

Public Service Commission Meeting
December 15, 2016

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TRANSCRIPT OF THE
PUBLIC SERVICE COMMISSION
COMMISSION MEETING

THURSDAY, DECEMBER 15, 2016

90 CHURCH STREET

BOROUGH OF MANHATTAN

Reported By:

Jennifer Cassella

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HEARING CONVENED AT 10:30 a.m.

PRESENT:

AUDREY ZIBELMAN, CHAIRPERSON

DIANE X. BURMAN, COMMISSIONER

GREGG C. SAYRE, COMMISSIONER

PATRICIA L. ACAMPORA, COMMISSIONER

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2 THE CHAIR: So we'll be bringing the
3 session of the Public Service Commission to
4 order.

5 Secretary Burgess, are there any
6 changes you're aware of to the final
7 agenda?

8 MS. BURGESS: There is one change to
9 the agenda. Item 375 which is case
10 14-E-0151, which is the Petition of Borrego
11 Solar Systems, on behalf of multiple
12 stakeholders, in relation to net metering
13 is being moved to the non-consent agenda.

14 THE CHAIR: Okay. Thank you.

15 So on this last session of 2016,
16 we're going to be making a change to how we
17 normally organize our agenda and I just
18 want everyone to be aware so there's no
19 confusion. As always, we have a regular
20 agenda, and a regular agenda consists of
21 matters that are either major decision
22 matters for the Commission or major policy
23 matters that I believe is -- need to
24 warrant a staff presentation and further
25 discussion and so they will stay on the

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2 regular agenda. We also have the consent
3 agenda, and the consent agenda consists of
4 matter that all of the Commissioners have
5 agreed to and have indicated they have no
6 further comment or questions and did not
7 involve major policy changes or anything
8 that warrants further discussion so are
9 just going to be taken care of as a group
10 as a voice vote. And then the non-consent
11 agenda consists of matters that normally
12 would be on the consent agenda but that an
13 individual Commissioner or Commissioners
14 believe -- have indicated they're not in
15 total agreement with or have additional
16 questions. And so while there will be no
17 staff presentations on these, we'll take
18 additional questions.

19 So the way we're going to do this is
20 we're going to start with the non-consent
21 agenda and these -- all the items on the
22 non-consent agenda were items that
23 Commissioner Burman indicated that she had
24 additional questions or would not be
25 agreeing to.

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So before we proceed on those, let me just start off with asking Commissioner Sayre and Commissioner Acampora, are there any items on the consent agenda that you would like to get moved to the non-consent agenda? Either one of you.

COMMR. ACAMPORA: I have read through the various items and was briefed on all of these items, read through them again in case I thought I might have missed something, and I would move to, as far as I'm concerned, back to the consent agenda.

COMMR. SAYRE: And I've been over each of the items on both the consent and the non-consent agenda several times, first when they were initially proposed for the agenda and then with each successive draft of the orders. I've been briefed on them by staff, all my questions have been answered. I've followed my fellow Commissioner's questions and staff's responses to them on each of these items and at this point I do not have any additional questions or issues with these

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2 items and I'd be fine moving them back to
3 the consent agenda.

4 THE CHAIR: Commissioner Burman, are
5 there any items on the non-consent agenda
6 that you would like to see moved back to
7 the consent agenda?

8 COMMR. BURMAN: No.

9 THE CHAIR: Okay. So with that, let
10 us just then vote on the -- the first thing
11 I'd like to do then is vote on the consent
12 agenda, and all those in favor of the
13 recommendations on the consent agenda,
14 please indicate by saying Aye.

15 (Chorus of Ayes.)

16 THE CHAIR: Opposed?

17 (No response.)

18 THE CHAIR: Hearing no opposition,
19 there being no opposition, the
20 recommendations are adopted.

21 So now we're going to move to the
22 non-consent agenda, and what I'm going to
23 do is just ask the appropriate staff member
24 to just describe what the item is about and
25 then we'll take any questions or comments

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2 beginning with Commissioner Burman since
3 she's the only one whose indicated a
4 request to discuss them.

5 So item number 162, Ms. Scherer.

6 MS. SCHERER: So item number 162 is
7 case 10-G-0299, Parkline Apartments versus
8 Brooklyn Union Gas Company and it's the
9 appeal of an informal hearing decision.

10 The customer appealed the informal
11 hearing decision because the customer did
12 not believe that he was responsible for
13 \$95,000 worth of commodity charges which
14 were billed by Hudson Energy. He did not
15 believe he was responsible for the charges
16 because the contract was not countersigned
17 by Hudson Energy. The appeal upholds the
18 informal hearing decision and finds that
19 the customer is responsible for the 95,000
20 in unpaid commodity charges, and it also
21 indicates that the, although loss of meter
22 adjustment was provided to the customer on
23 the distribution charges, it really wasn't
24 warranted and should not be provided to the
25 customer on the commodity charges.

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2 THE CHAIR: Thank you.

3 Ms. Burman, your question or
4 comments.

5 COMMR. BURMAN: Thank you. And I do
6 appreciate, you know, this has been a long
7 time coming in making sure that it's
8 reflective when it says the consent agenda,
9 that if there are things that I or other
10 Commissioners may not fully agree with or
11 still have some questions that it is a way
12 of making sure that that is an opportunity
13 at session and also not to have folks think
14 that we're all in agreement.

15 But just a clarification, when I ask
16 for something to not be on the consent
17 agenda, it does not necessarily indicate
18 how I may vote and in fact, all of the
19 items whether they're on the consent
20 agenda, non-consent agenda or the
21 discussion, I don't share with anyone how I
22 am going to vote until I actually am
23 voting. I may indicate internally to
24 counsel a particular way, but I reserve
25 right up until the time of my vote, voting

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a certain way. And so any item that's on there should not be a nod to folks to think that I'm either an up or down on any of the items.

So with item 162, when I look at this, my question is really, as I read this, this is a complainant who's a ratepayer with a 30-unit apartment building in Brooklyn and was an ESCO customer, and this complaint was brought in 2009.

Ultimately, the complaints against the ESCO was found to not be valid and is being dismissed.

The question I have is this complaint was brought in 2009, the informal hearing decision was in 2010. So I -- is this an outlier in terms of when Commission decisions from an informal hearing come before the Commission? I know that I've seen a number over the last few months that seem to be from 2008, 2009, 2010. I think I even saw one in 2007. And since it also deals with significant monies, that the ratepayer believes he or she might be due ,

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2 I am concerned about our backlog, if there
3 is one.

4 THE CHAIR: Luann, go ahead.

5 MS. SCHERER: So as we've discussed
6 with you and the other Commissioners, there
7 is a significant backlog in the Appeals
8 Unit. I think at the beginning of 2015
9 when Mike Corso took over the unit -- or
10 took over the Office of Consumer Services,
11 there was a backlog of 97 appeals. This
12 year we closed more appeals than we opened
13 which is great news. Our goal is to
14 dismiss with the appeals backlog by the end
15 of 2017 due to the support from the Chair
16 and from Tom Congdon. We have formed an
17 inner agency -- or inter/intra agency team
18 of senior staff who's also going to help
19 with appeals. We've hired a manager. We
20 now have four staff so I think we're
21 right-sized for the future and, you know, I
22 think we're on top of it.

23 This is the -- this Parkline is the
24 oldest appeal that we have so you should
25 expect to see probably four appeals at

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2 least on each session going forward and
3 we're trying to cure the backlog as quickly
4 as possible.

5 THE CHAIR: May I add to that? So
6 when I came to the Commission, there was a
7 problem with the backlog. Part of the
8 problem is, of course, that these appeals
9 process can be elongated because of
10 complaints from individuals, but also we
11 continue to get more appeals and there was
12 a question of staffing. One of the things
13 that I asked Mr. Corso when he took over
14 and then when Luann took over Operations is
15 that they really focus on removing this
16 backlog and I am pleased with the work
17 they're doing.

18 The other thing I'm particularly
19 pleased about is that not only are the
20 people in Office of Consumer Services now
21 looking at this, but Luann has also
22 assigned a number of other directors as
23 well to start looking at this. And I even
24 have a Commissioner or two who've agreed to
25 look at these appeals and help us because

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2 we think it's so important to get through
3 these, and I think that as we found through
4 dedicated action and really making this a
5 priority for the Commission for the first
6 time we're able to work on these things
7 through.

8 So while I think nobody wants to see
9 a backlog, what we recognize is that it's
10 very important and this is really the
11 renewed focus we have on Consumer Services
12 in the Commission starting with the
13 appointment of our first consumer advocate.

14 COMMR. ACAMPORA: Can I just --

15 THE CHAIR: Yeah. Sure.

16 COMMR. ACAMPORA: I feel like a
17 historian, but since the day I came onto
18 the Commission, I think that there always
19 was a huge backlog, much larger, and Luann,
20 correct me if I'm wrong, larger than what
21 it is now. So I really do commend the
22 Chair, and Luann, and Mike Corso, and all
23 the people who have been involved in trying
24 to whittle these down. And it's always
25 been about staffing problems. That's very

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2 difficult. And some of these cases do go
3 on and on because after the appeal then
4 there's more appeals all the time. So this
5 really is nothing new and that's why I had
6 no problem and I'm glad that, you know,
7 we're seeing this and we're seeing it
8 again, as you said, whittle down to
9 something that's more manageable.

10 THE CHAIR: Commissioner Burman.

11 COMMR. BURMAN: Thank you.

12 So -- and I am glad to hear that we
13 are sort of whittling down the hearings,
14 the decisions and the backlog. Since I've
15 come on the Commission, I've been
16 laser-focused on that backlog. I would
17 like to see a list of all the pending
18 appeals with the dates of the informal
19 hearing decisions, as well as the money
20 that may be involved and whether or not
21 it's a residential or a commercial customer
22 because I do think it's important that we
23 have a full understanding of the amount of
24 money that may be there, especially if a
25 decision -- the informal hearing decision

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2 granted relief to the complainant and they
3 are thinking that they are getting money or
4 not having to pay and then later we may
5 disagree with the informal hearing
6 decision. So that shock to the ratepayer,
7 it could be significant, so I would
8 appreciate that. Thank you.

9 THE CHAIR: Do you have any further
10 comments on this matter?

11 COMMR. BURMAN: No, not on this one.

12 THE CHAIR: Okay. All those in
13 favor of item 162, please indicate by
14 saying Aye.

15 (Chorus of Ayes.)

16 THE CHAIR: Opposed?

17 (No response.)

18 THE CHAIR: Hearing no opposition,
19 the recommendations are adopted.

20 The next item is item 169 and that's
21 in the matter of Heating Fuel Oil Supply
22 Coordination with Interruptible Gas
23 Services.

24 Cindy McCarran, can you just give us
25 a quick overview of this item?

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MS. McCARRAN: Sure. It would be my pleasure to.

So item 169 is case 15-G-0185. It deals with interruptible gas service customers. It implements gas utility supply coordination with interruptible gas service customers. It requires daily communication with demand response customers prior to and during interruptions, and additional unannounced tasks by January 31st of each winter, affidavits of customers attesting to compliance with the utility tariffs, and those affidavits must include the customer's alternate fuel supplier information so that if the utility needs to contact them they have that information.

THE CHAIR: Thank you.

Commissioner Burman, any questions or comments?

COMMR. BURMAN: Thank you.

So, I am glad to see this. I think it's important that we look towards better coordination each and every year, working

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2 with, as we look at our winter reliability
3 issues as well as summer reliability, and
4 to the extent that we need to be
5 laser-focused on the interruptible
6 customers.

7 I was struck by this item in that
8 when I went back and read the filings that
9 had been put in there, two things sort of
10 struck me about this item which I was glad
11 for the opportunity to look at, is that
12 Consumer Power Advocates which is an
13 alliance of large not-for-profit
14 institutions in the Greater New York region
15 which involve hospitals and universities as
16 well as other large non-profits, they filed
17 initial statements that said due to air
18 quality concerns, natural gas has become
19 the preferred fuel for many large boilers
20 in New York City. So therefore, especially
21 because it's important that hospitals and
22 universities, et cetera, don't have
23 problems with their reliability of their
24 system, it's important that we take into
25 consideration their thoughts on this, and I

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2 was happy to see sort of the diligence of
3 their filing in trying to drill down on it.

4 And then I was also struck by the
5 multiple intervenors comments that was
6 talking about, and I want to make sure I
7 get this right, in their footnote, one of
8 their comments, they said that, "Due to the
9 shortage of available intrastate natural
10 gas capacity, interruptions have been
11 called more frequently and for greater
12 durations." And so that as a result, they
13 believe that interruptible customers have
14 been forced to burn larger amounts of
15 higher cost alternative fuels, and the
16 higher cost of these alternate fuel far
17 offset, in their opinion, any savings
18 obtained from interruptible service during
19 the remainder of the year.

20 They also called for, in light of
21 their critically important nature of
22 intrastate gas pipeline capacity with
23 respect to reliability, energy
24 affordability and the ability to achieve
25 certain of the state's energy initiatives,

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2 they asked that the Commission institute a
3 more detailed inquiry into further
4 consideration and identification of a means
5 to increase the availability of intrastate
6 pipeline capacity in New York through a new
7 proceeding dedicated to addressing those
8 issues. I don't believe we've opened up a
9 new proceeding on that but I wondered if
10 you could talk a little about what we are
11 doing with that.

12 MS. McCARRAN: Sure. Yeah. So, you
13 know that staff every year in the
14 summertime does what we call the winter
15 supply review and we meet with all the
16 utilities and we go over their five-year
17 plans. So we have those meetings every
18 year and then that's the basis of our
19 presentation in October to the Commission
20 every year, so we do that.

21 You know, other than that, we have
22 been having a lot of conversations at the
23 staff level. There hasn't been an
24 affirmative decision made yet for a
25 proceeding but we're certainly continuing

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2 to look at that and we're certainly, you
3 know, cognisant of the fact that, you know,
4 there are several pipeline projects that
5 are on hold right now, so we're looking at
6 that situation.

7 THE CHAIR: Just if I can, because I
8 think this, you know, we don't normally
9 speculate on future items we have. The
10 staff is working with the utilities. We
11 certainly have in our minds what's gas
12 requirements not only for this year, in the
13 future, and certainly if necessary, we
14 would bring a proceeding in front of the
15 Commission.

16 COMMR. BURMAN: And we also have
17 that old 2012 natural gas proceeding that I
18 don't think we've seen activity on that.

19 I did -- you know, the reason this
20 struck me also was that, you know, again,
21 multiple intervenors is a large group of
22 customers, large industrial customers and
23 so it's important to, especially with our
24 economic development initiatives, that we
25 look carefully at that.

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2 I will say I was also struck, I read
3 the other day that National Grid with the
4 Saratoga Economic Development Corporation
5 as well as -- and I'm blanking on the third
6 party -- oh, Global Boundaries, have also
7 undertaken a study on the reliability of
8 this system up there. Are we involved in
9 that.

10 THE CHAIR: You know, I'm going to
11 move for a vote on this. I understand you
12 have a lot of questions, but this has
13 nothing to do with this particular matter
14 which because we have a big agenda, I'd
15 like to just move for a vote. So --

16 COMMR. BURMAN: That's fine. I will
17 just point out that I am reflecting upon
18 the two filings that talked about this in
19 here and is actually in the order says that
20 they, you know, we didn't necessarily drill
21 down and decide those specific items. So I
22 wanted some clarification, but that's fine,
23 we can move for a vote.

24 THE CHAIR: We are going to move for
25 a vote and it wasn't a subject of this

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which is why we didn't address it.

So all those in favor of item 169,
please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Opposed?

(No response.)

THE CHAIR: Okay.

MS. BURGESS: Excuse me. Can I ask
the Commissioners just to speak closer to
the microphones because sometimes your
voices aren't being picked up to those who
are hearing outside. Thank you.

THE CHAIR: Thank you.

The next item is item 170 which is
with respect to a Waiver of Certain Tariff
Provisions, and Cindy, please proceed.

MS. McCARRAN: Sure.

Okay. So this is case 16-G-0554,
item 170. It's the National Grid New York
or what we call also KEDNY, Petition for a
Waiver of their Annual Reconciliation of
their Gas Adjustment Clause which is a
filing that is required to be made per
Commission regulations. They ask for a

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2 waiver of the requirement that the GAC
3 surcharge which would go into effect on
4 January 1st, coincident with KEDNY's rate
5 increase, the regulation requires that the
6 surcharge go into effect on January 1st,
7 they would like to have that waived.
8 Instead, they would like to phase in --
9 they asked to do something different, but
10 staff is recommending to the Commission
11 that the surcharge be phased in after the
12 first three months of the winter and then
13 collected during the remainder of the year
14 so that the same dollar amount would be
15 collected but it would just be delayed in
16 their implementation. This is being
17 recommended to mitigate bill impacts, and
18 also to allow recovery of what we're
19 actually under collections from last
20 calendar year. Because of the very warm
21 weather, they were not able -- they didn't
22 have the throughput to collect all of their
23 fixed charges.

24 THE CHAIR: Commissioner Burman.

25 And please, if you could, just confine

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yourself to the particular proceeding.

COMMR. BURMAN: I am, but okay.

Thank you.

So when I look at this item 170, the draft order says that there -- the case number 15-D -- G-0101, which is a petition by small customer marketer coalition which was brought in February 24th, 2015 to revise the recollect -- reconciliations and was asking to look at that and make some accommodations and was concerned and wanted to have an examination of this. So this order here refers to that order and -- let me make sure I get my page, excuse me -- and says that, "The items that NEMA, National Energy Marketers, NG, and URAC and other interested parties, that the comments that they had regarding gas costs, reconciliation regulations and processes over a generic basis should be further considered, addressed in that proceeding, and that staff shall continue its efforts in that proceeding and report back to the Commission prior to next year's annual

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2 reconciliation period."

3 So I have two questions with that.
4 I'm concerned because this petition which
5 was brought before this other petition
6 which we're deciding on today which was
7 brought in the middle of 2016, wasn't
8 decided but yet the items seem to be
9 related and we're saying we're not
10 addressing those, we'll have staff work
11 with you and report back and I -- that
12 seems very open-ended to me and it also is
13 confusing in terms of regulatory certainty
14 for those items which also seem to get at
15 the heart of some of the concerns that NEM
16 as well as others have in terms of price
17 and costs, et cetera. So I just wondered
18 what that process would be, and if
19 reporting back means reporting openly in
20 terms of having an item on the session or
21 just filing something.

22 THE CHAIR: We'll make -- in terms
23 of the future procedure, we'll make that
24 determination after staff completes its
25 investigation of whether or not additional

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2 action is warranted. But -- so, I
3 don't -- I think this is very typical of
4 the Commission. An item was raised. We
5 had a particular matter we had to address
6 which was the adjustment for the utility
7 and we, you know, the recommended decision
8 is that we not confuse the two but that
9 there's a more generic concern around
10 reconciliations which we're pursuing. So I
11 don't -- there's nothing to really discuss
12 on that other than the fact that the order
13 notes that that is something that the
14 Commission is directing the staff to
15 investigate.

16 I'm going to move for a -- unless
17 you have a further question, that's very
18 typical of the Commission.

19 COMMR. BURMAN: Well, yes. And
20 because it is the language in the order, to
21 me, the orders words in the order are very
22 important and that I'm very concerned when
23 I look at orders, I like to make sure that
24 there is regulatory certainty as well as
25 making sure that we don't have open-ended

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2 processes, and especially when it comes to
3 referring to a generic proceeding, when I
4 look back that that generic proceeding
5 there's been no activity since
6 October 4th, 2015. So for me, it sort
7 of -- it fails the threshold of is this
8 providing regulatory certainty and are we
9 referring to something, especially another
10 order or proceeding, outside the four
11 corners of this order that might -- might
12 cause more confusion and also make it
13 either seem that we're going to be more
14 active on that proceeding or in fact it
15 will still remain inactive.

16 And because, you know, I do think,
17 and, you know, this has been the history of
18 the Commission, sometimes these generic
19 proceedings have no real life and -- or may
20 pop to life when people least expect it.
21 So I raise that only because for me, that's
22 why I can only concur with this item and
23 not vote with the majority on the draft
24 order because I don't think the language
25 speaks to regulatory certainty.

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THE CHAIR: So, that's fine. We're going to move to a vote, and in the future when you have concerns like this, it is always helpful if you can articulate your concerns because we would address things like that in the order.

Let's move to the vote. Item number 170. All those in favor of the recommendation, please indicate by saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur based on my comments at session.

THE CHAIR: We're going to move now to item number 264 which is related to Central Hudson tariff filings. Mike Worden will provide a brief overview.

MR. WORDEN: Good morning.

THE CHAIR: Good morning, Michael.

MR. WORDEN: Good morning, Chair Zibelman and Commissioners. Item 264, it makes permanent Central Hudson Electric and Gas tariff leaves to effectuate the terms for the second year of its rate plan which

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2 is July 1st, 2016 through June 30th, 2017.

3 As part of this, it's also approving the
4 company's request to continue to use
5 non-prorated electric supply costs for
6 areas of street lights since these
7 customers are billed in advance at the end
8 of the month and it's not possible to
9 prorate. So there are several changes in
10 this but they're essentially mechanical in
11 nature.

12 THE CHAIR: Great.

13 Commissioner Burman.

14 COMMR. BURMAN: Thank you very much.

15 So the item references an underlying
16 order that was done February 26th, 2016,
17 and as you know, I don't always vote with
18 the majority so I always need to check
19 exactly how I did vote and in this case, I
20 concurred on this item and what I had said
21 was that I -- and this was in a concurring
22 separate statement, that "I do note that we
23 have a number of outstanding proceedings
24 that concern resolution of various net
25 metering matters. Normally I would seek to

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2 resolve such issues together and not in
3 piecemeal fashion, however, this specific
4 issue relates to administrative billing
5 matter that due to the upcoming effective
6 date to start such billing needs to be
7 resolved now." So at that time I supported
8 approval of the petition request for the
9 reasons cited by Central Hudson, especially
10 because failure to grant such request would
11 cause unnecessary time and expense to be
12 incurred." I believe that we still have
13 those outstanding proceedings that concern
14 resolution and various net metering
15 matters, so I will concur again in light of
16 my past voting record. Thank you.

17 THE CHAIR: Thank you.

18 This is -- just for the record,
19 again, this is only with respect to time of
20 billing and as a technical issue.

21 But -- so all those in favor of item
22 264, please indicate by saying Aye.

23 (Chorus of Ayes.)

24 COMMR. BURMAN: And I concur as
25 stated in my comments.

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2 THE CHAIR: The next item is item
3 265 which is related to matter of Rate
4 Design Reforms Supporting REV, and Marco
5 Padula -- where is Marco?

6 MR. PADULA: Right here/.

7 THE CHAIR: Oh, there he is, hiding.
8 Please proceed.

9 MR. PADULA: Good morning, Chair and
10 Commissioners. So item 265 is related to
11 case 16-M-0430 which was the case
12 established to consider Rate Design Reforms
13 to Support the Commission's Reforming
14 Energy Vision. In this draft order would
15 adopt with modifications, the compliance
16 tariff filings by all electric utilities
17 aside from Con Edison, to implement standby
18 service, liability credit, and offset
19 tariffs as laid out in the REV Track 2
20 Order.

21 THE CHAIR: Just to be clear, the
22 reason why Con Ed's not there is that this
23 is adopting consistent practices that Con
24 Ed had already adopted.

25 MR. PADULA: Just one clarification

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2 on that. The Track 2 Order asked Con Ed to
3 implement the change in its rate case
4 filing which it did.

5 THE CHAIR: Okay. So this --

6 MR. PADULA: Right.

7 THE CHAIR: Thank you.

8 Commissioner Burman.

9 COMMR. BURMAN: Thank you. And I
10 would also like to thank you for
11 accommodating me and having each staffer
12 give a brief blurb or statement on what the
13 item is about. I think that's very helpful
14 to those who are listening, as well as for
15 the preservation of the transcript. So
16 thank you. I do appreciate that.

17 265 goes hand-in-hand with 266, so
18 if you want my to speak about them together
19 I will or I will reserve my comments for
20 item 266.

21 THE CHAIR: No, that's great.

22 That's great.

23 So item 266 --

24 COMMR. BURMAN: Do we want --

25 THE CHAIR: Yeah, let's do them

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2 both.

3 MR. PADULA: Sure. So I can just
4 give a brief summary of 266, which is in
5 case 14-M-0101 which is the REV Proceeding.
6 In that draft order would deny the joint
7 utility's position for reconsideration of
8 the reliability credit and extend firsthand
9 by service. And it's the only issue that
10 they asked for reconsideration of the Track
11 2 Order.

12 THE CHAIR: Commissioner Burman.

13 COMMR. BURMAN: Okay. Thank you.
14 Just pulling up my pages here.

15 So on page eight of the draft order,
16 it speaks about the Track 2 Order and
17 that -- and I'm just going to read
18 this -- "The Commission stated that the
19 joint utility's further argument that under
20 the as used demand approach, the customer
21 might receive a credit or a higher credit
22 based on external factors such as weather
23 was theoretically correct." It then went
24 on, "The Commission observed, however, that
25 it was unclear whether it was practical to

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2 normalize external factors in the context
3 of standby rates." And the Commission
4 noted that, "Whether it is practical to
5 normalize external factors in the context
6 of standby rates should be developed
7 further." So that was the language in the
8 Track 2 Order.

9 We then say in this order, "The
10 petition for reconsideration offers no
11 practical methods for normalizing external
12 factors and we decline to revisit this
13 issue at this time."

14 So my two questions are, I'm
15 concerned that our Track 2 Order said that,
16 "It should be developed further. We are
17 not accepting the petition for
18 reconsideration at this time because it
19 offers no practical methods for normalizing
20 external factors.", which was also what we
21 didn't do in Track 2 Order. So now we're
22 declining to revisit that issue at this
23 time but in the Track 2 Order, we said we
24 would look at this and develop it further.
25 So I'm just confused about whether that

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2 language is giving us some certainty about
3 when, where and in what proceeding we may
4 be looking at this issue, and also noting
5 that sometimes I think parties shouldn't be
6 obligated to have to come up with the best
7 solution but maybe they're identifying an
8 issue that needs further collaboration in
9 real time.

10 THE CHAIR: So your question, just
11 to be clear, is whether or not we will
12 continue to consider that if we are able to
13 discern a way to deal with other factors,
14 and these are factors that may cause
15 something to fail. I'm just trying to make
16 sure --

17 COMMR. BURMAN: Yeah. I will read
18 again what the order said. The Track 2
19 Order, which this order refers to, says,
20 "The Commission noted that whether it is
21 practical to normalize external factors in
22 the context of standby rates should be
23 developed further." So the order was
24 recognizing that that issue should be
25 developed further. We then say in this

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2 order, "The petition for reconsideration
3 offers no practical methods for normalizing
4 external factors. We decline to revisit
5 that issue at this time."

6 So my question is, based on the
7 Track 2 Order which seems to indicate that
8 we think it should be developed further and
9 now we decline to re-visit the issue at
10 this time, what is the trigger to have that
11 looked at and decide it?

12 THE CHAIR: Right. I understood
13 what we said in the order and I also
14 understand your question. I think the way
15 I -- the reason why I don't think it makes
16 sense to do it at this time is that we're
17 in the process in the value of distributed
18 energy resource practice filing to
19 determine how do we value distributed
20 energy better on the system and including
21 in that the types of performance
22 requirements that we will require for
23 compensation. And so to me, it's the issue
24 that the utilities are asking for, which
25 would be to look at are there ways that you

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2 would not credit standby resources because
3 of the factor that was unrelated to their
4 performance but was external to it. It's
5 this type of issue that I would expect the
6 value of distributed energy resource to
7 look at.

8 And so I feel comfortable that it's
9 not appropriate for us to open up a new
10 proceeding to look at this which is I think
11 is a side issue to the bigger issue which
12 is how you value these resources, and
13 that's why at least I'm voting to say let's
14 not do this now. We're not -- I don't
15 think any new information has been brought
16 up to reconsider having putting in place
17 these standby tariffs, and we have a
18 proceeding already that's looking at the
19 evaluation of these resources so no need to
20 open up a new proceeding. That's why I'm
21 voting, correct -- Commissioner Burman or
22 Commissioner Sayre, you can indicate why
23 you think it makes sense.

24 COMMR. SAYRE: REV has scores and
25 scores of open issues that remain for the

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Commission to decide. They're all interrelated. It's impossible to have a detailed timeframe for each individual issue. We are building the boat as we sail it and we're doing the very best job that we can. I don't think this leaves the utility industry in unreasonable doubt.

COMMR. ACAMPORA: I agree with Commissioner Sayre, and as we've learned from when we did energy efficiency proceedings that when we did REV, we used my favorite word called "flexibility". And so yes, nothing is certain. This is ongoing and I think to jump into something now would lead to more questions than it would answers. So I'm in favor of voting on this now.

COMMR. BURMAN: Thank you.

And to clarify, I wasn't suggesting that we open a new proceeding. What I am suggesting though, is that when we have open issues and when we decline to address it and we actually specifically say that in an order and don't say we will never

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address it or it's being -- in this case
it's not even saying it should be done in
Value D, so people need to know. And the
reference to the boat, I don't swim so I'm
worried that we're building the boat and
I'm going to sink.

So my issue is, is because that when
we look at this, I want to make sure that
these open issues especially because there
are so many proceedings and the pace of
what we're doing, it's very easy to drop
something that was stated in an order as an
open issue, and when we're closing the
proceeding, people may not take that and
then put it into the Value D and some of
the folks who are working on this order, on
this proceeding are not necessarily working
on the Value D proceeding. So for me, it's
clarifying that that issue is likely to pop
or be apart of the Value D, and to the
extent it needs to if it's not already
being incorporated in there and making sure
that we've done the proper notice that
needs to be done, and that this goes on the

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2 long tickler list of open issues that need
3 to be addressed. And to the extent that
4 folks feel that nothing is certain, my
5 concern is that our order should strive to
6 have regulatory certainty and especially
7 because there are so many proceedings and
8 so much that needs to be done and we have
9 limited resources, not only in our
10 Commission and agency, but in the parties
11 who are trying to manage and look at all of
12 the different proceedings, they need to
13 know where something may or may not land.

14 THE CHAIR: So Commissioner Burman,
15 just one thing. Again, and I, you know, I
16 appreciate that, but I think that's why I
17 know for Commissioner Acampora and
18 Commissioner Sayre when they have questions
19 on clarifications of orders, they
20 usually -- we address these during
21 briefings and we will make changes. So if
22 you have concerns like that, I think it's
23 always welcome if you say something's not
24 clear or during your briefings to ask
25 questions of staff. I'm not aware that you

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did that, but maybe -- Mr. Weiner, you may want to address how we're handling this.

MR. WEINER: Yeah. I want to try and avoid some uncertainty, particularly with the respect to internal coordination. Key staff at the director and assistant director level are involved on a cross-cutting basis, not just on issues but also departments. All work streams are being actively tracked so it's true that not every human being is involved in every issue, but in this issue say, for example, Marco is lead and one of the -- on standby, and one of the key team members on Value of DER. Not only that, in some ways more importantly, there is an overlap, a very important contributory overlap with the stakeholders who are involved in these processes, and part of what transpires if not on a daily basis, certainly a weekly basis, is discussion among staff and active stakeholders of where issues are best resolved, what's the best way to do that.

So, I appreciate the observations of

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Commissioners Sayre and Acampora that this is a dynamic process, it is flexible, and I can assure you that there is more than adequate overlap intentionally designed by staff so that we maintain an active view.

COMMR. BURMAN: Thank you.

I'm not going to respond to the comment about giving questions ahead of time. I don't think we should be discussing our internal processes and what conversations I may have with counsel's office, and my silence on that does not mean that I am agreeing that I have not given my thoughts or comments on an item. I just don't think it's appropriate.

But be that as it may, in this case and why I think anyone who knows me knows that I am very clear in what my concerns are generically as well as specifically, and for me, the one thing that is very clear to me, that I think that I will reiterate in case it comes as a shock to folks, my main concern is maintaining the reliability of the system, making sure that

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2 we do not only short-term but long-term
3 planning, and to the extent that we are
4 undertaking an enormous undertaking with
5 many different proceedings. When we look
6 at an order and when we're writing an
7 order, we need to make sure that we're as
8 crystal clear as we can and we should be
9 flagging language in there that is unclear
10 on the pathway forward, and especially when
11 items or language in there indicates that
12 something is an open issue, especially when
13 it does not have an ordering clause that
14 refers that to something. I think it's
15 important that we make sure that those
16 language items yet -- get teed up so that
17 after the order is out, there is some
18 followup somewhere to make sure that it
19 falls in the appropriate place and that the
20 parties that may be interested in that
21 item, that took the time to submit papers
22 on it, know where they need to look for
23 resolution, if there is resolution. So I
24 think we can move forward on 260 -- on
25 these two items.

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THE CHAIR: Well, just so -- for the -- just to make sure it's clear, I don't think there's anyone sitting up on this panel who cares more about reliability than anyone else. I think we're all very, very cognisant of that. I think we're also cognisant of the complexity of what we're looking to do and the need to deal with multiple proceedings. I also think that my comments around having an efficient process where everyone knows each other's concerns so we can vote and look to whether or not there are good ideas is an important part of having a multiple member commission, and that was why I say I offer to everyone if there's a way to improve, we'd like to hear about it because we always look to improve.

Items 265 and 266 I'll take as a group. All those in favor, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Opposed?

COMMR. BURMAN: And I concur on both items per my comments at session.

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2 THE CHAIR: Item 267 is in the
3 matter of the Comprehensive Management and
4 Operations Audit of Avangrid Subsidiaries
5 NYSEG and RG&E, and Doris Stout will be
6 providing a brief overview. Welcome,
7 Doris.

8 MS. STOUT: Item 267 recommends the
9 Commission issue a request for proposal for
10 an independent third-party consulting firm
11 to conduct management and operations audits
12 of two Avangrid Inc. subsidiaries, New York
13 State Electric and Gas Corporation, and
14 Rochester Gas and Electric Corporations.
15 These audits will focus on construction
16 program planning and operational efficiency
17 with an emphasis on improving performance
18 consistent with Section 6619 of the Public
19 Service Law.

20 THE CHAIR: Commissioner Burman, do
21 you have questions or comments about this
22 management audit?

23 COMMR. BURMAN: So the reason that I
24 flagged this is it is -- it's not the first
25 audit to consider REV questions. However,

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2 it is the scope of it and the scope of REV
3 has evolved, and so for me, I flag this
4 because there's a lot of things in REV that
5 are still being worked through and to the
6 extent that the auditors may be having to
7 evaluate whether a particular utility in
8 this case, utilities that we have before us
9 for the management audit, whether or not
10 they're meeting their -- the objectives and
11 the drilling down on whether they have a
12 successful audit or have -- there are some
13 concerns. I want to make sure that the
14 information given to the independent
15 consultant on what the metrics and what the
16 overall objectives and what the REV focus
17 is is very clear, as well as ensuring that
18 it is not following one particular position
19 because there are so many open proceedings.
20 And I wondered how that is going to get
21 done in this audit, and understanding that
22 this is really the first full scope REV
23 dive in an audit.

24 THE CHAIR: Doris, do you want to
25 respond? Can I -- I'll just offer my

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2 observations. I think that the issue of a
3 management audit is really about the
4 preparation of the management team to
5 address issues that are either current or
6 forward looking for utilities. I see these
7 audits as an opportunity to look at the
8 processes that the utilities adopt, the way
9 they're managing, the way they're staffing,
10 the capabilities and certainly to the
11 extent an historical audit has found flaws
12 in operations or concerns that we go back
13 and we look to make certain those have been
14 addressed.

15 I would note that we've did more
16 management audits in the last couple years
17 than we ever have since we reinvigorated
18 that process several years ago, and my
19 informal conversations that I've had with
20 utilities post audits because I meet with
21 each of the utilities every year to talk
22 about operations, is that the utilities
23 themselves find these audits and their
24 depth and scope as to be a great
25 opportunity, frankly, for a new set of eyes

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2 to take a look at what's going on and that
3 they can look at as opportunities to
4 improve.

5 I think that the, in terms of REV,
6 it's not a particular REV item. It's
7 really thinking about as utilities are
8 looking at a changed world where there's
9 more distributed energy, where we have
10 customers who want more choice, where we
11 have customers who want more information,
12 where you need a different capability
13 around digitalization, where you need a
14 different capability about marketing, where
15 they're worried about things like making
16 sure that they have the right kinds of
17 staff and structure to adapt and be much
18 more at -- to where things are going, that
19 these types of audits give them a sense and
20 us a sense as how the utilities are really
21 rethinking their businesses to deal with a
22 very changed world with the industry.

23 So I wouldn't tie this to any
24 particular proceeding. It's really REV as
25 it's become a noun in this industry is

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really about a utility and that is a distribution system platform providing a much greater level of services, much more accommodating to a clean energy future, and really a very different thinking about how they will operate and manage their systems.

So I look at this as helping us and helping the utilities really understand what changes they've made and what changes they're contemplating and really then learn from each other as we do it, and that's really, to me, these audits are a great opportunity to shed a light. And, you know, when we're in rate cases, we often do investigations of particular issues but we really don't have the time to do that kind of broad look and analysis so I feel like we're very, very fortunate, New York, that this agency actually has the responsibility to do these types of management audits because it really can allow us to set a standard, operating standard for our utilities that is actually much higher than most states.

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2 And so I think that this is, you
3 know, looking at this and looking forward
4 and thinking about how this -- changes have
5 to be made and how you're organizing is
6 welcome, and I'm appreciate of the fact
7 that the staff in fact is recognizing that
8 and is making sure utilities are thinking
9 about these things as well.

10 COMMR. BURMAN: And all of that, you
11 know, and make no mistake, I believe
12 strongly that a good, well-balanced and
13 independent management audit can be really
14 good for all the parties but especially the
15 people of New York, and so when I look at
16 this, there is a lot in REV, there is a lot
17 that is still uncertain. The utilities
18 have filed their DCIPs and even in that,
19 there's going to be tension over one
20 utility's DCIP and someone else who might
21 be perceived as an outlier and there might
22 be tension with staff in terms of some of
23 that.

24 So to the extent that, especially I
25 know Central Hudson, you know, had their

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audit completed and, you know, it was -- I believe it was pre the DCIP, but when you look at that, one of it is assessing how the utility is planning on integrating their maintenance and modernization efforts as tied into the efforts of the undistributed service implementation plan.

So I raise it really as a caution as well as making sure that what we give to the -- and the subject matter experts, what they give to the consultants, really needs to be, you know, factual and based on what the orders and the direction of the Commission are and not necessarily, you know, their -- what might still be fuzzy or still being debated or possibly having petitions for a hearing that are out there, so that the audit comes out with clarity as well as helping us to ensure that we are making sure that it is as robust as it can be based on accurate information on the processes of REV, and also identifying where there is still gray areas so that the consultants is making sure that that is not

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2 stepping into the proceeding and making
3 determinations that may color the utility
4 either positively or negatively, but
5 actually just straight up factually.

6 THE CHAIR: Commissioner Acampora.

7 COMM. ACAMPORA: I think, again,
8 I'm going to be the historian, one of the
9 first things I looked at when I first came
10 to the Commission was the fact that there
11 were no management audits and when I had
12 the opportunity to Chair the Commission I
13 instituted those. And I think that make no
14 mistake, our staff is fully capable of
15 vetting through an RFP process who will get
16 the determination of being the group that
17 goes in and makes these audits and I think
18 they lay out a very clear map for the
19 auditors to do what exactly that we are
20 asking them to do. I don't think we've
21 ever found an audit that was in any way
22 fuzzy because they knew what they were
23 supposed to do, and many times they even
24 went beyond and brought back things that
25 were helpful and not detrimental.

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So I think that this item is very clear cut. It's something we've done in the past. It's been one of the best tools we've had in our toolbox over these years and I think as the Chair had said, the company's would agree also and then it gives us something to really depend upon when we are looking at a rate case. These are very valuable when it comes to looking at a rate case which we'll be doing later.

So again, this is clear cut. This is something we've done in the past. Our staff knows how to do the interviews, how to go through the RFP process and I think, you know, there should be no concern about that.

THE CHAIR: Do you have anything to add? Commissioner Sayre.

COMMR. SAYRE: I don't see the proposed audit as in any way a compliance audit with respect to REV or anything else in the way of Commission order compliance. That would be a different kind of audit. This is a management audit to determine

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2 whether they're prepared for the future and
3 where we say REV preparation in the future,
4 as the Chair said, we're looking at a
5 transformation of the utility industry
6 that's happening everywhere, not just New
7 York, with the addition of distributed
8 energy resources. I think we're ahead of
9 the curve in New York in making regulatory
10 preparations for that change but it's
11 happening anyway, and one of the things
12 that we're asking the auditors to look at
13 is whether the utilities are ready for this
14 transformation.

15 THE CHAIR: I'm going to move to a
16 vote on item 267. All those in favor of
17 the recommendations, please indicate by
18 saying Aye.

19 (Chorus of Ayes.)

20 COMMR. BURMAN: And I concur based
21 on my comments at session.

22 THE CHAIR: The recommendations are
23 adopted.

24 Item No. 270 is the proceeding to
25 Seek Consequences against Atlantic Power

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and Gas for violation of the Uniform Business Practices. Luann Scherer, you're back.

MS. SCHERER: So Atlantic Energy is a pretty small ESCO with a comparatively large number of slamming complaints. Staff has been working with Atlantic since July. We issued a notice of apparent failure against Atlantic in July. We got partial responses to the notice and we've since received additional slamming complaints. So the next logical step in the process is for the Commission to do an order to show cause which will require Atlantic to file additional information with the Commission.

Do you have specific questions, Commissioner Burman?

COMMR. BURMAN: No, your summary was sufficient. I will say that I've stated my position that enforcement of bad ESCOs or potentially bad ESCOs are important and that we are not in this order to show cause in any way making a judgement about the actual actions of the ESCO, but really

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doing it to fully inform our decision and as has been stated before and most recently at the September session, the staff then works with the ESCO and I know we have two that were brought forward at the September session that staff I believe are still working through those and we may see them at some point.

MS. SCHERER: Yeah. There was actually three on the September session and we -- they filed additional documents and we have meetings scheduled with each of those ESCOs.

COMMR. BURMAN: Okay. Thank you.

THE CHAIR: And I believe your comments are understood by the other Commissioners, hence why it was on consent.

All those in favor of item 270, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Item 271 is the proceeding on the motion of the Commission to consider the rates and charges for electric and gas for Con Edison.

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Mr. Worden.

MR. WORDEN: Good morning, again.

Item 271 basically extends rate credits for Con Edison customers, gas and electric, until rates are reset by the Commission. There is a pending rate case in front of you that is scheduled to be heard this month, the 11-month period for deciding a rate case. The company has asked for an extension of that period. These credits were expected to expire at the end of this year, so if they expire there would be a rate change and then a subsequent change when you reset rates. So this just keeps them steady until you reset rates when we come you. Simple.

THE CHAIR: Any questions on item 271?

COMMR. BURMAN: I couldn't have said it better myself so I'm comfortable with voting for this item. Thank you, Michael.

MR. WORDEN: Thank you.

THE CHAIR: All right. So all those in favor of item 271, please indicate by

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2 saying Aye.

3 (Chorus of Ayes.)

4 THE CHAIR: Item 362. Michael,
5 maybe you're charmed.

6 MR. WORDEN: So I'm on a roll now.
7 We'll keep going and see how we do.

8 This item implements tariff filings
9 on non-wires alternative projects for
10 Central Hudson. You previously considered
11 this in July. Central Hudson simply
12 updated its tariff filing to modify the
13 wording for cost allocation. That's the
14 extent of this tariff filing.

15 THE CHAIR: All those in favor -- do
16 you have comments on this compliance
17 filing?

18 COMMR. BURMAN: I just wanted to
19 reflect that last time when we had looked
20 at this item I had issued a concurring
21 statement and talked about the need that we
22 are, for me, as the these non-wires
23 alternative projects can be wonderful and
24 something that we can look to as part of
25 our REV processes while we're focused on a

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2 reliable grid that helps to maintain our
3 system reliability and how important again,
4 all of this is, the most important is our
5 system reliability. So, thank you.

6 THE CHAIR: Again, I think everyone
7 would agree with that.

8 So all those in favor of 362, please
9 indicate by saying Aye.

10 (Chorus of Ayes.)

11 THE CHAIR: 365 which is a filing by
12 National Grid to update LED Street Light
13 Wattage. I think we'll just have you do
14 the rest of these, Mr. Worden.

15 MR. WORDEN: Okay. Good. This one
16 literally updates the wattages available
17 through tariffs that National Grid has and
18 it's based on the bids that it received
19 from providers, suppliers, and the ones
20 that they wanted to select it came from the
21 lowest bidder to those things and they're
22 just updating the wattages simply that
23 customers can sign up for.

24 THE CHAIR: Any questions on item
25 365?

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2 COMMR. BURMAN: I do.

3 THE CHAIR: All those in favor,
4 please --

5 COMMR. BURMAN: No, I said I do.

6 THE CHAIR: Oh, you do. Okay.

7 COMMR. BURMAN: I would like to know
8 about the ongoing working group with the
9 street lighting, the inter agency working
10 group and working with the different
11 municipalities. So for me, it's focused on
12 making sure that we are looking carefully
13 at all of our different tariffs and the
14 actions that we're taking and working
15 through any challenges. So is that still
16 an ongoing group?

17 MR. WORDEN: It is ongoing. We do
18 have a number of items that you'll be
19 seeing in the future months on street
20 lighting. We don't have the people here
21 that are leading that today to really kind
22 of brief you on that. It's kind of outside
23 the scope of this.

24 THE CHAIR: It is. It's
25 not -- right. It's not before us today and

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2 I'll suggest this, why don't we look for a
3 time that Michael, you can brief all of the
4 Commissioners. Obviously we're happy to do
5 that, Commissioner Burman, but in the
6 interest of efficiency of time today when
7 we have all these people in the room and a
8 lot of matters in front of us, I'd rather
9 just stick to the published agenda. So
10 I'll just take a vote on 365. If you have
11 specific questions about this I'm happy to
12 have someone ask them -- answer them.

13 THE CHAIR: Hearing none, all those
14 in favor of 365?

15 (Chorus of Ayes.)

16 COMMR. BURMAN: And I will concur
17 with the caveat that I would like to see in
18 some fashion a report that helps to
19 summarize the status of street lighting
20 overall and make sure that we are all
21 looking carefully at the different tariffs
22 and different challenges and working
23 through so that we can have a comprehensive
24 policy on street lighting. So, thank you.

25 THE CHAIR: Thank you. And

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I -- that's not in front of us today but we will offer to brief the Commissioners.

So in moving onto item 375, which is a petition of Borrego Solar for relief from net metering caps. Mr. Worden.

MR. WORDEN: So this item is -- actually, we've been referring to it as Borrego but it's really a petition on behalf of the number of developers and utilities jointly filed with the Commission and what it does, it's really much simpler than it appears. It relieves the developers from a responsibility to get projects in service by the end of 2017 in order to retain monetary credits for net metering. These are credits that you made available back in 2015. You actually, in our briefings we discussed, you did a good job in really kind of animating the market for these projects and through 2015 and '16 we had a large influx of projects. I think I briefed you previously on those projects and because of that, the utilities had difficulty keeping up with the engineering

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aspects and the construction aspects. So this commits the developer to pay for the upgrades of the utility system and it commits them to doing their work and it takes them off the hook if the utility is not able to complete their construction work by 2017. So that's in essence what it does.

THE CHAIR: This is -- actually, this item I would just add to Michael's, what my observation is, is that after -- because of the work we've been doing around solar in New York we've had over a 300 percent increase in solar installations and this is one example where, frankly the work of staff collectively with the utilities and the developers and working together to work through what some people would say is a high class problem where we have more solar coming in than we've ever had before and we're looking to address these in a way that's collaboratively as opposed to antagonistic. So I think this item

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reflects really an attitude in New York that we work to get things done rather than thinking things out. So I think it's a good item and I'm pleased to see it.

Any questions or comments on it?

COMMR. BURMAN: My comments are really related to I think that interconnection issues and net metering issues are really very important. I've been consistent in my concerns on the increasing interconnection applications. While that's a positive, we also potentially need to be concerned about what that means on our system reliability as well as the overload in terms of going through the interconnection applications, and at some point needing to have some clarity on those aspects and also address the significant challenges and issues.

I am glad to see that there's an interconnection technical working group. I will though point out that we have many, many different working groups. I'm not really sure the full scope of them or the

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2 full scope of whether they're active or not
3 and exactly -- and what their overlap is.
4 To the extent that this interconnection
5 working group seems to be now up and
6 running not necessarily for many Commission
7 order that I can find, that we do need to
8 be careful about making sure that we are
9 fully looking at all the different issues
10 and addressing them, especially because
11 folks need clarity and certainty,
12 especially when they're trying to make
13 business decisions on being apart of New
14 York, and the scope of and the increase in
15 the interconnections cause me a great deal
16 of concern.

17 MR. WORDEN: We actually have two
18 interconnection working groups, an
19 interconnection policy working group and an
20 interconnection technical working group,
21 and we work very closely with the Value of
22 D working groups so to make sure that the
23 two are aligned and that we don't do things
24 to conflict with each other. So those are
25 very important.

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You know, I would point out that, you know, number one for us or for me personally is safety. That's the most important thing that I do. The second most important thing is reliability. So if we do this stuff on a technical things for DG and we don't keep the system reliable, we have a problem, so we fully recognize that.

COMMR. BURMAN: Thank you.

THE CHAIR: I don't think our staff needs to be reminded of these issues.

Any other further questions or comments?

(No response.)

THE CHAIR: So all those in favor of item 375, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Item 377 is a tariff filing by Con Edison to modify the Rider T Commercial Demand Response Programs. Marco, you're back on deck.

MR. PADULA: Yup. I'm back.

So item 377 deals with the case 16-E-0543.

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2 THE CHAIR: Marco, you're fading. I
3 may be fading too.

4 MR. PADULA: It was me. Sorry. Got
5 it.

6 And the draft order would adopt the
7 tariff amendments with modifications to be
8 effective for the program year of 2017.

9 THE CHAIR: Any questions or
10 comments with respect to this item?

11 COMMR. BURMAN: Yes, I do.

12 THE CHAIR: Commissioner Burman.

13 COMMR. BURMAN: So here, again,
14 going back to language, we have on page 13
15 and then something else on page 15, I'll
16 address the page 13, we're talking about
17 Energy Spectrum's comments. I also want to
18 give kudos to Energy Spectrum for their
19 always willingness to be very detailed and
20 in the weeds on things. It's appreciated
21 by me.

22 And so here we have that -- we are
23 discussing that, "We view Energy
24 Spectrums's request as an opportunity for
25 the company to offer an enhanced service to

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2 aggregators who wish to subscribe to the
3 service for an additional fee and we
4 therefore will ask Con Edison and Energy
5 Spectrum to work with Department of Public
6 Service staff to determine if providing
7 realtime updates to forecast is of interest
8 to other aggregators, and if so, to develop
9 the basis of the fee for these information
10 services that we're asking our utilities to
11 develop to support the customer facing
12 activities of aggregators and other market
13 participants." So that to me, means that
14 we're not addressing it here but we're
15 asking folks to work together. It's
16 unclear to me in what context, proceeding
17 and when it may get resolved.

18 And then on page 15 we say, and this
19 is again, talking about something that
20 Energy Spectrum brought up, that -- this is
21 talking about, "To the extent that net
22 metering -- a net energy metering customer
23 participates in a DER program and provides
24 load reductions during events." This is
25 about double payments of the generators not

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2 operating at the time, and we say, "While
3 the Commission recognizes this conflict,
4 the issue of interactions between NEM and
5 other distributed level markets should be
6 carefully considered on a statewide basis
7 with ample opportunity for stakeholder
8 engagement, therefore, staff shall address
9 this as part of the ongoing value of DER
10 proceeding."

11 So first, thank for being clear in
12 this to which proceeding it should be,
13 however, I do point this out to make sure
14 because there is no ordering clause that
15 states that this item should be taken care
16 of in Value D, that I laser-focus it for
17 folks that the language that's in the order
18 that talks about that particular item
19 should be in the Value D proceeding. So
20 from that and the other one we'll be
21 addressing I'm not sure exactly where.

22 THE CHAIR: So let me -- I think the
23 Value of D is clear. On the second
24 one -- just on the first, let me just be
25 clear about that because if it's not, we

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2 can certainly look to clarify the order. I
3 think the determination was that the
4 realtime streaming was not necessary to
5 implement the changes that Con Ed was
6 proposing, nor was it particularly cost
7 effective as a way of updating a DER
8 provider or aggregators in terms of changes
9 in the forecast, but at the same time,
10 under REV, we're always looking for
11 opportunities for the companies to improve
12 services to third-parties. This would be a
13 voluntary activity on the part of Con Ed,
14 not a required activity, but it's a
15 learning opportunity I think, to think
16 about what kind of services that the
17 aggregator may value, may not be of
18 particular value to the utility or other
19 nonparticipating customers, but could be
20 something that provides a source of
21 additional revenues to the utility which
22 then of course would offset their operating
23 expenses which then would yield a benefit
24 in terms of being able to reduce their
25 regulated revenue requirements, all what we

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2 contemplate in Track 2 of REV.

3 So I think what the order just notes
4 is that this is an opportunity to develop
5 what we call as these types of fee-based
6 services that are forward leaning, that are
7 customer oriented, not necessary to provide
8 just and reasonable service or reliability
9 services but could be a value add to a new
10 customer base, AKA the aggregator base or
11 the DER provider. So it doesn't need a
12 proceeding. It's really an opportunity for
13 the company to develop a product, but
14 unlike any other product, if it's just one
15 customer who wants it then the it's not
16 much of a market and I would think any
17 vendor would want to do some due diligence
18 in terms of is there a market for this
19 service, is it broader than one entity, and
20 if so, what would they be willing to pay
21 because if you price it wrong nobody will
22 buy it.

23 So this is really to me, not a
24 proceeding, not anything other than what we
25 would expect utilities to do and say, hey,

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2 we don't see the value of this for doing
3 what we need to do but if there's a market
4 out there, we'll want to explore that
5 potential. So that's the way I -- that's
6 the way the order is written.

7 Does anyone else have any questions,
8 comments on that?

9 COMMR. BURMAN: So the way the order
10 is written, it says that, "We ask Con
11 Edison and Energy Spectrum to work with
12 Department of Public Service staff", and
13 then it goes on. So to me, it flagged it
14 as to how it was going to be, a working
15 group --

16 THE CHAIR: Okay. Nobody can hear
17 you. I don't think it was meant to be a
18 working group. Really it was to me, the
19 way I look at it, I'm -- the reason why I'm
20 recommending that we vote on this and I
21 think it's probably -- is that it's a
22 learning opportunity. We're all learning
23 here on how to think about businesses,
24 think about these opportunities
25 differently. Staff really doesn't need to

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2 be involved but I wanted staff to be
3 involved because it was an opportunity for
4 them to begin to understand how we can
5 develop these new products that we didn't
6 see a value to but the market sees a value
7 to, and we wanted everyone to see this as a
8 learning opportunity but not a full
9 proceeding.

10 COMMR. BURMAN: Okay.

11 THE CHAIR: So all those in favor of
12 item 377, please indicate by saying Aye.

13 (Chorus of Ayes.)

14 COMMR. BURMAN: And I concur based
15 on my comments at session.

16 THE CHAIR: Okay. The next one is
17 379 and that is the proceeding to seek
18 consequences against Astral Energy, LLC.
19 Ms. Scherer, you are up batting cleanup.

20 MS. SCHERER: So this is an item
21 which will reinstate Astral Energy's
22 ability to market to commercial customers
23 in New York. As you know, the Commission
24 suspended Astral's ability to market in
25 November 6th, 2015. Since then, they have

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2 revamped all of their marketing processes.
3 They've filed UBP compliant sales
4 agreements, they've hired additional
5 employees to strengthen supervision of
6 third-party marketers, and they've
7 addressed a number of compliance and
8 quality control issues that we've raised
9 with them.

10 Do you have specific questions,
11 Commissioner Burman.

12 COMMR. BURMAN: Yes, I do.

13 THE CHAIR: Proceed.

14 COMMR. BURMAN: So, page seven of
15 the order states that in its monitoring of
16 Astral, "Should staff find that the company
17 is not in compliance with the UBP, staff
18 shall take swift action and bring such
19 instances of noncompliance to the
20 Commission without delay." And then it
21 goes on, "As provided for in UBP Section
22 2.D.5, should Astral fail to comply with
23 the UBP, the PSL or the Commission's
24 regulations and orders, the Commission will
25 seriously consider revoking Astral's

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2 eligibility to operate as an ESCO in New
3 York State or imposing any other
4 consequences the Commission may deem
5 appropriate." I just want to flag to make
6 sure that it's absolutely clear that it
7 would be the Commission as the body and
8 also that there would be proper due process
9 in line with our UBP and the section
10 referenced.

11 THE CHAIR: I think that's clear in
12 the order.

13 MS. SCHERER: Yes.

14 COMMR. BURMAN: Okay.

15 THE CHAIR: All those in favor of
16 item 379, please indicate by saying Aye.

17 (Chorus of Ayes.)

18 COMMR. BURMAN: And I concur based
19 on my comments at session.

20 THE CHAIR: Okay. It's 10
21 to 12:00. My watch says it's time to stand
22 but I'm not going to. Do we want to take a
23 five-minute, ten-minute break and then
24 we'll come back? Give everyone a minute,
25 because we're going to go then into the

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2 regular agenda and then we're going to go
3 through it. Okay. Ten minutes.

4 (Whereupon, a short recess is
5 taken.)

6 (Whereupon, the following
7 proceedings were transcribed by Kari L. Reed:)

8 THE CHAIR: We're now going to
9 proceed for the regular agenda. Our feist --
10 first, feist, feist, first -- first item today is
11 101, which is a Joint Proposal for KEDNY and
12 KEDLI rates. It's presented by Administrative
13 Law Judges David Van Ort and James Costello.
14 Mr. Costello has recently joined the agency. And
15 we want to welcome you and also note that we want
16 you to stay, so.

17 (Laughter.)

18 THE CHAIR: Mr. Van -- I think, let's
19 see, Cindy McCarran and Doris Stout are also here
20 available for questions. But Mr. Van Ort, you're
21 going to be beginning, right, Judge Van Ort?

22 ALJ VAN ORT: Yes, correct.

23 THE CHAIR: Okay. Welcome.

24 ALJ VAN ORT: Good afternoon, Chair
25 Zibelman and Commissioners.

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You have before you a proposed draft order which was prepared by Judge Costello and myself, which incorporates the input of advisory staff. The order would adopt the terms of a Joint Proposal filed on September 7th, and established three year gas rate plans for KEDNY and KEDLI, covering the calendar years 2017 through 2019. The draft order also resolves five other cases pending before the Commission. However, there are three minor modifications that we are recommending to the Joint Proposal.

The first would involve a requirement for annual reporting regarding implementation of the REV demonstration projects.

The second would require a study of potential impacts of eliminating the declining block rate structure.

And the third would allow individual customers in the SC 2 category who were over-charged between 2008 and 2014 dates to demonstrate actual amounts that they lost greater than the credit that is provided for in the Order, and therefore recover that additional amount.

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The Joint Proposal was executed by the two companies' staff and seven other parties representing a wide array of interests; municipal, environmental, large metropolitan real estate, residential, commercial, consumers and ESCOs. And there are four parties that are opposing the Joint Proposal, mostly on discrete issues.

The proposed order either resolves the issues raised or explains the basis for the opponents' recommendations being rejected.

I'll provide you with some additional background on the two rate cases, and a few salient features of the Joint Proposal and Order. Judge Costello will provide you with additional key elements to the Joint Proposal and Order, and also discuss the Joint Proposal consistency with the Commission's settlement guidelines.

The need for the rate increases was precipitated to a large extent by the fact that KEDLI and KEDNY have not received base rate increases in many years, despite incurring substantial increases in capital and operating costs. The last base rate increase for KEDLI

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2 took effect in 2008, and that was a one time
3 increase. The last base rate increase for KEDNY
4 occurred more than a decade prior to that time.

5 As you know, these rate filings were
6 made in January. They were updated in April, and
7 again by the companies in June rebuttal
8 testimony.

9 If adopted as proposed by the
10 companies in rebuttal, delivery base rates for
11 KEDNY would increase by approximately \$331
12 million or 20 percent, and KEDLI's would increase
13 by approximately \$180 million, or 16 percent.
14 These percentages are stated as a net revenue
15 increases as a percentage of total revenues.

16 The increases also include rolling
17 into base rates recoveries of site investigation
18 remediation costs, or SIR costs, which were
19 previously recovered by an annual surcharge for
20 KEDLI and KEDNY. And since the surcharges would
21 be eliminated, the net revenue increase for KEDNY
22 would be about \$269 million, and about \$140
23 million for KEDLI.

24 Shifting these costs into base rates
25 would not increase the customer bills. And

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2 that's an important point. And I'll talk more
3 about the SIR costs in a moment.

4 Subsequent to the filing, the parties
5 initiated a review and conducted extensive
6 discovery. Testimony and exhibits in response to
7 the rate proposal were filed by staff and eleven
8 other parties. Staff, however, is the only party
9 that has filed alternative revenue requirement
10 recommendations.

11 Staff recommended base rate revenue
12 increases of approximately \$263 million for
13 KEDNY, and approximately \$116 million for KEDLI.
14 And, consistent with the companies'
15 demonstration, staff also included a shifting of
16 SIR cost recovery from surcharge to base rates.
17 That's -- the overall delivery revenue increase
18 for each company would be somewhat less than
19 that.

20 The parties thereafter initiated
21 settlement negotiations, and several changes were
22 precipitated as a result of the continuing
23 negotiations. The parties were confronted with
24 significant challenges in conducting their
25 negotiations, balancing the interests of the

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2 various parties against the need for rate
3 increases and the potential financial impact that
4 those increases could have on customers. The
5 signatory parties, however, ultimately reached an
6 agreement on the rate plan, which is embodied in
7 the Joint Proposal.

8 I should note that there was
9 substantial public comment in these cases. The
10 Commission secretary received a large number of
11 written and opinion like comments from both KEDNY
12 and KEDLI, and the vast majority of those
13 comments expressed opposition to the proposed
14 rate increases. Public comments were also
15 received at six public statement hearings, three
16 held in KEDNY service territory and three held in
17 KEDLI service territory.

18 That was followed up by the parties
19 submitting statements in support or opposition to
20 the Joint Proposal and reply statements. And
21 then in October we held an evidentiary hearing to
22 allow parties the opportunity to question
23 witnesses for the Joint Proposal proponents and
24 to test the reasonableness of the provisions
25 contained therein. None of the parties chose to

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2 cross examine witnesses sponsored in support of
3 the Joint Proposal. Nonetheless, the hearing
4 record in these cases is extensive. There are --
5 it's composed of 540 exhibits. The pre-filed
6 testimony, supporting work papers and exhibits
7 filed in these cases constitutes several thousand
8 pages.

9 The draft order before you, if
10 adopted, would still result in significant
11 delivery rate increases for KEDNY's and KEDLI's
12 customers. On an unlevelized basis, the first
13 year's base rate increase was approximately \$272
14 million for KEDNY, and approximately \$112 million
15 for KEDLI. These increases are needed to fund
16 additional capital improvements and various O&M
17 increases.

18 The base rate increases also include
19 forecast rate year, SIR costs, and recovery of a
20 portion of the deferral amount that will be as of
21 December 31st of this year. Its recovery is at
22 one-tenth. The Joint Proposal and the Order
23 reflect an allowed ROE of nine percent, an equity
24 ratio of 48 percent, and that is for both
25 companies. They also have an earning sharing

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2 mechanism which would capture earnings above 9.5
3 percent.

4 The Order mitigates the impact of
5 these increases on customers through a
6 levelization in each year over the three years.
7 The average annual increase for KEDNY would be
8 approximately 9.3 percent, and for KEDLI 5.1
9 percent, which is substantially lower than the
10 companies' proposals.

11 The Order has provisions which also
12 further reduce the impact of these increases on
13 low income customers, those most adversely
14 impacted by rate increases. We believe in
15 totality that these provisions mitigate, to the
16 extent practicable, the potential rate shock that
17 may result from the base rate increases.

18 Now, just turning back to the SIR
19 issue for a moment, because that's usually the
20 gorilla in the closet, as you know, these costs
21 have plagued many of our regulated utilities.
22 Cost recovery is an extremely complicated issue.
23 Cost timing and the extent of remediation are
24 largely beyond the control of the regulated
25 utility, and may involve other potentially

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2 responsible parties or PRPs.

3 The record in this case is extensive
4 in that regard. It illustrates substantial
5 efforts on the part of the companies in seeking
6 contribution for the cleanup costs, identifying
7 other PRPs, obtaining insurance recovery, and
8 litigating other claims. And I just point out
9 with respect to the one-tenth recovery of the
10 deferred SIR cost, that that is not as aggressive
11 as the Commission has provided for in other
12 cases. So that's -- it reduces the impact on
13 customers.

14 Also note that the SIR costs are
15 forecasted to decrease from after the first year,
16 with the exception of the cleanup of the Gowanus
17 Canal and the Newtown Creek, which are two
18 Superfund sites in the KEDNY service territory.
19 The costs for those projects are as yet unknown.

20 With that in mind, the parties have
21 fashioned a provision to allow for a surcharge
22 beginning in rate year two of SIR costs that
23 exceed the rate allowance by \$25 million.
24 However, there is also a cap on that amount,
25 limited to two percent of the prior year's

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2 aggregate revenues. And I should note that KEDLI
3 does not have a similar provision because it
4 doesn't have these issues at this point. In the
5 event that it incurs incremental costs for SIR
6 costs, it would be allowed to petition for
7 recovery.

8 At this point I'll turn the
9 presentation over to my colleague, Judge
10 Costello.

11 THE CHAIR: Welcome, Judge.

12 ALJ COSTELLO: Good afternoon, and
13 thank you.

14 I'm going to focus my comments on two
15 of the programs in which there are large capital
16 expenditure increases. And they're driven
17 basically by policy, Commission policy, the first
18 being the low income discount program.

19 In May of 2016 the Commission issued
20 its Order in the low income -- generic low income
21 discount proceeding. In which it set as a guide
22 that energy household expenditures be no more
23 than six percent of household income. It also
24 set forth a tiered system of discounts, which
25 would be tied to a recipient's level of benefits

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2 that they receive under the Home Energy
3 Assistance Program. The companies will be
4 phasing in such programs in the course of these
5 rate plans.

6 There is significant increases for
7 funding for both companies for them to do so.
8 With KEDNY, funding being increased from 9.8
9 million to 25 million in the first year, which is
10 155 percent increase. And with KEDLI, funding
11 being increased from 3.3 million to 5.4 million,
12 or a 64 percent increase in the first year. In
13 the first year, the companies anticipate
14 providing what would be equivalent to the tier
15 one discount level for certain eligible heat --
16 residential heating and non heating customers,
17 with a \$19 per month discount for KEDNY
18 customers, those are the heating customers, and a
19 \$41 a month discount for KEDLI heating customers.
20 In the second year the of the program and the
21 third year, the full program as required under
22 your Order would be implemented.

23 Also, KEDNY intends and will be doing
24 an HRA file matching program no later than the
25 spring of 2017 in order to identify further

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eligible customers. And KEDLI anticipates doing the same beginning in January of 2018, contingent upon the Commission's approval of their deferring the cost for implementing the program.

The next program in which there are large capital expenditure increases is for the leak prone pipe replacement program. There are significant increases in funding, which is attempting to bring the companies in line with the Commission's stated goal to have leak prone pipe replaced in the state within twenty years.

Capital spending for the proactive leak prone pipe mileage is being increased significantly. For KEDNY it's going up is 48 million in the first -- which is current to 93 million in the first year or 94 percent increase. It's then going up to 115 million in the second year, or 140 percent increase, and 135 million in the third rate year.

For KEDLI, the amounts will be going from 89 million to 128 million, or a 44 percent increase. Then to 158 million and ultimately the third year to 188 million.

The leak prone pipe total target

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mileage is also going up. So that KEDNY's current mileage, in 2016, they retired 47 miles of leak prone pipe. That's going up to 55 miles per year in the first rate year, 60 miles in the second rate year, and 65 in the third rate year.

KEDLI is making significant increases. They are going from 95 miles per year to 115 miles per year in the first rate year; 135 miles per year in the second rate year; and 155 miles in the third rate year.

The Joint Proposal also contains an incentive for the companies to achieve cost -- unit cost savings over the amounts of unit costs that's reflected in rates, base rates.

The companies will continue using their risk ranking algorithm to prioritize the replacement of leak prone pipe. And taking into consideration concerns by the New York City -- by New York City and the Environmental Defense Fund. Beginning in the second year they will also be taking into account, all else being equal, the location of leak prone pipe in flood areas, and they'll be taking into consideration methane -- methane leak flow data data in retiring leak

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prone pipe.

They will also be using innovative programs that, if proven successful, will ultimately result in large cost savings. One of those is the cast iron joint ceiling robot or CIC Bot, which allows with one excavation 80 joints to be sealed without the main being put out of service. So that's a benefit for the community in that there's no disruption because it's only one excavation and there's no disruption in the service.

They'll also be using cured in place pipe lining, which allows the refurbishing of one mile of pipe at one half the cost of replacing that pipe.

In addition to these programs, the JP resolves certain other proceedings. One, as Judge Van Ort discussed, is a one time credit for certain KEDNY customers, the SC 2 class. They will be getting a one time credit that will be going to heating customers. Which we recommend be modified so that those customers can come in with actual billing and establish a greater refund amount due, they have the ability to do

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2 so. It will also resolve three tax refund cases,
3 with credits of over \$22 million going to
4 customers.

5 Another benefit for the communities
6 is that under the JP there will be 380 new jobs
7 created.

8 So, with that, we believe that
9 there's an ample record providing you with a
10 rational basis to determine that the JP has
11 appropriately balanced the interests of the
12 shareholders, of the ratepayers, and of the
13 utilities in such a way that it allows the
14 utilities to provide safe and reliable service at
15 just and reasonable rates.

16 And basically that concludes our
17 presentation, and we're available for any
18 questions.

19 THE CHAIR: Thank you, Mr. Costello.

20 So before I have my observations,
21 just a very quick question. I think with respect
22 to the low income discount, I know that the
23 Public Utility Law Project has -- did not join
24 into the JP, but this is not an area of the JP
25 they objected to; is that correct?

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ALJ COSTELLO: That's correct.

THE CHAIR: Okay. You know, one thing that I would note about this particular rate case, and I talked to the advisory staff when it came in, is that this was a case where neither party had -- neither company had bid in for quite some time. That the rates that we're putting in today are actually lower than the rates that were in place in I believe the 2007, 2008, time frame. And what staff told me is, is that the company did a very actually good job of reducing their demand to really the -- their minimum of increases based on cost drivers that they were doing. So, unlike my favorite regulatory term, the normal Kabuki dance between regulators and regulated companies, where everyone sort of comes in high and someone comes in low and then they know where they're going to go, in this case the company in advance really took a look at it and I think tried to limit its request to areas that they knew from a policy perspective the Commission was already had recommended and where our policies were. So in that I frankly commend the company.

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2 Irrespective of that, there's
3 obviously always a concern on the part of this
4 agency when we are looking at rate increases.
5 Energy is essential. And we know -- and we also
6 know that we'd like to maintain its
7 affordability. And as regulators, our job is to
8 make sure that our rates are not set in a level
9 that is higher than necessary but is sufficient
10 for the company to be able to operate its system
11 in a safe and reliable way, as well as attract
12 investment as a reasonable expense. And with
13 that, though, I commend the fact that the parties
14 tried to address really the effect on consumers
15 by looking at a number of different ways to
16 mitigate the impact that this was -- of the
17 change.

18 Clearly, you know, the types of
19 drivers for this increase, the need to replace
20 leak prone pipe is an area that's very important
21 for the Commission. It's important from the
22 perspective of safety. We want to eliminate leak
23 prone pipe as quickly as possible, we have a
24 policy towards doing that. And I know both
25 companies have been aggressive in helping pursue

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that policy and have placed a lot of capital into effectively replace the pipe. And also, as noted in the JP, are looking at alternative technology ways to be able to address our concerns about safety in a way that's more cost effective and less disruptive. The CYC bot technology is one, I got a chance to see it and it's pretty incredible about what can be done. So I'm appreciative of the work being done there.

The other major cost driver, of course, is the issue of cleanup of Superfund sites. Again, these are often areas that the company might have inherited or is historic. And, frankly, a sound reminder of when we don't pay attention to the environment it can come back and bite us. And the need that really generations today are having to pay for the fact that people didn't pay attention in the past is really the sort of thing we're trying to avoid with the CES and other things that we're doing now.

So, with respect to that, I also know that the Commission previously put in place, again, I think it was maybe even under

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2 Commissioner Acampora's direction, a requirement
3 that we look at these, the Superfund sites and
4 that the staff aggressively pursue making sure
5 that the companies are taking all actions
6 necessary to reduce the impact on consumers. And
7 I think in this case staff reviewed it, they sent
8 interrogatories and felt that, as the judges
9 mentioned, that the company did take all the
10 actions they could, and as a result, were able to
11 substantially reduce the amount of what they --
12 what otherwise would have been charged for
13 consumers, so that our objective in setting the
14 right types of incentives and pressures.

15 The last issue with respect to the
16 changes, in addition to those mentioned, was also
17 property taxes have gone up, and that happens
18 when a company replaces old infrastructure with
19 new infrastructure. There are additional
20 property taxes that are associated with it.
21 These are costs that we're required to pass
22 through.

23 And then in terms of the low income
24 discounts, that's a way for us to avoid, frankly,
25 customers not being able to pay their bill, but

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2 it's certainly a policy of this Commission to
3 maintain energy affordability.

4 So I think, you know, I'm certainly
5 satisfied that the drivers of this rate increase
6 and the actions that have been taken to minimize
7 the effect were both taken by the company even
8 before they filed, and now through the rate plan
9 in terms of three years rate plan, as well as
10 other actions they're taking to mitigate impacts,
11 really results in a just and reasonable rate. I
12 would notice the return on equity that is baked
13 into this case is actually lower than the return
14 on equity that the company currently has placed
15 today, and is consistent with the returns that we
16 are offering to other utilities.

17 So I feel very strongly that with
18 these actions, plus the other issues that we are
19 addressing in this JP, such as looking at
20 additional conservation measures to help reduce
21 costs to consumers, again looking at technology
22 as a way of reducing cost to consumers, really,
23 one, is certainly necessary, it's our obligation
24 to provide rates of revenue requirements that are
25 compensatory for costs incurred. The rates, I

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2 believe, the resulting rates are just and
3 reasonable.

4 And I applaud I know the hard work of
5 the members who worked on the settlement to find
6 solutions. And I know that in any settlement
7 there are individual issues that an individual
8 party may find is not to their liking. But the
9 art of settlement, just like the art of
10 negotiations, in fact, our President Elect wrote
11 a book about that, requires some level of
12 compromise. And so we are going to -- we do need
13 to recognize that this is a package. There may
14 be individual issues that we would have thought
15 about differently, but I think that for me when I
16 looking at, both on balance but actually the
17 particular items, I think that the JP results in
18 a fair result, a necessary result, and I intend
19 to vote to approve it. So thank you.

20 I'll go -- who wants to go first?
21 Commissioner Sayre.

22 COMMR. SAYRE: It's certainly not a
23 unanimous settlement, but it does have enough of
24 a critical mass from very diverse parties that it
25 warrants serious consideration. It's really

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2 inevitable that we have got to give these
3 companies a significant base increase because of,
4 as the judges said, one of them hasn't been in
5 for eight years for a base rate increase, and the
6 other been for something substantially over ten
7 years since it had a base rate increase.

8 The provisions in the settlement that
9 move me to accept it are, as explained by the
10 judges, a very substantial increase in the low
11 income program, which helps ameliorate the impact
12 of the increase for the customers who can least
13 afford it. The significant acceleration in the
14 replacement of local prone pipe. And, in my
15 view, the savings of at least two million dollars
16 of rate case expenses, because at least in my
17 view, one rate case that would otherwise have
18 happened in the future isn't going to happen
19 because we have a three year plan. The three
20 year plan also allows us to gradually feather in
21 the necessary rate increases.

22 It's tough to approve a big rate
23 case. But we have to balance the public
24 interest, including everybody affected. We have
25 to recognize that utilities are legally entitled

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2 to an opportunity to earn a reasonable return on
3 the assets that they've placed prudently in
4 public service. They're entitled to recover
5 their expenses that they have prudently made in
6 the course of public service. I think this
7 settlement strikes a fair balance and makes --
8 comes up with a just and reasonable balance.

9 THE CHAIR: Commissioner Burman.

10 COMMR. BURMAN: Thank you.

11 I was nervous when you first started
12 talking, because, as a former colleague at the
13 court of appeals, as a former alum, I wanted to
14 make sure that you did a great job, and you did.
15 So congratulations.

16 The question -- I have a couple of
17 questions related to, and I'm not sure whether
18 it's you or Mr. Agresta to answer this.

19 THE CHAIR: Are you speaking to
20 Mr. Costello or Mr. Van Ort?

21 COMMR. BURMAN: Mr. Costello, former
22 alum at the court of appeals.

23 So what I'm -- what I'm curious about
24 is what is the legal standard for our approval of
25 the Joint Proposal? And I understand that, you

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2 know, parties have to make compromises for them
3 to come to agreement and settlement. But then
4 when it comes to us, I just want to be clear on
5 exactly what our role is as a regulator in
6 looking at that Joint Proposal.

7 THE CHAIR: I'll let Mr. Agresta
8 respond to that.

9 You have to work today, Paul, I'm
10 sorry.

11 (Laughter.)

12 MR. AGRESTA: Okay. So the basic
13 standard of approving rates is the same whether
14 it's a Joint -- can you hear me?

15 THE CHAIR: Yes.

16 MR. AGRESTA: The basic standard in
17 approving rates is the same whether it's a Joint
18 Proposal or not. But when there is a Joint
19 Proposal, one of the things you would consider is
20 whether there were competing arguments made by
21 the parties. That the settlement then results in
22 a range of reasonable outcomes if the parties had
23 instead litigated, and whether it's in the public
24 interest. It's as simple as that. But you're
25 primarily trying to decide whether the rates are

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2 just and reasonable.

3 THE CHAIR: So, just to be clear, our
4 judgment doesn't really change. We have an
5 obligation to ensure the resulting rates are just
6 and reasonable, the terms are just and
7 reasonable, whether there's a settlement or not.

8 COMMR. BURMAN: And has this
9 Commission ever made modifications to a Joint
10 Proposal after it's been presented at a session?

11 MR. AGRESTA: Yes.

12 COMMR. BURMAN: This Commission?

13 MR. AGRESTA: Well, by this
14 Commission, I don't know if you're talking about
15 these four people sitting up here.

16 COMMR. BURMAN: Yeah, not the
17 Commission, this Commission.

18 THE CHAIR: I believe we have. I've
19 had -- we've had certain --

20 MR. AGRESTA: In my view there's one
21 Commission, it's the Commission.

22 THE CHAIR: Yes.

23 COMMR. BURMAN: Okay. So for me,
24 that is important to make sure that we're all on
25 the same page about what we're looking at in

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2 terms of the approval of the Joint Proposal and
3 our objective from looking at it for are the
4 rates just and reasonable.

5 With the --

6 MR. AGRESTA: I think you may have
7 made a modification to the Niagara Mohawk rate
8 case at my request when I was an ALJ a few years
9 ago.

10 THE CHAIR: Yes. Great memory. But
11 I also think that we've also recently made
12 changes to joint proposals that have been in
13 front of us if a particular term was something
14 that we didn't want to see or we wanted to amend.

15 Commissioner Acampora.

16 COMMR. ACAMPORA: Also, with regards
17 to using a levelization, we have many times made
18 modifications in favor of going to levelization
19 when it was not put out there.

20 COMMR. BURMAN: Okay. So I just
21 wanted to make sure we were all on the same page
22 legally as we walk through this.

23 So when I look at this, I do have a
24 couple of questions, especially because there
25 does seem to be some folks who have differences

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2 of opinion in the Joint Proposal that have been
3 filed with us. So from -- when we're looking at
4 this and we're looking at the collaboratives,
5 there are about four or five collaboratives that
6 are coming out of this Joint Proposal; is that
7 correct?

8 MS. McCARRAN: We have -- if you
9 don't mind, I'll take that. We have an ESCO
10 collaborative, we have a power generation
11 collaborative, we have after an ITTC
12 collaborative, which stands for interruptible
13 temperature controls, and then we have a storm
14 hardening collaborative.

15 COMMR. BURMAN: Okay.

16 MS. McCARRAN: So four.

17 COMMR. BURMAN: So to the extent that
18 some of these collaboratives will be focused on
19 these particular parties, to the extent that it
20 also dovetails into some of our generic
21 proceedings, how does that work? So, for
22 example, the storm hardening collaborative, we've
23 been looking at that generically in storm
24 hardening, but now there's a separate
25 collaborative. And I know Con Edison had its

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2 collaborative, and then all other utilities were
3 looking at a collaborative, so.

4 MS. McCARRAN: I guess from my
5 perspective, you know, to the extent something is
6 potentially going to cost the utility money, you
7 have to look at it in terms of their individual
8 rate case. Whereas as a generic case would be
9 more focused on a statewide policy, right. So I
10 think that's the point here is that we're trying
11 to figure out what's it going to cost this
12 particular utility.

13 COMMR. BURMAN: Okay. So to the
14 extent that some of these collaboratives may
15 overlap with some of our statewide initiatives, I
16 think it's important that the folks that are
17 looking at the collaborative and working on it
18 have a full understanding of what is ongoing or
19 about to be ongoing, and so that we make sure
20 that there is no disconnect, and factor that in.
21 So that's the first.

22 The other -- the other issue is, I'm
23 trying to understand the REV demos here and the
24 terminology of REV demos. And, you know, there's
25 a -- I think that we've only approved one REV

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2 demo in a rate case before, which was the Central
3 Hudson REV demo. And so here this is the first.
4 No, actually it's the first for three REV demos,
5 but it's also the first for approving natural gas
6 REV demos. So there's a recognition going back
7 to our REV objectives, which were five and then
8 became six. But one of the REV objectives in the
9 original five, I think it was number three, was
10 fuel diversity. So to the extent that now
11 there's a recognition that natural gas is a
12 interconnection in REV demos, I think it's
13 important to point that out from the perspective
14 of fuel diversity and going back to the tenets
15 of -- the basic tenets of our REV objectives from
16 the get-go did provide for that connection.

17 But to the extent that these REV
18 demos and the process, will they be following the
19 same process that the REV demos follow now, sort
20 of outside the Commission with a -- with
21 implementation and a approval process and a work
22 plan?

23 MR. WORDEN: So, as you know, while
24 the REV is largely focused in the electric
25 industry but we have been trying to take some of

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2 the lessons learned as we move forward in the
3 electric industry and apply them to the gas
4 industry, this is an opportunity that we took
5 because the two rate cases were in front of us,
6 to try to have some projects to learn from that,
7 you know, REV stuff that's going on on the gas
8 side of the business. There were specific
9 projects in this case that the company put
10 forward, and so the funding for those was
11 embedded into the rates that we're setting today.

12 COMMR. BURMAN: Okay.

13 MR. WORDEN: So it's a little
14 different process than what we are using with the
15 electric REV demos.

16 COMMR. BURMAN: Okay. I'm just
17 looking for clarity just in making sure that
18 this, the terminology then of the REV demos,
19 don't fit the same as the ones that are ongoing
20 now through that process; is that correct?

21 MR. WORDEN: That's correct. It's a
22 slightly different process.

23 COMMR. BURMAN: Okay. All right,
24 thank you.

25 And then as to the geothermal pilot

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2 project, I am trying to figure out, because the
3 language in the Order talks about doing this as
4 an alternative to natural gas and working with a
5 water company and LIPA and PSE&G on Long Island.
6 So to the extent that I'm trying to understand,
7 is that already in place, are they going to be
8 doing outreach there? And then how does that
9 affect us in terms of our oversight if it
10 involves LIPA and PSE&G, but also on the pending
11 rate case for at least one water company.

12 MS. McCARRAN: Yeah. I think the
13 intention here -- I shouldn't say I think, I know
14 the intention here and the discussion around this
15 was that to the extent you could get somebody to
16 use geothermal energy to heat their home, you
17 could avoid investment in additional natural gas
18 infrastructure. So that could potentially be a
19 savings to all of the gas ratepayers if you
20 avoided -- and it's very similar to, you know,
21 the same issues on the electric side -- you can
22 avoid that investment that everybody saves a
23 little bit of money. So that's the intention
24 here with, you know, with calling it a demo. The
25 company is going to be looking at it and studying

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2 it. There's nothing that's been decided or, you
3 know, or even, you know -- I don't think even
4 anybody has really had any strong opinions
5 expressed yet about what that's going to look
6 like. It's, you know, the water company was
7 mentioned because there is a project that's being
8 done I think, as you know, with the school on
9 Long Island where.

10 COMMR. BURMAN: Yes.

11 MS. McCARRAN: Where it could
12 potentially be cost savings. So to the extent
13 it's a win win win, where I say a school district
14 can do a geothermal and they save on their fuel
15 costs, but it also eliminates the need to secure
16 additional pipeline capacity for the utility,
17 then it could be very beneficial for everybody.

18 COMMR. BURMAN: And is that a concern
19 in terms of looking at it from -- so some of the
20 dynamic was that looking at reducing the pipeline
21 capacity, the need for the infrastructure for
22 that? I'm just trying to understand --

23 THE CHAIR: Yeah.

24 COMMR. BURMAN: -- the basis of it.

25 THE CHAIR: I'll tell you why I'm

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2 enthused about it. So I think that geothermal
3 has a huge amount of promise for the state in
4 terms of an alternative non-fossil energy
5 resource, both in terms for heating and cooling.
6 And the example, the project that was done in
7 America Water is really unrelated to this, but
8 it's something I know that Commission Acampora
9 knows -- has spent a lot of time looking at, is
10 an opportunity to really take a look at, from a
11 consumer perspective, how can I really get my
12 needs met in a way that's really more cost
13 effective, and if I have a concern about wanting
14 to reduce carbon emissions, using a renewable
15 resource, in this case water, as a form of
16 heating and cooling. One of the challenges that
17 we have as we take a look at decarbonization is
18 really looking at the opportunity to look at
19 different business models and having existing
20 business models, in this case a gas utility,
21 maybe thinking about how to conserve customers in
22 a different way and how it can create a business
23 model around that maybe alone or in combination
24 with the neighboring electric utility or with the
25 water company. I don't think we have the

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details. I think that's to me the value of why we do these demonstrations. It's not so much the technology, because in this case the technology, like in many cases, is clearly proven. It's just that we don't have a business model that really works cost effectively, even though we know that there's a huge consumer benefit and an environmental benefit.

So I really actually applaud the utility because I know that, you know, this is like a non-wires alternative for electricity, this is a non-pipe alternative for heating, but also in this case potentially cooling. And, you know, the experience that we have, and I've had a chance to visit school where it was done, the teaches are delighted because they're able to keep the windows closed and the temperature moderate in the late spring and the early summer, as well as keep the moderate temperature all winter. So, you know, for an old school and for an opportunity to reduce their operating expense, achieve their carbon goals, and keep kids focused because they're not looking out the window or sweating, I think that's -- those are all good

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2 things. So I'm glad that we're going to explore
3 how we can develop a business model around this.
4 And I certainly appreciate that the utility is
5 willing to say hey, we'll see if we can make this
6 work. I think that's pretty much what it's
7 about.

8 COMMR. BURMAN: So, and again, I'm
9 focused on fuel diversity and looking at things
10 that are technology neutral as we move towards
11 valuing carbon, not just no carbon but low
12 carbon, and ensuring that all our assets are
13 carefully evaluated and obviously working on the
14 overall mix of our fuel and the implications for
15 that on the reliability and the resiliency of our
16 grid and maintaining that. And to the extent
17 that we look at these things and make sure that
18 we are cognizant of that, but also that to the
19 extent that there are these, and this is a pilot,
20 characterized here as pilot, not a REV demo, to
21 the extent that this pilot program is really just
22 and exploring that, but that any potential
23 taxpayer or ratepayer costs may need to be looked
24 at, not only, you know, from a benefit-cost
25 analysis but from to the extent that we are

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looking at our entire energy system and what that means and what might be needed. So I'm focused on that aspect of it. I won't speak about the Valley Stream one because I know that that's part of the ongoing proceedings related to that water company, so I am cognizant of that.

When I look at this, I also had questions on the SIR and the recovery mechanisms on going after others to participate in reducing or being a part of the costs as well as the litigation that might be involved in that. To the extent that this was looked at carefully, and ALJ Van Ort and ALJ Costello articulated what is being done on that, I'm very comfortable that we have really been laser focused on that aspect and trying to make sure that we were carefully handling those issues and the recovery that's in there.

What is our role in working through some of those challenges with third party recovery? Is that ours or is that DEC? I'm just I'm just trying to --

THE CHAIR: You can't hear?

You need to speak closer to the mic.

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2 COMMR. BURMAN: We need to get
3 another mic for me. It always seems to be an
4 issue, I don't know.

5 (Inaudible.)

6 COMMR. BURMAN: No, no, I'm glad you
7 spoke up. Everyone who can't hear me, speak up,
8 you know.

9 (Inaudible.)

10 COMMR. BURMAN: Right, right, right.

11 THE CHAIR: Commissioner -- rather,
12 do you want to speak to that, or Cindy or Doris
13 or Judge Van Ort? Which one?

14 COMMR. BURMAN: I think they're
15 looking at --

16 THE CHAIR: The question is staff's
17 role in looking at the SIR --

18 COMMR. BURMAN: Yeah.

19 THE CHAIR: -- compliance. And
20 Cindy, do you want to talk about it?

21 MS. McCARRAN: Sure. And, you know,
22 staff has a pretty extensive process. Certainly
23 the gas and water rate section audits, the way
24 that the utilities look to find other parties to
25 the contribute to the cost recovery. And also

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2 ensuring that the work that's done is work that,
3 you know, where they're finding ways to contain
4 costs and not just writing blank checks to people
5 who are doing the cleanup work. Certainly I
6 think Doris's folks are also auditing those
7 expenditures. I don't know if you want to add
8 anything.

9 MR. AGRESTA: We should also add the
10 scope of work is something governed by the DEC,
11 not by us.

12 THE CHAIR: Right.

13 MR. AGRESTA: So we're looking to see
14 that the company is being as efficient as
15 possible in complying with DEC.

16 COMMR. ACAMPORA: But excuse me,
17 Paul, aren't also the feds involved in that too?

18 ALJ VAN ORT: With respect to the
19 Gowanus Canal they are. That one is done on more
20 of an expedited basis because of planned
21 redevelopment for that site. So they are, the
22 EPA is involved in that site.

23 COMMR. ACAMPORA: Would you say
24 that's one of the reasons this thing is taking so
25 long?

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ALJ VAN ORT: For Gowanis specifically?

COMMR. ACAMPORA: Mm-hmm.

ALJ VAN ORT: Gowanis, I think part of it was the identification of those who were potentially responsible for Gowanis Canal, both Gowanis and Newtown Creek. But it is a factor, yes.

COMMR. ACAMPORA: Thank you.

MS. STOUT: Okay, so accounting and audits and finance staff is involved to the extent that, as part of the generic SIR Order that the Commission issued a few years ago, they required annual reporting requirements of the utilities, and all of them in the state have some degree of SIR responsibility. And so staff in my office is involved in reviewing those annual reports that are filed and compiling a report on all of them.

THE CHAIR: So, and just to be clear, once responsibility for a cleanup site is assigned to the utility by either the DEC or the EPA, that becomes a third party expense, which by law we're required to essentially pass through.

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Our issue is always to make sure that they're not spending more than necessarily, so that it's prudent. But we couldn't legally say it was not used and useful in the provision of service; therefore, it's a recoverable expense.

COMMR. BURMAN: Okay, thank you. I really just wanted to make sure that I clarified the different aspects and some of the follow up that would happen and the ongoing process that we would be involved in.

I think that, from my perspective, the integrity and reliability of the energy system is paramount, and that includes in this case, because we're looking at this from the gas perspective, that the integrity and the reliability of the gas system is paramount. And in New York we have been laser focused on ensuring we have a safe, reliable and clean natural gas system. And when we look at that, we have in here, and I think it's a great credit to see throughout this Joint Proposal and the Order, that there are several gas initiatives that are looking at actively being engaged in all three prongs of that, both safe, reliable and clean

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2 natural gas.

3 Obviously we always have to look at
4 the reasonable balance, and some of that is the
5 balance on the industry who wants to participate
6 and have opportunity, and the balance for the
7 ratepayer who wants to have safe, reliable and
8 clean energy, but at reasonable cost. And the
9 balance for us as regulators in looking in terms
10 of the just and reasonableness of these rates on
11 all of these things, and ensuring that we have
12 done a deep dive into the fairness of this and
13 the reasonableness and understanding how it all
14 works, and then making sure that we follow
15 through after this in the specific initiatives
16 and projects and aspects of this Order that we
17 have allowed to go forward. And, you know, as
18 from a -- the perspective of, you know,
19 infrastructure and looking at ways that we can be
20 innovative to finance the necessary gas safety
21 and gas infrastructure opportunities is
22 critically important to the ratepayers and to us
23 in the state.

24 So I am comfortable. I do understand
25 that there are some things that are difficult, as

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2 well as things that we may need to, even if we
3 agree to adopt the Joint Proposal, there were
4 some concerns that were raised that are valid,
5 and we need to look at for ways to minimize that
6 or to incorporate it. And to the extent that
7 there are five different collaboratives that
8 address different ongoing projects, ongoing
9 issues, it's important for us to make sure that
10 they find their proper home, not just with
11 working with this utility but also as it relates
12 to ongoing initiatives on a statewide basis in
13 other proceedings, and making sure that we fully
14 address those and make sure that we have proper
15 staffing and resources dedicated to that. So
16 thank you.

17 THE CHAIR: Commissioner Acampora.

18 COMMR. ACAMPORA: Thank you.

19 I'm going to ask a question of Doris,
20 it's the one I always ask in a rate case, about
21 how this Joint Proposal, how the Street will look
22 at this if it's approved.

23 MS. STOUT: So, in anticipation of
24 your usual question, I had my staff do a search
25 to see what has specifically been stated in

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2 various analysts' reports about the JP. And I
3 wasn't able to come up with much, but as of last
4 week Fitch did issue their analysis of the
5 companies, and they describe the Joint Proposal
6 as supportive of credit quality, and they
7 reaffirmed the company's bond ratings. Though
8 they were concerned about the pressure on
9 leverage from the extent of capital investment
10 that is included in the Joint Proposal, and
11 they're going to monitor this. So, in light of
12 that being one of the few references, I spent
13 some time reflecting on the elements that are in
14 the Joint Proposal, and there are a large number
15 of good elements in the Joint Proposal from an
16 investor's standpoint, both bond investors and
17 equity investors.

18 Wall Street generally views our
19 multi-year rate plans favorably, because they
20 eliminate a lot of the regulatory uncertainty for
21 the term of the rate plan, in this case three
22 years. And during that three years we've fixed
23 the ROE at nine percent with a 48 percent equity
24 ratio. And testimony on the record indicates
25 that that should allow KEDNY and KEDLI to

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2 maintain their investment grade bond ratings.

3 Some of the other elements to
4 consider is that because the JP is based on
5 forecasted test years, it reflects all of this
6 forecast of increased capital investment and
7 increasing operating budgets. So that provides
8 the relief to the companies over that three year
9 time period, ensuring that they have adequate
10 cash flows.

11 In addition, as the judges mentioned,
12 there is the surcharge mechanism in place for
13 KEDNY to capture increases in the SIR costs
14 related to Gowanus and Newtown. And that type of
15 surcharge, if it's triggered, would provide
16 additional cash flow relief to the companies in a
17 timely fashion.

18 Lastly, our joint proposals have a
19 lot of reconciliation mechanisms that reduce the
20 risks to these companies. So the ROE and equity
21 ratio are appropriate in light of those elements.
22 And I think that the JP allows the piecevan
23 companies to stay at the forefront of all of
24 these innovations, the capital investment, they
25 have incentive mechanisms to reduce leak back

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2 logs and increase the number of miles of leak
3 prone pipe remediated, while reducing the cost
4 per mile. And other infrastructure enhancements
5 for -- and other incentive mechanisms for
6 reducing terminations and uncollectibles. So
7 there really are a lot of good elements in this
8 Joint Proposal that somebody investing in the
9 companies would take comfort in.

10 COMMR. ACAMPORA: Thank you.

11 And, Cindy, just for you, because
12 leak prone pipe has been really on the radar
13 lately, and, as the judge explained, that this is
14 an aggressive program to replace some of the old
15 piping, how does this measure up, this proposal,
16 with regard to what other companies are doing?

17 MS. McCARRAN: Yeah. These numbers,
18 especially for Key Span -- well, National Grid
19 Long Island, KEDLI, are higher than other
20 utilities. The KEDNY numbers are about the same
21 ball park as a few other utilities. But National
22 Grid Long Island has the biggest inventory of all
23 the state's gas utilities of leak prone pipe. So
24 they have a lot of work to do.

25 COMMR. ACAMPORA: Thank you.

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2 I think for the record, and Paul, you
3 can correct me if I'm wrong, but the reason why
4 these companies have not been in was because of
5 the agreement in the Key Span grid merger.

6 MR. AGRESTA: For which I believe I
7 may have been a staff counsel.

8 COMMR. ACAMPORA: You may have been.
9 And that's when we really did a -- quite a number
10 on the JP.

11 MR. AGRESTA: But we set up a plan
12 that was designed to be durable over many years.

13 COMMR. ACAMPORA: Right.

14 MR. AGRESTA: With revenue sharing
15 and stuff like that to keep them out.

16 COMMR. ACAMPORA: Right. So I just
17 wanted that for the record. Because normally,
18 any Commissioner that has served here would
19 rather see a multi-year rate case, rather not have
20 a company stay out that long. I think it, you
21 know, it is -- it works better, it's more
22 efficient. And it works well for the company and
23 also the ratepayers that are out there.

24 You know, when you come into the 20th
25 floor, and I think almost every floor may have

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2 one, there's a mission statement. And the
3 mission statement says that our job is to deliver
4 safe and reliable services at just and reasonable
5 cost. And no one takes that for granted. It's
6 important to everyone. And it's always a
7 balancing act that we have here. And so yes,
8 there's going to be people who are going to be
9 pleased with it and there's going to be people
10 who are not pleased with it. But that's part of
11 the balancing act that we need to do here, and
12 because we are required by law to do certain
13 things.

14 I'm happy and I think that the low
15 income proposal is a decent one, and I support
16 that. And it's also something that we don't take
17 for granted. We don't throw around other
18 people's money trying to help everyone else. The
19 staff is always on top of this in making sure,
20 our consumer services office, and dealing with
21 low income folks, making sure that everything is
22 done in a proper fashion.

23 And when we go to the SIR, this is
24 something, if you remember Commissioner Larocca
25 when he was here, he and I spent weeks trying to

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2 figure out if there was another way we could get
3 around this. Because it's brutal and it hurts.
4 And it was something that was done in the past.
5 And, as the Chair quite eloquently stated, we now
6 have you to pay for the mistakes of those in the
7 past. Fortunately in the Gowanis that we're
8 trying to identify these other parties who are
9 still around. But I can remember as a kid going
10 on the Belt Parkway and crossing the Gowanis
11 Canal, going to New Jersey to visit my father's
12 relatives, it looked like a mess then. And that
13 was a long time ago. And so hopefully this will
14 finally get some resolve to the people who live
15 around that area. It's really -- it's an
16 eyesore, it's an environmental hazard. And I
17 would hope that our people in the Department of
18 Environmental Conservation will lean really hard
19 on the feds and all the parties to get this thing
20 going so that we can see some result to it down
21 the road.

22 In the JP you state some numbers with
23 regard to seeing an end to SIR down the road,
24 which I think, you know, is very hopeful, because
25 no one wants to pay for the mistakes of the past.

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2 But I think the people of the State of New York
3 are smart enough and want to leave a better
4 environment for the generations to follow.

5 So, as was said before, there's a lot
6 of good things here. There's things that are not
7 as good as you would want them to be. But in
8 balance it does meet our responsibility for
9 delivering -- making sure the companies deliver
10 safe and reliable service at just and reasonable
11 costs. And for those reasons stated I will be
12 voting in the affirmative.

13 THE CHAIR: Thank you.

14 I'm going to move to a vote. All
15 those in favor for item 101, please indicate by
16 saying aye.

17 (Chorus of ayes.)

18 THE CHAIR: Opposed?

19 (No response.)

20 THE CHAIR: All those -- hearing no
21 opposition, there being none, the recommendations
22 are adopted. Thank you, Judges Van Ort,
23 Costello, Cindy and Doris. Not judges, but still
24 very smart people.

25 COMMR. ACAMPORA: And other staff.

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2 THE CHAIR: And everyone else.

3 I do want to actually before -- on
4 this item, I know these take a lot of work, not
5 just the people that are here speaking, a lot of
6 staff, teams have worked on this item, and also
7 the parties themselves. I do want to thank
8 everyone for working through complex, difficult
9 matter, and really helping us get to a good
10 solution. So thank you.

11 We are going to move now to item 102,
12 which is also a Joint Proposal, regarding a
13 National Gas incident at 310 Page Street in
14 Schenectady. And Administrative Judge Ben Wiles
15 will be presenting this. Good afternoon, Judge
16 Wiles.

17 ALJ WILES: Good afternoon.

18 THE CHAIR: You can proceed any time
19 you're ready.

20 ALJ WILES: Thank you. Am I
21 getting close enough to the mic here?

22 THE CHAIR: I hear you fine.

23 ALJ WILES: Good.

24 This case, or this is a case, or in
25 this case a an action for the recovery of a

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penalty pursuant to Public Service Law 25A. 25A, PSL 25A was enacted in 2013.

THE CHAIR: You might need to move a little closer.

ALJ WILES: Okay.

In 2013. And this is the first enforcement action in which the Commission has taken under the new statute. Public Service Law 25A gives the Commission the authority to impose an administrative penalty when a combination gas and electric company fails to comply with the requirement of the PSL, or a regulation under the PSL, or an Order of the Commission adopted pursuant to the PSL.

Prior to the adoption of PSL 25A in 2013, the Commission sought to collect penalties pursuant to PSL 25. Under PSL 25, the remedy is obtained through judicial action, in comparison to the PSL 25A, where the Commission can impose a penalty administratively.

With that background, we can turn to the actual circumstances of the case.

310 Page Street is a residential address in Schenectady. On August 10th, 2014,

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there was an explosion at this address which, while not causing any personal injury, completely destroyed the house. The Department conducted an investigation of the explosion to determine what the cause of the explosion was and whether the actions of the gas supplier, Niagara Mohawk, caused or contributed to the accident.

Niagara Mohawk's records indicated that and indicate that the company was first called to 310 Page Street in March of 2013 for a gas meter turn off, and was called again on five more occasions in 2013. Notwithstanding these multiple visits, the company did not turn off the gas at this address.

The staff report identified two potential violations by Niagara Mohawk of our code of gas safety.

First, the investigation determined that Niagara Mohawk failed to, quote, unquote, lock the meter, which is a phrase used to describe the actions taken to discontinue gas over the service line and into the premises.

Two, they failed to lock the meter for the accounts at this address when it received

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a request to discontinue gas service at this address.

There are three ways to lock the meter that are acceptable under the code of gas safety. But Niagara Mohawk failed to do any of these.

Second, staff determined that the company includes the methods for locking the meter in its written procedures. And our code of gas safety requires the company to follow these written procedures. Clearly the company did not do so, so this is the second potential violation.

Under Public Service Law 25A, Niagara Mohawk could be liable for an administrative penalty of \$250,000 for each of these violations. A total penalty of \$500,000.

On May 15th, 2015, and based on the staff's investigation, the Commission began this case, and directed staff to conduct a hearing and any other procedures needed to resolve the matter.

In May 2015 -- in the May 2015 Order, the Commission suggested that the administrative penalty for these two violations would total

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2 \$500,000, unless the facts adduced at the hearing
3 supported a higher penalty.

4 Following the Order, Niagara Mohawk
5 and staff conducted settlement discussions.
6 These settlement discussions continued until June
7 2016, when staff and Niagara Mohawk filed a Joint
8 Proposal for settlement of the case. Under the
9 terms of the Joint Proposal, it's proposed that:

10 Niagara Mohawk would agree to use --
11 to use better call scripts and call centers when
12 service is discontinued;

13 Would monitor accounts more closely
14 for usage on closed accounts; and

15 Would interact better with
16 municipalities to identify vacant properties.

17 In addition, Niagara Mohawk would
18 commit to make a greater effort to move meters
19 from inside to outside in the customer's
20 premises.

21 And, finally, Niagara Mohawk also
22 agreed to support a pilot program to evaluate the
23 use of remote meter valves.

24 Under the Joint Proposal, the
25 company's support for this pilot program is set

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at \$500,000. When the company incurs an expense for the pilot, the company will pay for it, up to a total of \$500,000, and not seek the recovery of this amount from ratepayers.

When Niagara Mohawk makes a payment as part of the \$500,000, it creates potentially a tax deduction in that same amount. This tax deduction has some value to Niagara Mohawk. So the financial impact of this provision of the Joint Proposal is actually a net impact. And this net financial impact under the Joint Proposal is significantly less than \$500,000.

The draft order, characterized and entitled a draft order on consideration of the Joint Proposal. Through this Order, the Commission declines to accept or approve the terms of the Joint Proposal. The Commission's decision does not reject any of the commitments to improve the practices or procedures that Niagara Mohawk has offered to accept in the Joint Proposal. These are the improved scripts, better monitoring of accounts, communications with municipalities, and the movement of meters from inside to outside the premises.

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The Commission's objection, as set forth in the Order or as recommended in the draft Order, is that the tax effects of the Joint Proposal reduce the net financial impact of the settlement on Niagara Mohawk and its shareholders below \$500,000. This reduced after tax impact is not consistent with a robust enforcement of our code of gas safety, and of the deterrent effect of potential -- of the penalties described in PSL 25A. The Order -- or the draft order states that the impact of the settlement on the company's shareholders must be as great as the five hundred dollar -- as the impact of the \$500,000 penalty would have been.

Accordingly and solely because of the shift in the financial impact caused by the federal and state income tax deductions, the recommendation on this item is that the Joint Proposal cannot be approved.

It is possible, however, for a limitation to be placed on the implementation of the Order, which would make the settlement approvable. If Niagara -- and this is described in the Order, in the draft Order -- if Niagara

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2 Mohawk makes a commitment to forego the tax
3 deduction created by the payments to support the
4 remote meter valve pilot, the full financial
5 impact of the \$500,000 payment by Niagara Mohawk
6 would be felt. Under these circumstances, the
7 Joint Proposal would be acceptable. Therefore,
8 the draft order provides that if this acceptable
9 commitment by Niagara Mohawk is made, the Joint
10 Proposal would be approved.

11 That's the case that we are dealing
12 with, and if there are any questions, I'd be
13 happy to respond.

14 THE CHAIR: Just a couple of
15 procedural questions.

16 So this is an example, frankly, where
17 the Commission is not accepting a JP as designed
18 and is making a modification. And I think from
19 my perspective it's an important modification.
20 You know we got lucky in a sense that this was
21 only property damage, although it was obviously a
22 very significant and substantial property damage,
23 which is why I was comfortable directing staff
24 last May to look at the maximum penalty that we
25 could impose under 25A, and maybe do more.

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2 Because, and I -- you know, there are other
3 instances of this. And I do know that the
4 company, I would say in this case National Grid
5 because it's not just National Grid -- it's not
6 just NIMO but the other subsidiaries have had
7 these kind of problems in the past, and has
8 changed its procedures based on -- and has
9 improved in terms of making certain that we don't
10 have homes that are empty where there's live gas
11 flowing. So I think that's very important. I
12 also think that the other terms, including using
13 a technology that would help with these hard turn
14 offs is a great thing.

15 But I do think that being certain
16 that the full \$500,000 effect is on the
17 shareholders was important to me. And that
18 making sure that the tax effect was not a way to
19 minimize that, that was important. So that's
20 why, at least for me, I'm comfortable in
21 accepting the recommended decision and was not
22 comfortable in terms of the JP itself.

23 In terms of process, I just want to
24 be clear on this. So the company has an
25 opportunity now to make a determination whether

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2 to accept or reject the decision, because
3 obviously it's not signed onto this decision,
4 it's only signed onto the Joint Proposal. What
5 happens if they accept it? Do they have to come
6 back to the Commission.

7 ALJ WILES: No.

8 THE CHAIR: And what happens if
9 they reject it?

10 ALJ WILES: If they reject it,
11 then we would have to implement the original
12 order. And there would be preparations by both
13 parties for a hearing, there would have to be an
14 evidentiary hearing, and then the result of that
15 hearing would come back to the Commission.

16 THE CHAIR: Okay. Thank you.

17 Any further questions or comments on
18 this matter? Yes.

19 COMMR. SAYRE: As everybody has been
20 saying all day, we take gas safety extremely
21 seriously at the Commission. This item proposes
22 the maximum statutory amount, and I concur with
23 that under these circumstances. In fact, we are
24 getting a \$500,000 benefit for ratepayers that we
25 otherwise wouldn't get to fund a pilot program

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2 that will hopefully prevent this kind of
3 explosion in the future. I think that's more in
4 the public interest than putting a penalty amount
5 into the state's general fund without any
6 ratepayer benefit, which is really what the
7 alternative would be. So I support this item.

8 THE CHAIR: Thank you.

9 Commissioner Acampora.

10 COMMR. ACAMPORA: No.

11 THE CHAIR: Commissioner Burman.

12 COMMR. BURMAN: Thank you.

13 First, I would like to thank the
14 first responders who put their safety above all
15 in responding to these, and working together to
16 make sure that they are doing all they can or are
17 properly trained to respond to these.

18 The other is, you know, as we've
19 said, integrity and reliability of our natural
20 gas system is paramount. And at the core of that
21 is safety. And, as a state regulator, I am
22 dedicated to working with all parties to continue
23 to seek to improve and enhance pipeline safety.
24 And we have to recognize, with limited resources,
25 that we must do a great deal. And thus we must

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be laser focused on how best to maximize our resources to achieve our safety goals.

Safety is everyone's business. And enforcement when there is a violation is important. This does send a message that we will vigorously enforce when needed. And we will work through challenges and look to make sure that we are focused on improving and looking at and striving for a zero incident target. I'm very much committed to continuing to work collaboratively with everyone involved to have proper regulations, policies and initiatives in place that provide meaningful advancements for pipeline safety.

I will just point out one thing in here, which is focused on the inside-outside meters. That is also an area that is focused on looking at what it means when we say where feasible, and what are the challenges in inside-outside meters. It's not just this company that is experiencing it, but it is about us as regulators and with the industry as well as with the affected folks to work together but to understand that the primary focus is on safety,

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2 and what we need to do to ensure and not
3 compromise that safety.

4 Thank you.

5 THE CHAIR: Thank you.

6 We're ready to move for a vote then.
7 So all those in favor of item 102, please
8 indicate by saying aye.

9 (Chorus of ayes.)

10 THE CHAIR: Opposed?

11 (No response.)

12 THE CHAIR: Hearing no opposition,
13 the recommendation's adopted.

14 We're now going to move on to item
15 201, which is related to energy service companies
16 selling to low income customers. This was
17 Mr. Dwyer, assistant counsel, will be presenting
18 this, and LuAnn Scherer, director of the Office
19 of Consumer Services, is available for questions.

20 And Tom, as soon as you're ready.

21 This is another form of the Kabuki
22 dance.

23 MR. DWYER: Good morning, Chair -- or
24 good afternoon, I should say, Chair Zibelman and
25 Commissioners.

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Item 201 relates in part to the orders issued by the Commission in July and September of this year. The September Order adopted a moratorium on ESCO service to low income customers on an emergency basis, and, at the same time, issued a notice of proposed rule making to consider, among other things, converting the moratorium to a prohibition. And that's what the proposed item before you today does.

The item addresses two fundamental concerns. First, that low income ESCO customers are generally paying more for gas and electricity than they would have if they had received full utility service. And, two, that ratepayer and taxpayer funded assistance programs, which provide a subsidy on low income customer bills, are frustrated when the customer receives more expensive ESCO service.

The Commission issued a new SAPA in these proceedings in September, providing parties with an opportunity to comment and provide a basis for the Commission to revisit the actions taken in September. In addition, and separate

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from the efforts to address over-charges to low income customers, there are efforts underway to ensure that the retail markets are resulting in just and reasonable rates for the larger population of mass market customers.

The secretary issued a notice recently that established evidentiary hearings that comprehensively addressed the concerns with the retail market for that larger group of customers. And staff proposes that the issue of ESCO service to low income customers may be revisited once any necessary reforms have been made to the broader retail market pursuant to that process. For the time being, however, the proposed item before you today would stop the dilution of the benefits provided to low income customers.

Staff has continued to work on these issues and has concluded that, despite the effort to implement the Commission's 2014 directives that ESCOs provide real cost savings to low income customers, those customers are still paying more for gas and electricity than they would otherwise pay as full utility service

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2 customers.

3 No comments received pursuant to the
4 most recent SAPA, nor any of the evidence
5 collected as part of staff's investigation have
6 provided any justification that the moratorium
7 should be discontinued. So, accordingly, staff
8 proposes that the moratorium on ESCO service to
9 low income customers be converted to a
10 prohibition. That being said, the proposed item
11 would provide a mechanism whereby an ESCO could
12 request a waiver of the prohibition if it could
13 demonstrate that it can provide a guaranteed
14 savings to low income customers.

15 Again, the overall goal of this Order
16 is to ensure that customers who receive a subsidy
17 on their energy bills also receive most cost
18 effective service so that those assistance
19 program funds can effectively reduce their energy
20 burden and ensure that the customer maintain
21 essential service.

22 That concludes my presentation on
23 this item. And LuAnn and I are here to answer
24 any questions you may have.

25 THE CHAIR: Thank you, Mr. Dwyer.

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So I personally feel like this is a very, very sensible approach. The Commission has made a determination earlier this year that it made no sense for low income customers who are already receiving a subsidy in the form of a federal program or a subsidy in terms of a rate -- a state program through a rate discount to have -- experience higher bills than necessary as a result of taking service from an ESCO and that the -- so, as a result, we placed the moratorium because of the evidence we had, that these customers were being charged more than they would have had had they stayed with the utility.

Since that time, staff has done additional research, which really has confirmed this information. I think LuAnn can talk about the extensive examination they did over many, many months to make sure that they were comparing apples to apples. And that I think close -- we found there's close to a billion dollars, nine hundred million dollars in over-charges statewide through ESCO payments.

That being said, we are very, very committed to figuring out how to create a market

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2 for residential and small commercial businesses
3 that ESCOs can provide services that are truly of
4 value. The Commission, when it opened up these
5 markets in the 1990s, made a presumption that
6 adding retailers -- competitive retailers in the
7 market would provide energy efficiency services
8 and potentially other pricing programs that would
9 provide benefits to all consumers. Our study on
10 this is that it's not been realized. But that
11 doesn't mean that we don't think there's
12 potential, but at the same time we're open to the
13 fact that if we can't get there, we don't want to
14 continue to expose people to this kind of
15 dissatisfaction and, frankly, economic harm.

16 And so I think that the way we are
17 processing this is to have an evidentiary
18 proceeding, as well as other actions that the
19 secretary set out in her notice, so that we can
20 really look at this market, do the investigation,
21 and maybe come up, and I hope we do, come up with
22 real solutions. I've had a number of ESCOs come
23 to me and talk about, one, their frustration
24 about the fact that they do not like it when some
25 of their other people in the market really

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2 destroy their brand by putting customers in
3 harm's way. And so they're looking, frankly, for
4 a better set of rules. I've also had ESCOs talk
5 about the value they'd like to provide in terms
6 of energy efficiency and other services, they can
7 help customers manage their bills and have much
8 better choice in terms of energy, both
9 electricity and gas. And so I remain the eternal
10 optimist here that we will get it right and we'll
11 be able to get there, but it's going to require
12 concentrated effort and commitment on all parties
13 to really come up with solutions. And that's
14 what this process is about.

15 In the interim, I don't see any
16 reason or any justification for putting low
17 income customers, who are already challenged with
18 paying bills, in harm's way by forcing them or
19 unwittingly to pay more for energy, electric and
20 gas service, than necessary. And certainly it's
21 also to my mind against the public interest in
22 having taxpayers whose money is going to support
23 programs like HEAP, High Energy Assistance
24 Programs, which I think are very valuable, or low
25 income discounts, to find that their subsidies,

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2 the value of that subsidy is being diminished
3 because a retailer is making money off of those
4 customers by charging them more money than
5 necessary, more than money than necessary for the
6 same service. So, for that reason, I think the
7 conversion of the moratorium to a permanent
8 prohibition is appropriate.

9 As in all cases, once we figure out I
10 think the rules for the market at large, we will
11 come back to see how we can apply this to low
12 income. So for those who say well, why would you
13 deprive private low income people of these
14 opportunities, we won't, I don't think we will.
15 But first we need to find what are the
16 opportunities we want to achieve and how do we
17 achieve them in a good way.

18 In the interim I think that, you
19 know, the Order does provide a limited
20 opportunity for those ESCOs who have come to us
21 and said they're willing to guarantee savings to
22 say if you're willing to guarantee savings and
23 you're capable of showing how you will do that,
24 we will allow you to come in and show us how that
25 can happen. So we don't want to deprive anyone

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2 of a benefit if it truly can be a benefit. But
3 at the same time I think it's totally appropriate
4 for this Commission to say we will not water down
5 or diminish the value of the discounts nor of
6 these HEAP programs by putting people in harm's
7 way of paying more for electric and gas service
8 than necessary. So I see no reason to revisit
9 that policy determination, and I think that the
10 process that we are now on is the appropriate
11 process, and I would intend to vote for this
12 item.

13 Any further questions or comments on
14 that? Commissioner Sayre.

15 COMMR. SAYRE: I completely concur
16 with Chair Zibelman's comments. I've seen
17 nothing in the way of facts or legal arguments to
18 convince me that we took the wrong step in July
19 to put a moratorium on signing up low income
20 customers for ESCO services, and, in fact, the
21 facts that have been coming in indicate that we
22 were right. Unfortunately we have a market
23 failure. And that's the kind of situation where
24 our job is to step in and protect customers. I'm
25 therefore also in support of this item.

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THE CHAIR: Thank you.

Commissioner Burman.

COMMR. BURMAN: So first, I would be remiss if I did not say a few words in honor of Usher Fogel, who I was unfortunately not able to attend his memorial service in Albany today. I have known Usher since about 2007. He was an incredible, dedicated advocate to his clients. Extremely well liked, even from those who may have disagreed vehemently with his substantive positions. He was kind to all. I'm sorry. He was kind to all. Especially those who were new to the energy regulatory world. And it was a gift to all who knew him. His ability to continually do all he could to ensure he gave a hundred ten percent of himself to his clients, his family, his friends, and to staff at the Commission was awe inspiring. May his memory forever be a blessing.

Usher was known in the sort of history of the way we have worked collaboratively with ESCOs. The Commission has historically dealt with different issues that would come up in the retail market. And the way it was done was a

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2 drilling down, working through processes and
3 processes and processes in a collaborative
4 process. And, at the end, being comfortable that
5 there was resolution on important issues and
6 knowing that regulation is always changing, and
7 that we need to work together on the different
8 things that may need to be refined.

9 This item talks about the importance
10 of protecting the low income ratepayer. I got
11 into the legal field because of my work with the
12 low income community, working in the social work
13 field, dealing with issues related to women who
14 were low income and were in an abused -- in a
15 shelter for abused women and children, and
16 working through the different issues. And energy
17 and addressing those issues was something that
18 was a constant issue.

19 And I would also be remiss if,
20 because we are so focused on the low income, that
21 we take this time to remind folks that for the
22 2016-17 regular HEAP benefit, it opened November
23 14th of 2016. And folks may be eligible for a
24 regular HEAP benefit per program year to help
25 them pay their -- to heat their home. But also,

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2 upcoming, the 2016-17 emergency HEAP benefit
3 opens January 3rd, 2017. And that also is, if
4 they are eligible, a benefit that can help them
5 heat their home if their heat -- or a heat
6 related emergency. And I do hope that our
7 website will be updated to make sure that that
8 information is there, and that we do look at what
9 we can do on our website to highlight the low
10 income initiatives and programs. If you go to
11 the index, you can't find anywhere to direct you
12 if you are looking for information. So I just
13 point that out.

14 When I look, I think it's important
15 that bad actors in the ESCO market should not be
16 allowed to continue to do business in New York
17 State. That is a important aspect. We need to
18 do all that we can to ensure we have vigorous
19 standards of operating practices in place and
20 that we provide proper oversight, guidance and
21 opportunity to improve performance, such that we
22 help to have a thriving marketplace that protects
23 consumers. This includes addressing quickly when
24 market participants exercise poor or illegal
25 conduct.

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Prior to any regulatory decision, we need to ensure that we have properly established a robust record, ensure due process concerns are addressed, looked at unintended consequences from our actions, and ensure that we will have the tools necessary to properly implement our decision.

Each time that we have looked at these issues, I have made it very clear that bad actors are not something that we want in the marketplace. What I am concerned about is that we have in a broad brush painted the industry in a negative light. We need to carefully take stock of what we have done to not encourage a turnaround in areas of enforcement.

I am concerned that when I read this draft order it takes a broad brush and collectively talks about the ESCOs as if they have not, on any individual basis, been a part of a collaborative process for resolution. In fact, I have taken time to look at each and every collaborative that was on our website, from a webinar perspective, or a transcript perspective, or a summary perspective. And what I have found

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2 is that there was robust dialogue. There was
3 engagement. In fact, the low income
4 collaborative report had two focuses at the
5 threshold; fixed rates, and savings, guaranteed
6 savings and value added.

7 The fixed rate aspect seems to have
8 dropped off the table. And I'm trying to
9 understand on that why. So first, maybe if
10 that's the first question we can get some
11 resolution on.

12 THE CHAIR: First of all, LuAnn,
13 please address the question, I think we did
14 provide the low -- the ESCOs an opportunity to
15 offer a guaranteed savings program.

16 MS. SCHERER: Yes, we absolutely did.
17 With regard to the guaranteed savings, there was
18 a substantial effort to work with the ESCOs back
19 in 2014 pursuant to a Commission Order, which
20 said the only products that could be offered to
21 low income customers was either a guaranteed
22 savings or an energy related value added. The
23 work of the collaborative resulted in a report
24 that was issued I believe December or November
25 2015. There was no solutions. And in fact the

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2 vast majority of the ESCOs indicated that they
3 were either unwilling or unable to guarantee
4 savings.

5 With regard to the fixed rate
6 product, one of the issues that we've been
7 addressing in the collaborative, which is
8 identified in the recent notice as a separate
9 track, is reference pricing, because, you know,
10 along with -- the Commission has recognized that
11 the fixed rate product is a value added. But
12 the -- we need to make sure that the fixed rate
13 product is a product that will benefit low income
14 customers. So there's an effort to work on
15 reference pricing, which is the second track.

16 THE CHAIR: Okay. So just to be
17 clear, just so -- we have not abandoned fixed
18 rate by any means. I think the challenge that we
19 have, and it's a challenge we want to see
20 addressed, is making sure that when customers are
21 offered a fixed rate, we have a mechanism to
22 ensure that the resulting bill or the rate is
23 just and reasonable. And that's where the
24 discussion of coming up with a reference price,
25 which I would assume would be part of the

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2 discussions moving forward, in fact, I think it's
3 one of the explicit questions in our notice is
4 how to develop that. So I don't think it's been
5 abandoned. And I think the issue is even a fixed
6 price, if it's higher than necessary and higher
7 than it would have been based on a utility
8 average bill, but certainly higher than
9 necessary, would be a concern of mine.

10 Especially in a market that is opaque as energy.
11 It's very hard for customers to understand what's
12 a reasonable price because, unlike going to the
13 grocery store or the drugstore or even going car
14 shopping, it's hard to comparison price. And so
15 looking for ways to do that and provide that
16 customer benefit is really important. But it's
17 also customer certainty. I think nobody ever
18 wants to be in a position where they are put in a
19 position where they are asking to buy something
20 and they don't know if they can get the same
21 product and that they might value at a different
22 price. And so we need to work on how do we
23 provide that clarity to consumers.

24 COMMR. BURMAN: So with that I would
25 say, and I won't belabor the point of comments

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2 that I have made at other sessions that I think
3 are as true today as they were then, I will
4 incorporate by reference my comments and the
5 discussions at the February 2016 session, the
6 July 2016 session, and the September 2016
7 session. And I think if folks looked at that and
8 see -- saw some of the questions and dialogue,
9 they would see that there is a pathway. However,
10 part of our difficulty is that we have not had a
11 laser focused on robust enforcement of truly bad
12 actors. And when I look at that, I am concerned
13 that we are spending more time on regulating by
14 press release than we are by actually looking to
15 see what we can do to ensure that we are cleaning
16 up the market as necessary without actually
17 destroying the market. And from my perspective
18 it's important.

19 As to the fixed rate piece, what
20 confuses me about that more than anything, not
21 only that the low income collaborative report
22 seemed to have no issue among the parties on the
23 fixed rate aspect, but that the prohibition on
24 the fixed rate contract, A, seems odd when after
25 the polar vortex we were very focused on

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2 encouraging ESCOs to move all their customers to
3 fixed rate contract. But the other issue I have,
4 and it's a disconnect that I can't seem to wrap
5 my arms around, is in the community choice
6 aggregation programs I don't believe that the
7 prohibition on fixed rate contracts for low
8 income folks is in place. And I don't understand
9 that.

10 MR. AGRESTA: So one difference in a
11 community aggregation program is you have a very
12 sophisticated community and/or consultant who is
13 looking at the pricing offerings of the ESCO and
14 coming up with a good deal, something that an
15 ordinary customer doesn't have the advantage of.

16 COMMR. BURMAN: Okay. So I --

17 MR. AGRESTA: And then some of your
18 other concerns, I understand them, but as of
19 today we can't tell you what's a good fixed rate
20 product for any customer, what's a good
21 guaranteed rate product for any customer. And,
22 in the meantime, low income customers, who we are
23 subsidizing, are overpaying what they would pay
24 if they were just utility customers. So while we
25 try to sort out how to create these products,

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2 millions of dollars are changing hands from low
3 income customers. And how we can continue to let
4 that go on is beyond me. Which is really the
5 whole gut of this thing. We are going to try to
6 fix the market that failed. But in the interim,
7 we are going to get the low income customers out
8 of the equation so that we can at least stop the
9 bleeding while we try to figure it out. And
10 that's the essence of this.

11 COMMR. BURMAN: So when I look,
12 though, at the fixed rated part of it in the
13 community choice aggregation, I went to
14 Westchester Power website. And they have in
15 there a piece on fixed rates, discussing in
16 there, and I won't have the right, specific
17 language, but basically discussing that fixed
18 rates may not be, you know, as -- it may be
19 higher than your utility rate. But that the
20 reason you have the fixed rate is for leveling
21 out to make sure that you know what you're
22 paying. And there is no distinction on looking
23 at it from if you're a low income customer you
24 shouldn't be paying a fixed rate price. And the
25 fixed rate price may not necessarily be the best

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2 benefit for you. However, for some it may be
3 because they are wanting to have that certainty
4 in there.

5 THE CHAIR: I know that everyone
6 wants to get into a debate on this, but can I
7 just -- one thing. The issue of fixed versus
8 variable is not in front of us today. So that's
9 one. So this is really beyond --

10 MR. AGRESTA: That's budget billing,
11 which gives people --

12 THE CHAIR: Right. And we also
13 have --

14 MR. AGRESTA: -- a predictable bill
15 per month.

16 THE CHAIR: But there's no question
17 that when anyone -- someone is looking at a
18 forward price, going forward as opposed to a
19 variable price, there's a risk premium. And so
20 we would expect that that would get added because
21 there is an effort to remove the risk of variable
22 volatility in the prices away from the consumer
23 onto the vendor. That I think we all understand
24 is sort of basic pricing in the market.

25 The question, though, becomes in all

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2 these instances how high a premium, what is the
3 ultimate rate, and how do we make a determination
4 that even on a fixed price that the fixed rate
5 being offered is a just and reasonable one.
6 Hence, our decision or recommendation or thought
7 last spring to look at reference pricing so we
8 had some gauge, and that's been -- it's used in
9 the markets, it's only almost like a circuit
10 breaker, so ESCOs would know that within a
11 certain range we would feel comfortable that what
12 they were offering was just and reasonable. And
13 staff was working with them.

14 I will -- I'm going to turn to
15 Commissioner Acampora -- but no, let me just
16 finish.

17 But I do want to take -- I do take
18 issue with you. I do not think we are regulating
19 by headline. We began last spring to begging to
20 work with the ESCOs. We gave them every
21 opportunity to come in and work with us. They
22 made a determination that they were going to sue
23 us, even challenging our very authority to
24 regulate this market on the benefit of consumers.
25 We have been working with them, our door has been

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open. Staff has spent endless hours and collaboratives working, trying to work these things through.

We have an obligation to protect consumers. Consumers have the right to believe that whenever they're charged for anything that is within our jurisdiction, that they're getting value for their dollar, and the price that they're getting is just and reasonable. To suggest that this commission is doing anything but looking at how to execute its obligation to consumers is offensive to the rest of us. We have -- we have -- and so I know you have voted against these matters in the past. I know that you voted against the low income discount. But I will tell you that I am absolutely committed, and I think other Commissioners sitting here are absolutely committed to getting this market rate right. It was a market failure. We are going to address this. And even though the ESCOs want to continue to sue us, we're going to continue to pursue solutions for the benefit of the consumers.

So with that, I just -- you can

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2 disagree with us, you can disagree with our
3 policy, but do not suggest that this commission
4 does anything but execute its responsibility to
5 the people of New York.

6 COMMR. BURMAN: Respectfully, I would
7 like to respond to this. I think it is very
8 difficult to -- to try to make sure that I do
9 what I need to do as a regulator and as one
10 member of this body. I am well aware that there
11 may be times that what I say may be uncomfortable
12 and not necessarily agreed to by the other
13 Commissioners. But I do have a vote, and I do
14 have a perspective that it is important that we
15 make sure that we have a robust record, that we
16 are not coming here and just going along because
17 it's difficult. That in fact we drill down and
18 we make sure that what we're doing is asking the
19 right questions. And it's not about asking the
20 right questions internally. At times it may be
21 important that the public sees the debate and the
22 discussion. I welcome people to have
23 disagreements with me. In fact, it makes me a
24 better regulator. It makes me go back and drill
25 down and make sure that I have all the

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information I need. And if I don't, then I cannot feel comfortable voting on it without first addressing it.

I have said from day one, and you go back through all the different orders, what's important that we -- that our words mean something and the actions to those words mean something. And if I'm not comfortable, that those -- that this is being done in a way that is actually addressing the issues and may actually have unintended consequences, then I have to raise those issues.

You go back pre February 2016, and you will see that we have had a number of issues where we have ourselves stayed our own ESCO orders, stayed our own ESCO orders, and have on record, in transcript, an admission that maybe we got it wrong and we need to do another deep dive. In fact, at the February 2016 session I did not vote against the reset order. I said I concurred, but I was very concerned, very concerned with the unintended consequences and shutting down an entire industry and causing confusion to the customers who were relying on

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2 those, those ESCOs.

3 And my concern is making sure we get
4 it right. I have asked repeatedly, repeatedly,
5 both publicly and internally, for information
6 drill down on the Office of Consumer Services
7 statistics and complaints and making sure that we
8 are focused, very much so, on actually pulling
9 out of that real data and not just taking it to
10 our advantage and using it in a way that's either
11 harmful or positive to the people that we are
12 trying to focus on. In fact, in this very order
13 it cites to a footnote on initial complaints and
14 doing a period of time and capturing that period
15 of time I think of six months where we say we
16 have a thousand complaints -- initial complaints
17 for ESCOs.

18 My question is this. And I've asked
19 this. Go back to the session September 2016.
20 This is not new. You're not being blind-sided by
21 my questions. In fact, I'm trying to actually
22 make sure that we're doing what we say we are
23 going to do, which is protecting the ratepayers
24 and making sure that through that we have a
25 robust marketplace and we're working on what we

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2 need to do. We can't go forward if we are
3 ourselves are not willing to take stock of our
4 own issues.

5 And I take umbrage at the fact that a
6 party may decide that we were wrong and they
7 decide that they're going to challenge that in
8 court, and that somehow they are then seen as bad
9 actors for doing that. People on all sides of
10 the aisle go to court and sue one party or
11 another if they believe that they were -- that
12 the actions taken by a commission was improper.
13 And in fact, they vote -- two times they were --
14 they got stays, one in the reset order and one in
15 the low income order.

16 And so what I look at that is, I do
17 not want to be on the wrong side of the law. I
18 was very concerned and I said it, and that's to
19 the fact that we were -- we were taking some --
20 some leaps legally and that we might get harmed
21 because we did not follow the process. Process
22 is very important to me, and making sure that we
23 do what we need to do so that people have the
24 right due process and the right notice. And, in
25 fact, I was right. The court stayed our actions.

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2 And when you stay the action and when you give a
3 TRO, it's not just because you messed up on
4 process. It's also because they think there may
5 be some merit to the underlying substance.

6 So for me, when I look at this, all I
7 know is we have -- we have TRO's that are telling
8 us that on our order, our reset order and on our
9 low income moratorium order, that we are stayed
10 in that. And that under that, and I can pull out
11 the language, Judge O'Connor was very specific in
12 not doing anything in violation of that order.
13 So somehow now we have taken that, and we may be
14 able to, but somehow we have now taken that, we
15 have based the evidence that we submitted to the
16 court on the staff testimony with the statistics,
17 and we've taken that and we -- overnight we
18 issued a notice opening up a proceeding. That
19 proceeding that was opened before the
20 administrative law judge, that notice last
21 Friday, I read about it in the paper. And so my
22 issue is, what was the drive to do that without
23 telling the Commission as a body and having us
24 vote as a body on whether or not that notice was
25 proper. And, in fact, what I would have said is

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2 I welcome an administrative law judge looking, an
3 independent administrative law judge looking into
4 these issues, doing a fair evidentiary hearing,
5 doing a fair investigation, doing a fair analysis
6 and making sure that we understand where our
7 challenges are and where our opportunities are
8 and potentially some resolution. I look at that
9 notice, I don't see anything about default
10 pricing.

11 (Inaudible.)

12 COMMR. ACAMPORA: Thank you. I think
13 we have a record to stand on here. This has gone
14 on for an awfully long time. And I can safely
15 say that when I first voted to have this
16 moratorium, I felt very secure in the fact that
17 we were doing the right thing.

18 We all know, ESCOs can be great
19 partners and we want them to be. But we've had a
20 problem in New York. And I don't know how many
21 times we have adjusted our business practice law.
22 And, you know, we've tried to work with people.
23 But we are responsible for the money that is
24 given to help low income people. And that
25 responsibility is a heavy one. And when that

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2 money is literally thrown out the window and is
3 not doing these people any good, we have a
4 responsibility to come in and stop it. If people
5 can't trust their government to work and do the
6 right thing to protect all sides, I mean, no one
7 has worked harder with our Office of Consumer
8 Services than me. I'm actually known far and
9 wide as the consumer commissioner. So I think
10 that we have worked together well. And the fact
11 that maybe there -- the organization is working
12 to say we haven't done the right thing, that's a
13 disagreement that we can continue to have. But
14 we are not shutting the door on anyone. But we
15 have to come to grips with what is wrong.

16 And so to open this up and let the
17 bad players go out and do the same thing, we know
18 that this happens throughout the whole country.
19 There are people who are out there who know where
20 to go in order to bilk the low income customers,
21 because they know they're disadvantaged. And if
22 we don't take a responsibility to help the
23 disadvantaged, and to help the people who think
24 they're doing a good thing by helping the
25 disadvantaged, we're not doing our job, period.

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2 So I think that talking about this particular
3 item addresses the fact that we are still going
4 to go out there and protect the low income people
5 until we get this thing right.

6 And that's all I have to say.

7 THE CHAIR: I also want to note that
8 our staff has been extremely diligent. We have
9 now done a review of all the ESCOs. We are on
10 the complaints. And to suggest that we are not
11 enforcing our laws is also factually just simply
12 incorrect.

13 COMMR. BURMAN: I'd like to ask how
14 do we, as the PSC, convert a low income
15 moratorium, which has been stayed by a court
16 order to a prohibition without running afoul of
17 the TRO?

18 THE CHAIR: Mr. Agresta.

19 COMMR. BURMAN: How do we issue a
20 notice without it coming to the Commission first
21 to say it's okay, we feel that we have not
22 violated the court order? And how do we make
23 sure that we don't have notices issued without
24 the full body of the Commission -- without the
25 full body of the Commission, it may be you may be

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2 able to legally, but is it the right thing to do.
3 Should it come back to the Commission.

4 I'd like to see added to that notice
5 that we look at the default pricing. I'd like to
6 see added to that that we look at a true
7 independent analysis of our own enforcement
8 efforts. I'd like to see an analysis of the
9 community choice aggregation and what's happening
10 there, and how it is able to be a footnote in the
11 orders, be waived from any of the provisions in
12 the reset order and the prohibition on the low
13 income.

14 THE CHAIR: So just on the third item
15 you're certainly, and I would invite all the
16 Commissioners to ever -- to tell us if there are
17 additional issues that they would like to see in
18 the proceeding and we'll take it under
19 consideration in terms of the investigation.
20 There's a -- so we will do that.

21 On the issue on the legality of this
22 order today, and even though it's beyond the
23 scope of this order, the Commission -- our -- the
24 ability for the secretary to initiate
25 proceedings, I'll just turn to you, Mr. Agresta,

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2 just for a legal opinion.

3 MR. AGRESTA: Okay. So there's two
4 issues that you raised that Audrey hasn't
5 addressed.

6 THE CHAIR: So if you would just
7 speak up.

8 MR. AGRESTA: Okay. First let me get
9 first to the item that's before us, okay, if
10 that's all right.

11 When the Commission adopted on an
12 emergency basis the moratorium, at the same time
13 it also approved issuing a SAPA notice to
14 consider whether to make the emergency order
15 permanent. In that SAPA notice it was also
16 noticed to the public and the world that the
17 Commission would also be considering whether or
18 not it should be made a permanent prohibition
19 instead of just a moratorium. That SAPA notice
20 was published in the State Register, people had
21 an opportunity to comment on it. And it reads
22 virtually word for word for what is in the Order
23 before you today. In my many years of working
24 here, that SAPA notice is closer to the order
25 than any SAPA notice has ever been to any other

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2 order in the history of the Commission. Okay.
3 So I don't believe there's any procedural
4 problems there at all.

5 The judge did not stay the Commission
6 from taking future actions. The judge cannot
7 stay the Commission from taking future actions.
8 The Commission is a lawful body that has the
9 authority to take actions. So none of these
10 actions that we are proposing today are covered
11 by any stay by anybody.

12 And as to the notice that went out in
13 these proceedings, I believe it was mentioned at
14 the last session when we talked about this stuff
15 that the Commission was going to be doing further
16 work on the reset order to go forward. And that
17 notice is just the outcome of that, but it was
18 not necessary for the Commission to vote on
19 whether that notice should go out or not.
20 There's ample authority for either the Commission
21 to issue such a notice, the secretary, the chair,
22 or a designated employee who is going to be
23 conducting a hearing. There's -- so there's
24 absolutely no question under the Public Service
25 Law that that was proper and legal. And it is

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2 totally consistent with everything we have been
3 saying in public from the beginning, that we are
4 going to work to try to, first of all, take low
5 income customers out of the equation, and then
6 second, fix the markets.

7 THE CHAIR: I would ask Commissioner
8 Sayre and Commissioner Acampora, since
9 Commissioner Burman opined on the additional
10 proceeding, do you have any concerns or thoughts
11 about that that you want to express?

12 COMMR. SAYRE: I agree with
13 Mr. Agresta that it was not necessarily -- not
14 necessary to take that kind of initiating order
15 directly to the Commission. But I'd like the
16 record to reflect that had it been, which was one
17 of the options, I would have voted for it.

18 THE CHAIR: Commissioner Acampora.

19 COMMR. ACAMPORA: I agree with what
20 Commissioner Sayre just said, no problem.

21 COMMR. BURMAN: And I just want to
22 clarify. I two times raised issues at session
23 concerned about the notice and the SAPA and the
24 legality of that and worried about it. And both
25 times the court acted staying our orders. So I'm

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2 particularly sensitive to making sure that we
3 don't come even close to a violation of the court
4 order. And here, the particular language that
5 concerns me is, said order that any entity or
6 persons acting pursuant to the moratorium order
7 who receive notice of this order are hereby
8 temporarily restrained from acting on or
9 implementing the moratorium order in any way.

10 Now, be that as it may --

11 MR. AGRESTA: That refers back to the
12 order that was previously adopted by the
13 Commission. Here we are adopting a new order.
14 That that prior restraint does not apply to a new
15 action in any way or manner.

16 COMMR. BURMAN: And we have --

17 MR. AGRESTA: And a court does not
18 have the authority to pre-enjoin a body like this
19 from doing something.

20 COMMR. BURMAN: I understand, but we
21 also have the.

22 MR. AGRESTA: So there's no legal
23 issue. There's nothing to go with.

24 COMMR. BURMAN: We have an obligation
25 to look at how we can tighten up our processes

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2 and make sure that there is no issue.

3 MR. AGRESTA: Which we did, and which
4 is why the SAPA notice is virtually word for
5 word what's in this order.

6 COMMR. BURMAN: And as a commission I
7 would have appreciated, as a member of the
8 commission, as the body, being able to decide
9 that as a body. And even if I was out voted, I'm
10 comfortable with that if we as a body agreed that
11 it was legal or not legal. All I know is a
12 notice was issued on behalf of the Commission
13 without my authority, without my even knowing
14 about it, and without having any opportunity to
15 ensure that as robust a record and as robust in a
16 notice is issued giving direction to the
17 administrative law judge, because I would have
18 asked for other things to be in that so that we
19 would make sure that we had a fair evidentiary
20 process. And I would have also asked if we had
21 checked with the court on the -- on her
22 interpretation or the court's interpretation of
23 whether or not she would see that that was going
24 to be a violation.

25 THE CHAIR: Okay. Commissioner

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2 Berman, I think -- I appreciate that, that's your
3 view. But there's two separate issues here, and
4 I think you're conflating the two.

5 So the issue in terms of the
6 initiation of the proceeding, I think that in my
7 mind the court contemplated additional
8 proceedings. In the TRO they actually said the
9 issue was they wanted us to have additional
10 proceedings. That's why we're having additional
11 proceedings on the issue of how to reset this
12 market.

13 And the issue in terms of low income,
14 which is the matter in front of us today, you
15 have the ability to vote for it or vote against
16 it. And so I'm going to move to a vote.

17 All those in favor of the
18 recommendation stated in item 201 to prohibit
19 sales from energy service companies to low income
20 customers as described, please indicate by saying
21 aye.

22 (Chorus of ayes.)

23 THE CHAIR: Opposed?

24 COMMR. BURMAN: And I dissent for a
25 variety of reasons. One, I was not given the

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2 opportunity today to fully explain my concerns
3 and to ask for detailed information.

4 Two, I am concerned that we may have
5 crossed the line in terms of pushing the bounds
6 of fair and opportunity for not only the parties
7 but for the Commission to weigh in on the proper
8 notice.

9 Three, I am concerned that the Order
10 language is not balanced. And, in fact, appears
11 somewhat, in a very, very broad brush, to cast
12 the entire industry as bad actors and having not
13 come to the table to try to resolve these issues.

14 And, four, at the end of the day I
15 want to make sure that what we're doing is
16 actually helpful to the customers, low income,
17 middle income, and any income. I want to make
18 sure that we are doing what we need to do to make
19 sure that we maintain a reliable and robust
20 energy system. And that means that we have to be
21 able to have frank conversations and be able to
22 look carefully and to not take to -- and to not
23 try to tell a commissioner that he or she should
24 not be asking these questions in a public forum.

25 THE CHAIR: First of all, I don't

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2 think anyone has told you you can't ask questions
3 that are relevant. But I will take your
4 opposition. I do note that you've had many
5 minutes now to talk about the reason why you were
6 concerned, so I don't think anyone has kept you
7 from opining.

8 We are going to move to item 301,
9 which is our last item for today, and that is the
10 petition for rehearing of the Clean Energy
11 Standard, presented by Mr. Paul Agresta.

12 Paul, please begin.

13 Don't look so puzzled, you've got me
14 nervous.

15 MR. AGRESTA: No, it's the number, it
16 was throwing me off because the number changed.

17 THE CHAIR: It's item -- case 302,
18 item 301.

19 MR. AGRESTA: Okay. The purpose of
20 today's session item is for the Commission to
21 consider petitions requesting that the Commission
22 rehear or reconsider a number of issues decided
23 on August 1 in the Clean Energy Standard Order.
24 The standards for rehearing is set forth in the
25 Commission's regulations, and they provide that

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2 rehearing is only appropriate when the Commission
3 has committed an error of law or fact, or when
4 new circumstances warrant a different
5 determination.

6 As a legal matter, the standard is
7 difficult to meet, and it is not unusual for most
8 petitions for rehearing to be denied. The topics
9 covered by most of the petitions before you today
10 include:

11 Whether certain preexisting
12 hydropower resources should be eligible to
13 satisfy the Renewable Energy Standard mandates;

14 Whether certain existing hydropower,
15 wind, and other renewable resources should be
16 eligible for additional financial support to
17 ensure that they are maintained as resources that
18 contribute to the baseline of New York's
19 renewable resources;

20 Whether the current biomass emissions
21 testing requirements for eligibility are too
22 onerous;

23 Whether biogas technology should be
24 eligible for more financial support than other
25 renewable technologies, to recognize unique

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2 benefits they may provide;

3 Whether the Commission really meant
4 for municipal electric customers to contribute
5 towards the Renewable Energy Standard mandates;

6 Whether imposition of the zero
7 emissions credit requirement or the ZEC
8 requirements exceeds the Commission's procedural
9 or substantive authority under state law; and

10 Whether the ZEC requirement is within
11 the Commission's authority under federal law.

12 Now, all of the arguments made in
13 those petitions are summarized in the session
14 item. Staff recommends that the petitioners have
15 not met the rehearing standard, and that
16 therefore the rehearing process is not an
17 appropriate vehicle to consider the matters, and
18 the petition should be denied.

19 But staff also recommends that there
20 be continued consultation by staff with the
21 parties in a follow on process to ensure -- to
22 further consider eligibility and other issues to
23 promote the deployment and maintenance of energy
24 renewable resources. This recommendation
25 responds to the request of many for further

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2 consideration sooner than the otherwise planned
3 triennial review of the program, which wouldn't
4 happen for three years.

5 There is one other petition for your
6 consideration as part of this session item that
7 is somewhat different than the others. Exelon,
8 the owner of the Ginna and Nine Mile nuclear
9 facilities, requests rehearing and removal of the
10 CES order requirement which conditioned the
11 twelve year duration of the ZEC program on
12 transfer of the FitzPatrick nuclear plant by
13 September 1, 2018. The purpose of that condition
14 as it relates to Exelon was to give Exelon an
15 incentive to purchase the FitzPatrick facility.
16 After the CES order was issued, Exelon responded
17 positively to the incentive and entered into a
18 binding contract to purchase the FitzPatrick
19 facility. That is a significant change of
20 circumstances directly related to the
21 requirement.

22 Exelon now argues, and staff agrees,
23 that continuing the requirement as to Exelon, now
24 that Exelon has done all it can to make the
25 transfer happen, causes a perverse incentive that

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2 is an incentive that is opposite to the overall
3 intended policy because it discourages Exelon
4 from making multi-year investments in the Ginna
5 and Nine Mile facilities until such time as the
6 twelve year term of the ZECs is assured. So, if
7 you're Exelon, you're not going to want to spend
8 money on a five year project for a plant if
9 you're not sure that after two years you're still
10 going to be around. So it works as a reverse
11 incentive from what we want. We want the plants
12 to stay open for the full twelve years to provide
13 ZECs for the full term.

14 So, therefore, as to the Exelon
15 petition, staff recommends that it be granted and
16 that upon rehearing, the requirement issued be
17 modified as to how it is applied to Exelon.

18 This concludes my presentation. And
19 staff is available to answer your questions.

20 THE CHAIR: Thank you. And just very
21 quickly on that, I am comfortable with the fact
22 that Exelon has now completed the transaction
23 with Entergy plus the fact that I would note that
24 FERC has also approved the transfer. That is a
25 changed circumstance. And we would not want any

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2 uncertainty going forward so they can execute and
3 move forward on retaining Fitz as part of the
4 fleet. So I'm comfortable with making that
5 change.

6 I also am pleased that we're
7 accelerating the discussions that we were going
8 to have as part of the triennial review in terms
9 of hydro as well as existing renewables in the
10 state. Again, low costs of natural gas is having
11 its impact, both beneficial and harmful depending
12 on what business you happen to be in. But as a
13 result of that, we'll want to look at, because
14 clearly, if in fact there are existing renewable
15 resources that we're taking service from today,
16 that would, because of the prices in the market,
17 would find that they could no -- they couldn't
18 even stay open for three years and we would lose
19 them as a resource and the cost of replacing it
20 would be higher, those are the types of factors I
21 think the Commission needs to consider because
22 our objective, after all, is to implement the
23 Clean Energy Standard at the lowest cost possible
24 to consumers, and this is very consistent with
25 looking at that issue. So I'm comfortable with

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2 the direction we're taking in the rehearing and I
3 intend to vote for it.

4 Any further questions, comments?

5 Commissioner Sayre. You're still smiling.

6 COMMR. SAYRE: I'm still -- yeah, I
7 changed my train reservations.

8 (Laughter.)

9 COMMR. SAYRE: Luckily I got the new
10 ones.

11 I concur with the staff
12 recommendation. I agree that nobody has shown,
13 with the limited exception of the FitzPatrick
14 ownership requirement, nobody demonstrated a
15 mistake of fact or mistake of law or new
16 circumstances that warrants rehearing. So we
17 deny it.

18 THE CHAIR: Commissioner Burman.

19 COMMR. BURMAN: So I understand the
20 granting the petition for rehearing on the piece
21 with Exelon in addressing that clause and, you
22 know, sort of the fact that it doesn't make sense
23 to have that in there. I also am very focused on
24 the fact that we have a nuclear fleet that we
25 need to ensure is viable and working with our

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focus on making sure that we have a robust energy system and a reliable one.

I think that there was some -- there is some confusion in my mind on the denial of some of the petitions for rehearing where we seem to suggest that we're denying them, but then at the same time saying -- directing staff to look at how some of these things may be able to be resolved in the future. And to me it seems a little disconnect that if we are acknowledging that some of what they have in there is important in terms of their interest in being a part of the Clean Energy Standard or not, that it may be appropriate to grant rehearing on those aspects separated out and actually have a pathway of real time of addressing them. It concerns me that, again, it goes back to language and clarity and regulatory certainty. And to the extent that we have the discretion to reconsider portions of it and to clarify or to incorporate some of those, that we're not taking that opportunity to do so.

I also think that last session, when we looked at the Public Service Law Section 70 transfer, that there was confusion that we were

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2 deciding the Clean Energy Standard. I made it
3 very clear at session that at that time the Clean
4 Energy Standard was not a part of the decision on
5 the Public Service Law Section 70 transfer. It
6 had nothing to do with any potential state
7 subsidies or other subsidies, and in fact was a
8 straight Section 70 transfer petition before us
9 looking at the four corners of that and that was
10 really all that we were doing.

11 And so for me, my difficulty is on
12 looking at this and understanding that we have
13 situation with needing to address our nuclear
14 fleet, being supportive of that. But also at the
15 same time, at the August 1st, 2016 session I did
16 not vote with the majority opinion the draft
17 order. What I said at that time, which I still
18 hold today, is that we have -- we're at a
19 critical juncture. We need to look care
20 carefully at all that we're doing from the state
21 energy planning process. And we need to move
22 forward in making sure that all of our decisions
23 and the impact that they might have, short and
24 long term, and the real costs and the overload
25 and impact on the reliability and resiliency of

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the system needs to get looked at in our long term state energy planning. And also incorporating what the experts outside of our agency may also be doing with that overall state policy planning. So that's sort of my dilemma when I look at this is the petition to rehearing.

MR. AGRESTA: So from my point of view, none of them met the standard for rehearing. None of them raised arguments that weren't already considered when the August decision was made, if you were going make the decision again today, I would recommend you make the same decision you made on August 1st.

The question that they have raised that concerns us is more one of timing. The decision doesn't have a review for another three years. And I think they made a case that maybe we need to look at this sooner. And so that's why we have suggested a new process.

THE CHAIR: But I think what I would add to that is that part of this is that there are statements that have been made by the various renewable developers or renewable owners that they are not able to economically survive in

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2 these markets. And I think by opening --
3 starting the discussion now, we're able to look
4 at the situation, get a better understanding, and
5 develop the type of record evidence that the
6 Commission would want to see if it's going to
7 reverse its decision on Tier 2. So this is --
8 it's not a rehearing, because we have yet to have
9 enough information. This is the point of
10 developing the information earlier rather than --
11 and, frankly, providing the opportunity for
12 certainty and addressing their concerns. So I
13 don't -- I am very comfortable with it. But I
14 would not be comfortable doing a rehearing right
15 now because we simply just don't have enough
16 information.

17 COMM. BURMAN: So are we then doing
18 what we did last time, which is petition for
19 clarification, which is essentially saying we
20 hear you, we may need to retool this, and
21 therefore we will look at that?

22 MR. AGRESTA: Well, the Commission
23 already said it was going to on a triennial basis
24 relook at everything.

25 COMM. BURMAN: But this is speeding

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2 that process up.

3 MR. AGRESTA: What we're hearing is
4 that there may be some urgency to do it quicker.
5 But we do not have facts before us to even come
6 back with a proposal at this point, and so it
7 needs further --

8 THE CHAIR: Development.

9 MR. AGRESTA: Development. And
10 that's the purpose of a consultation.

11 COMMR. BURMAN: Okay.

12 THE CHAIR: Okay. Any questions?
13 All right. So let's -- so for that let me move
14 to a vote on item 301. All those in favor,
15 please indicate by saying aye.

16 (Chorus of ayes.)

17 THE CHAIR: Opposed?

18 COMM. BURMAN: And I still have the
19 same position I had at the August 1st session,
20 and raise the concerns that I also believe that
21 some of these aspects should be, as we said, fast
22 tracked to look at, because people do need
23 regulatory certainty and making sure that they
24 actually have a window to look at that and have
25 folks deciding how we should further proceed.

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2 But I also am very interested in making sure that
3 all of this gets looked at holistically across
4 the board in terms of our diverse fuel and making
5 sure that we do things that are technologically
6 neutral and look at how this impacts the grid
7 itself.

8 THE CHAIR: Secretary Burgess, yeah,
9 what's your vote, please?

10 COMM. BURMAN: I'll abstain from vote
11 being based on my previous vote.

12 THE CHAIR: So that's a no.

13 COMMR. BURMAN: No, it's not, it's an
14 abstention.

15 THE CHAIR: An abstention is a no.

16 So we're going -- is there any other
17 matters in front of us today?

18 SECRETARY BURGESS: There are no other
19 matters before you today.

20 THE CHAIR: Okay. Before I close,
21 first of all, any -- I'd like to -- smiling Jack
22 here. I did want to take a couple of minutes.

23 So, first of all, it is our last
24 session of the year. We're about ready to enter
25 into the holidays. And I think it's important to

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2 take a minute first because for a couple reasons.
3 One, we are I think really fortunate in this
4 state to have a staff at the Department of Public
5 Service that I think is exemplar par none in
6 terms of their dedication to people -- and I know
7 they want to get back to their homes, but I'm
8 going to take a few minutes -- and to people in
9 New York, to their jobs, the sacrifices they make
10 all the time in terms of public service. I think
11 I'm very fortunate to be serving with other
12 Commissioners who are equally dedicated. We have
13 robust debates, as obviously is seen, but that I
14 agree with Commissioner Burman that debates only
15 making us better. I also think we are very
16 fortunate in that the parties who participate in
17 our proceedings add so much. And as a result, as
18 a state we accomplish a huge amount.

19 And so, you know in -- you know, I
20 took a look and to see -- you know, what --
21 really I think it's a good opportunity to say at
22 the end of year what have you done. We have done
23 a lot. You know, we started the year, frankly,
24 with the initiation of the CES proceeding, which
25 of course has gotten a -- taken a huge amount of

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time and been recognized as very forward looking across the United States and frankly across the country in what we're doing. But also we started the matter with -- the year with, even back then thinking, about the RG Ginna RSA matter, which was complicated and now just minor comparison.

Throughout the year, just to get to these facts on, these are pure facts, we did eight major rate cases and saved ratepayers approximately \$241 million from the activities of this staff and these ratepayers. We of course initiated in REV a number of proceedings. The Clean Energy Standard, the clean energy fund implementation, the work on DCIPS, the work on value of the distributed energy resources, the work on energy interconnections, the work on BSA. All in the order of approximately fourteen orders. We had 24 public information meetings with fourteen communities, and received 4,000 comments just related to REV.

We also were very successful in implementation of a number of the demos throughout the state. Many customers of our utilities, Con Ed, O&R, Central Hudson and RG&E

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now have portals where they can easily look at ways of buying energy efficiency and becoming engaged, something they never had before.

Con Edison has implemented its virtually power plant, which is an incredibly innovative product, that's looking at storage and solar in combination so that you can add them together, and as a result has worked successfully with the fire department in New York in addressing how to use lithium ion batteries, which is going to be a huge value as we integrate solar and other renewable resources.

National Grid implemented its fuel belt product, which is a great project that's looking at how to work with low income consumers and giving them access to solar.

So all of these were just in REV. But we haven't stopped. We did a number of Article 7 proceedings related to building infrastructure. The staff is absolutely committed to getting things done, to do things through reliability, and these things are often not seen by the Commission but it happens every day.

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We completed four management audits. And we began three, more than we've ever done in any single year since we started this in 1988.

In telecommunications we completed the Altice and Cable Vision merger, as well as implemented the Charter merger. So now in New York, thanks to that and Governor Cuomo's broadband, we are going to be the state that provides 300 megabits of broadband and access throughout the state. No other state in the country is offering that type of service. And I think it's something we should be proud of. It's close to a billion dollars of value just coming from the merger alone.

Our consumer services unit had 84 public statement hearings, basically one or two meetings every week that they did. They fielded 60,000 complaints, and had over 51,000 calls. That's in addition to the other processes we've debated at length today, and I'm not going to reopen that.

Pipeline safety handled a total of 659 cases involving damages to underground facilities, and our gas utilities have agreed to

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2 complete more than 447 and a half miles -- we
3 have engineers, we are very precise -- of leak
4 prone pipe because of Commission approved
5 replacement plans. That's nearly 20 percent more
6 than the previous year, and lives up to our
7 commitment to make sure that during our life
8 times we are going to replace this pipe.

9 So that's last year. And the hits
10 continue to keep on coming. In 2017 there are a
11 lot of things we are going to continue. We
12 expect to see a number of Article 10 proceedings
13 related to wind development and other activities,
14 related to the CES. We'll have our first
15 auctions. We expect to see a 90 megawatt solar
16 energy project in front of us, one of the biggest
17 in the state. And we also will implement and
18 work on the value of distributed energy resource
19 proceeding, I expect to get that as well as
20 completion of our work on the modifying how we do
21 interconnection. So, you know, all in all -- and
22 then in telecommunications we are going to work
23 on our telecommunications study, especially
24 looking at safety issues and how do we close that
25 digital divide, and continued work, as always, on

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2 gas safety and on the REV demonstrations.

3 So, you know, we have a big agenda
4 behind us that we completed. I am always amazed
5 at the work of the staff. They grumble like
6 crazy, they complain like crazy, but they get it
7 done and they get it done well.

8 I've been, as you all know, I spent a
9 great deal of time in my life in the frozen
10 tundra of Minnesota. And in Minnesota there's a
11 little town called Lake Wobegon that Garrison
12 Keillor talks about as the -- and I'll just
13 borrow from that when I talk about the
14 Department. The fact the matter is that I am
15 really fortunate to be part of a state where
16 there's so many committed people. But really
17 feel blessed that we're part of a Department
18 where the women are strong, the men are good
19 looking, and all of the employees are well above
20 average. So thank you, and I wish you all a very
21 happy holiday.

22 (Applause.)

23 THE CHAIR: And that is the close.

24 (Whereupon, the proceedings were
25 concluded.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

I, JENNIFER CASSELLA, a
Shorthand Reporter and Notary Public within and
for the State of New York, do hereby certify:

I reported a portion of the
proceedings noted in the within-entitled matter
and that the foregoing transcript is a true
record of said proceedings.

I further certify that I am not
related, by blood or marriage, to any of the
parties in this matter and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 21st day of December, 2016.

_____*Jennifer Cassella*_____

JENNIFER CASSELLA

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

I, KARI L. REED, a Registered Professional Reporter (Stenotype) and Notary Public with and for the State of New York, do hereby certify:

I transcribed the portion of the proceedings noted in the within-entitled matter and that the forgoing transcript is a true record of said to the best of my ability.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, 2016.

Kari L. Reed

KARI L. REED, RPR

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