyses and a  
5 sharing of savings.

6 The Staff recommendation, which I support,  
7 approves the overall structure, but makes some adjustments  
8 to the sharing mechanism. The order cuts back a little on  
9 the benefits to the shareholders and allocates a little  
10 more to the ratepayers. And it also adds some checkpoints  
11 and filing requirements to the process to ensure that  
12 benefits are actually being realized. And, finally, it  
13 harmonizes this process with a rate case order.

14 I think with this, we have a good plan  
15 going forward and it's consistent with our overall policy.  
16 That overall policy is that we're asking utilities to make  
17 major modifications to the way that they look at projects.  
18 Traditional ratemaking gives utilities incentives to just  
19 simply throw money into the investment pool, add  
20 investments to satisfy system and customer needs. That's  
21 the way the process has been set up for 100 years.

22 We're asking them to change that and find  
23 innovative ways to save some of these costs. And, in my  
24 view, it's very reasonable and appropriate to allow the  
25 utility to retain some of the benefits from the cost

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2 savings as long as the ratepayers get the lion's share,  
3 which is what the Staff proposal does here. Everybody  
4 benefits when it works and I think it's working here.

5 CHAIR ZIBELMAN: Thank you.

6 Commissioner Burman?

7 COMMISSIONER BURMAN: Thanks. I'll save my  
8 comments after Commissioner Acampora. I'll defer to her  
9 first. Thank you.

10 CHAIR ZIBELMAN: Commissioner Acampora?

11 COMMISSIONER ACAMPORA: Hello, Doris.

12 MS. STOUT: Hello.

13 COMMISSIONER ACAMPORA: Would you mind  
14 giving us your expert thoughts on this particular rate  
15 case and the ROE of 9?

16 MS. STOUT: Surely.

17 So, unlike other recent cases like Suez  
18 that we just talked about where I have to hypothesize what  
19 the reactions might be, Con Ed is widely followed by the  
20 investment community. So I'm actually able to say what  
21 analysts have actually reported about their opinions about  
22 the J.P. and note that all of the benefits in our multi-  
23 year rate plans.

24 Many analysts commented on the J.P. when it  
25 was signed in September. Their comments were, generally,

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2 positive. They found the 9% ROE in line with their  
3 expectations and other New York cases, even though it was  
4 still low relative to ROEs granted across the country.

5 Further, the analyst reports positively  
6 noted that the J.P. provides annual rate increases that  
7 support rate-based growth and that the J.P. continues  
8 various true-up mechanisms that reduce risk and support  
9 the Company's ability to earn that ROE.

10 Analysts specifically recognize the  
11 earnings opportunities provided in the J.P., if Con Ed is  
12 able to capture the positive incentives under the EAMs.  
13 And one even noted that those EAMs represented a  
14 reasonable step toward innovate ratemaking.

15 These largely positive statements were  
16 tempered by some cautious remarks relating to Con Ed's  
17 diversification efforts and potential fallout from the  
18 Harlem gas explosion, which we're still working on. And -  
19 - so, overall, I think, the street view of this J.P. is  
20 positive.

21 COMMISSIONER ACAMPORA: Thank you.

22 First of all, Judge, you did an excellent  
23 job.

24 And Mike, I'm sure you are not sitting all  
25 the time with your feet up on the desk.

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2 As everyone knows, and it can't be stated  
3 enough, the kind of work that goes into delivering a rate  
4 case to us. Fortunately, this one wasn't as contentious  
5 as the one we just previously did. But all rate cases  
6 bring out people who have concerns. And certainly, this  
7 Commission has always been concerned about walking that  
8 fine line and balancing between working with the Company  
9 and protecting ratepayers.

10 And it is good to have a 3-year rate case.  
11 And I know it doesn't give you any pause for rest, but I  
12 think it shows people who look at what we do in New York,  
13 that the consistency of having a multi-year rate case  
14 works to a benefit. It really does.

15 There are many things in this rate case  
16 that I do like. And I would have to say I do appreciate  
17 the fact that the Company has shown leadership with moving  
18 forward with REV. I think that's really important. And,  
19 I'm pleased to see, again, the expansion of fixing leak-  
20 prone pipes. As we all know, things are not easy to do in  
21 New York City and we want to make sure that this  
22 continues. I think that's very, very important.

23 And, as far as 201-B, again, I think it's  
24 important to move on those NWA projects. And so I will be  
25 voting in favor of both these items.

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2 CHAIR ZIBELMAN: Thank you.

3 Commissioner Burman?

4 COMMISSIONER BURMAN: Thank you.

5 The integrity and reliability of our  
6 system, whether it's electric, gas, or water, is  
7 paramount. When I look at a rate case, I go through the  
8 process of what's being done and how does this relate to  
9 ongoing proceedings that we're doing, and what's the path  
10 forward for not only regulatory certainty, but stability  
11 for all those who are involved, not just the utilities,  
12 but the customers, and what's the path forward for helping  
13 with our economic development as we look at our aging  
14 infrastructure, and are we planning not just for the --  
15 you know, tomorrow or -- or the next 3 years, but really  
16 the future ,and taking a pause to look at all aspects and  
17 see is it reasonable.

18 And there is a reasonable balance that  
19 needs to be looked at, not only for the ratepayer who  
20 wants a safe and reliable service, but at reasonable  
21 costs. And looking at what that means and for us in our  
22 job as oversight, we need to kind of look at all the  
23 different aspects and how it transcends.

24 I also tried to look at each order in terms  
25 of other things that we may have decided. Where I,

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2 necessarily, might not have agreed with the majority or I  
3 may have agreed with the majority, but taking pause to see  
4 is that aligned now in this rate case and, if not, and  
5 let's say, for example, I have disagreed, whether it's  
6 abstaining because it's consistent with my voting, or  
7 concurring in limited fashion, or dissenting, I try to  
8 look at what the path forward is for all of us to really  
9 have some certainty. And, again, getting back to the  
10 integrity and reliability of the system is most important.

11 I think that, from that perspective, there  
12 have been times where, when I look at something, I realize  
13 that, you know, the -- the certainty is in the orders that  
14 have been done, even if I disagreed to now know that this  
15 aspect is moving forward and that aspect of it and maybe  
16 my position on it at the time that I voted is moot.

17 However, what I also go back and look at,  
18 is it moot because we have failed to act, is it moot  
19 because there are other things that have come up, other  
20 issues that may make it moot and substantively, I may  
21 agree with that. And so I try to take stock of then how  
22 does that fit into the particular order that we're looking  
23 at and what is the pathway forward.

24 In here, there are really many, many good  
25 things, things that I can fully embrace and support. And

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2 it's again -- it's a balancing act of looking at the Joint  
3 Proposal and deciding is all of this, as -- as a whole,  
4 best for the public interest. And that's really what my  
5 job and my role is as a Commissioner, or at least the way  
6 I view my role and -- and having oversight and drilling  
7 down when need to and pulling back and not -- not drilling  
8 down and leaving it to others, if that's necessary, but  
9 also to continually check and reevaluate and ask the  
10 questions.

11 The -- some of the concerns that I have  
12 with this order or this draft order relates to mentions of  
13 other orders that are still not final, per se. They're  
14 petitions for rehearing or reconsideration or  
15 clarification or declaratory judgments, asking on, you  
16 know -- on some aspect that we've done. And those are  
17 still lingering.

18 So for me, some of that aspect then means  
19 what does that mean because if and when we do decide to do  
20 those petitions for rehearing, reconsideration,  
21 clarification, are the parties in those orders where they  
22 have a record that may be somewhat stale or dated, is it  
23 stale or dated, but still relevant? Or is it stale and  
24 dated and they no longer have those positions because,  
25 like me, they have moved forward, you know, or -- or had



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2 to embrace other aspects to get to the path forward.

3 So I take pause in that one of the reasons  
4 that I can't fully embrace this Joint Proposal is the  
5 concern that, by doing this, some of the issues that may  
6 still be out there and needing clarification on -- in the  
7 Track Two order and, frankly, the low-income affordability  
8 order, which has a pending petition for rehearing and  
9 Track Two order has, as one Commissioner said at session,  
10 has 100 policy decisions in it. I've only been able to  
11 find 99, I think, so, I'm not really sure what that one is  
12 that I'm missing.

13 But to the extent that -- what I then am  
14 trying to figure out is when those decisions are made, how  
15 does that impact this rate case? And frankly, it doesn't  
16 impact it until the next rate case. And so it concerns me  
17 because that's also why, when we do generic proceedings,  
18 I'm always asking what's the -- the sweet spot to match up  
19 the generic proceeding or an individual proceeding or  
20 policy decision that is getting decided in a rate case  
21 that may not match up and then by the time you get to the  
22 next rate case, that policy decision or the generic  
23 proceeding may actually be moot or more confusing or  
24 doesn't transcend into the next one.

25 And so I really ask the question for all of

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2 us to really take pause of what things are out there that  
3 are pending and how, especially, because there's so many  
4 different proceedings -- how do they all match up.

5 I have, frankly, a hard time following when  
6 I'm only looking at it and I only should be looking at the  
7 record that's before me in a particular case. But trying  
8 to understand what it means and the impact it has on other  
9 cases.

10 Frankly, the orders sometimes don't have  
11 where it says -- you know, it never says Commissioner  
12 Burman dissented or Commissioner Burman abstained. So I  
13 have to then go back and make sure that I'm recalling it  
14 right that I abstained or I dissented or I concurred in  
15 limited fashion.

16 And it doesn't say in the footnote and a  
17 petition for rehearing is pending. So it doesn't tell the  
18 full story if you're just looking at the one order or  
19 relying on that as precedent for why we're deciding  
20 something in a rate case or in another order.

21 So I take this opportunity, really, to say,  
22 we should all kind of look at where we are and the path  
23 forward and look at this rate case as an opportunity on  
24 that, but also to say what does it now mean for some of  
25 the things that are still out there that need to be

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2 decided or you may need to go back and look at what you've  
3 said, whatever party, if you're involved in other things -  
4 - what you've said in other rate cases -- excuse me -- in  
5 other proceedings that may no longer be or let us know  
6 that that -- formally, that that is actually still your  
7 position and explain to, you know, everyone, so that  
8 everyone is on the same page because one of these orders  
9 or one of these proceedings may pop elsewhere and we need  
10 to be able to make sure we are holistically looking at all  
11 of these different things.

12 We are, right now -- you know, I -- I -- as  
13 we sit here, there are folks out there taking care of our  
14 storm issues, hard-working people in utilities and in  
15 other, making sure that customers have their power, and,  
16 if not, restoring it. And I'm mindful of the fact that we  
17 do a good job working together in those situations in  
18 making sure that the integrity and reliability of our  
19 system is there, not just for now, but for the future.

20 And that's really our role.

21 So, I embrace, as a whole, the 201-A. I --  
22 I concur in limited fashion to the extent that there are  
23 aspects of it that I -- I do not agree with from other  
24 orders that have not had finality in that proceeding.

25 And in 201-B, I have one actual question, I

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2 think, Marco, you're the right person. Is in the -- to  
3 the extent that the TDM reporting, there's quarterly  
4 reporting, what's the next steps now for reporting in the  
5 -- in this aspect and what we're doing in it?

6 MR. PADULA: There's reporting provisions  
7 on the N -- related to the NWA provisions in the Con Ed  
8 Joint Proposal that essentially mirror what's in the --  
9 what was in the TDM program.

10 COMMISSIONER BURMAN: Okay. Great.

11 And, in that, I abstain in -- from my past  
12 history and my voting record on that aspect of it. I  
13 think there's a lot there that is affecting other items  
14 that are still policy decisions that still have not had  
15 finality. And we will work through that.

16 But I don't want my comments, concurring in  
17 limited fashion or abstaining in light of my voting  
18 history to be a distraction from the work that we have to  
19 do and the fact that we all need to work together to have  
20 robust dialogue and discussion on how we can all have --  
21 and continue to have a safe and reliable system that works  
22 for all of us.

23 Thank you.

24 CHAIR ZIBELMAN: Thank you.

25 Say, one thing I -- I wanted to mention, we

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2 did in -- in terms of the electric rate case, the economic  
3 savings associated with the rate of return changes, about  
4 160 million -- it's 116. I also want to note, not -- for  
5 -- for the record here, even though it's not the record in  
6 this case, as a result of the work of the DPS Staff, as  
7 well as other of our sister agencies, including NYSERDA  
8 and DEC, last week, we had a FERC decision which modified  
9 how the New York ISO is implementing its capacity program  
10 in New York. And that also is going to reduce supply  
11 costs in New York by -- on the realm of about 160 million,  
12 in terms of capacity pricing.

13 So I -- I think that -- that's a good new  
14 story because combination of this will certainly mitigate  
15 the rate impact effects, but there's also, I think,  
16 further indication of the fact that our feet are often not  
17 up. They're sort of pedaling quickly, trying to make the  
18 good things happen.

19 So I want to applaud the work of not just  
20 the DPS Staff, but all the energy agencies in the state in  
21 pursuing this as well as the ISO. I guess they're on the  
22 other side of this issue, but certainly on the state side.

23 With that, let me move to a vote.

24 So the second item for discussion was 201-  
25 A, which was the Joint Proposal for Con Ed rates presented

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2 by -- Con Ed rates. And so all those in favor, let me  
3 stumble through this, I'm getting light-headed.

4 All those in favor of the Joint Proposal,  
5 please indicate by saying aye.

6 COMMISSIONER SAYRE: Aye.

7 COMMISSIONER ACAMPORA: Aye.

8 COMMISSIONER BURMAN: And I concur in  
9 limited fashion based on my comments at session.

10 CHAIR ZIBELMAN: So hearing three ayes,  
11 including mine, aye, the J.P. is accepted, the  
12 recommendations are adopted, and we'll -- and so we'll go  
13 forward.

14 Item -- the third item, is 201-B, which is  
15 the petition of Con Ed for implementation of projects and  
16 programs that support the Reforming the Energy Vision.  
17 And so all those in favor of the recommendations in that  
18 item, please indicate by saying aye.

19 COMMISSIONER SAYRE: Aye.

20 COMMISSIONER ACAMPORA: Aye.

21 COMMISSIONER BURMAN: And I abstain  
22 consistent with my voting history.

23 CHAIR ZIBELMAN: Okay. Aye for me. So  
24 that's three ayes and so the recommendations are adopted.

25 Thank you all very much for great, great

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2 work.

3 So we'll move -- I'm going to take a ten-  
4 minute break. I need a ten-minute break.

5 Thank you.

6 (Off the record)

7 CHAIR ZIBELMAN: Okay. We're going to get  
8 started. The next item for discussion is Item 301, which  
9 is the Joint Petition for Modifications to the Standard  
10 Interconnection Requirements and Application Process.  
11 Mike Worden is going to be present this today.

12 So Mike, good afternoon.

13 MR. WORDEN: Good afternoon, Chair Zibelman  
14 and Commissioners.

15 Item 301 address queue management plan -- a  
16 queue management plan for cost sharing mechanisms for  
17 distributed generation.

18 As you know, last spring and early summer,  
19 because of many of the policies -- positive policies that  
20 you directed to be implemented to enhance renewable  
21 distributed generation, the Department created the  
22 Interconnection Technical Working Group and the  
23 Interconnection Policy Working Group to address challenges  
24 that were created by the large influx of distributed  
25 generation projects throughout New York State.

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2 While these working groups are led by DPS  
3 and NYSERDA staff members, they were really made up of the  
4 utilities and the developer community. The proposal  
5 before you today is the product of a collaborative effort  
6 started in July 2016 that show how -- shows how this  
7 market is maturing. It offers an important gating  
8 mechanism to reduce barriers to the DG interconnection  
9 process.

10 The stakeholder's goal in developing this  
11 proposal was to eliminate the log jam in the  
12 interconnection queue that was created in late 2015 and  
13 through April 2016, when over 2,000 applications for  
14 commercial and community solar projects were proposed.

15 So prior to this time, many of the  
16 projects were under 300 kW. Since the time in 2015, we  
17 started seeing a lot of projects that were in the 2-  
18 megawatt range and, in fact, I would say well over half of  
19 these 2,000 projects are on the order of 2 megawatts.

20 The main components of the queue  
21 restructuring plan are as follows. First, developers are  
22 called on to demonstrate that they have consent of the  
23 property owner to develop their projects. This step  
24 eliminates instances where more than one developer has  
25 filed an application for a project at the same site.



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2 Believe me, they do exist.

3 The next step is for the utilities to  
4 then republish the entire queue after dropping projects  
5 that don't meet the property owner requirement. The  
6 utilities will publish the queue within 60 business days  
7 after the Commissioner approves the order in front of you  
8 today, assuming you approve it.

9 That publication then triggers the  
10 next set of actions by developers. Projects that have  
11 been fully studied for interconnection, that is those that  
12 have already received the results of a detailed  
13 engineering study, are required to move on to construction  
14 or withdraw from the queue.

15 Developers who want to stay in the  
16 process will have to sign an interconnection contract and  
17 pay their interconnecting utility 25% of the estimated  
18 costs of any system upgrade necessary to accommodate the  
19 interconnection.

20 The oldest projects in this group have  
21 30 business days from the publication of the queue to make  
22 their decision. So this is for projects that have been  
23 through the engineering study phase. They'll have thirty  
24 days to make a decision on whether to move forward or not.

25 Others that have received engineering

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2 studies more recently, or are under study now, will have a  
3 total of 60 business days to make their payment or  
4 withdraw.

5 The last group of projects, projects  
6 that have only had a preliminary review, have to decide  
7 whether or not to proceed to a full engineering study.  
8 Our queue data suggests that this is a large group of  
9 applications. To handle the volume in an orderly way, the  
10 plan sets up a series of decision rounds in which  
11 successive subgroups either pay for the CESIR study -- the  
12 -- the engineering study commonly referred to as the CESIR  
13 study, or withdraw from the process.

14 Essentially, we'll create a waterfall.  
15 Once Project A makes a decision, Project B gets put on the  
16 clock. It's much like a NBA draft or something like that.  
17 This is our version of it in regulation.

18 The plan gives utilities the  
19 flexibility to schedule the engineering studies according  
20 -- or -- the studies according to their available  
21 resources and requires them to publish information each  
22 month about the queue and the study schedules.

23 So the queue information is currently  
24 out there, but as this process moves forward, there will  
25 be continually refreshing the queue status so other

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projects can see what might be ahead of them in the queue.

Once the engineering study is scheduled, the interconnecting utility will have 60 business days to complete it as is provided for in the Commission's interconnection rules. As projects come through the engineering process, strict deadlines will apply to keep them moving towards construction. The plan also includes provisions for allowing extensions of deadlines for projects in a locality that has enacted a local moratorium on solar development.

The other major element in the plan that's in front of you today is an interim proposal addressing the high costs of some of the types of distribution upgrades necessary to connect, primarily focused on substation equipment work. Under the existing rules, the first project to trigger the need for this work bears the full cost. Under the proposal, this allows the first project to -- to -- to pay the full costs, but then seek reimbursement from subsequent projects for the benefit of the upgrade. For -- this is for upgrades that cost \$250,000 or more.

SolarCity put forth a proposal in its comments whereby it would allow a sharing of the costs on a substation basis in New York State amongst various

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2 parties that would come forward. We think that idea and  
3 other ideas have merit. However, this idea was put forth  
4 by the developers, themselves, working with the utilities  
5 in this collaborative effort.

6 We think that the stakeholder group  
7 should continue to define further efforts that could  
8 refine the process going forward. But for the purposes of  
9 today, it's more expedient to put forth this interim  
10 measure on cost sharing.

11 Finally, some provisions in the plan  
12 will apply to new application projects. Principally, this  
13 is a property acknowledgment form. So any future projects  
14 the -- the developer will have to have a form that  
15 acknowledges the application and demonstrate that is has  
16 site control so that we don't get a duplication of  
17 projects.

18 So it's fairly simple, but it's fairly  
19 complicated at the same time. So when you read the order,  
20 it's -- it can seem complicated, but it's fairly  
21 straightforward to move projects, make them make  
22 decisions, give them the information, then make the next  
23 one make decisions, give them the information.

24 So that completes my remarks. If you  
25 have any questions, I'm happy to answer them.

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2 CHAIR ZIBELMAN: Okay. Thank you,  
3 Mike. Thank you for this item.

4 So first of all, appreciative of the  
5 fact that this work -- not just work of NYSERDA and the  
6 Staff, our -- our liaisons, you know, was, was really good  
7 work. And I think the fact that we're talking about a  
8 proposal that was arrived at through the Technical Working  
9 Group that includes both the developers and the utilities  
10 gives me kind of all good, warm feelings because in other  
11 states they're so -- these are warring factions, and in  
12 New York we, we really are seeing an -- a different  
13 approach to this market in the fact that people get  
14 together, have discussions, understand each other's  
15 concerns, and arrive at solutions. So I think this is  
16 good.

17 I think this is also a very important  
18 vote for us today relative to the development of the  
19 distributed energy resources in this industry. As we all  
20 know, the issue of queues and the amount of projects in  
21 the queues are really confounding a lot of development.  
22 And a process to clean these queues out and make sure that  
23 projects that really are ready to go forward, can go  
24 forward and they're not behind other projects and that  
25 there's a way to -- now a mechanism to share costs, I

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2 think are all going to be very important to -- to progress  
3 the industry in New York.

4 That being said, I think Mike, you  
5 noted it. You know, there was -- SolarCity had another  
6 proposal. I think it's good that we consider it, but I  
7 don't think we -- it was simply not mature enough for us  
8 to act now. And I think it was very important that we act  
9 today.

10 So you know, I look forward to hearing  
11 about that proposal as it develops and I think that as we  
12 develop the value of DER in other proceedings, we're going  
13 to continue to see evolutions on how best to -- to mature  
14 this market. But this is a very important step, so I  
15 intend to vote for the SIR recommendations.

16 Any questions or comments for Mike on  
17 these?

18 Commissioner Sayre?

19 COMMISSIONER SAYRE: Just a comment.

20 It is a good news story. The queue's  
21 long. That means we've got a lot of potential clean  
22 energy coming down the pike. The rest of the good news is  
23 that even though the queue has been intractable, the  
24 parties have figured out a way of dealing with it, at  
25 least initially, on a going-forward basis, so we can break

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2 the logjam.

3 Again, as in previous cases where --  
4 where we came up with settlements, I commend the parties.  
5 A lot of -- a lot of progress has been made here by, by  
6 people working long hours to thrash out their considerable  
7 initial differences. It's not easy and it's not cheap for  
8 the parties, but I think it's a good way to regulate.  
9 Better than having lawyers file extreme positions and  
10 leaving it up to the Commission where things are going to  
11 end up.

12 It's another case where the parties  
13 here decided not to, as I've put it in my earlier comments  
14 roll the dice with the Commission. And I think they ended  
15 up with a result that's probably better than the result  
16 that would have obtained had they required us to make all  
17 of these decisions without the benefit of the give and  
18 take that occurred during the negotiations.

19 I expect that most if not all of the  
20 parties are not completely satisfied and not completely  
21 happy, but it looks like they have ended up with something  
22 that's, though not entirely to their liking, something  
23 they can live and work with. That's good to go forward  
24 with and I support the item.

25 CHAIR ZIBELMAN: Commissioner Burman?

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2 COMMISSIONER BURMAN: Does  
3 Commissioner Acampora want to say anything or --?

4 COMMISSIONER ACAMPORA: No. I think  
5 I'd like to hear what you have to say.

6 COMMISSIONER BURMAN: Okay. Great.  
7 Thank you.

8 So I have reserved my right  
9 afterwards, after all Commissioners have spoken, if  
10 there's something that I want to comment on -- because, I  
11 think it's important for us to have dialogue among the  
12 Commissioners to further understand our positions.

13 So I just have a couple of questions  
14 and then I just want to go through, sort of, my thought  
15 process here in this order. There's a filing from Central  
16 Hudson on January 20, 2017. To the extent that it's  
17 incorporated in the order, I just want to make sure that  
18 we're all on the same page of what we're doing as it  
19 relates to that January 20th letter. I have it here. I  
20 don't -- I'm just making sure we've looked at it, it's  
21 substantive, and how it -- it is -- is incorporated in the  
22 order or not.

23 MR. WORDEN: I -- I don't have the  
24 letter in front of me.

25 COMMISSIONER BURMAN: Okay. Has



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2 anyone -- I mean, I just -- to the extent that it's  
3 responsive, it's reply comments, I believe, to SolarCity's  
4 petition of the Interconnection Policy Working Group, you  
5 know, it kind of illustrates at least their position and  
6 I'm just making sure that it's reflective of what we're  
7 actually doing or not as it relates to that aspect of --?

8 MR. WORDEN: So Central Hudson was one  
9 of the key utilities leading the effort to develop the  
10 cost sharing mechanism. They were very much in favor of  
11 the cost sharing mechanism that was filed. They were one  
12 of the joint filers. There were several utilities and a  
13 number of developers that were signatories.

14 I believe Central Hudson has not  
15 bought into necessarily what SolarCity is proposing at  
16 this time. In the conversations we've had subsequent to -  
17 - to the date on that letter, the -- this is actually in  
18 the Policy Working Group. The Policy Working Group has  
19 agreed that they will continue to discuss cost sharing and  
20 look for other mechanisms and they will consider the Solar  
21 -- the SolarCity proposal and other proposals that others  
22 might put forth.

23 So this proposal on cost sharing --  
24 there's a lot of consensus this is not the best thing, but  
25 there's also consensus this is the best thing we can get

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2 at right now.

3 COMMISSIONER BURMAN: Uh-huh.

4 MR. WORDEN: And that's why it's  
5 crafted the way it's crafted.

6 COMMISSIONER BURMAN: Okay. Thank  
7 you. That's helpful.

8 You know, I try, when I look, again,  
9 looking through the record, to see where we are, some  
10 things don't necessarily fall into the draft order. So to  
11 the extent that it may need to be matched up, I just want  
12 to make sure before I vote, that I know exactly where we  
13 are and how it may or may not relate to something, or if  
14 we've considered it. So thank you. That's very helpful.

15 When I look through this order, I -- I  
16 am mindful -- I was mindful -- I am mindful of my comments  
17 that I did in Item 15-E-0557, which is related to the  
18 Matter Proposed Amendments to the New York State  
19 Standardized Interconnection Requirements for Distributed  
20 Generators 2 megawatts or less, which was issued effective  
21 March 18th, 2016. And I think it's relevant, especially  
22 since we're looking at the issue of the SIR and, and what  
23 we're doing with the queue.

24 To read my comments that I -- that I  
25 stated, which is attached to the order in -- at -- at the

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2 very end, after the exhibits, as reflected in my comments  
3 made at the March 17th, 2016, session, I abstained from  
4 voting on this item. In 1999, New York first adopted  
5 uniform interconnection standards. Since that time, the  
6 standard interconnection requirements have been amended  
7 several times.

8 In 2009, there was significant  
9 revisions made to the SIR. Thereafter, there were some  
10 minor revisions to reflect changes to the net metering  
11 laws that took place. In March 2013, more amendments were  
12 made to the SIR to help expedite the interconnection  
13 application and review process and to align with changes  
14 made to the net metering laws in 2012.

15 And in February 2014, we had even more  
16 amendments to, again, reflect updates to net metering and  
17 remote net metering laws under New York State Public  
18 Service Law Section 66-J and 66-I. The most recent SIR  
19 amendments -- at the time that I wrote this -- were in  
20 July 2015.

21 Understanding this dynamic and ever-  
22 changing but necessary amendments to reflect current law,  
23 ensuring seamless, expedited process and provide a more  
24 ordered streamlined and robust system, it would seem, at  
25 first blush, correct to make these changes today. In

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2 fact, I wholly embrace many of the concepts and understand  
3 the driver seeking such immediate changes.

4 We have heard loudly from interested  
5 parties about the real need to have the SIR process and  
6 technical rules kept up to date with the heavy increased  
7 volume of interconnection requests.

8 I believe that the order here attempts  
9 to, in good faith, make such interim modifications to the  
10 SIR, but I am mindful of the -- the realization, that like  
11 other prior orders that I have raised caution and, in some  
12 cases, disagreed in part of whole with the majority's  
13 approach, this, too, is one that I can't vote with the  
14 majority at this time.

15 We need to more holistically look and  
16 analyze, A, with more deliberative thought about  
17 unintended consequences, and B, via a real drill-down of  
18 all of the outstanding pieces directly and indirectly  
19 related to the SIR that make up the energy world we are  
20 confronted with now and into the future.

21 That does not mean to wait and wait  
22 and not take action. In fact, I very much personally  
23 struggle with one of the necessary interim actions that  
24 must be taken while we collaborate further. This order  
25 may, in fact, be the right interim step, but I am not

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2 convinced from the record that it is. In fact, there is  
3 no dispute that our work is not done.

4 While we all realistically understand  
5 additional work is needed and improvement efforts will be  
6 significant, I am not convinced that enhancing and  
7 speeding up the interconnection process, via this order  
8 today, is justified at this time. I need more careful  
9 discussions around what ultimately is the right balance,  
10 including a detailed technical analysis of the  
11 applications pending, and those that will come, and how we  
12 will handle these on the system.

13 I desire to understand more  
14 holistically how we are substantively addressing the  
15 outstanding net metering and other interconnection issues,  
16 including concerns for our abilities to successfully  
17 transition to full achievement of our laudable REV goals.

18 Here I side with abstaining on this  
19 item at this time, which is generally consistent with my  
20 previous public positions conveyed during our Commission  
21 session. So in conclusion, I very much appreciate that  
22 we're at a critical juncture and I look forward to the  
23 important next steps as hand -- at hand.

24 So that was at -- in March of 2018  
25 (sic). There's been a lot of really good work that's been

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2 done. I think some of the comments that I had at session,  
3 folks were mindful of when they undertook the  
4 collaborative process in the working group, in looking at  
5 the queue.

6 When I look at the -- the draft order  
7 that we have before us, it does have in here the reference  
8 to 15-E-0557 SIR and the March 18th, 2016, order. So it  
9 is relevant and on point with going back and looking at  
10 that.

11 It does not show that I abstained and  
12 had a written abstention at the very end, after the  
13 exhibits, but it does show -- or it does show that that is  
14 relevant to this order.

15 As I look in the file, the public file  
16 on 15-E-0557, it shows that on April 18th, 2016, SolarCity  
17 moved for petition and rehearing, I believe, on that. And  
18 we reflect that in a footnote, to some extent by -- by  
19 going to ordering page twenty-five in the footnote in this  
20 order.

21 So that bucket is still out there in  
22 resolution and it seems like we're moving the SolarCity  
23 issues into what we believe is the more appropriate bucket  
24 to address, not here, but we're giving it an opportunity  
25 later.

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2 The other orders that are referenced  
3 in here is 15-E-0754 -- or, excuse me -- the Value D Staff  
4 Report issued October 27th, 2016. It also references 15-  
5 E-0082, which is the community net metering order, which  
6 as -- as I see the file, it appears, has several pending  
7 petitions and matters before it. And 15-E-0082 also has -  
8 - believe -- looks like October 16th of 2015, a petition  
9 for reconsideration was also issued.

10 And then I look to 16-E-0497, which  
11 has -- also some -- was -- was mentioned and also is  
12 relevant and at session we talked about -- last session,  
13 which was in -- actually, two sessions ago, November 17th,  
14 2016 -- are some of those farming net metering issues  
15 being dealt with in the working group. It seems like it  
16 is being done outside of that. And also 14-E-0151, the  
17 Hudson Valley order.

18 Actually, there were several orders  
19 under 14-E-0151, and again, it's referenced in here  
20 12/15/2014, January 8th, 2015, February 27th, 2015. It  
21 was combined with 14-E-0422, which was -- was looked at in  
22 April 16th, 2015, and December 15th, 2016. This raised  
23 the cap at that time to 6%.

24 What is not mentioned in this order is  
25 15-E-0407, which had an order October 16th, 2015, where

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2 the cap was lifted. I dissented, had written comments,  
3 written dissent. And November 16th, 2015, has been --  
4 since November 16th, 2015, a petition for rehearing is  
5 still pending. They're also --.

6 CHAIR ZIBELMAN: Commissioner Burman,  
7 can I? I'm sorry. I'm -- I'm not following where you're  
8 going with --

9 COMMISSIONER BURMAN: Bear with me --

10 CHAIR ZIBELMAN: -- relevancy?

11 COMMISSIONER BURMAN: -- as I go  
12 through this because I think you'll understand as I read  
13 my comments.

14 And 15-E-0267, which deals with the  
15 remote net metering and had an order October 16th, 2015.

16 So when I -- and again, as I explained  
17 in the Con Ed rate case, as I do with all orders, when I  
18 get a draft order and there are other orders that are  
19 cited in there, I go back and I look at what that order  
20 said, make sure that it matches up with the language in  
21 the draft order, and also see if there is any more  
22 activity, and how it relates the current order, and what  
23 the status of that prior or current proceeding is.

24 And it's very important for me to look  
25 at how we operate as a whole. Folks have known, in almost



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2 every net metering order I discuss, that I'd like -- from  
3 the very beginning, I've discussed looking at it from a  
4 holistic perspective, looking at what we're doing as a  
5 whole and not doing piecemeal.

6 There have been times that I have  
7 voted in agreement, wholly with the majority,  
8 understanding the need for a specific issue to be  
9 addressed, and moved forward, though I have made it clear  
10 that I would like to have it an overall holistic approach.

11 In my dissenting comments on 15-E-  
12 0407, which really was before we got into the SIR working  
13 group process, which I would like to take some credit for  
14 having raised that we needed more of queue management  
15 focus, I said, as reflected in my comments made at the  
16 October 15th, 2015 session, I dissent. I strongly believe  
17 in the vision of New York's Reforming Energy Vision. I  
18 understand we need to work together to enable self-  
19 sustaining clean markets at scale, to build a cleaner,  
20 more resilient, and affordable energy system. The  
21 achievement of our goals will not happen overnight. I  
22 believe that the majority opinion is made in a good faith  
23 effort to have stability while still working on achieving  
24 our REV goals. In fact, the majority position of not  
25 disrupting the distributed generation development efforts

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2 is one I can support.

3 I'm also in agreement that REV should  
4 ultimately decide alternatives to net metering. However,  
5 we are in disagreement on what to do during this  
6 transition and if this decision actually achieves, for the  
7 short and long term, a more stable, sustainable energy  
8 system.

9 Moreover, I do not believe that this  
10 decision today is a true transitional approach. In fact,  
11 the decision may invite uncertainty and confusion in the  
12 implementation of net metering and unintentionally cause  
13 long-term harm to the goals we are trying to achieve.

14 I then went on -- I won't go further.  
15 I do think it's on point. And for me, the focus that I  
16 have is I have a problem here when we look at this order,  
17 where I can see, solely in this environment, yes, it makes  
18 sense to have these queue management changes, to help that  
19 process.

20 But ultimately, the elephant in the  
21 room that we're not addressing is that we need to look  
22 underneath that process and decide, even if it goes  
23 against where I'm at, and I'm comfortable with that if we  
24 have had a discussion -- we need to decide in a timely  
25 fashion those items where folks -- not just me saying I

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2 disagree -- but those folks -- what -- whoever the parties  
3 are, have -- have found some reason that they seek  
4 petition for rehearing, reconsideration, clarification,  
5 declaratory judgment, whatever it is, in a timely fashion  
6 so that they can see what it means then, just like me,  
7 when I look at this -- what does it mean in this next case  
8 and proceeding and order, and where is the finality.

9 Because by the time we get to this  
10 Case 15-E-0407, which frankly, I think is one -- one of  
11 the most critical issues to address, especially because I  
12 raised in my dissent that I had thought that we were  
13 overstepping the statutory authority that we had been  
14 given and I was concerned about that. I didn't say we  
15 were. I said I was concerned. And so for me, what I  
16 would like to see is finality in some fashion in some of  
17 these -- what I perceive as big, major issues that will  
18 have dramatic effect and show what we should be doing,  
19 going forward, so that we can have resolution to that.

20 For me, I am happy and blessed that  
21 the queue management system is one that seems to be  
22 working well. Parties seem to be bringing their issues.  
23 It's getting addressed. Staff is working diligently and  
24 very hard on those issues. And I would -- I -- I think  
25 it's a great collaborative effort.

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2 However, there are certain items that  
3 get discussed or don't get discussed in that, that the  
4 Commission, as a body, should be addressing and making  
5 sure that there's regulatory certainty and also the path  
6 forward.

7 I'm mindful of the fact that we have  
8 many different things that are out that people are trying  
9 to juggle and figure out how it fits. And I, myself,  
10 struggle as a Commissioner, myself, knowing which one  
11 actually is relevant and timely and how does it relate if  
12 what we do changes or -- or doesn't get decided and may  
13 pop at another time and we're not aware of it and what --  
14 what that impact is.

15 So I can support, in limited fashion,  
16 this. I think these changes, like with the other -- with  
17 the other changes that had been proposed, are something  
18 that we should be looking at. How can we make things  
19 better? How can we make the process better?

20 I did, at the time, at the session on  
21 the SIR amendments, raise issues on terms of how this all  
22 fits in the state resource planning, the state energy  
23 plan, looking holistically how the -- the queue and the --  
24 the -- the -- the amount coming in, how does that work for  
25 the reliability integrity of the system and how can we

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2 move forward.

3 And again, my overall ultimate goal is  
4 making sure I do what I need to do as a Commissioner to  
5 have oversight in the integrity and reliability of the  
6 system. And I think those are the things that I'm  
7 concerned about.

8 So I share this, while it may be a  
9 little longwinded, to the extent that I do think it's very  
10 important at the end of the day, we remember the integrity  
11 and reliability of the system is paramount. And planning  
12 for our future is necessary to get there, which is all  
13 part of what we're doing as Commissioners.

14 So I thank you and thank you for  
15 allowing me to -- to speak on this issue, which I think is  
16 very significant.

17 CHAIR ZIBELMAN: So I just want  
18 respond briefly, because -- and I -- I would have to say  
19 that this brings to mind a French saying, (speaks in  
20 French), which loosely translated means the perfect is the  
21 enemy of the good.

22 So that's -- that's a Voltaire  
23 statement that Commissioner Sayre found for me.

24 But -- but really, what it -- what  
25 we're talking here is that we're progressing towards

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2 market. And I -- I -- I wish we were all smart enough to  
3 say what is this market going to need to look like in 2020  
4 or 2025 when we have immense amount of DER, we have  
5 transactions, we have tools, we are able to measure with  
6 precision down to the millisecond, and what's this all  
7 going to look like?

8 But, unfortunately, we are building  
9 that market. And -- and in building a market my  
10 experience at PJM, my experience at Excel (phonetic  
11 spelling), my experience at Viridity, and my experience  
12 here is that you have to increment. And so what the  
13 Commission has done on the SIRs was we issued a set of  
14 rules that the parties told us were the first set of  
15 gating issues that they needed to have addressed and we  
16 addressed them.

17 Recognizing at that time, so I -- and  
18 I appreciate that you were appreciative of that, but I  
19 don't think it was just your dissent. We all said that --  
20 that we all knew that this was a developing set of rules  
21 asked because the issues were complex and we wanted to do  
22 -- which is really Problem Solving 101 -- chunk it down  
23 into the projects and you could solve it at once and then  
24 you move on to this next level of issues.

25 We are now at the next level of

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2 issues, which the parties in this process who are, you  
3 know, in business to do this, have said these are the next  
4 level of issues we really need you to resolve in order for  
5 us to -- to move forward.

6 So I -- I -- I guess, I -- I -- I  
7 really do disagree with you in all seriousness, to the  
8 extent that we're saying well, let's get the whole picture  
9 because we can't start to solve the problems unless we  
10 know the whole picture.

11 Frankly, the whole picture is -- is --  
12 is a bit, you know, not in great clarity yet because the  
13 problems are -- are large. We're not quite sure where  
14 things are going to tack, but we know what -- what we need  
15 to solve for the immediate future. And that's, I think,  
16 the appropriate way to go about this because this is  
17 where, in fact, you -- it may be that the good is the  
18 perfect. In other words, solving the issues that you need  
19 to solve in order to make progress, is exactly where you  
20 want to be.

21 And so I -- I don't -- I just -- I  
22 fundamentally disagree with your approach about we can't  
23 start to solve anything until we know everything, because  
24 we will never know everything. It's always going to  
25 continue to evolve as we move forward.

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2 I think the approach this Commission  
3 has taken to try to understand what's primarily concerned  
4 and then move it is -- is the right way. And so I -- I  
5 also -- so -- so to that, I -- I just -- I simply disagree  
6 with your philosophy on regulation and I certainly  
7 disagree with your philosophy of how markets need to get  
8 developed because I've seen mistakes made where people  
9 were sort of trying to solve issues. They didn't quite  
10 understand the issue yet, and then they made the wrong  
11 decision and they have to re-track.

12 I think this is a much better way to  
13 build a market. And what we need to do is be able to be  
14 flexible and nimble enough to solve things as they appear,  
15 rather than waiting. And you know, my concern would be,  
16 quite frankly, if we all abstained, and we all dissented,  
17 we would've made no progress to now.

18 So I think that fact that we're voting  
19 on things and moving them forward, is -- is critical. We  
20 can always amend, but simply to wait, I think is actually  
21 a mistake for the progress that we need to make.

22 COMMISSIONER BURMAN: And thank you  
23 very much. I think those comments are very helpful.

24 It's clear that you misunderstand  
25 exactly what I see as my role as a regulator. My role as



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2 a regulator is to ask the tough questions, to make sure I  
3 understand, and to make sure we are focused on the short-  
4 and the long-term and how it all relates.

5 There is great regulatory uncertainty.  
6 And when we look to -- one of our goals should be to have  
7 regulatory certainty, to have people understand, and to  
8 have stability in that, and to be able to make --

9 COMMISSIONER BURMAN: So --.

10 COMMISSIONER BURMAN: -- decisions --

11 CHAIR ZIBELMAN: Okay.

12 COMMISSIONER BURMAN: -- and so --.

13 CHAIR ZIBELMAN: So then --

14 COMMISSIONER BURMAN: Excuse me.

15 CHAIR ZIBELMAN: -- now, let me ask  
16 you a question then.

17 COMMISSIONER BURMAN: In the --.

18 CHAIR ZIBELMAN: Commissioner Burman,  
19 how would abstaining today provide regulatory certainty  
20 for the people who have to make business decisions  
21 tomorrow?

22 COMMISSIONER BURMAN: First --.

23 CHAIR ZIBELMAN: If the Commission  
24 were to agree with you and we all said no, what would  
25 happen?

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2 COMMISSIONER BURMAN: Well, first, I  
3 didn't say how I was voting. I have an abstention, a  
4 dissent, and I can pull up -- I have several other times  
5 where I have concurred and several times when I have  
6 agreed with the majority.

7 The reality is -- is that just because  
8 I may not agree with the majority and I may offer thoughts  
9 in a public session that help to clarify where -- where I  
10 sit, and also what it may mean and it -- frankly, to say  
11 that we're dealing with what the parties want, the parties  
12 are not the ones choosing what we're dealing with. They  
13 are in a working group. They're in 2 working groups in  
14 this aspect. There's many other different ones. And they  
15 are dealing with different issues and trying to juggle and  
16 understand.

17 So it's helpful, I think, in some  
18 ways, to have a debate and a dialogue and to make sure  
19 that we're clear in what it is.

20 When I was talking on Item 401 and I  
21 asked in the order what it means to say the perfect cannot  
22 be allowed to become the enemy of the good, I was actually  
23 given a different answer and told that it was clear. It  
24 was related to the data aspect and it was very different  
25 than now a policy statement that you're -- that you're

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2 saying that's different in REV.

3 So from my perspective, what I am  
4 trying to do is to make sure that I fully understand, work  
5 through the challenges, and in fact, at times, I think  
6 that there are things that I may say -- or my thoughts may  
7 actually help.

8 The queue management system, the  
9 standard interconnection issues, some of those things came  
10 from what I said not only at Session, but to Staff working  
11 on the issues. And so to the extent that it actually may  
12 have helped, because we can all benefit from taking a look  
13 at what we're doing process-wise and substantively, and  
14 making sure that we're all on the same page, and if not,  
15 questioning it.

16 There's nothing wrong and there's not  
17 -- it doesn't mean that you're right and I'm wrong. And  
18 it doesn't mean that we're even in disagreement. What it  
19 means is that we're trying to understand what it is that  
20 we're actually doing. We're not just charged with blindly  
21 saying yes because it makes it easier at session.

22 So I respectfully think that my  
23 comments at session, to the extent that they may be  
24 helpful, it is what it is. And to the extent they're not  
25 helpful, that's your -- your -- your, you know, desire to

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2 -- to not listen to what I'm actually saying.

3 But I am very comfortable in making  
4 sure we ask the questions. What are we doing? How does  
5 it relate to other proceedings? And how does it relate to  
6 how to make things work better for our state? And again,  
7 the integrity and reliability of the system is paramount.

8 CHAIR ZIBELMAN: So I guess -- just --  
9 and then I'll move on to you, Commissioner Acampora.

10 I think we all agree that this is --  
11 that around -- about the importance of maintaining  
12 reliability of the system and the integrity. I also  
13 welcome everyone's comments at session. I also welcome,  
14 frankly, when people have questions, to use the briefing  
15 opportunities that the Staff does to get your questions  
16 answered so that we can -- we can use that and when Staff  
17 can have access because having it -- questions just  
18 answered at meeting -- at this session is sometimes not  
19 the best time because unless Staff knows the question  
20 ahead of time, it's -- it's hard to answer.

21 But more importantly, I think the  
22 discussion is really important. We -- I don't expect to  
23 have uniform agreement. What I believe we need to do,  
24 though, and is very important, is that we vote. We either  
25 vote yes or we vote no. But if we don't vote -- in other

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2 words, we abstain, then we can't make progress. And  
3 that's -- and that's -- that's -- I think was my point is  
4 that I -- it's -- disagreement is fine. Voting no is  
5 fine. Voting yes is fine. But let's move on things so  
6 people get some clarity on where -- where we are.

7 COMMISSIONER BURMAN: And if you don't  
8 have the information and you believe that certain things  
9 are not being resolved and they're sitting there, then an  
10 abstention, because you don't have the correct information  
11 -- or any information at times, it is incumbent upon me to  
12 look at it and make sure that folks are understanding  
13 exactly where I'm at.

14 I don't think on any item, if you go  
15 through, I am very, very clear -- sometimes people don't  
16 want to listen to it, but I am very clear. My process has  
17 been very, very clear. I look at every order and every  
18 draft order. Where it talks about a case in there, I pull  
19 it up, even if I think I know what it is, and I go through  
20 the process. Even if it's a 1999 case, I go through it  
21 and just make sure. And then I try to find the pathway.

22 And then I try to see how it fits  
23 within what we're doing and whether we can go forward.

24 CHAIR ZIBELMAN: Okay. I think this  
25 is -- we can move on.

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2 Let's -- Commissioner Acampora?

3 COMMISSIONER ACAMPORA: Thank you.

4 First of all, let me say my favorite word is always  
5 flexibility and you know that over the years. And this is  
6 exactly what we're doing again. We're being flexible to  
7 meet the needs.

8 So the support of this, I think, is  
9 really important. I think it does send a message to help  
10 clarify those people out there who do have to make the  
11 business decisions. I think that's very important.

12 I have -- I have to say one thing,  
13 though, in remarks of my colleague. I have been here for  
14 almost 12 years. There is a process here. There has  
15 never been a time where I have asked for something that it  
16 was not delivered to me.

17 I feel that every time I come to this  
18 table -- and we may have a disagreement or a  
19 misinterpretation of what we think our personal  
20 responsibilities are. But I think my responsibility is to  
21 come here with as much knowledge and briefing to be able  
22 to make a vote.

23 So I really do take umbrage with the  
24 fact that it has been said here today that we are not  
25 given information. We are not prepared. There are many

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2 times, over the years, that I have asked for changes and  
3 changes have been made. So I -- I feel that I don't want  
4 the record to just show that there is a disagreement.

5 My feeling is there have always been -  
6 - the Staff has been very helpful and always forthcoming  
7 in matters that I may have a question on.

8 And as to whoever the Chair may have  
9 been, when I felt I reached a point with the staff that I  
10 needed to go to the Chair, that door has been opened also.  
11 So I just want to say we come here to vote and people just  
12 don't blindly vote yes. It's taken under due  
13 consideration.

14 So for that, I will say I will be  
15 supporting this item.

16 CHAIR ZIBELMAN: Let's move on.

17 So all those in favor of Item 301 as  
18 the recommendation to -- let me see. Am I on the right  
19 place? Yes. The petition -- not sure if I am. Yeah. To  
20 the Standard Interconnection Requirements, please indicate  
21 by saying aye.

22 COMMISSIONER ACAMPORA: Aye.

23 COMMISSIONER SAYRE: Aye.

24 CHAIR ZIBELMAN: Aye.

25 COMMISSIONER BURMAN: And I concur in

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2 limited fashion reflective of the comments I made at  
3 session.

4 CHAIR ZIBELMAN: So there'd be three  
5 eyes. I did vote, Mr. Agresta, in favor. The  
6 recommendations are accepted.

7 And next item for discussion is Item  
8 302. And Leka Gjonaj is going to be presenting this.  
9 This is with respect to the AC Transmission Proceeding. I  
10 hope this is a short item because we're just going to be  
11 moving on it, but let's --.

12 MR. GJONAJ: I have about thirty pages  
13 here so.

14 CHAIR ZIBELMAN: We -- then you can --  
15 we're going to amend the agenda.

16 Go ahead, Leka.

17 MR. GJONAJ: Okay. Good afternoon  
18 Chair Zibelman and Commissioners.

19 Item 302 is a draft order addressing  
20 AC Public Policy, Transmission Upgrades, and Cost -- Cost  
21 Allocation Methodology.

22 As you may recall, the New York  
23 Independent System Operator, or NYISO as we refer to them,  
24 developed its public policy transmission planning process  
25 to comply with FERC's Order 1000 that required, in part,



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2 the development of a planning process for the  
3 consideration of public policy driven transmission needs.

4 The NYISO'S public policy transmission  
5 planning process consists of 4 main steps, which include,  
6 1) the identification of public policy requirements by the  
7 Commission driving the need for transmission, 2) The  
8 NYISO'S solicitation of proposed solutions to identify  
9 needs or requirements, and 3) NYISO'S evaluation of the  
10 viability and sufficiency of proposed transmission and  
11 non-transmission solutions to the public -- public policy  
12 transmission needs, and 4) upon confirmation of the  
13 transmission needs by the Commission, NYISO'S evaluation  
14 selection of the more efficient or cost effective  
15 transmission project to satisfy the need.

16 Item 302, before you today, is at step  
17 4 of the public policy transmission planning process.  
18 That is confirming that a transmission need still exists  
19 and directing the New York ISO to perform its evaluation  
20 and selection of the more efficient or cost effective  
21 transmission solution.

22 How did we get to this stage?  
23 Briefly, in a December 2015 order, the Commission found  
24 the relief of persistent congestion across the central  
25 east and UPNYSENE, or Upstate New York to Southeast New

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2 York, electronic transmission interfaces would advance  
3 public policy. This came to be referred to as the AC  
4 Transmission Public Policy Transmission Need, this being -  
5 - that being a first step.

6 On February 29th, 2016, the NYISO took  
7 the next step and issued its solicitation for projects  
8 that would address the needs using the criteria specified  
9 in the Commission order. In response to its solicitation,  
10 NYISO received proposals from 6 developers who proposed a  
11 total of 15 transmission projects and one non-transmission  
12 proposal.

13 Based on the criteria set forth in the  
14 Commission order, the NYISO prepared a viability and  
15 sufficiency assessment for each of the proposed solutions  
16 and, following stakeholder review and comments, issued its  
17 viability and sufficiency report on October 25th, 2016.

18 NYISO analysis found that 13 of the 15  
19 transmission projects were viable and sufficient. It did  
20 not, however, find that to be the case for the non-  
21 transmission proposal. Further, regarding cost  
22 allocation, the Commission's December 2015 order described  
23 an allocation method whereby 75% of costs should be  
24 allocated on an economic beneficiaries pay approach and  
25 25% of those cost on a load ratio share allocation, which

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2 determines the respective shares of Upstate and Downstate  
3 entities.

4 The NYISO's cost allocation proposal  
5 in this case is based, in large part, on its existing and  
6 well-established Carus (phonetic spelling) or economic  
7 planning process, would allocate 90% of the cost to  
8 downstate load zones G through -- commonly referred to as  
9 G through K -- or known as G through K, and 10% to Upstate  
10 load zones A through F, a result -- the -- the December  
11 2015 Commission order had anticipated.

12 Given that background, today you are  
13 confirming that a public policy transmission need still  
14 exists for the AC transmission upgrades and directing the  
15 New York ISO to complete its final step of evaluating and  
16 selecting the more efficient or cost effective  
17 transmission proposal to meet -- to meet that need.

18 And finally, once the NYISO makes --  
19 excuse me -- once NYISO makes its selection, the winning  
20 developer will then file the necessary Article 7  
21 application and proceed through the -- the siting process.

22 This concludes my presentation. I am  
23 more than happy to answer any questions you may have.

24 CHAIR ZIBELMAN: Great. Thank you.

25 The reason I -- I thought -- and it

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2 was recommended by Commission Burman and -- and  
3 Commissioner Sayre to put this on the regular agenda was  
4 not so much for the debate, because of the significance,  
5 Order 1000 from FERC is a fairly new process. We were one  
6 of the first states to take advantage of this in terms of  
7 public policy transmission and this is the first meeting  
8 that we could've had this on the agenda. And I think  
9 Staff worked very hard over the holidays to get it in  
10 front of us today so we can act on it quickly.

11 Getting the AC transmission proceeding  
12 and moving it along, I think, is very important. Know --  
13 we know that the need to -- the desirability of building  
14 transmission for public policy, particularly now with the  
15 CES, as well as the announced retirement of Indian Point,  
16 has become even more relevant to what the state is going  
17 to need, moving forward.

18 So I certainly intend to vote for this  
19 item and I can take any questions or comments.

20 Commissioner Sayre?

21 COMMISSIONER SAYRE: I don't think  
22 anybody really seriously disputes the need for this  
23 project. We've had a bottleneck in Upstate New York in  
24 the Utica area between Upstate and Downstate for decades.  
25 It's been discussed for far longer than I have been at the

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2 Commission.

3 Without this project, we're going to  
4 have problems meeting our Clean Energy Standard goal of  
5 50% of the state's load met by renewable energy by 2030,  
6 because of the simple facts that there's a lot more solar  
7 and wind resource capacity Upstate, but we need most of  
8 the load Downstate.

9 Now some of the parties have taken  
10 issue with the allocations that -- that we've directed and  
11 proposed. We're here to discuss and decide that kind of  
12 issue and the order right here in front of us does that.

13 I certainly trust that my comments  
14 earlier today aren't going to be taken as a policy that  
15 everything needs to be settled. It doesn't. We're here  
16 to make the difficult decisions as well as make policies.  
17 But on this matter, this upgrade has been discussed for a  
18 very long time. And I am absolutely delighted to see it  
19 moving forward.

20 CHAIR ZIBELMAN: Thank you.

21 Commissioner Acampora?

22 COMMISSIONER ACAMPORA: I have no  
23 comment.

24 CHAIR ZIBELMAN: Commissioner Burman?

25 She doesn't have any comment.

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2 COMMISSIONER BURMAN: When we first  
3 started this item, it was -- had been started before I  
4 came. But my very first time that we discussed one aspect  
5 of this, I had mentioned that my son was starting college  
6 and that I hoped we would have resolution to this  
7 proceeding, not picking winners or losers, just in  
8 resolution to the proceeding.

9 He's a junior right now, so unless  
10 he's a 5-year, you know, the time is coming. He actually  
11 was at the session when I said that, I believe. So just  
12 let me know if I need him to extend his time at college  
13 so.

14 CHAIR ZIBELMAN: Okay. All those in  
15 favor in -- for Item 302 as it relates to the  
16 recommendation defined public policy requirement and  
17 transmission need, please indicate by saying aye.

18 COMMISSIONER SAYRE: Aye.

19 COMMISSIONER ACAMPORA: Aye.

20 COMMISSIONER BURMAN: Aye.

21 CHAIR ZIBELMAN: Aye. Hearing no  
22 opposition, there being none, the recommendations are  
23 adopted.

24 Okay. We are going to move to the  
25 consent agenda. Do any of the Commissioners wish to

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2 recuse from voting on the items of the consent agenda?

3 COMMISSIONER SAYRE: No.

4 CHAIR ZIBELMAN: No. Any comments on  
5 the consent agenda?

6 COMMISSIONER SAYRE: No.

7 CHAIR ZIBELMAN: No. Okay. Let me --  
8 Commissioner Burman?

9 COMMISSIONER BURMAN: Just -- the only  
10 comment I want to make is that at the December 15th, 2016,  
11 session there was an announcement that we were making a  
12 change to how we normally organize our agenda and that it  
13 was going to be a regular agenda and the regular agenda  
14 would consist of matters that are either major decision  
15 matters for the Commission or major policy matters that  
16 the Chair believed needed and warranted a Staff  
17 presentation and further discussion and so they would stay  
18 on the regular agenda.

19 And then there was a consent agenda  
20 that the Chair indicated consists of matters that all of  
21 the Commissioners have agreed to and have indicated they  
22 have no further comment or questions, and did not involve  
23 major policy changes or anything that warrants further  
24 discussion so just going to be taken care of as a group as  
25 a voice vote.

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2 And then there would be non-consent  
3 agenda, which would consist of matters that normally would  
4 be on the consent agenda, but that an individual  
5 Commissioner or Commissioners believe indicated they're  
6 not in total agreement with, or have additional questions,  
7 and while there was not going to be any Staff  
8 presentations, they would take additional questions.

9 And I just want to note that I think  
10 that the -- the process that was established -- a new  
11 process that was established in December 5th -- the  
12 December 15th, 2016, session has changed. It's the  
13 prerogative of the Chair. I'm not disputing that.

14 I do just want to reflect, though,  
15 that when it says consent agenda, that folks should look  
16 to the language in the -- in the -- the -- in the actual  
17 final agenda, which notes that -- let me get it --  
18 consists of items that, because of their nature, can be  
19 cited by the Commission on the basis of written reviews  
20 and analysis, previously made available to the Commission  
21 if not required discussion, and any item on the consent  
22 agenda can be transferred to the regular agenda if  
23 discussion is required, which is determined by the Chair.

24 And so I never share, before a  
25 session, on any item, how I am going to be voting. And --



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2 and it's my prerogative to -- and I think it's the right  
3 decision to leave those final decisions to after the  
4 session in case the session produces something that would  
5 make me change that.

6 So when it says consent, it doesn't  
7 mean that that means that I believe that the item doesn't  
8 involve major policy changes or that I am in consent to  
9 vote yes on the item. However, at this time, I have no  
10 comments or question on the consent agenda, but do just  
11 want to point out the change so that folks don't think  
12 that if there's a consent that that means that before the  
13 session, that I'm in agreement with them and will let the  
14 Chair know, as I have done, on what items I think, but it  
15 is her prerogative to decide what falls in the consent  
16 agenda bucket.

17 Thank you.

18 CHAIR ZIBELMAN: Okay. And I -- I  
19 invite any comment on the consent agenda, but I did try to  
20 -- we -- to make a change, but my fellow -- 2 of the other  
21 fellow Commissioners said they thought it was a really bad  
22 idea. So that's why we are moving back to our -- our  
23 normal way.

24 So with that, all those in favor of  
25 the items on the consent agenda, please indicate by saying

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aye.

COMMISSIONER ACAMPORA: Aye.

COMMISSIONER SAYRE: Aye.

COMMISSIONER BURMAN: Aye.

CHAIR ZIBELMAN: Aye.

Opposed?

Hearing none, the consent agenda is approved.

So thank you all very much. And is there anything else in front of us today?

SECRETARY BURGESS: There are no other matters today. The next meeting is February 16th.

CHAIR ZIBELMAN: Okay. Thank you.

We are adjourned.

(The meeting adjourned at 2:32 p.m.)

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STATE OF NEW YORK

I, JANET AXTON, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 162, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 31st day of January, 2017.

JANET AXTON, Reporter

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