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Monthly Meeting - November 15, 2018

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, November 15, 2018  
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 10:37 a.m.)

3 CHAIRMAN RHODES: Okay. It's time. It's a  
4 little bit past time, so let's get started. I call this  
5 session of the Public Service Commission to order.

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

8 MS. KATHLEEN BURGESS: Good morning, Chair  
9 and Commissioners, there are no changes to this morning's  
10 agenda.

11 CHAIRMAN RHODES: Okay. Thank you. Before  
12 we jump into the agenda, I'd just like to recall that this  
13 is the week that includes Veteran's Day and we're lucky to  
14 have many veterans in -- in our utilities and not quite as  
15 many with us in our agency. We thank all of them -- all  
16 of you for your service. We do it once a year, but the  
17 gratitude kind of stretches throughout the year, so thank  
18 you.

19 With that, let's proceed to the first item  
20 for discussion which is Item 101, Case 18-G-0094 which is  
21 in the matter of enforcement against National Grid U.S.A.  
22 and subsidiary KeySpan Gas East Corporation doing business  
23 as National Grid, for failure to maintain and reestablish  
24 cathodic protection presented by Suresh Thomas, Utilities  
25 Supervisor, and Diane Dean, Assistant Counsel. Kevin

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2 Speicher, Chief of Public Safety, is available for  
3 questions. Speicher, please begin.

4 MR. SURESH THOMAS: Thank you. Good  
5 morning, Chair Rhodes and Commissioners. I'll be  
6 presenting Staff's audit findings pertaining to cathodic  
7 protection on the National Grid pipelines on Long Island.

8 Pipeline Safety Section Staff reviews New  
9 York's distribution company's compliance with cathodic  
10 protection monitoring and remedial emissions requirements  
11 as part of the Safety Section's annual orders of the  
12 distribution company's compliance with the Gas Safety  
13 Regulations.

14 Cathodic protection is a matter by which  
15 steel pipelines are protected from corrosion by making the  
16 surface a cathode so that corrosion is inhibited.

17 Cathodic protection is required on steel  
18 pipes to prevent corrosion. If corrosion is not  
19 prevented, the integrity of the pipe may be compromised  
20 causing leakage or leading to an incident. Gas Safety  
21 Regulations set criteria that must be met for pipelines to  
22 be cathodically protected. These regulatory criteria must  
23 be verified each year. If annual readings show that the  
24 criteria are not being met, regulations allow no more than  
25 one year to reestablish cathodic protection to acceptable

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2 levels.

3 During the 2016 and 2017 audits of National  
4 Grid, the Department's Pipeline Safety Investigators  
5 identified low cathodic protection levels on the control  
6 lines or pipes that had existed for over three years at  
7 National Grid's Northport, Commack, and other regulator  
8 stations. After confirming the existence of inadequate  
9 cathodic protection levels at these locations, Staff  
10 communicated the findings to National Grid in meetings and  
11 in writing in 2017. National Grid has improved its  
12 cathodic protection levels and it is Pipeline Safety  
13 staff's intent to allow gas companies the opportunity to  
14 correct deficiencies when DPS finds such deficiencies.

15 However, most recently in June 2018, Staff  
16 confirmed that cathodic protection on another segment of  
17 pipe showed erratic readings indicating that the pipe to  
18 soil electrical potential measurements were not meeting  
19 the minimum requirements at that location. Though the  
20 Pipeline Safety Section believes these deficiencies did  
21 not cause active corrosion and do not pose an immediate  
22 risk to the public, if they are not corrected, low  
23 cathodic protection levels will lead to leaks.

24 Staff's intent is to address this problem  
25 before it gets any worse. We are making this proactive

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2 recommendation for Commission action to prevent any future  
3 safety risks.

4 Now Diane Dean will present Staff's  
5 proposal for Commission action. Thank you.

6 MS. DIANE DEAN: Good morning, Chair Rhodes  
7 and Commissioners. Suresh has described what Staff has  
8 concluded are National Grid violations of the Commission's  
9 Cathodic Protection Gas Safety Regulations. The  
10 Department Staff is asking the Commission at this time to  
11 proactively address National Grid's ongoing failure to  
12 resolve its inadequate cathodic protections levels at its  
13 Long Island gas regulator stations.

14 Staff has been continuously monitoring  
15 National Grid's Cathodic Protection Program since the  
16 problems first came to light. At this time, however,  
17 Staff believes sufficient evidence exists for Staff to  
18 conclude that violations of Commission Gas Safety  
19 Regulations did occur.

20 Despite Staff's work to alert National Grid  
21 that the cathodic protection problems must be resolved,  
22 new problems continue to be found. Therefore, Staff  
23 recommends the Commission order to show cause before you  
24 which requires National Grid to respond to Staff's  
25 conclusions. To date, Staff has identified nine

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2 violations of cathodic protection requirements with  
3 respect to certain segments of control line piping. At  
4 this time, Staff believes a basis exists to prosecute  
5 these violations as continuing violations under Public  
6 Service Law, Section 25 A, Subsection 3. Also, since the  
7 cathodic protection problems have been going on for some  
8 time, Staff believes National Grid's cathodic protection  
9 program requires scrutiny by a third-party monitor.

10 Given these types of regulatory failures,  
11 Staff believes the next most effective step in the  
12 enforcement process is for the Commission to issue an  
13 Order to Show Cause. The Draft Order requires National  
14 Grid to demonstrate two things.

15 First, why a penalty action under Public  
16 Service Law Section 25A should not be commenced for  
17 violations of Commission Gas Safety Regulations and  
18 second why a third-party monitor should not be appointed.

19 It is important to emphasize at this time  
20 that as an Order to Show Cause, the Draft Order does not  
21 prejudice or make any Commission determinations of law or  
22 fact, rather it obligates National Grid to provide  
23 justification, if any exists, for the company's actions or  
24 inactions related to its Cathodic Protection Program or to  
25 refute the problems that Staff found at National Grid's

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2 various Long Island facilities.

3 Based upon the response that National Grid  
4 submits and if the facts warrant, the Commission could, if  
5 it so decided, then proceed with an Administrative  
6 Enforcement Proceeding. The Draft Order allows National  
7 Grid thirty days to respond. Suresh and I are prepared to  
8 answer any questions you may have.

9 CHAIRMAN RHODES: Thank you, Diane. Thank  
10 you, Suresh. This is an opportunity to again make  
11 absolutely clear for the record that we -- I have zero  
12 tolerance for violations of safety standards and safety  
13 practices. We note that this is a matter of vigilant  
14 rather than of immediate risk, but even here, we need to  
15 and will hold any party including utilities strictly  
16 accountable with appropriate sanctions if there is a  
17 violation. I will be in favor of this item and I  
18 apologize for not being -- having the mic on. Do I need  
19 to repeat? I'm fine. Thank you. Commissioner Sayre?

20 COMMISSIONER GREGG SAYRE: I'm very  
21 thankful and grateful to Staff that it found the safety  
22 issue here before there was a significant likelihood of  
23 the kind of event that we don't ever want to see here, and  
24 I commend Staff for its good work. As the Chair said, we  
25 take gas safety extremely seriously and if we find that a

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2 company takes its eye off the ball as may well have  
3 happened here, I will be very pleased to vote to act  
4 swiftly and strongly to remedy this situation as we're  
5 doing here.

6 CHAIRMAN RHODES: Commissioner Burman?

7 COMMISSIONER DIANE BURMAN: Thank you. I  
8 too also commend Staff and the Chair for bringing this  
9 forward. The integrity and reliability of our natural gas  
10 system is paramount, at the core of that is safety. We  
11 understand how important pipeline safety is to everyone,  
12 regulators, the public, the gas companies, and gas  
13 consumers. We all have to work together in that effort.  
14 This is a prima facie case. It's an Order to Show Cause.  
15 We're now allowing the company the time to affirmatively  
16 respond to us and then we will review it, so we're not  
17 pre-judging anything at this time. We are going to all  
18 work together.

19 We recognize with limited resources we must  
20 do a great deal and that's why I see this as a positive in  
21 terms of identifying it and letting folks know and -- and  
22 also sharing with others that we're all very focused on  
23 this. Cathodic protection is a time-tested method that  
24 has been used to prevent age related or environmentally  
25 assisted degradation of underground pipes. It plays an



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2           important role in preventing corrosion of pipes that in  
3           turn are an integral part of energy infrastructure and  
4           facilities. It's not just limited to gas pipes. For  
5           cathodic protection to play this important protective  
6           role, it's important that it be operative and consistently  
7           implemented in a proper and regulatory compliant matter.  
8           I look forward to the affirmative response and then  
9           addressing it as a whole with the Commission if further  
10          action is needed. Thank you.

11                   CHAIRMAN RHODES: Thank you. Thank you.  
12          Commissioner Alesi?

13                   COMMISSIONER JAMES ALESI: Thank you,  
14          Chairman. I commend the Staff for their usual good and  
15          hard work. I'm looking forward to the positive results  
16          and hopefully that this will serve us well and serve the  
17          -- not only the customers of the company, but their  
18          employees as well for their own safety, so I'll be  
19          supporting this.

20                   CHAIRMAN RHODES: Thank you. With that, we  
21          will now proceed to vote on the item. My vote is in favor  
22          of the recommendation to order National Grid to show cause  
23          as discussed.

24                   Commissioner Sayre, how do you vote?

25                   COMMISSIONER SAYRE: Aye.

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2 CHAIRMAN RHODES: Commissioner Burman, how  
3 do you vote?

4 COMMISSIONER BURMAN: Aye.

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

7 COMMISSIONER ALESI: Aye.

8 CHAIRMAN RHODES: The item is approved, and  
9 the recommendation is adopted. So we'll move now to our  
10 second item for discussion, Item 201, Cases 14-M-0224 et  
11 al as they relate to sustainable Westchester Community  
12 Choice Aggregation presented by Kelly Strait, Utility  
13 Analyst Three. Ted Kelly, Assistant Counsel, and Bruce  
14 Alch, Chief Retail Access and Economic Development, are  
15 available for questions.

16 MS. KELLY STRAIT: Good morning, Chair  
17 Rhodes and Commissioners. Item 201 addresses a petition  
18 filed by Sustainable Westchester to reauthorize its CCA  
19 Pilot Program under a master implementation plan. Their  
20 CCA Pilot Program was approved by the Commission in 2015,  
21 launched in 2016 becoming the first CCA program in New  
22 York state. Their CCA Pilot Program preceded the April  
23 2016 CCA framework order; therefore, Sustainable  
24 Westchester was required to file an updated implementation  
25 plan for Commission consideration. After review, Staff

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2 finds that Sustainable Westchester's implementation plan  
3 complies with the Commission's framework order and meets  
4 the general requirements laid out in the framework order.

5 Sustainable Westchester reports that as of  
6 July 2018, the CCA is serving twenty-one municipalities  
7 with approximately one hundred thousand participants,  
8 seventy thousand of which are in its green supply option.

9 Customers can choose between a basic supply  
10 or a green supply. To date, Sustainable Westchester has  
11 confirmed that their CCA model has been a success.

12 Customers are saving money and there is a reduction of CO2  
13 emissions. Current customers may opt in to community  
14 solar program or choose to participate in other  
15 sustainable Westchester program offerings such as, but not  
16 limited to, demand -- demand response and solar plus  
17 storage -- better storage. Sustainable Westchester plans  
18 to achieve full participation of the remaining eligible  
19 municipalities in Westchester county.

20 As mentioned, Sustainable Westchester is  
21 currently offering an opt in community solar program but  
22 notes in its implementation plan that it may pursue an opt  
23 out program in the future. If an opt out CDG is added to  
24 the CCA, Sustainable Westchester must file an  
25 implementation plan consistent with the requirements

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2 outlined in the Jewel [phonetic spelling] CCA order as  
3 well as any other applicable orders for Commission  
4 consideration and review. To ensure that residents have  
5 an opportunity to seek additional information and become  
6 well informed regarding the details of the program's new  
7 supply contract rate, at least one additional meeting must  
8 be held in each municipality after an ESCO is selected and  
9 prior to opt out letters being mailed. Sustainable  
10 Westchester must also submit documentation of these  
11 meetings as a compliance filing.

12 Finally, Sustainable Westchester will need  
13 to ensure that its green supply option is in compliance  
14 with the requirements specified by the Commission in the  
15 Jewel CCA order. That concludes my presentation and I am  
16 available for questions. Thank you.

17 CHAIRMAN RHODES: Thank you, Kelly. To my  
18 eyes, this is a straight forward item in a straight  
19 forward continuation of the structure of the CCA which  
20 makes sense as it delivers greater bargaining power and  
21 greater choice to New Yorkers and of a model that is  
22 working in accordance with our now well-established  
23 principles for CCAs. I'm going to be in favor of this  
24 item. Commissioner Sayre?

25 COMMISSIONER SAYRE: I agree with the

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2 Chair's remarks. As I've said before, I'm a fan of  
3 Community Choice Aggregation as being consistent with our  
4 REV goals of increased customer choice and a market-based  
5 encouragement of additional options for clean energy and  
6 distributed energy resources. The item also helps move us  
7 forward to make it easier for future program sponsors to  
8 understand what they have to do to get Commission approval  
9 of programs down the road. I think it's working, and I  
10 hope to see it continue to work.

11 CHAIRMAN RHODES: Commissioner Burman?

12 COMMISSIONER BURMAN: Thank you. So I have  
13 a -- just a couple of questions that I think Staff can  
14 answer and I think it will clarify for myself, but for  
15 those listening. In the order and in your presentation,  
16 there was no affirmative mention of low-income customers.  
17 Can you expand upon that exactly as it applies to  
18 Sustainable Westchester, but CCAs in general?

19 MR. TED KELLY: Yes, as with the other CCA  
20 programs, Sustainable Westchester can only serve low-  
21 income customers with the start of the new renewed program  
22 if they offer those customers and can provide those  
23 customers with a guaranteed savings product and they did  
24 discuss that in their master implementation plan and  
25 acknowledge that they were aware of that requirement and

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2 would comply with that requirement if they served low-  
3 income customers.

4 COMMISSIONER BURMAN: Okay. And are they  
5 working with the municipalities affirmatively to inform  
6 them of that and to work on in terms of identifying how to  
7 do that in a way that -- that makes sense for low-income  
8 customers in the communities in general?

9 MR. KELLY: Yeah, they discuss in their --  
10 in their implementation plan that they're in discussions  
11 on that with the communities and still under review of  
12 whether they'll be able to offer a guaranteed savings  
13 product.

14 COMMISSIONER BURMAN: Okay. I am focused  
15 just in us making sure that we follow up and ensure that  
16 there is -- there are no blips and that we work diligently  
17 on that issue if there are. Thank you. The order speaks  
18 about before contract renewal that they have to have  
19 additional outreach of one meeting. The order doesn't  
20 expressly state how to do that, proper notice, and with  
21 opportunity to be heard. I just want to make sure that we  
22 make sure that that meeting is noticed in a timely fashion  
23 and that community members have an opportunity to have  
24 their concerns heard rather -- so in terms of just  
25 checking the box at a meeting was done, I think it needs

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2 to be a true meeting for the communities.

3 MR. KELLY: Absolutely. In this -- in the  
4 CCA framework order it does include specific requirements  
5 that meetings like these have public notice.

6 Generally, that's fulfilled through  
7 newspaper publication and they -- the CCAs when they make  
8 their compliance filing showing they had the meeting have  
9 to include information on that notice.

10 COMMISSIONER BURMAN: Okay. Great. Thank  
11 you. We don't seem to have a formal process for those who  
12 are in a CCA who may have an issue or a complaint or  
13 concern to notify us and it isn't necessarily a clear  
14 process whether if they notify the municipality or the  
15 provider for the CCA how it all gets collected and would  
16 bubble up to us for resolution. It does -- it does  
17 trouble me, so I do think that we do need to look at that  
18 complaint process and concern process and make sure that  
19 we are focusing on it so that we can really get a true  
20 sense of the communities -- any specific persons or  
21 customers concerns.

22 MR. KELLY: Yes, so as with any customer of  
23 a utility or an ESCO, the customers in Sustainable  
24 Westchester are entitled to call the Department -- the  
25 Commission's complaint line and that, you know, does show

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2 up on their -- the number for that shows up on their bill  
3 every month and we have kept track of -- looked out for  
4 any complaints that came from the CCA and we haven't  
5 received any at this time at the Department and in  
6 addition, the -- the CCAs are required to keep track of  
7 and provide basic information in their annual reports on  
8 any complaints that come in directly to them.

9 COMMISSIONER BURMAN: Okay. Yeah, we may  
10 need to look at that just in terms of whether we wait  
11 until the annual report or we do some informal, you know,  
12 review process that just in terms of identifying early and  
13 doing any corrective action that would be helpful. My  
14 goal is to make sure that we are timely identifying any  
15 concerns, not that we've heard that there are any  
16 concerns, but in case there are, it's important to me. To  
17 the extent that Sustainable Westchester or the  
18 municipalities or any other CCA folks are working with  
19 items that might require if they weren't doing it in the  
20 CCA model to file as a DER provider or other provider,  
21 what are we doing to make sure that they are also aware of  
22 the filing requirements and then tracking that because  
23 some of their products might be outside of the CCA model,  
24 but they -- if it was a standalone, they'd have to file?

25 MR. KELLY: Yeah, absolutely. So we have



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2 had discussions with Sustainable Westchester specifically  
3 about the DER oversight requirements just to make sure  
4 they're aware of what might apply to them. In general,  
5 those requirements would apply primarily to their partners  
6 in those programs, so for example, they're not directly  
7 putting solar on rooftops or directly doing CDG They're  
8 helping to connect people with companies and those  
9 companies are registered and are also, you know, very  
10 aware of the requirements.

11 COMMISSIONER BURMAN: Okay. And again, we  
12 may want to do some, you know, review just to make sure  
13 sometimes everybody in that circle -- there's a lot of  
14 folks and there may be miscommunication on who has to do  
15 what and who is required so that we are identifying early  
16 if there are any issues with that. I know we're still  
17 sort of evolving on the DER oversight process.

18 That's something that I think is long  
19 overdue and we really do need to make sure that we are  
20 focused on that as well as the whole not just in CCA  
21 Sustainable Westchester as an entity, I believe, is funded  
22 by outside sources, municipalities I think primarily if  
23 not wholly. They -- Sustainable Westchester may do  
24 activities through this model that are outside the CCA  
25 model, so those costs aren't necessarily captured in the

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2 CCA model. So when we talk about that, we do need to look  
3 at all of the different costs and fees that may be borne  
4 which are outside of the CCA model, but are under the  
5 umbrella of Sustainable Westchester or whatever other CCA  
6 is set up. I do -- not that I -- not that there is any  
7 evidence of this at all, but I do worry that without us  
8 looking carefully at that, that they -- some of those  
9 costs and activities may not line up. So I'd like to make  
10 sure that they are complimentary and that if we did do --  
11 while we may not have oversight and control over that to  
12 the extent that we do review it, to ensure that there's no  
13 unintended double charging or other things that may cause  
14 concern, so without kind of -- without taking a look under  
15 the hood there, we might be unaware of an issue, so I do  
16 think it's something to -- to look at. Again, I don't  
17 anticipate that there would be an issue, but I would --  
18 would like us to just doublecheck with that.

19 The order talks about green products and  
20 following the -- the model that -- that we have on what  
21 determines a green product. I do think we do need to  
22 evolve on that potentially expand the definition and also  
23 outside of the CCA, what it means for other ESCOs with  
24 that I think is important. Sustainable Westchester goes  
25 by that name, but I think there's also a related entity of

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2 Westchester Power and I think that there is, at least for  
3 where I sit, that there could potentially be some  
4 confusion.

5 I do believe they may have two separate  
6 boards, but because I am confused, I would like to ensure  
7 that the named entity operating is not confusing to others  
8 especially the customers and that there is one central  
9 updated website because it does concern me that depending  
10 on what you're looking it up you can go to different  
11 websites and whichever one it is, the other should be  
12 linking back to it. I think that's important as well as  
13 making sure that it's very up to date especially with  
14 their -- if they're a non-profit, their form nine nineties  
15 and whatever other governing documents are necessary so  
16 that folks can track that. I think it's helpful.

17 This is a question on studying all of the  
18 CCAs and looking at that and when we're doing a full  
19 review or case study of the CCAs and again learning some  
20 lessons to -- to make it better.

21 MR. KELLY: So Sustainable Westchester was  
22 the pilot and the first one to come into effect and it's  
23 actually the only CCA that's served customers so far.

24 There are several others that have received  
25 Commission approval that are in -- at least two of them

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2 are very, very close to starting to serve customers, but  
3 they haven't yet, so Sustainable Westchester is the only  
4 one where we've gotten reports on actual service to  
5 customer and as those have come in to use, the PILOT  
6 program staff has looked very closely to those and  
7 certainly we learned some lessons from that program that  
8 informed the approval of later CCAs and now the renewal of  
9 this one, so as those continue to come in and as they  
10 start to come in from the other CCAs as well, Staff will  
11 certainly continue to take a very detailed look at them  
12 each year and certainly once we have, you know, kind of  
13 several to compare against each other, we'll be looking at  
14 them in -- in that fashion.

15 COMMISSIONER BURMAN: Okay. It actually  
16 then may be timely for us to do some annual -- actually  
17 some random surveying and sampling of real customers so a  
18 direct outreach to those customers in the Sustainable  
19 Westchester program since the other CCAs don't have  
20 customers yet and are looking to launch that soon. It  
21 would be helpful to know ahead of time especially for  
22 those future CCAs with customers so that if there are any  
23 opportunities for making it better for the customer, the  
24 customer itself is giving us that information rather than  
25 just working through Sustainable Westchester. I would

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2 like to see a little bit more direct connection to not  
3 only the munies, but then to the actual customers through  
4 some kind of random surveying or sampling I think might be  
5 appropriate and that will help us with improvements and  
6 that really gets to just the tool in determining customer  
7 satisfaction especially since we may not see some of their  
8 complaints that -- that may not bubble up to us, so that  
9 is food for thought.

10 I am going to concur on this item because I  
11 do think it -- we're moving in the right direction. There  
12 are a couple of things in there like the green product and  
13 other things that I would like a little tighter, but I'm  
14 comfortable that this is good news and looking forward to  
15 it.

16 The one final question that I do have is  
17 the next step after this in terms of Sustainable  
18 Westchester finalizing its contract renewal, what's the  
19 process, how are they going to be notifying those who may  
20 be interested in being a part of it?

21 MR. KELLY: Yep, so they -- I believe  
22 they've either already -- I believe they've already put  
23 out the solicitations as their contract for the Con-Ed  
24 area expires at the end of this year, so they need to have  
25 a new one in place by then to have continued service to

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2 customers, so once they have that contract locked down  
3 which I expect will be very soon, they'll be scheduling  
4 these -- the second round of public meetings providing,  
5 you know, notice for those in newspapers and other places  
6 and also preparing the opt out letter to send out and  
7 getting approval from that from Staff, so that's the --  
8 the primary way in which they'll be communicating the  
9 details of a new contract and giving all customers who are  
10 still members, anybody who opted-out in the past stays  
11 opted out and then this gives all customers who are  
12 currently participating the chance to take a look at the  
13 new contract and ensure they want to continue to  
14 participate or if they don't, send back the opt out letter  
15 or call the number or so on.

16 So that's -- that's the primary ways  
17 that'll be communicated and I know that as Kelly said,  
18 Sustainable Westchester is also always interested in  
19 expanding to other communities in Westchester, so that's  
20 just sort of outreach they do on their own both to the  
21 population and the town leaderships, the boards, and --  
22 and local governments and so on --

23 COMMISSIONER BURMAN: Okay.

24 MR. KELLY: -- and they are adding -- there  
25 are three additional ones that have already passed local

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2 laws and taken all the steps to join at the beginning of  
3 the new contract.

4 COMMISSIONER BURMAN: Okay. It will be  
5 important to look at the solicitation and -- and what  
6 comes in as well as to -- to look at the opt out for the  
7 customers and what we're seeing because that will show  
8 also getting back to customer satisfaction, that may show  
9 us some information that -- that we wouldn't otherwise  
10 have and that could be utilized for future CCAs. I may  
11 still feel that the -- the way that we had done it  
12 originally was not something that I was comfortable with  
13 and so, you know, I am comfortable that we're working out  
14 a lot of the kinks and that things are moving forward in a  
15 -- in a positive way so it's more of a looking forward  
16 rather than backwards, so thank you very much. I have no  
17 further questions.

18 CHAIRMAN RHODES: Thank you, Commissioner  
19 Burman. Commissioner Alesi?

20 COMMISSIONER ALESI: Thank you, Mr.  
21 Chairman. It's a good blue print for CCA programs and  
22 what we're trying to do with the REV. It saves money.  
23 It's good for the environment. I'll be happy to support  
24 forward motion in this case.

25 CHAIRMAN RHODES: Thank you. So with that,

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2 we will proceed to call for a vote on the item. My vote  
3 is in favor of the recommendation to approve Sustainable  
4 Westchester's Master Implementation Plan and Data  
5 Protection Plan as discussed. Commissioner Sayre, how do  
6 you vote?

7 COMMISSIONER SAYRE: Aye.

8 CHAIRMAN RHODES: Commissioner Burman?

9 COMMISSIONER BURMAN: I concur.

10 CHAIRMAN RHODES: Commissioner Alesi?

11 COMMISSIONER ALESI: Aye.

12 CHAIRMAN RHODES: The item is approved, and  
13 the recommendation is adopted. We will now move to the  
14 third item for discussion. Item 301, Case 18-E-0206 as it  
15 relates to tariff filings to effectuate the provisions of  
16 Public Service Law Section 66-0 presented by Mary Ann  
17 Sorrentino, Acting Chief Electric Rates and Tariffs.  
18 Christopher Graves, Principal Economist, and Bridget  
19 Woebbe, Assistant Counsel, are available for questions.  
20 Mary Ann, please begin.

21 MS. MARY ANN SORRENTINO: Good morning,  
22 Chair Rhodes and Commissioners. Item 301 is a Draft Order  
23 establishing --

24 SECRETARY BURGESS: Could you please move  
25 up Mary Ann? Thank you.



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2 MS. SORRENTINO: Item 301 is a Draft Order  
3 addressing the investor owned electric utility tariffs  
4 regarding Public Service Law 66-0. The purpose of the  
5 bill that became PSL 66-0 was to provide greater  
6 incentives for electric vehicle ownership and to encourage  
7 grid responsible charging times. PSL 66-0 required  
8 electric utilities to file residential tariffs for  
9 charging EVs and also requires periodic reporting. The  
10 tariffs addressing 66-0 are substantially similar in that  
11 each of the electric utilities proposed a one-year price  
12 guarantee for residential customers with qualifying EVs  
13 that go on the residential time of use rate for their  
14 entire load. The commission has already approved price  
15 guarantees for EV owners in ConEdison and National Grid's  
16 service territories to reduce customer fear of trying a  
17 new rate.

18 Under time of use rates, charges are lower  
19 during periods of low overall electric demand or off-peak  
20 hours and higher during periods of high electric demand or  
21 on peak hours. Encouraging EV owners to charge during off  
22 peak hours fulfills the purpose of PSL 66-0 by lowering  
23 the cost of EV ownership and by reducing their impact on  
24 the distribution system.

25 Additionally, the tariffs allow residential

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2 customers with a qualifying EV to take service under the  
3 residential time of use rate for the sole purpose of EV  
4 charging.

5 The National Resources Defense Council,  
6 Sierra Club, Pace Energy and Climate Center, Plug In  
7 America, and EV-Box submitted joint comments on the  
8 fillings. The parties recommend that the tariffs be  
9 revised to reduce the customer cost associated with  
10 adopting whole home or EV only time of use rates. The  
11 parties also recommend that the on peak period for  
12 residential time of use rates be shortened three to five  
13 hours. Finally, the parties recommend that rates for EV  
14 owners be set in a way that enables EV ownership costs to  
15 be recouped in a reasonable time period by increasing fuel  
16 cost savings. The parties suggest reducing or eliminating  
17 the customer charge for second meters and to explore  
18 submetering as a means to lower the cost of EV only time  
19 of use rates.

20 The Draft Order requires electric utilities  
21 to file tariff revisions for residential customers with  
22 registered EVs that take service under the residential  
23 time of use rates such that the time of use customer  
24 charge will be equal to the traditional residential  
25 customer charge. This is intended to reduce barriers to

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2 time of use rate adoption by EV owners. The Draft Order  
3 also establishes a price guarantee for residential  
4 customers with qualified EVs that go on the time of use  
5 rate for their entire load that is consistent for the  
6 electric utilities.

7 Under the guarantee, after one year, the  
8 customer will receive a credit for the difference, if any,  
9 between what the customer paid under time of use rates and  
10 what the customer would have paid under standard  
11 residential rates.

12 The Draft Order requires customers that go  
13 on a residential time of use rate for the sole purpose of  
14 EV charging to pay an additional customer charge. While  
15 this may dissuade customers from separately metering EV  
16 load, it provides electricity -- it provides electric  
17 utilities with appropriate cost recovery of investments  
18 made to service such customers. The Draft Order maintains  
19 the current off-peak hours for each electric utility. The  
20 current off-peak hours are at least seven and a half hours  
21 and provide sufficient time for home charging. The  
22 current off-peak rates encourage charging during off peak  
23 periods which increases the use of underutilized system  
24 capacity.

25 The Draft Order also requires the electric

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2 utilities to provide an annual report containing the  
3 number of customers who have arranged to have electricity  
4 delivered under the EV charging tariffs, the total amount  
5 of electricity delivered under the EV charging tariffs, an  
6 estimate of how many EVs are in their service territories,  
7 and any future company plans for EVs. This concludes my  
8 presentation of the Draft Order. Chris Graves, Bridget  
9 Woebbe, and I are happy to answer your questions regarding  
10 the Draft Order.

11 CHAIRMAN RHODES: Thank you, Mary Ann. We  
12 know electric vehicles are coming and we know that it's up  
13 to us to make sure that this coming call on the electric  
14 system is managed well. That, in turn, calls for good  
15 engineering, but also good economics and specifically good  
16 rates. We do have a broader proceeding underway to  
17 develop this approach comprehensively, but in the  
18 meantime, this is a smart pragmatic adaptation of existing  
19 approaches that fits with our principles and makes sense.  
20 I will be in favor of this item. Commissioner Sayre?

21 COMMISSIONER SAYRE: I completely agree  
22 with the Chair's comments. Staff's recommended changes to  
23 the utilities proposed EV tariffs makes them more customer  
24 friendly and the additional reporting that the draft item  
25 requires will help us see how the market is working and

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2 allow us to make future course corrections which is  
3 something that we've done from time to time in our various  
4 REV related dockets if we need them. I also support the  
5 item.

6 CHAIRMAN RHODES: Commissioner Burman?

7 COMMISSIONER BURMAN: Thank you. First,  
8 I'd like to thank Staff, Mary Ann, Chris, and Bridget. As  
9 you three know, I had some initial reservations about this  
10 item because I was concerned about how it fit with the  
11 generic proceeding and the VDER proceeding and why we were  
12 going forward on this understanding we're doing so with it  
13 to be in compliance with Public Service Law Section 66-0.

14 Can you just expand -- I think it's helpful  
15 for others, Mary Ann, to explain why this may compliment  
16 the generic proceeding and how it fits with the VDER  
17 proceeding which is looking more at the rate design?

18 MS. SORRENTINO: Sure. So in the generic  
19 proceeding, we're really addressing infrastructure and  
20 equipment issues and we will be addressing EV charging  
21 rates, but not for residential applications. We're  
22 addressing EV charging rates for commercial applications,  
23 so by taking action on this item now, we're making some  
24 modifications particularly for residential applications  
25 and advancing -- and implementing the bill guarantee in

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2 utilities that we currently don't have it.

3 With respect to VDER, Staff is preparing a  
4 white paper that is due by December of this year. In that  
5 white paper, Staff will make a recommendation as to a NEM  
6 successor rate for mass market customers that will  
7 eventually go to the Commission after a comment period.  
8 That will probably go before the Commission by spring at  
9 the earliest and customers all -- all mass market  
10 customers will eventually or are envisioned to be able to  
11 take service under that rate, so EV owners will be allowed  
12 to take service under that rate as well, so I think that  
13 this complements both of those and isn't in conflict with  
14 either of them. The NEM replacement rate is not going to  
15 be technology specific.

16 COMMISSIONER BURMAN: Okay. Thank you.  
17 That is helpful and since we will be looking at those  
18 larger issues, the generic proceeding and then the VDER  
19 proceeding, I'm comfortable with that. The only one pause  
20 I have which leads me to a concurrence versus a -- a full  
21 yes, is with respect to that when I look at this, I think  
22 that primarily all customers in all service territories  
23 other than Central Hudson will be potentially benefitted  
24 by this and it's not that Central Hudson's customers won't  
25 be benefitted, but it does give me pause in how this may

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2 be applicable to them that sits up differently and I am  
3 just concerned about that and so to the extent that that's  
4 something that we may need to work through making sure  
5 that as Central Hudson, you know, is not -- not  
6 necessarily looking at AMI in the same way that others are  
7 that it's -- it's -- we're being sensitive to that and not  
8 pushing something that doesn't work for their territory,  
9 so thank you.

10 CHAIRMAN RHODES: Thank you, Commissioner  
11 Burman. Commissioner Alesi?

12 COMMISSIONER ALESI: Well said, thank you.

13 CHAIRMAN RHODES: With that, we will move  
14 to a vote on this item. My vote is in favor of the  
15 recommendation to direct the utilities to file tariff  
16 amends as discussed. Commissioner Sayre, how do you vote?

17 COMMISSIONER SAYRE: Aye.

18 CHAIRMAN RHODES: Commissioner Burman?

19 COMMISSIONER BURMAN: I concur.

20 CHAIRMAN RHODES: Commissioner Alesi?

21 COMMISSIONER ALESI: Aye.

22 CHAIRMAN RHODES: The item is approved, and  
23 the recommendation is adopted. We will now move to the  
24 Consent Agenda. Do any Commissioners wish to comment on  
25 or recuse from voting on any items on the Consent Agenda?

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2 COMMISSIONER BURMAN: So I have three items  
3 that I want to comment on. The first is Item 367 which is  
4 the Central Hudson Rehearing Petition. I had voted no on  
5 Central Hudson Rate Case. The issues on the re-hearing  
6 are unrelated to my no vote; however, I did struggle with  
7 this item when I was looking through it and trying to  
8 understand the -- the concerns which really for me focused  
9 on a timeline issue, so there was a concern to the extent  
10 that the Joint Proposal was modified by us to reflect the  
11 information on the -- that was in the ETIP order that had  
12 a different methodology and so for me, I looked through it  
13 and I do think it's important to establish sort of the  
14 time line which then leads me to a yes because I don't  
15 think it -- it popped as much in the order as I think a  
16 time line itself is helpful, so I am just going to run  
17 very quickly through it.

18 On February 26, 2015, the Commission as a  
19 whole issued the REV order authorizing portfolio level as  
20 opposed to program level energy efficiency targets for the  
21 utilities.

22 On September 1, 2015, in Case Number 15-  
23 01945, Staff sent the ETIP information request to Central  
24 Hudson to clarify the net to gross ratio applied to the  
25 company's targets. The information request was filed in



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2 DMM on September 18, 2015 and then on September 18, 2015,  
3 Central Hudson sent the response to Staff's Information  
4 Request stating the point nine net to gross ratio applied  
5 to all programs. Then on July 28, 2017, in 17-E-0459,  
6 Central Hudson filed its rate case and proposed energy  
7 efficiency targets expressed as net targets. There were  
8 only total energy efficiency targets, not individual  
9 program targets expressed in the filings.

10 Then on March 15, 2018 in Case Number 15-M-  
11 0252, the Commission issued an ETIP order authorizing the  
12 portfolio level targets as gross and that was calculated  
13 by dividing the net targets by point nine net to gross  
14 ratio. Now Central Hudson's targets included in the order  
15 are the same as those proposed in the July 2017 rate  
16 filing divided by point nine. Then on March 15, 2018 in  
17 17-E-0238, the Commission issued its order approving the  
18 National Grid Rate Plan, so not the Central Hudson but the  
19 National Grid Rate Plan and there converted the net  
20 targets from the joint proposal to gross targets by  
21 dividing by point nine.

22 Then on April 18, 2018, Central Hudson  
23 filed its Joint Proposal in its rate case and parties in  
24 that Joint Proposal take the targets proposed in the  
25 initial rate filing and increase them by forty percent,

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2 still expressed as net, and the Joint Proposal in that --  
3 in Central Hudson contained only total energy efficiency  
4 targets, not individual program targets, so that means  
5 they weren't separately expressed targets for behavioral  
6 programs.

7 On June 14, 2018, the Commission issued its  
8 order, I dissented, approving the Central Hudson Rate Plan  
9 and converting the net targets from the Joint Proposal to  
10 gross targets by dividing by point nine.

11 This was to complement it with the same  
12 method as the March Utility ETIP Order and the National  
13 Grid Rate Plan Order. My dissent had nothing to do with  
14 that aspect of it and the making sure that we were all  
15 aligned. There was not a robust discussion; however, it  
16 was a clear following of what would be done in terms of  
17 making sure that they were aligned. On July 12, 2018,  
18 Central Hudson filed its petition for rehearing.

19 I do think that because of a lot of the  
20 different proceedings and timelines, it gets confusing in  
21 terms of matching up. In a -- when we get a rate case  
22 that's filed and there is a Joint Proposal, the Commission  
23 does have the right to modify as it sees fit. This does  
24 seem like as to that it was a fair and -- and just  
25 modification and the -- as I read the petition for

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2 rehearing, while I can understand some of the confusion  
3 with what -- what was done, I do think that looking at it  
4 from a pure timeline factor and how it -- it sort of came  
5 together this way, I do think it is proper, so I -- I am  
6 comfortable with that. I do think in -- in the future, we  
7 may want to just make sure that we're even more clear even  
8 though when I looked at all of the papers and all of the  
9 transcripts in all of the different cases, I felt  
10 comfortable that following it that someone would be able  
11 to sort of see that progression, so I do feel very  
12 comfortable, so thank you.

13 CHAIRMAN RHODES: Thank you.

14 COMMISSIONER BURMAN: So that -- so that is  
15 Item Three sixty-seven, sorry, Central Hudson --.

16 CHAIRMAN RHODES: We have two more.

17 COMMISSIONER BURMAN: Right. Sorry.

18 CHAIRMAN RHODES: I'm keeping track.

19 COMMISSIONER BURMAN: So in Item 379 with  
20 this Cassadaga Wind, this one is really a more pro forma  
21 than others. I do look at this and recognize the  
22 significant issues and concerns that some members in the  
23 community have with the underlying Article 10 citing;  
24 however, to the extent that here under the law, we really  
25 are limited in it -- in -- in looking at items that their

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2 concerns, while I can understand them, I am not able to  
3 legally to -- to take those into consideration for the  
4 record for this transfer of assets, so I am comfortable  
5 voting yes.

6 I also am comfortable that I do know that  
7 Chair Rhodes who wears two hats, one on the Article 10  
8 Board as well as here, is very cognizant of looking at  
9 community concerns and within the proper context of  
10 addressing them and following it that -- that some of  
11 those concerns can be looked at and properly addressed,  
12 but also taking into consideration for future Article 10  
13 cases in how to help those members of the communities who  
14 may feel disenfranchised or that their concerns aren't  
15 taken seriously. I don't have any particular ability to  
16 rectify any of that or drill down to see if there is a  
17 need to, but I do just want to point out that I did hear  
18 the community members very loudly and clearly.

19 I also do want to recognize A.L.J. Dakin  
20 LeCakes who I think did a very good job at the Public  
21 Statement Hearing on this and the, excuse me, and the  
22 other conferences that were held in really trying to make  
23 clear that this -- this limited item was not able to take  
24 into account those community concerns so that folks would  
25 not be blindsided when we looked at this item that those

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2 issues were not able to be addressed because it didn't  
3 pertain to the record that was before us in a limited  
4 fashion, so I will be voting for that.

5 On Item 381 which is, excuse me I just want  
6 to pull it up, which is relating to approving the 2019  
7 Administrative Budget for NYSERDA. I am going to be  
8 abstaining on my vote because I -- while I appreciate and  
9 think that there are some positives in this, collections,  
10 the movement of money from one year to another is down.  
11 It went down by about 420 thousand less than last year and  
12 also that there are no new last year -- last time we  
13 looked at this, we had an administrative adder on top of  
14 moving the collections from -- that weren't used --  
15 unspent collections from one to another year.

16 We also had an administrative adder, so I  
17 am glad that those two things seem to be on a more  
18 positive trend; however, to the extent that NYSERDA still  
19 has not done its annual report related to this, we only  
20 have the outstanding 2017 and when I do look at their  
21 annual reports and financial statements on their website,  
22 I do see that there may need to also be some more updating  
23 on the Periodic Contracts Report as well as the Semi-  
24 annual Report. The last one for the Periodic Contracts  
25 Report was May 15, 2018 at least online. I do believe

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2 they may have presented that to the NYSERDA Board a more  
3 updated one, but I don't see it here and then the Semi-  
4 annual Report, the last one was June 2018.

5 I do think it is important for us to look  
6 at this. Utilities are still collecting so it's not like  
7 collections are going down. It may be that they don't sit  
8 in NYSERDA's house yet, but they are still being collected  
9 until NYSERDA asks for it, so for that I do think that we  
10 do need to look more a little holistically at all of the  
11 different buckets and the unspent -- the unspent funds and  
12 look -- and make sure that not only us as Commissioners,  
13 but that the public does fully understand that, so I do  
14 think it is a positive in terms of, again, the downward  
15 trend and the no new administrative adder, but I am just  
16 flagging the information that I need to feel more  
17 comfortable, so I will be abstaining from my vote.

18 CHAIRMAN RHODES: Thank you, Commissioner.  
19 With that, I think we can move to a vote and my vote is in  
20 recommendations on the consent agenda as presented.  
21 Commissioner Sayre, how do you vote?

22 COMMISSIONER SAYRE: Aye.

23 CHAIRMAN RHODES: Commissioner Burman, how  
24 do you vote?

25 COMMISSIONER BURMAN: I vote yes except for

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2 the three items that I identified how I was voting.

3 CHAIRMAN RHODES: Thank you. Commissioner  
4 Alesi?

5 COMMISSIONER ALESI: I vote aye.

6 CHAIRMAN RHODES: The items are approved,  
7 and the recommendations are adopted.

8 MS. BURGESS: Excuse me. Excuse me. Chair  
9 Rhodes, can I just clarify Commissioner Burman's vote.  
10 Are you -- you're abstaining on 381 --.

11 COMMISSIONER BURMAN: So I'm -- I'm voting  
12 as a block yes to all items except I'm voting individually  
13 on Item 367, 379, and 381. Three eighty-one, I'm  
14 abstaining. Three seventy-nine and 367 which is the  
15 Central Hudson, I'm voting yes.

16 MS. BURGESS: Yes, okay, so just --

17 CHAIRMAN RHODES: Thank you.

18 MS. BURGESS: -- you're abstaining only on  
19 381?

20 COMMISSIONER BURMAN: Yes.

21 MS. BURGESS: Correct. Thank you.

22 COMMISSIONER BURMAN: You're welcome.

23 CHAIRMAN RHODES: Thank you, Secretary  
24 Burgess. Secretary Burgess, is there anything further to  
25 come before us today?

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2 MS. BURGESS: There's nothing further to  
3 come before you today and the next commission meeting is  
4 December 13th in the New York City office.

5 CHAIRMAN RHODES: Okay. Thank you. Before  
6 we adjourn, just a couple of announcements, PSAs really.  
7 Winter is here really, so the HEAP season is here and the  
8 -- this is an invitation to all New Yorkers who may be  
9 eligible for this assistance and would like this  
10 assistance to -- to apply now. Winter is here, here as in  
11 today. We've got weather that's coming in so please,  
12 please be safe. I'm also sorry to say that we need to  
13 remind folks about the reality of utility scams. This is  
14 utility scam week. Please help everybody be alert and  
15 then on a more upbeat notice, Happy Thanksgiving  
16 everybody. We're adjourned.

17 (Off the record 11:27 a.m.)

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2 STATE OF NEW YORK

3 I, JEFFERY ALLEN, do hereby certify that the  
4 foregoing was reported by me, in the cause, at the  
5 time and place, as stated in the caption hereto, at  
6 Page 1 hereof; that the foregoing typewritten  
7 transcription consisting of pages 1 through 40, is a  
8 true record of all proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 23rd day of November,  
11 2018.

12

13

14 JEFFERY ALLEN, Reporter

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