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Monthly Meeting - 1-17-19

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

MONTHLY MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, January 17, 2019  
10:30 a.m.  
Three Empire State Plaza  
Agency Building 3, 19th Floor  
  
Albany, New York

COMMISSIONERS:  
JOHN B. RHODES, Chair  
GREGG C. SAYRE  
DIANE X. BURMAN  
JAMES S. ALESI

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2 (On the record 10:32 a.m.)

3 CHAIRMAN RHODES: We are time and I  
4 call this session of the Public Service Commission to  
5 order. Assistant Secretary Aissi, are there any  
6 changes to the final agenda?

7 MS. AISSI: Good morning. There are  
8 no changes to the agenda this morning.

9 CHAIRMAN RHODES: Thank you. So,  
10 with that, we will proceed -- begin with the first  
11 item for discussion, which is Item 201, Cases 14-M-  
12 0094 et al, as they relate to the petition filed by  
13 the New York State Research and Development  
14 Authority, regarding data and reporting, presented by  
15 Ted Kelly, Assistant Counsel, Peggy Neville, Deputy  
16 Director Office of Clean Energy and Bruce Alch, Chief  
17 Retail Access and Economic Development are available  
18 for questions. Ted, please begin.

19 MR. KELLY: Thank you. Good morning  
20 Chair Rhodes and Commissioners. This item is a  
21 proposed order regarding a petition filed by the New  
22 York State Research and Develop -- Energy Research  
23 and Development Authority or NYSERDA, regarding  
24 access to data and legacy reporting.

25 Part of NYSERDA's role as the State's

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2 energy research and development authority, is to  
3 conduct studies and evaluations related to the  
4 State's clean energy progress initiatives. This is  
5 laid out in NYSERDA's authorizing statute, the Public  
6 Authority's law, as well as in the State Energy Law.

7 Furthermore, the Commission has  
8 directed NYSERDA to perform these sorts of activities  
9 in various orders, including in the authorization of  
10 the clean energy fund. NYSERDA has already conducted  
11 a number of these studies over its history. In many  
12 cases, these studies require data collected by the  
13 State's gas and electric utilities, regarding  
14 customer usage.

15 Needed utility data may relate to  
16 customers who are participating in clean energy  
17 programs with NYSERDA or the utilities or may relate  
18 to customers who have not participated in clean  
19 energy programs, who I will refer to as non-  
20 participants.

21 For example, in 2015, NYSERDA worked  
22 with the utilities and received the necessary data to  
23 conduct the residential baseline study. Baselines  
24 studies use current energy usage data, including the  
25 prevalence of certain energy technology -- of clean

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2 energy technologies or measures to determine a  
3 baseline level that can later be used for comparison  
4 of progress.

5 Baseline studies and similar tools are  
6 especially important for REV and the Clean Energy  
7 Fund because those initiatives aim to increase clean  
8 energy deployment through market development  
9 strategies, rather than simply through resource  
10 acquisition strategies.

11 Baseline studies require both  
12 participant data and non-participant data with the  
13 non-participants acting, essentially similar to a  
14 control group.

15 In addition, because the study is  
16 looking at granular by customer data, aggregated data  
17 is not sufficient; individualized data is needed.  
18 The residential baseline study and other studies like  
19 it, were conducted in compliance with guidance issued  
20 by Staff at the direction of the Commission and the  
21 guidance was regarding data protection and privacy.  
22 In addition, NYSERDA and the Utilities negotiated  
23 data security agreements for their studies.

24 More recently, the Utilities have  
25 expressed reluctance to provide -- to continue to

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2 provide non-participant data to NYSERDA, without  
3 specific Commission authorization and guidance. As  
4 such, NYSERDA filed the petition, which requested  
5 that the Commission authorize NYSERDA to receive non-  
6 participant data for 2 specific use cases; first, to  
7 assess performance and effectiveness of clean energy  
8 programs and policies, including through potential  
9 baseline and market characterization studies, as well  
10 as other evaluation measurement and verification  
11 activities; and 2, for implementation of NYSERDA's  
12 clean energy fund portfolios.

13 NYSERDA also requested that the  
14 Commission create a process for these data requests,  
15 as well as determining the appropriate data security  
16 and privacy protections. The draft order grants  
17 NYSERDA's request, with respect to the first use  
18 case, conducting studies and other evaluation  
19 activities but denies the request, with respect to  
20 the second use case for implementation of the CEF  
21 portfolios.

22 The first use case, is consistent with  
23 the work that NYSERDA has been doing for years and  
24 with its responsibilities under the law and  
25 Commission orders. It is also consistent with the

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2 Utilities own use of data for studies and evaluation  
3 purposes, as well as the Utility sharing of data with  
4 their own contractors.

5 The second use case is overly broad  
6 and lacks the necessary specificity. The petition  
7 does not explain what specific activities might fall  
8 in that category nor how those activities would be  
9 consistent with current or past practice and with  
10 consumer privacy interests.

11 The data order creates a process by  
12 which NYSERDA will publicly file its requests for  
13 data. The Utilities will then respond by either  
14 agreeing to fulfill their request and providing a  
15 timeline or by objecting to their request if they  
16 believe that it is not consistent with this order or  
17 is overly burdensome. And, where the Utility  
18 objects, Department Staff will determine whether the  
19 request is consistent with this order.

20 The draft order also creates a process  
21 for the development of a standard memorandum of  
22 understanding between NYSERDA and the Utilities  
23 governing these transfers of data, which will include  
24 data security and privacy provisions. The Utilities  
25 are required to approve the memorandum of

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2 understanding consistent with past agreements between  
3 the Utilities and NYSERDA.

4 Those past agreements include strong  
5 data security protections, as well as cybersecurity  
6 insurance requirements. The Utilities may propose  
7 new additional protections with explanations for why  
8 those new protections should be added. NYSERDA and  
9 the Utilities will then negotiate a final agreement,  
10 with Staff available to arbitrate if they are unable  
11 to come to an agreement.

12 This order will allow NYSERDA to  
13 conduct important evaluation activities, such as the  
14 commercial baseline study, to ensure the State's  
15 Clean Energy programs are successful.

16 NYSERDA's petition also requests that  
17 the Commission modify the reporting requirements of 2  
18 programs that have program periods that have ended,  
19 the Systems Benefits Charge or SBC3 program and the  
20 SBC4 program. These programs stopped accepting new  
21 applicants a number of years ago. However, some of  
22 the contracts signed under those programs, involved  
23 performance payments over the life of a contract.

24 Therefore, payments from those  
25 programs have continued and reporting has accordingly

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2 continued.

3 At this point, both programs have very  
4 few outstanding payments. Therefore, NYSERDA  
5 requests that the remaining reporting be limited to a  
6 final report for SBC3 and an annual reports for SBC4  
7 followed by a final report from the SBC4 has  
8 completed all payments.

9 The draft order grants -- grants the  
10 request, with respect to SBC3, it directs an interim  
11 final report this year, followed with an updated  
12 final report when all payments are complete. With  
13 respect to SBC4, it directs annual reports, followed  
14 by a final report when all payments are complete.

15 That concludes my presentation and  
16 Peggy, Bruce and I are available for questions.

17 CHAIRMAN RHODES: Thank you Ted. It's  
18 foundationally important that we ensure that the  
19 programs that we approve do in fact work and  
20 specifically this means being able to tell if we're  
21 making a difference and that requires data.

22 I find this report assures that data  
23 in a way that's careful and appropriate, which is  
24 necessary given that we're talking about data and  
25 therefore, about privacy and security. And, I also



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2 find that the other items beyond the -- the larger  
3 access to data question are -- are well handled. I'm  
4 going to be in favor of this item.

5 Commissioner Sayre.

6 COMMISSIONER SAYRE: I'm pleased to  
7 support this item. In general, I support the  
8 proposition that if you can't measure something, you  
9 can't improve it effectively. As Chair Rhodes said,  
10 we have to keep improving these programs. Nobody can  
11 expect them to be perfect from the outset. And, if  
12 we're going to improve them, we have to measure them.

13 This item allows us through NYSERDA to  
14 look at the success and less than success of our  
15 Clean Energy programs. And, it provides, in my view,  
16 as the Chair said, an appropriate level of protection  
17 of the consumer data.

18 CHAIRMAN RHODES: Commissioner Burman.

19 COMMISSIONER BURMAN: Thank you. I'm  
20 going to be dissenting without prejudice for the --  
21 for NYSERDA to refile. I do want to discuss my  
22 rationale because I do think it's important for  
23 thoughtful consideration, even if my dissent doesn't  
24 convince others.

25 I am very pleased with the work that

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2 DPS Staff did to take what was a petition that had  
3 far reaching implications and narrow it, though I  
4 don't think it goes far enough. I do want to,  
5 without prejudice though, because I do think a  
6 careful evaluation of access to that data is  
7 important and there may be an opportunity for, with  
8 more information and more collaboration with other  
9 stakeholders, we could -- I could feel comfortable  
10 with that.

11 My concerns relate really to the --  
12 several things. The first, I'd like to ask Ted, you  
13 to explain the UER, the status of that and -- and how  
14 this relates, or not, to this item.

15 MR. KELLY: Absolutely. So, the last  
16 -- last year the Commission authorized the Utility  
17 Energy Registry, which is being developed by NYSERDA  
18 with the participation of the Utilities.

19 The Utility Energy Registry collects  
20 aggregated customer usage data, generally aggregated  
21 at the municipal level and by customer type;  
22 residential, for example, commercial and provides  
23 that -- and, will -- will provide that data in an  
24 open website where anybody can search it, review it  
25 and use it to plan -- do energy planning, do energy

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2 targeting and so on.

3 The UER is currently under development  
4 at NYSERDA. All of the Utilities have provided  
5 NYSERDA with the necessary data to get the UER up and  
6 running and my understanding is that currently  
7 NYSERDA is open to queries by email, while they  
8 currently finalize the open access website, which  
9 they expect to have up and running, I believe, in the  
10 second or third quarter of this year.

11 COMMISSIONER BURMAN: Okay. So, my  
12 concern relates, really, to this is a policy shift in  
13 that we as a Commission, are looking at giving  
14 potentially broad data access to non-participants of  
15 NYSERDA. And, while we have done it and NYSERDA has  
16 done it with Utilities in limited cases on a case by  
17 case basis looking at the MOUs et cetera, as it  
18 relates to now giving a 3 year MOU an approval, I am  
19 concerned about that.

20 So, what I'd like to see, if NYSERDA  
21 was going to be putting in a revised petition for  
22 consideration, which is why my dissent will be  
23 without prejudice, I would really like to see the MOU  
24 template, specifically as to this because I do think  
25 it will -- while it may mirror other MOUs that have

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2 been done, I do think, to the extent that the  
3 Commission itself would be able to drill down and  
4 also have potential comments from stakeholders on  
5 that MOU, I do think it would important and helpful,  
6 especially as it is a broad MOU, to not one specific  
7 study.

8 So, it may be important for us to have  
9 some other caveats in there.

10 The second is, the -- the MOU itself,  
11 is worked through only with, at this point, Staff and  
12 the Utilities. Without -- while taking into  
13 consideration some of what the Commission order says,  
14 it does give wide latitude for that MOU or revisions  
15 to that latitude, without Commission direct oversight  
16 and that concerns me.

17 And, it's also being done without, in  
18 this case, any external consumer advocates or other  
19 stakeholders having weighed in except for C.P.A.  
20 And, so I do appreciate Consumer Power Advocates'  
21 comments, their concerns and I would imagine that  
22 there would be other concerns as we go down the road.  
23 Now, I do understand that the second part, the phase  
24 2 I -- I guess in my mind it is, looking at it  
25 outside of the first use cases, we would hope that

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2 there would be more consumer engagement and advocacy.

3 Frankly, I do think it is incumbent  
4 upon anyone who is submitting a petition that touches  
5 upon and directly touches upon consumers, for that  
6 petitioner to make sure that there is direct outreach  
7 to consumer advocates or others who may be affected  
8 by this and to seek out that and to let us know if  
9 there is any support or opposition on that.

10 My other issue is really related to  
11 I'd like to see -- I would have liked to see in the  
12 petition the actual studies expected to be done.  
13 That would give us and probably give other  
14 stakeholders more information on exactly what is  
15 planned. It's a 3 year plan. I think we should know  
16 ahead of time what those studies are going to be or  
17 expected to be in whole. There's a lot right now  
18 that is being proposed potentially in the budget and  
19 to the extent that some of the things that may or may  
20 not come out of that, would I think would fall into  
21 that and I'd like to make sure that the Commission,  
22 itself, is fully engaged on that and it's not left to  
23 another potential new or old entity to look at that  
24 but rather this is under the Commission's umbrella,  
25 so it's important for us to know exactly how those

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2 studies may be done and to the extent that NYSERDA is  
3 engaging with any sister agencies, including ours in  
4 those studies, we should know about that ahead of  
5 time and that should be part of the revised petition  
6 that explains that in more detail.

7 The other issue I have is I really  
8 want to understand and the petition was lacking in  
9 this, in how NYSERDA plans to keep confidential this  
10 data. I do understand that they would be following  
11 normal protocols in confidentiality and -- and  
12 working through that. But, to the extent that  
13 internally, what I'd like to see exactly what the  
14 process is, especially even if they have normal  
15 processes now but especially as it relates to this  
16 new access to data that would be coming in. It  
17 should really be limited only to those who are  
18 participating in the gathering of information and the  
19 analysis for the study and we should make sure that  
20 there is clear guidance given internally in the fact  
21 that this information cannot be taken, in any way,  
22 and applied externally or internally for other uses  
23 and so, that it really is the use for this study or  
24 these studies that may be done.

25 That also goes to how it will be, in

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2 terms of being shared, potentially with other sister  
3 agencies or any external consultants. And, while we  
4 addressed it a little bit, really I think need to  
5 make very clear that the access to this data is very  
6 limited to helping in that analysis and not to be  
7 used even inadvertently in others without some clear  
8 guidance from the Commission.

9 For me, I would also like to see  
10 specifically the petition, especially since the  
11 current one was so broad in trying to capture it for  
12 many uses. I'd like to see what the actual steps  
13 will be to limit the need for this. There is, I  
14 believe, a -- a focus on encouraging them to use it -  
15 - to use UER before they go to this but I'd like to  
16 see exactly what that process is; what that analysis  
17 is intended. And, rather than encouraging -- UER is  
18 the -- is -- is what should be utilized first and  
19 foremost and any alternative need outside of that,  
20 needs to really be looked at. But, my concern is,  
21 we've spent a lot of time on the UER and it's also  
22 something that is evolving and I'd like to make sure  
23 that the UER process is one that evolves  
24 appropriately and not -- this, in many ways, can be  
25 seen as well, we don't need to do the UER because we

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2 have access to that data from other means; doing a  
3 study. And, that's why it's important for me to make  
4 sure that we're linking the clear understanding of  
5 what studies it would fall under, as well as looking  
6 at what we're doing to the UER, if there needs to be  
7 refinement as has been expected that that would be an  
8 evolving process.

9 The UER discloses the information in  
10 an aggregate fashion, if I'm correct and it's  
11 publicly available and will, apparently in June, be  
12 available via website for all. And, so that really  
13 at that point, that give everyone the ability to see  
14 the data and to have that information and it's a  
15 fairness perspective that everyone has it, they can  
16 look at it, they can understand where some of the --  
17 the penetration issues are, they maybe can do some  
18 targeting of the information in the aggregate fashion  
19 but not specifically targeting specific customers.

20 My concern relates to, in this,  
21 NYSERDA and any of its consultants or sister  
22 agencies, they're the only ones that have this data  
23 from the Utilities. And, therefore, they really sort  
24 of have an ability to have more information than  
25 those through the UER process. And, while we are



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2 very mindful that they should maybe not be using this  
3 for anything other than the studies, to the extent  
4 that it is important that this gets into exactly what  
5 they can do with that information and the analysis of  
6 that and that's missing in the petition.

7 So, for example, in the UER process,  
8 everyone would have access to that information. They  
9 may be able to see X County has certain number of  
10 things. They can then target or market to the County  
11 itself in that fashion. Here, it might be taken to  
12 utilize this and to target; maybe not the specific  
13 customers but to understand that this is going to X  
14 County. We should target the entire County that way.  
15 And, those are the types of things that I want to  
16 make sure we have clear understanding from NYSERDA  
17 and from the folks and the guidance on that and look  
18 carefully at that and that any question, as it  
19 relates to we're going to use this outside of that  
20 study for X, really needs to be addressed by the  
21 Commission itself rather than left for discussion  
22 with Staff and the NYSERDA folks.

23 My other concern is the -- the order -  
24 - the draft order really focuses very much on generic  
25 legal language, legislation, et cetera to support

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2 doing this in generic sections of the law. The only  
3 time we go beyond citing to the generic sections of  
4 the law for our ability to do this, is when we talk  
5 about the guidance document that is currently  
6 existing. That guidance document, the most current  
7 one, was not approved by the Commission as itself.  
8 But, the guidance document was worked on with Staff  
9 and the now defunct Clean Energy Advisory Council.

10 And, so for me when I look at this and  
11 see that the guidance is going to be revised to  
12 reflect that, while it kind of reflects -- will  
13 reflect and should reflect what the order says, what  
14 it does, is it opens up a conundrum, in that we are  
15 not looking at the specific guidance language that  
16 will actually be inserted and we are missing that  
17 stakeholder outreach that was there, in some fashion,  
18 in -- with the Clean Energy Advisory Council.

19 So, I just put that out as concern for  
20 me because I do pause whenever I see a draft order  
21 where we're really relying on just generic sections  
22 of the law, rather than specifically. And in fact,  
23 in the guidance document and in many of our orders,  
24 we have focused very carefully on the protection of  
25 access to customer data. So, this is really

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2 something that gives me great pause.

3 The other issue I have is really  
4 relating to the legacy reporting. So, I -- I think  
5 that NYSERDA in bringing up an issue of the legacy  
6 reporting and looking at it and saying that they --  
7 they want some leeway in submitting this report  
8 annually and semi-annually for the different reports,  
9 my concern is that it again misses the mark. Yes, it  
10 is important for us to have timely reporting. We can  
11 discuss whether it's annually, semi-annually,  
12 monthly, whatever it happens to be.

13 The issue really isn't, to me, the --  
14 the -- the -- how many times someone reports. The  
15 issue is that it's timely and that it's actually  
16 comprehensible and usable for everyone. And, what  
17 I'd like to see, which I've said before, what I  
18 really would like to see, if more of a collaborative  
19 effort on looking at the reporting structures that  
20 come, looking at all of the different subsets of  
21 information that come from other reporting that we  
22 get and really work on trying to make sure that we're  
23 giving timely, accurate, factual information in a way  
24 that people can really grab onto, not just those, you  
25 know, wonky folks or others who, you know, are

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2 looking at it day in and day out but really -- having  
3 people really come away with a real understanding of  
4 and usefulness to actually being able to read the  
5 reports and decipher the reports, without having to  
6 really struggle through that. It's something that  
7 really is important to me and I think we really  
8 should be working towards looking at -- at doing that  
9 sooner, rather than later.

10 I do think that -- I do think that my  
11 concerns really can be alleviated with more thought  
12 and with some more input. I am very hopeful, that we  
13 can get to a more, if not in this petition but in  
14 others, where there is a lot more granular  
15 information. There is really more specific  
16 information that helps us to really understand it but  
17 for me, it's lacking in the details. Some of these  
18 studies, we may not even know what they're going to  
19 because of the ongoing discussion on what may come  
20 out through the legislative process. And therefore,  
21 it's important for me that we take a pause and give  
22 an indication to NYSERDA on what we're looking for  
23 and also, get some more outreach from those  
24 stakeholders who -- who may be interested in this and  
25 also help us to formulate a better policy and being

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2 very clear on the information is important and again,  
3 how this doesn't conflict with the UER

4 And, I'd like to see in -- even in the  
5 revised petition, an indication of how they plan to  
6 utilize the U.E.R in a more robust way and how this  
7 will not chill any of the ongoing activities, as it  
8 relates to that and would help me feel more  
9 comfortable.

10 But, right now, I feel that this is  
11 not the right time for this. I would need to really  
12 be much more careful because it is access to customer  
13 data -- non-participant customer data in NYSERDA's  
14 programs. So, that's my food for thought and that's  
15 why I really fall on the dissenting without prejudice  
16 to resubmit.

17 Thank you.

18 CHAIRMAN RHODES: Thank you very  
19 much. Commissioner Alesi?

20 COMMISSIONER ALESI: Thank you Mr.  
21 Chairman. I think this is a reasonable request. I -  
22 - I recognize NYSERDA as a legitimate entity in our  
23 efforts towards clean energy and I think that with  
24 strong data security, we're in a better position to  
25 share things and to measure the things that we share

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2 and use those measurements to make predictions that  
3 will get us closer to our common goal of clean  
4 energy.

5 So, I'll be voting yes.

6 CHAIRMAN RHODES: Thank you very  
7 much. With that, I'll proceed to call for a vote.  
8 My own vote is in favor of the recommendation to  
9 grant the petition, with modifications as discussed.

10 Commissioner Sayre, how do you vote?

11 COMMISSIONER SAYRE: Aye.

12 CHAIRMAN RHODES: Commissioner  
13 Burman?

14 COMMISSIONER BURMAN: I dissent  
15 without prejudice.

16 CHAIRMAN RHODES: Commissioner  
17 Alesi?

18 COMMISSIONER ALESI: Aye.

19 CHAIRMAN RHODES: The item is  
20 approved and the recommendation is adopted. We'll  
21 now move to the second item for discussion, which is  
22 Item 301, Case 18-E-0766, which is the Petition of  
23 the New York Power Authority and the Port Authority  
24 of New York and New Jersey for a Declaratory Ruling  
25 presented again by Ted Kelly, Assistant Counsel.

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2 Marco Padula, Acting Director of Markets and  
3 Innovation, is available for questions. Ted, please  
4 begin.

5 MR. KELLY: Thank you. This item is a  
6 proposed Declaratory Ruling, regarding a petition  
7 filed by the Port Authority of New York and New  
8 Jersey and the New York Power Authority. The  
9 petition relates to the Port Authority's interest in  
10 building distributed solar generation at J.F.K.  
11 Airport. NYPA joins the petition, as it will assist  
12 the Port Authority in developing solar.

13 The Port Authority explains that, as  
14 part of its clean energy goals, it is interested in  
15 building a 5 megawatt solar photovoltaic system, as a  
16 community distributed generation project. The CDG  
17 project will be focused on serving low and moderate  
18 income residents in the environmental areas  
19 surrounding J.F.K. Airport. The CDG project would be  
20 compensated under the value stack compensation  
21 method, authorized by the Commission, in the value of  
22 distributed energy resources proceeding.

23 The Port Authority is interested in  
24 building 5 megawatts or more of additional solar,  
25 besides the CDG project, to serve its own energy

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2 needs at J.F.K. This additional solar would be  
3 separately interconnected from the CDG project and  
4 would be designed only for self-supply, that is to  
5 serve the energy usage by the various parts of J.F.K.  
6 Airport, rather than to inject energy into the  
7 utility system.

8 The Port Authority explains that Con  
9 Edison has indicated that this arrangement would not  
10 be permissible under current rules because Con Edison  
11 believes it would violate the 5 megawatt rated  
12 capacity cap. The 5 megawatt cap set by the  
13 Commission, is an eligibility limit for value stack  
14 compensation. Generation larger than 5 megawatts, is  
15 not eligible for value stack compensation and  
16 therefore, is also not eligible to be a community  
17 distributed generation project.

18 To determine whether multiple  
19 generation resources should be considered together  
20 for purposes of the cap, the Commission established a  
21 3 factor test. Projects receiving values stack  
22 compensation are aggregated for the purpose of the  
23 test, unless they are one, separately interconnected  
24 and metered, two, operationally separate and three,  
25 sited on different parcels of the land.



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2 The Port Authority explains that Con  
3 Edison has stated that it interprets the 3 factor  
4 test as applying to all generation on a parcel, even  
5 if only some of the generation is intended to receive  
6 value stack compensation.

7 Therefore, it would apply this three  
8 factor test to the 5 megawatt CDG project and the  
9 additional self-supply generation. It would then  
10 find that while the projects would be separately  
11 interconnected and metered and operationally  
12 separate, they would both be sited on the same  
13 parcel, as J.F.K. is one -- is on one large parcel of  
14 land and would therefore, fail the test. Thus, the 5  
15 megawatt CDG project would not be eligible for value  
16 stack compensation or to be a CDG project.

17 In its petition, the Port Authority  
18 and NYPA argue that Con Edison is incorrectly  
19 interpreting past Commission orders and its tariff  
20 language. They argue that the 5 megawatt cap and the  
21 3 factor test, should not be applied when only one  
22 generator is intended for value stack compensation  
23 and the other is intended solely for self-supply.

24 Consistent with the declaratory rule  
25 and regulations, Con Edison received notice of the

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2 petition and filed a response. Con Edison argues  
3 that its original interpretation is correct and that  
4 a contrary interpretation could allow large scale  
5 generation projects to inappropriately receive value  
6 stack compensation by sub-dividing their projects.

7 The proposed ruling finds that the  
8 Port Authority and NYPA are correct and grants the  
9 petition. It finds that the intent of the 5 megawatt  
10 cap and the 3 factor test, are to ensure that a large  
11 project is not split into multiple smaller projects  
12 to receive value stack compensation, since large  
13 project should appropriately go to the wholesale  
14 market for compensation, rather than the value stack.

15 This also helps manage the potential  
16 non-participant impacts of value stack compensation.  
17 However, applying the cap where one -- where only one  
18 project is designed to receive the value stack and  
19 the other is designed for the self-supply of a large  
20 energy user, is inconsistent with both the intent and  
21 the language of the 5 megawatt cap and the 3 factor  
22 test.

23 It would inappropriately limit the  
24 ability of large customers to manage their own energy  
25 usage. This -- in this case and in similar cases,

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2 one large project is not being inappropriately  
3 divided, rather this is a situation where multiple  
4 smaller projects, with separate purposes, happen to  
5 be on the same large parcel of land.

6 For these reasons, the draft ruling  
7 grants the petition and finds that the rated capacity  
8 of project seeking value stack or net metered  
9 compensation, should be aggregated to determine  
10 whether the rate of capacity limited and the 3 factor  
11 test are satisfied. However, the rated capacity of  
12 projects used solely for serving onsite load and not  
13 seeking compensation under value stack or net  
14 metering, should not be counted towards the rated  
15 capacity limit nor should the 3 factor test be  
16 applied in those cases. That concludes my  
17 presentation and Marco and I are available for  
18 questions.

19 CHAIRMAN RHODES: Thank you Ted. I  
20 find this ruling to be clear and helpful and narrow  
21 clarification of our intent -- of the intent and of  
22 the intended application of our language. I am going  
23 to be in favor of this item. Commissioner Sayre.

24 COMMISSIONER SAYRE: This is a simple  
25 but important interpretation of our 5 megawatt cap in

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2 the value stack compensation process. We never --  
3 well, I better say I never intended, through my vote  
4 on the value stack, to exclude a small project from  
5 value stack compensation, just because a large  
6 customer has a bunch of other generation in the same  
7 area that won't ever hit the network. It's intended  
8 solely for self-supply.

9 This item takes care of that situation  
10 clearly and simply. And, it's even more compelling  
11 because the 5 megawatt project that will hit the  
12 network, is Community D.G., that's intended to  
13 benefit low and moderate income consumers. So, I'm  
14 pleased to support the item.

15 CHAIRMAN RHODES: Thank you.  
16 Commissioner Burman.

17 COMMISSIONER BURMAN: Thank you --  
18 thank you Staff for your hard work on this.

19 Can you explain -- one of the concerns  
20 I have is the wholesale market and whether this  
21 intrudes upon the wholesale market that would be  
22 going through the I.S.O. process, rather than here.  
23 Can you explain that?

24 MR. KELLY: Yes. So, the reason that  
25 a project, like this one or like in other project

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2 that could be built under this declaratory ruling,  
3 would not be an inappropriate avoidance of the  
4 wholesale market, is because the -- the primary  
5 project is intended for self-supply and customers  
6 always have the option of building large generation  
7 for self-supply, even beyond the 5 megawatt cap,  
8 without going to the wholesale -- without having to  
9 interconnect or be involved with the wholesale  
10 market. They can still be direct customers of a  
11 distribution utility while having that large  
12 generator for self-supply.

13 So, in this -- in -- in a case where  
14 the generation besides value stack generation is only  
15 for self-supply, the wholesale market wouldn't be  
16 appropriate in -- in any case.

17 COMMISSIONER BURMAN: So, you see this  
18 order as being limited only to the new --  
19 interpretation that's different from Con Ed, in this  
20 case, if it would not apply to the wholesale market?

21 MR. KELLY: Right. If a -- if a -- if  
22 it were -- instead of self-supply, another injecting  
23 -- a second large injecting project, that would  
24 present a different scenario and that wouldn't be  
25 covered by this ruling and the -- you know, they'd

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2 have to -- if they -- it wouldn't be covered by this  
3 ruling.

4 COMMISSIONER BURMAN: So, what if NYPA  
5 and the Port Authority do something that would now,  
6 if -- if not but for this ruling, included something  
7 that then would make it a wholesale market situation.  
8 How do we get around? How do we address that?

9 MR. KELLY: So, in that -- right. In  
10 that case, when they -- they would have to submit --  
11 for any project like this, they would have to submit  
12 an interconnection application with Con Edison and,  
13 you know, and because this -- this ruling on Con  
14 Edison's tariff, only changes their interpretation  
15 for a self-supply case. It's my expectation that if  
16 there was a non-self-supply project, Con Edison would  
17 reject the interconnection application or -- or,  
18 potentially not reject the application but warn the  
19 Port Authority that proceeding with it, would limit  
20 their ability to receive value stack compensation.

21 COMMISSIONER BURMAN: Okay. Thank  
22 you. That's very helpful. And, to the extent that  
23 NYPA has had ongoing focus on increasing its  
24 jurisdictional reach, how do you see this item  
25 applying to that issue?

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2 MR. KELLY: Sure. So, this item is  
3 really within NYPA's core existing jurisdiction, in  
4 that it's supporting one of its own customers, as --  
5 as Port Authority is a partial NYPA customer,  
6 including for its -- partially for its J.F.K. load,  
7 supporting one of its own customers building on site  
8 energy management tools, including renewables, energy  
9 efficiency and so on. And, that's really kind of a  
10 core and fairly traditional part of NYPA's  
11 jurisdiction.

12 COMMISSIONER BURMAN: Okay. And, why  
13 is NYPA working with the Port Authority, other than a  
14 non-government market participant?

15 MR. KELLY: So, again it's because  
16 it's their ability to support one of their own  
17 customers in this case but there will also be non-  
18 government businesses involved in this, as neither  
19 NYPA nor the Port Authority will be the ones who  
20 actually build the solar. They'll go out to solicit  
21 private -- a private -- private businesses to put in  
22 bids to build the solar.

23 COMMISSIONER BURMAN: Okay. Now, NYPA  
24 -- the Port Authority/NYPA is not the only -- Port  
25 Authority is not just a NYPA customer. They also are

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2 a Con Ed customer, if I'm correct, right?

3 MR. KELLY: That's the -- yeah, that's  
4 my understanding, yes.

5 COMMISSIONER BURMAN: Right. So, it  
6 could be something where we could be looking at Con  
7 Ed being involved, potentially, as it relates to --?

8 MR. KELLY: Certainly they'd be  
9 involved with the interconnection process, as -- as  
10 the local utility always will be for a project like  
11 this. You know, building the solar, that's not  
12 within Con Ed's business either.

13 COMMISSIONER BURMAN: Okay. It's food  
14 for thought. NYPA and the Port Authority boards,  
15 what's their approval process on this and the actual  
16 projects that they would be doing?

17 MR. KELLY: So, I'm not specifically  
18 familiar with their regulations. My understanding is  
19 that generally boards approve capital plans and  
20 capital projects and I -- I would expect that this  
21 would, certainly for the Port Authority, be a capital  
22 project. So, it would likely go before the board for  
23 that reason but I'm not -- I'm not very specifically  
24 familiar with the regulations, so I can't speak to  
25 the exact details.



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2 COMMISSIONER BURMAN: Okay. And, how  
3 do we follow-up with the C.D. -- CDG portion of it?  
4 Obviously, that's something that, as a Commission as  
5 a whole, we've been very focused on. How do we make  
6 sure that that actually -- this intended item to help  
7 spur that, actually happens and what's the follow-up  
8 to make sure that we're looking at the customers  
9 benefiting from it, rather than just NYPA and the  
10 Port Authority?

11 MR. KELLY: So, we're in regular and  
12 close contact with the interconnection teams at the  
13 various utilities and -- and the distributed  
14 generation teams at those utilities. So, I expect  
15 that through our continued contact with Con Ed's  
16 interconnection team, we'll keep an eye out for when  
17 these projects file their formal interconnection  
18 applications and then we'll keep an eye on them  
19 through that to ensure that they're, you know, acting  
20 in compliance with expectations and Commission --  
21 and, what the Commission says.

22 COMMISSIONER BURMAN: Okay. So, I  
23 struggled with this item because for me, I do -- did  
24 at first blush and continued to understand Con Ed's  
25 interpretation and I do look to -- do look carefully

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2 at the fact that the Utility, itself, interpreted it  
3 this way and is important in looking at that. I do  
4 understand that there may be other interpretations  
5 and so, it's not that I see Con Ed right and the  
6 Staff wrong or the Staff right and Con Ed wrong. I  
7 do see that there's potential interpretation issue  
8 that needs to be resolved and obviously, the  
9 Commission is the one to resolve that.

10 The pause I have in that, is that I'm  
11 not fully convinced that this was the original  
12 interpretation or originally thought of as an issue.  
13 I can't really find anywhere where this potentially  
14 unique situation came up and was thought through.  
15 So, to the extent that we have the 3 factor test and  
16 that first blush, seems like they, you know, don't  
17 need it for doing it this way. I would agree that  
18 Con Ed was right to see that interpretation the way  
19 they did, though I could also see interpreting it  
20 differently, potentially.

21 The pause I have is, and I've -- I've  
22 raised this issue before in other declaratory  
23 rulings, is when we get a declaratory ruling  
24 petition, it generally is not and it does not have to  
25 be SAPA'd and it generally is not and does not have

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2 to be issued by the Secretary for Comments. However,  
3 this really affects not just NYPA and the Port  
4 Authority and its project. It affects -- potentially  
5 it has Statewide implication, even to the effect that  
6 we have an ongoing value stack proceeding, where  
7 we're looking at potentially tweaks to it or looking  
8 at what -- what folks are seeing and how it -- it  
9 works. For me, I am concerned that, especially  
10 because this petition was filed in December with a  
11 very short window, that folks may not have had an  
12 opportunity to -- or saw a need to weigh in on  
13 something that was a single project with NYPA and the  
14 Port Authority and then Con Ed's territory.

15 So -- but, it may have actually great  
16 value to see and actually the interpretation from the  
17 Statewide implications, may actually have great  
18 support for Staff and NYPA and the Port Authority or  
19 it may not. Without that information, I'm left  
20 concerned that I don't have the full information or I  
21 was not giving enough attention to others who  
22 potentially could weigh in. I do think that we need  
23 to look at that.

24 I do understand that we can do it but  
25 it doesn't mean we should do it that way. I'm going

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2 to vote no on this item because I think that  
3 threshold issue is -- is important enough for us to  
4 take into consideration and also because I'm not  
5 fully convinced that Con Ed's interpretation is  
6 wrong, without more information from others who may  
7 weigh in.

8 With that being said, I do think that  
9 Staff did a good job and I do really want to focus on  
10 the result outcome from this and also to see that we  
11 -- we may need to look to teeing it up on a Statewide  
12 implication, to see if this is something that is  
13 concerning or not for others. And, I think that  
14 would be important for us to -- to do that. So,  
15 thank you.

16 CHAIRMAN RHODES: Thank you very  
17 much. Commissioner Alesi?

18 COMMISSIONER ALESI: Thank you Mr.  
19 Chairman. I'm going to support this. It is a unique  
20 situation, at least as we're seeing this for the --  
21 the first time. But, I think from my viewpoint, the  
22 separate generation or at least the end goal, is to  
23 provide self-supply on the one hand and community  
24 generation on the other hand. And, those are clearly  
25 separated, in my viewpoint at least as far what the

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2 request is. And, I can't overlook the benefit of  
3 taking advantage of using the solar aspect, to  
4 provide more clean energy down there and it's a  
5 reliable energy that I think will help the entire  
6 operation. So, I'm going to support it. It is  
7 unique but I'll support it and maybe see more of this  
8 down the road.

9 CHAIRMAN RHODES: Thank you very  
10 much. So, with that, I will proceed to call for a  
11 vote. My own vote is in favor of the recommendation  
12 to grant the petition, as discussed. Commissioner  
13 Sayre, how do you vote?

14 COMMISSIONER SAYRE: Aye.

15 CHAIRMAN RHODES: Commissioner  
16 Burman?

17 COMMISSIONER BURMAN: No.

18 CHAIRMAN RHODES: Commissioner  
19 Alesi?

20 COMMISSIONER ALESI: Aye.

21 CHAIRMAN RHODES: The item is  
22 approved and the recommendation is adopted. We will  
23 move to the third item for discussion. Item 302,  
24 Case 18-E-0503, which is the petition of Utica Center  
25 for Development, Inc., for a waiver to allow master

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2 metering, presented by Craig Carroll, Utility Analyst  
3 to Office of Consumer Services. Bruce Alch, Chief  
4 Retail Access and Economic Development and Steve  
5 Kramer, Assistant Counsel are available for  
6 questions. Craig, please begin.

7 MR. CARROLL: Good morning Chair  
8 Rhodes and Commissioners. The item before you is a  
9 petition for Waiver of the Individual Metering  
10 Requirements found in Opinion Number 76-17 and 16  
11 NYCRR Part 96. Generally, similar petitions are  
12 listed as consent items on the Commission's agenda.  
13 From time to time however, an item as unique or has  
14 received notable public interest, may be presented,  
15 here the Commission will act on a waiver request to  
16 its regulations that will help allow the owner to  
17 facilitate many services to Veterans.

18 The Commission's rules and regulations  
19 require that units in new or renovated multi-family  
20 residential buildings, be equipped with its own  
21 meter, in order to promote energy conservation by  
22 providing the residents with a price signal, except  
23 where buildings meet the definition of assisted  
24 living facility or senior living facility, as  
25 provided in Part 96. These types of buildings may

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2 still be master metered.

3 The owner in this case, Utica Center  
4 for Development, Incorporated, is renovating the  
5 upper two floors of its Veteran Outreach Center to  
6 create 18 residential units for homeless Veterans or  
7 for Veterans with their -- and their families. Utica  
8 Center requests a waiver of the individual metering  
9 requirements, described above, to better serve this  
10 resident population.

11 The owner states that the building is  
12 designed for -- designed to provide services to  
13 Veterans that encourage self-reliance, including case  
14 management, assistance with V.A. benefits, assistance  
15 for employment, legal aid, food and other supportive  
16 services. The owner also explains that residents  
17 will be transient and that the living arrangements  
18 are otherwise distinguishable from a typical  
19 apartment where the Commission's policies would  
20 otherwise require individual metering.

21 In light of these circumstances,  
22 installation of individual meters, either direct or  
23 through sub-metering, will not advance the  
24 Commission's policies that new living units be  
25 individually metered and in this case, would

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2 otherwise reduce the resources available to Utica  
3 Center to assist homeless veterans in obtaining  
4 shelter and critically needed services.

5 Staff has verified the owner's claims  
6 and recommends that the petition be approved. That  
7 concludes my presentation and we are available for  
8 questions.

9 CHAIRMAN RHODES: Thank you Craig.  
10 I'd -- this is a -- a thoughtful and sensible and  
11 helpful decision. I know we issue this kind of order  
12 regularly and that we don't always present this and  
13 discuss it. So, I welcome both the general fact that  
14 this gives us a little glimpse into the kind of work  
15 that goes on at the Department and at that Staff on a  
16 regular basis. And, I also welcome the specifics of  
17 this recommended order and I'm going to be voting in  
18 favor of it. Commissioner Sayre.

19 COMMISSIONER SAYRE: This is a great  
20 example of why it's important for the Commission to  
21 keep its eye on overall policy goals and objectives  
22 and be prepared to waive restrictive regulatory  
23 requirements where they simply don't make sense.  
24 This particular waiver request is necessary to  
25 provide benefits to homeless veterans and their



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2 families and I enthusiastically support it.

3 CHAIRMAN RHODES: Thank you.

4 Commissioner Burman.

5 COMMISSIONER BURMAN: Thank you. I am  
6 going to be voting for it. I think it's a really  
7 important item. I'm glad that it's highlighted. The  
8 only questions that I have are really -- and -- and,  
9 I -- I do want to comment the order itself states  
10 that the waiver is expressly conditioned on the  
11 continued use of the building as a residence for the  
12 provision of transitional housing for homeless  
13 veterans and the waiver shall be terminated if the  
14 building is put to a different use, which is  
15 important because it makes sure that that continues.

16 Since the first Opinion 76-17, where  
17 the Commission determined that individual metering  
18 requirements could be waived under certain  
19 circumstances and we have, since that time, had  
20 several of these -- a fair number of them, whether  
21 it's homeless residence for veterans or college  
22 dormitory and -- and a couple of other things for  
23 those folks -- facilities for the Department of  
24 Health, the question I have is, how many of them and  
25 how many of those -- and, this isn't for now. I

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2 don't know that you'd know it, how many of those have  
3 remained in the status based on the waiver and the  
4 ones that have not remained in that status, have we  
5 dealt with terminating the waiver?

6 MR. ALCH: Off the top of my -- my  
7 head, we'd have to check --

8 COMMISSIONER BURMAN: Right.

9 MR. ALCH: -- but, to my recollection,  
10 we've never really had any of those convert. It's a  
11 lot of assisted living facilities, nursing home type  
12 operations and they continue.

13 COMMISSIONER BURMAN: Right. Right.  
14 That -- that's my impression too. So, I only  
15 highlight it because it does show some of the  
16 longevity of these and I think it's important to  
17 highlight that, as well. But, it is also a -- a note  
18 to remind folks that the waiver is contingent upon  
19 them remaining as such. So, I think it is important  
20 for us to focus on that.

21 MR. ALCH: So, because of that  
22 requirement, we're engaging with the Utility as a  
23 partner, so they would keep us --

24 COMMISSIONER BURMAN: Right.

25 MR. ALCH: -- you know, we expect that

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2 they would alert us to the first instance that --

3 COMMISSIONER BURMAN: That's great.

4 MR. ALCH: -- there's a conversion.

5 COMMISSIONER BURMAN: So, thank you.

6 That -- that really makes it sufficient for me and  
7 important. So, I -- I think -- I'm very supportive  
8 of the item, so thank you.

9 CHAIRMAN RHODES: Thank you.

10 Commissioner Alesi.

11 COMMISSIONER ALESI: Thank you Mr.  
12 Chairman. I'm going to support this. I think, first  
13 of all, it's a noble effort to help out homeless  
14 veterans but to require individual metering, to me  
15 seems impractical at the very least because the  
16 nature of this population, people who have served our  
17 country, is that they're -- they're transient. So,  
18 to have individual meters in all of the units, I  
19 think just doesn't make any sense. This give us an  
20 opportunity to help people that are -- indirectly, to  
21 help those that are helping others, so I'm going to  
22 support it.

23 CHAIRMAN RHODES: Thank you very much.

24 And, with that, we will proceed to vote. I will  
25 proceed to call for a vote. My -- my vote is in

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2 favor of the recommendation to grant the waiver, as  
3 discussed. Commissioner Sayer, how do you vote?

4 COMMISSIONER SAYER: Aye.

5 CHAIRMAN RHODES: Commissioner Burman?

6 COMMISSIONER BURMAN: Aye.

7 CHAIRMAN RHODES: Commissioner Alesi?

8 COMMISSIONER ALESI: Aye.

9 CHAIRMAN RHODES: The item is approved  
10 and the recommendation is adopted. We will now move  
11 to the consent agenda. Do any Commissioners wish to  
12 comment on or recuse from voting on any items on the  
13 consent agenda? Mr. Sayer?

14 COMMISSIONER SAYER: No.

15 CHAIRMAN RHODES: Commissioner Burman?

16 COMMISSIONER BURMAN: I will be -- I  
17 have 4 items that I'll be voting differently than the  
18 consent agenda. Item 164, I will be concurring.  
19 Item -- let me just make sure I have the right  
20 number, Item 261, I'll be voting no consistent with  
21 my voting record, Item 371, I'll be concurring and  
22 Item 561, for the 5th time, no.

23 CHAIRMAN RHODES: Thank you very much.

24 So, my vote is in favor of the recommendations on the  
25 consent agenda. Commissioner Sayer, how do you vote?

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2 COMMISSIONER SAYER: Aye.

3 CHAIRMAN RHODES: Commissioner Burman,  
4 with those annotations, I suppose, how do you vote?

5 COMMISSIONER BURMAN: Yes.

6 CHAIRMAN RHODES: Commissioner Alesi,  
7 how do you vote?

8 COMMISSIONER ALESI: Aye.

9 CHAIRMAN RHODES: The items are  
10 approved and the recommendations are adopted.  
11 Assistant Secretary Aissi, is there anything further  
12 to come before us today?

13 MS. AISSI: There is nothing further  
14 to come before you today and the next session of the  
15 Commission will be held on February 7th in Albany.

16 CHAIRMAN RHODES: Thank you very much.  
17 So, before we adjourn, for everybody who's paying  
18 attention to this session, a reminder, we've got a  
19 storm coming. We've got a lot of snow or a nasty  
20 wintry mix and then we've got a very deep freeze. Be  
21 careful and be prepared. Thank you very much.

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2 STATE OF NEW YORK

3 I, JANET AXTON, do hereby certify that the foregoing was  
4 reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 1 hereof; that the  
6 foregoing typewritten transcription consisting of pages 1  
7 through 47, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 25th day of January, 2019.

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JANET AXTON, Reporter

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