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PSC Monthly Meeting - 4-18-19

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

MONTHLY MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, April 18, 2019  
10:58 a.m.  
Three Empire State Plaza  
Agency Building 3, 19th Floor  
  
Albany, New York

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

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2 CHAIRMAN RHODES: So, before we get  
3 started, I want to apologize for the tardy start.  
4 It's not like I -- it's not -- this is not the way  
5 we like to do business and we'd like for this not  
6 to happen again.

7 But thank you for all being here.

8 So, with this, I will call this  
9 session of the Public Service Commission to order.

10 Secretary Burgess, are there any  
11 changes to the final agenda?

12 SECRETARY BURGESS: Good morning,  
13 Chair and Commissioners.

14 There are no changes to this  
15 morning's agenda.

16 CHAIRMAN RHODES: Okay. Thank you.  
17 With that, we will proceed to the  
18 regular agenda.

19 The first four items, which relate  
20 to utility performance following storms, will be  
21 presented with an opportunity for Commissioners to  
22 ask questions or comment, after each item. After  
23 the four items have been presented, a vote will be  
24 taken, on each of the three voting items.

25 The first item for discussion is

1 PSC Monthly Meeting - 4-18-19  
2 item 301, case 17-E-0594, as it relates to the  
3 joint proposals, addressing the performance of  
4 New York State Electric and Gas Corporation and  
5 Rochester Gas and Electric Corporation, following  
6 the March 2017 wind storm. Presented by  
7 Administrative Law Judge Sean Mullany. Christian  
8 Bonvin, Chief Electric Distribution Systems is  
9 available for questions.

10 Judge Mullany, please begin.

11 A.L.J. MULLANY: Good morning,  
12 Chairman Rhodes and Commissioners.

13 Thank you.

14 Item 301 is a proposed Commission  
15 order, adopting the terms of two joint proposals.  
16 A settlement J.P. and an investment J.P. that  
17 would resolve penalty questions and safety  
18 concerns, identified as a result of Staff's  
19 investigation in to the severe wind storm that  
20 struck western New York on March 8th, 2017.

21 That storm caused widespread damage  
22 within the service territories of New York State  
23 Electric and Gas Corporation, or NYSEG and  
24 Rochester Gas and Electric Corporation, RG&E.  
25 Together, I'm going to refer to these two

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2 companies as the companies. It also affected the  
3 service territory of National Grid.

4 Sustained winds, in the range of 50  
5 to 70 miles per hour, uprooted and snapped trees,  
6 causing significant damage to electric  
7 infrastructure. The worst of the storm involved  
8 winds gusting to 81 miles per hour, within the  
9 city of Rochester.

10 Downed power lines and poles caused  
11 large-scale electric outages, in affected areas.  
12 Roads were blocked by trees and other debris,  
13 hampering transportation and impeding restoration  
14 efforts.

15 The strong winds lasted until the  
16 early morning of Thursday, March 9th, 2017 and the  
17 wind storm was immediately followed by a cold  
18 front, that caused temperatures to dip below  
19 freezing, creating further challenges for  
20 customers already without heat and electricity.

21 In addition, Winter Storm Stella,  
22 which brought sizeable snowfall to the northeast,  
23 also impacted the area, prior to complete service  
24 restoration.

25 NYSEG, RG&E and National Grid

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2 reported that overall, more than 250,000 customers  
3 experienced the loss of power during the wind  
4 storm, with peak customer averages of  
5 approximately 123,000 for RG&E, 48,000 for NYSEG  
6 and 113,000 for National Grid. Restoration took  
7 until March 13th, for NYSEG and until March 15th  
8 for RG&E. National Grid restored more than 90  
9 percent of its affected customers, within 36 hours  
10 and completed restoration on March 12th, 2017.

11 RG&E received and handled 74,000 --  
12 I'm sorry. 76,426 outage calls, between March 8th  
13 and March 15th. NYSEG received 66,121 outage  
14 calls, over a similar period. National Grid  
15 received and handled 17,327 outage calls between  
16 March 8th and March 12th.

17 In the wake of the wind storm,  
18 Staff performed an investigation and issued a  
19 report, referred to herein, as the D.P.S. Report,  
20 that identified deficiencies in the companies  
21 performance. Staff found that National Grid  
22 personnel followed the company's emergency  
23 response plan and identified no significant  
24 issues, or deficiencies with National Grid's  
25 performance. Therefore, the D.P.S. Report focused

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2 on performance shortcomings of NYSEG and RG&E.

3 The D.P.S. Report led to the  
4 Commission issuance of an order commencing this  
5 proceeding and in relevant part, directing NYSEG  
6 and RG&E to show cause why the Commission should  
7 not pursue an administrative penalty for the  
8 companies apparent failure to follow their  
9 emergency response plan. I just note that these  
10 two companies operate under a common plan.

11 Thereafter, the companies and Staff  
12 engaged in settlement discussions, that ultimately  
13 led to the signing and filing of the two joint  
14 proposals that are the subject of today's proposed  
15 Commission order. The settlement J.P., in lieu of  
16 an administrative penalty action, would resolve  
17 the issues concerning four alleged emergency  
18 response plan violations on the part of NYSEG and  
19 eight alleged emergency response plan violations  
20 on the part of RG&E.

21 The companies would pay a  
22 quote/unquote settlement amount of 3.9 million  
23 dollars, from shareholder funds. This amount  
24 would be allocated in the sum of 2.8 million  
25 dollars to RG&E Electric and 1.1 million dollars

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2 to NYSEG Electric, based on the outages  
3 experienced in each of these company's respective  
4 service territories.

5 The settlement amount reasonably  
6 approximates the potential total penalty amount,  
7 if the matter were to be fully litigated pursuant  
8 to Public Service Law Section 25-A and that  
9 accounts for twelve alleged violations, at  
10 approximately \$500,000 per violation, as specified  
11 under the statute.

12 The signatory parties to the  
13 settlement J.P. agreed that the expenditure of  
14 these funds by the companies, should not be  
15 construed as a Commission finding, or an admission  
16 by the companies, of a violation of any law, or  
17 regulation, or order of the Commission, nor  
18 construed as an assessment of a fine or a penalty.

19 Second J.P., the investment J.P.,  
20 describes how the settlement amount would be used  
21 for the benefit of ratepayers. The programs to be  
22 funded under the investment J.P., will address  
23 some important safety-related concerns, that were  
24 described in the D.P.S. Staff Report and  
25 identified in the Commission's previously-issued

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2 order to show cause. These investments would not  
3 be reflected in the company's rate base, or  
4 operating expenses, when establishing future  
5 delivery rates.

6 In general, funds will be used for  
7 more-effective event response prioritization,  
8 more-effective communications between the  
9 companies and their customers that are dependent  
10 upon electronically-powered life-support  
11 equipment, enhanced storm-response capabilities,  
12 faster restoration of critical facilities,  
13 improved wires-down procedures and increased  
14 electric system resiliency.

15 No party to the proceeding opposes  
16 either of the joint proposals and no public  
17 comments have been received regarding the joint  
18 proposals. This concludes my presentation.

19 Thank you.

20 CHAIRMAN RHODES: Thank you, Judge  
21 Mullany.

22 My -- my sense -- my view is that  
23 this represents a good and balanced proposal,  
24 recognizing the severity of the event, which is a  
25 factor that is outside any human organization's



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2 control. It delivers accountability with respect  
3 to the companies' performance against there  
4 commitments that they made in the E.R.P., the  
5 Emergency Response Plans and it then goes on to  
6 propose a balanced and useful set of investments.

7 So, I'm going to support this item.

8 Commissioner Sayre?

9 COMMISSIONER SAYRE: Like many of  
10 the people in this room, especially those from  
11 western New York, as I am, I remember that storm  
12 very well indeed. It was disappointing at the  
13 time, that NYSEG and RG&E took longer to restore  
14 service than National Grid, given relatively  
15 comparable service territories and -- and damages.

16 This item, in my view, gets at some  
17 of the problem areas, but as we're going to see  
18 later in today's agenda, there's a lot of work to  
19 be done on storm response. I do however, support  
20 the steps proposed in this item.

21 CHAIRMAN RHODES: Commissioner  
22 Burman?

23 COMMISSIONER BURMAN: I'm going to  
24 withhold my specific comments on how I'm voting on  
25 this, until after all of the items are done and

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2 then we'll discuss that. But I do have a couple  
3 of threshold questions.

4 The order to show cause -- so the  
5 storm was on March 8th, 2017, correct and the  
6 order --

7 A.L.J. MULLANY: Yes.

8 CHAIRMAN RHODES: -- to show cause  
9 and the report, was initiated -- and -- and --  
10 well, the report was finalized on November 16th,  
11 2017, which was the day that the order to show  
12 cause went forward.

13 From the time -- so from March to  
14 November 17th, how much of that was active  
15 investigation? So, when did the investigation  
16 start and when did the investigation complete, not  
17 when the report was done, but when the  
18 investigation was completed?

19 A.L.J. MULLANY: You want to take  
20 it?

21 MR. BONVIN: Sure.

22 So, we began our -- our  
23 investigation, following completion of  
24 restoration. There's procedural things that they  
25 file. There's a -- a report that's due 30 days

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2 afterwards. There's also a report that's due 60  
3 days afterwards.

4 But we probably started -- I'd have  
5 to check to make sure that we actually issued the  
6 I.R.s before those, but we likely did because we  
7 usually try to get some information before those  
8 reports are filed as well, to -- to solidify some  
9 -- some of that.

10 I -- I guess I would also probably  
11 say that the investigation continues until the  
12 report is finalized because as we're writing the  
13 report, we are very much active, in terms of  
14 rewriting sections that are getting questions, or  
15 need bolstering. In some cases, we might need to  
16 go back and get more information. In other cases,  
17 we might have that.

18 So, in terms of, you know, who --  
19 interviews and things like that, those happen more  
20 towards the beginning. But -- but I.R.s continue  
21 to occur throughout these -- these, as we're  
22 trying to fill in holes, as we're going through it  
23 and writing together our findings and making sure  
24 that we have proper support.

25 COMMISSIONER BURMAN: Okay. Fine.

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2 Thank you very much.

3 So, that's about eight months from  
4 start to finish then, if we use the -- that  
5 timeline.

6 For the settlement J.P. and the  
7 investment J.P., both of them occurred when? When  
8 they were filed, I think May 18th --

9 A.L.J. MULLANY: They're both --

10 COMMISSIONER BURMAN: -- 2018?

11 A.L.J. MULLANY: -- signed, as of  
12 May 18th --

13 COMMISSIONER BURMAN: Right.

14 A.L.J. MULLANY: -- 2018.

15 COMMISSIONER BURMAN: Okay. And  
16 then they got SAPA'd June 13th, 2018, right?

17 A.L.J. MULLANY: I -- I don't know  
18 offhand, Commissioner.

19 COMMISSIONER BURMAN: Okay. And a  
20 notice for comments was issued June 6th, 2018. At  
21 least, that's what my notes have. And comments  
22 were due August 13th, 2018.

23 Okay. And there was also an A.L.J.  
24 procedural ruling, on June 6th, 2018, at the same  
25 time, with the notice for comments, that discussed

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2 if anybody had any comments, or questions. So, it  
3 was basically at that point, pens were down, in  
4 terms of the investment J.P. and the settlement  
5 J.P., looking at that, from my -- from my notes.

6 It's not meant to be controversial.  
7 I'm just trying to get the timeline established.

8 A.L.J. MULLANY: Okay.

9 COMMISSIONER BURMAN: During the  
10 investigation, there is under the Law, also other  
11 things like you said, that have to get filed. The  
12 Part 105 filings, correct?

13 And what does Staff normally do  
14 with that?

15 MR. BONVIN: So, the Part 105  
16 filings are part of our investigation. We review  
17 those for -- to determine what the company's  
18 position is on how the storm impacted them, how  
19 they responded. We also compare that information  
20 to information we gather through other sources and  
21 -- and -- as well as look at what they produce as  
22 after-action items, which is required as part of  
23 those reports, to see areas where they feel  
24 they've found deficiencies, to make sure that  
25 we're seeing the same -- same items.

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2 So, they're very much part of our  
3 review and -- and help us ask a few more questions  
4 that we might not have seen, through either  
5 interviews or our own experiences that we attain.

6 COMMISSIONER BURMAN: Okay. At the  
7 time of the order to show cause, November 16th,  
8 2017, when we identified thirty recommendations,  
9 four of those were actually emergency response  
10 plan violations for NYSEG and eight of those were  
11 actually emergency response plan violations for  
12 RG&E.

13 So, the others were recommendations  
14 outside of the emergency response plan and  
15 additional to, correct?

16 A.L.J. MULLANY: I'm not sure that  
17 -- I can't say, without looking in to it closely,  
18 whether that's a fair and accurate  
19 characterization. It may be that some of the  
20 recommendations related to improved procedures,  
21 under the E.R.P., but related to matters that were  
22 not deemed of such a magnitude as to constitute a  
23 quote/unquote violation of those plans.

24 COMMISSIONER BURMAN: Okay. That's  
25 helpful.

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2 In the future, it would also be  
3 helpful to know when we have recommendations that  
4 are new, or flushing out something in the  
5 emergency response plan, to directly tie it to  
6 what section of the emergency response plan  
7 because it's helpful to me, when I look through  
8 the emergency response plans, to match it up and  
9 if it's not in the emergency response plan, where  
10 you see it as potentially going, is helpful  
11 because that's an area, I think that will help,  
12 not only me as a Commissioner, but the public too,  
13 who will be looking at those emergency response  
14 plans and the company as well, to see if that is  
15 in line with what they would be thinking, as they  
16 amend the plans.

17 At the time of the November 16th,  
18 2017 order to show cause, were the 30  
19 recommendations already being done? And if not,  
20 how many of them were already being done, or -- or  
21 -- or agreed to be done, by the company -- by the  
22 companies?

23 MR. BONVIN: I -- could you just  
24 repeat the timeframe --

25 COMMISSIONER BURMAN: What I'm

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2 trying --

3 MR. BONVIN: -- so, I can --

4 COMMISSIONER BURMAN: -- to --

5 MR. BONVIN: -- be sure --?

6 COMMISSIONER BURMAN: -- what I'm  
7 trying to understand, is we had 30 recommendations  
8 we made, in our order to show cause. Those  
9 recommendations may have already been being done,  
10 or agreed to, by the company -- companies.

11 My question is how many of those 30  
12 recommendations had already come to consensus on  
13 the part of the company, maybe in -- working with  
14 the various stakeholders, including Staff? So,  
15 out of those 30 recommendations, how many already  
16 was the company saying they were going to do, or  
17 doing, since our recommendations, or as a part of  
18 our recommendations?

19 It's important to me to understand  
20 when we issued the November 2017 order to show  
21 cause, was the company already doing those, or  
22 planned to do them, or -- so that -- or were they  
23 different and therefore, they needed to be ordered  
24 to do them?

25 MR. BONVIN: So, I would say a



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2 certain number of them, they were already in  
3 process. Whether or not they were completely  
4 parallel to what we exactly required, is -- is --  
5 is something that we'd probably be able to dig in  
6 to and -- and come back, with a little more  
7 clarity.

8 After issuing our order, we did  
9 meet with them and -- and -- or -- in December,  
10 where they gave an implementation plan and we  
11 worked very much in-hand with them during the  
12 beginning parts of 2018, to help redo their plan,  
13 so that we could make sure that the plan was  
14 acceptable and incorporated our recommendations,  
15 the way that we needed them to be done. So, we  
16 worked very closely with them.

17 That process was getting very close  
18 to the end, when the March storms occurred in  
19 2018.

20 COMMISSIONER BURMAN: Thank you.  
21 That's helpful.

22 So, at the time of the  
23 investigation, during those 8 months and engaging  
24 with the various stakeholders and also looking at  
25 the self-assessment reports from the company, how

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2 much engagement happened with Staff and the  
3 company, in terms of a review of that self-  
4 assessment and what might be incorporated in to  
5 the filing, in December 2017, for the upcoming  
6 emergency plan, that would also fold in to any  
7 recommendations that came out of this order to  
8 show cause?

9 MR. BONVIN: So, as we were going  
10 through the report of -- going through our  
11 investigation, we would ask a lot of questions.  
12 We would go do our investigatory process. They  
13 could certainly read in to probably a lot of our  
14 questions, areas where we had concern.

15 They put together issues that were  
16 -- they were either working on themselves, or knew  
17 that were concerns to us, as part of that December  
18 -- December 15th filing. It wasn't complete. It  
19 did include some areas in -- in -- not just for  
20 RG&E and NYSEG, but other areas.

21 The one example that pops in to my  
22 head is we worked on a process to incorporate  
23 municipalities -- resources for municipalities to  
24 gage -- engage as part of the response activities.  
25 There was a process that was developed in 2018,

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2 that kind of solidified how you'd request them,  
3 how they would be obtained. That all got worked  
4 through. That was all codified in the 2018  
5 filings, so that part was kind of going on on a  
6 separate track than -- than what was happening,  
7 especially where it included all -- all of the  
8 utilities and was a known issue that would benefit  
9 all utilities, just by making sure that process  
10 was clear.

11 So, some of that was happening, but  
12 there was certainly some aspects of what we put  
13 out, that weren't included, which is what we spent  
14 the -- the time, in December and -- and the  
15 beginning of 2018 doing.

16 COMMISSIONER BURMAN: Okay. Thank  
17 you.

18 With the settlement joint proposal  
19 between the Staff and the two companies, was there  
20 any outreach to other stakeholders, who might want  
21 to be a part of the settlement discussions, formal  
22 outreach?

23 A.L.J. MULLANY: I believe the --  
24 probably, the company would've filed a -- a notice  
25 of settlement negotiations. I don't know off the

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2 top of my head, whether that took place or not.

3 MR. BONVIN: Yeah.

4 For the --

5 A.L.J. MULLANY: I --.

6 MR. BONVIN: -- for the settlement  
7 negotiations, there was a notice that was put out.  
8 We used the listing that was based off of the  
9 latest RG&E's -- the last -- the previous RG&E  
10 rate case, as -- as kind of who we canvased and  
11 then from there, you have the listing of who  
12 participated. I know --

13 A.L.J. MULLANY: Yeah.

14 MR. BONVIN: -- there's 4 or 5  
15 participants, as part of those settlement  
16 negotiations --

17 COMMISSIONER BURMAN: All right.

18 MR. BONVIN: -- or for the -- part  
19 of the negotiations for the settlement agreement.

20 A.L.J. MULLANY: Yeah.

21 The settlement agreement was  
22 negotiated and executed by and between the  
23 companies and Department Staff --

24 COMMISSIONER BURMAN: Okay.

25 A.L.J. MULLANY: -- because they're

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2 the only parties that would be parties to an  
3 enforcement proceeding, if one were brought.

4 The investment J.P. was negotiated  
5 by and between a larger number of parties, as  
6 described in the materials.

7 COMMISSIONER BURMAN: So, the only  
8 parties that could be a part of the settlement  
9 joint proposal discussions to a settlement, would  
10 be the party -- the companies and the Staff? No  
11 outside, external stakeholders that might want to  
12 be a part of it?

13 A.L.J. MULLANY: And I -- I don't  
14 -- I don't know if anyone else wants to expand on  
15 this, but that's my understanding of how it was  
16 structured and that's why two different J.P.s were  
17 actually negotiated.

18 COMMISSIONER BURMAN: Right.

19 Okay. Thank you.

20 I'm -- that's all. I'm going to  
21 withhold my comments, until all of the reports --  
22 or all of the items.

23 So, thank you.

24 CHAIRMAN RHODES: Thank you.

25 Commissioner Alesi?

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2 COMMISSIONER ALESI: Thank you.

3 At least for what we're dealing  
4 with here, without regard to what's coming up  
5 later, I think that this is at least a fair,  
6 reasonable approach.

7 But I would say for the record,  
8 that having gone through that, you know, measuring  
9 this response and almost turning a blind eye to  
10 the requirements and the responsibilities of the  
11 utilities, that if you measure the response of  
12 National Grid and the RG&E and NYSEG, as I watch  
13 that all unfold, in reality, my -- my  
14 disappointment went to a disbelief. But with  
15 regard to this particular approach and a  
16 settlement, I think it accomplishes what we're  
17 looking to do, with regard only to this issue and  
18 not issues that may come up later on.

19 So, I'll be supporting it.

20 CHAIRMAN RHODES: Thank you very  
21 much.

22 So, with that, we will proceed to  
23 the discussion of our second item for discussion.  
24 Item 302 A, case 19-M-0285, which is an  
25 information presentation on Department of Public

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2 Service's Staff Report, on its investigation in to  
3 the performance of utilities, following the 2018  
4 winter and spring storms, presented by Christian  
5 Bonvin, still Chief of Electric Distribution  
6 Systems, which will be followed by Item 302 B,  
7 cases 19-E-105, et al, as they relate to the  
8 Staff's in -- and as they relate to the Staff's  
9 invest -- investigation, presented by Nicholas  
10 Forst, Assistant Counsel. Bruce Alch, Chief  
11 Retail Access and Economic Development, is  
12 available for questions.

13 Christian, please begin.

14 MR. BONVIN: Good morning.

15 Today, I'll be discussing Staff's  
16 investigation in to the performance of the  
17 utilities, regarding the winter and spring storms  
18 that affected New York in 2018. Most notable,  
19 were Winter Storms Riley and Quinn, which occurred  
20 less than one week apart.

21 Beginning on March 2nd, heavy, wet  
22 snow and high winds, associated with Winter Storm  
23 Riley, resulted in electric outages across the  
24 state, with peak outages of approximately 131,000  
25 for NYSEG, 93,000 for Con Edison, 85,000 for

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2 National Grid, 80,000 for Central Hudson, 41,000  
3 for PSEG Long Island, 32,000 for Orange and  
4 Rockland and 14,000 for RG&E.

5 The lower to mid-Hudson Valley area  
6 was particularly hard hit by Riley. Fallen trees,  
7 broken poles, downed wires and blocked roads, made  
8 it difficult for emergency responders and  
9 residents.

10 Con Edison, NYSEG and Orange and  
11 Rockland, were still restoring customers when  
12 Winter Storm Quinn arrived. Quinn caused peak  
13 outages of approximately 162,000, many of which  
14 were in the same areas impacted by Riley and Quinn  
15 delayed the restoration of customers originally  
16 impacted by Riley.

17 Full restoration of service for  
18 most of the utilities, following Quinn, occurred  
19 on March 10th. Customers in Con Edison's and  
20 Orange and Rockland's territories, however, were  
21 not fully restored until March 12th.

22 Staff began its investigation,  
23 immediately following Winter Storms Riley and  
24 Quinn. However, mother nature had more to offer.

25 On April 4th, a wind storm brought



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2 damaging winds and widespread rain to many areas  
3 of the state, including western New York. The  
4 April wind storm, with reported wind gusts above  
5 70 miles per hour caused peak outages of  
6 approximately 84,000 for National Grid,  
7 approximately 42,000 for NYSEG and RG&E combined.

8 On May 4th, another wind storm  
9 caused approximately 125,000 outages in National  
10 Grid's service territory and approximately 35,000  
11 customer outages in NYSEG service territory.

12 Finally, on May 15th, severe  
13 thunderstorms impacted the mid- to lower-Hudson  
14 Valley area. The concentrated storm, which  
15 included 3 tornadoes, caused approximately 73,000  
16 peak outages for Central Hudson, 69,000 for NYSEG  
17 and 46,000 for Orange and Rockland.

18 Because these subsequent events had  
19 restoration periods over 3 days, we combined our  
20 review of these storms, as part of our  
21 investigation.

22 Staff's investigation reviewed  
23 whether the utilities were properly prepared for  
24 and how they responded to the effects of the  
25 storms. Staff also examined the communication

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2 used to inform customers, emergency management  
3 personnel, government officials and the media, of  
4 the companies' restoration efforts.

5 Staff's investigation considered a  
6 number of factors, including a review of  
7 compliance with the companies' emergency response  
8 plan, discussion with the public officials,  
9 comments received as part of 20 public-statement  
10 hearings, comments filed directly with the  
11 Department, interviews with the utility personnel  
12 and analysis of the companies' reports and  
13 responses to over 700 information requests.

14 While Staff found certain areas  
15 where companies performed appropriately, our  
16 investigation found several areas where companies  
17 did not perform well, instances where they did not  
18 follow processes that identified in -- in their  
19 emergency response plan and opportunities for  
20 improvement. Overall, our report includes 94  
21 recommendations. Some of the recommendations are  
22 company specific, while others promote best  
23 practices, or enhance existing practices for all  
24 utilities.

25 Specifically, Staff's investigation

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2 found that companies were slow in obtaining  
3 outside resources needed to execute a timely  
4 restoration. Staff found the mutual-assistant  
5 process was not effective and inefficient during  
6 these events.

7 Additionally, Staff found that the  
8 internal-staffing levels at NYSEG and Con Ed --  
9 Edison, have steadily declined, limiting their  
10 ability to respond, when outside resources are  
11 scarce.

12 Although contractors are being used  
13 to help offset the decline, we find it appropriate  
14 for these companies to provide plans to increase  
15 their internal resources, to ensure proper levels  
16 are on-hand and also seek ways to increase access  
17 to outside resources.

18 Road clearing was a major concern  
19 during Winter Storms Riley and Quinn, as well as  
20 the May thunderstorms. In certain instances,  
21 residents were trapped because fallen wires  
22 prevented people from being able to vacate  
23 neighborhoods and more importantly, prevented the  
24 ability of first responders to access these areas,  
25 in case of an emergency.

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2 Staff found responses were  
3 uncoordinated and lacked an overall  
4 prioritization, given the multiple requests by  
5 municipalities. Although some process changes  
6 implemented following Riley, allowed for a better  
7 response in subsequent events, there was still  
8 much process that can be made. Staff also found  
9 that wire-guard resources were stretched and the  
10 National Guard was called on, to assist certain  
11 utilities with guarding wires.

12 NYSEG also per -- failed to perform  
13 damage assessment effectively, despite  
14 modifications to its plan. Our report identified  
15 14 recommendations to improve the road-clearing  
16 efforts and increased trained resources that can  
17 be used as damage assessors and wire guards.

18 One of the largest areas of concern  
19 we heard, was regarding the accuracy of estimated  
20 restoration times, or E.T.R.s. NYSEG had major  
21 shortcomings how it determined E.T.R.s, which  
22 resulted in the company having to revise its  
23 E.T.R.s. Staff also concluded that the failure to  
24 properly test I.T. systems, used to predict  
25 customer impact, or communicate E.T.R.s, led to

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2 misinformation being released and exacerbated  
3 customer confusion.

4 During Riley and Quinn, Con Edison  
5 and O&R, incorrectly notified customers that their  
6 power was restored, or that they were experiencing  
7 an outage. Additionally, the website for these  
8 companies, were out for an extended period of  
9 time.

10 Our report includes 10  
11 recommendations to fortify I.T. systems to use,  
12 disable the provision of incorrect information and  
13 provide E.T.R.s that are more accurate and easier  
14 to comprehend, by customers and government  
15 officials.

16 Staff review -- Staff's review of  
17 the restoration process identified multiple areas,  
18 to improve the efficiency of the utilities,  
19 including but not limited to minimizing travel  
20 times of crews and crew guides, ensuring stages  
21 areas are located in close proximity to work sites  
22 and better coordination with telecommunication's  
23 providers. Given that many of the resources used  
24 were from outside the areas, ample crew guides are  
25 necessary and the utilities should seek how to

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2 enhance resources that could be used in this  
3 capacity.

4 Additionally Staff identified that  
5 the expectations and under -- understanding  
6 regarding critical facilities was not the same,  
7 between all parties, leading to frustration,  
8 inefficiencies and delayed restoration of key  
9 facilities. This is an area where much  
10 collaboration among the utilities, counties and  
11 municipalities, during non-storm times, will  
12 produce major dividends.

13 Staff's report contains 19  
14 recommendations to improve cord -- and coordinate  
15 restoration.

16 With respect to communications, the  
17 utilities are expected to use several tools to  
18 provide information to customers and the public,  
19 including press releases, websites, call centers  
20 and social media. Staff found several areas where  
21 the utilities failed to meet the Department and  
22 public's expectation to provide timely, accurate  
23 and detailed information.

24 Additionally, several officials  
25 expressed frustrations with the municipal call

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2 process, due to the information being provided on  
3 the call, disorganization of the call and extended  
4 length of the calls, which in some cases, lasted  
5 over 2 hours for Con Edison and NYSEG. Staff  
6 offers more than 20 recommendations to improve the  
7 communication and municipal call processes.

8 Dissatisfaction with the  
9 communication process was extended in to the  
10 liaison process. Utility liaisons, which are  
11 meant to be a strong point of contact, for  
12 operation centers and local leaders, were not  
13 effective, as they were not able to provide  
14 detailed information, or resolve escalated  
15 concerns.

16 Concerns with liaisons were  
17 exacerbated, when the personnel assigned lacked  
18 knowledge about the geography, stakeholders and  
19 system configurations, in the areas to which they  
20 were assigned. Staff's report contains 5  
21 recommendations to improve communications and  
22 strengthen the municipal liaison programs, by  
23 providing liaisons, localized information, prior  
24 to and during an event. To support the efforts of  
25 the counties and municipalities.

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2 Customers using life-support  
3 equipment, referred to as L.S.E. customers, are  
4 always a major consideration during power outages.  
5 Utilities must maintain daily contact with  
6 L.S.E.'s customers during an event.

7 This is typically done through  
8 phone conversation. However, if a company is  
9 unable to make contact by phone, an in-person  
10 visit is required. Site visits may be performed  
11 with utility staff, or through third parties, such  
12 as an E.O.C., or first responder. Staff, however,  
13 discovered that NYSEG and Con Ed failed to contact  
14 all impacted L.S.E. customers.

15 Staff also found that the utilities  
16 were not consistent in logging and tracking  
17 communications with L.S.E. customers, including  
18 communications, once the customers were referred  
19 to others, assisting and performing site visits.  
20 As a result, the report includes 7 recommendations  
21 to help ensure all L.S.E. customers are properly  
22 contacted, in the case assistance is needed.

23 Finally, Staff's investigation  
24 identified numerous areas where the utilities  
25 potentially did not follow their emergency-



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2 response plan. These potential violations  
3 negatively impacted utility performance.

4 I will now turn it over to Nick, to  
5 elaborate on the potential violations and  
6 resulting next steps.

7 MR. FORST: Good morning, Chair  
8 Rhodes. Good morning, Commissioners.

9 Item 302B, the draft order before  
10 you, initiates a proceeding and orders New York  
11 State Electric and Gas Corporation, Rochester Gas  
12 and Electric Corporation, Consolidated Edison of  
13 New York, Incorporated, Orange and Rockland  
14 Utilities, Incorporated, Central Hudson Gas and  
15 Electric, Corporation and Niagara Mohawk Power  
16 Corporation, doing business as National Grid, to  
17 show cause within 30 days, why the Public Service  
18 Commission should not commence a civil-penalty  
19 action, or an administrative-penalty action,  
20 pursuant to Public Service Law Section 25 and 25A,  
21 for alleged violation of each utilities' 2018  
22 emergency-response plans, approved by the  
23 Commission on an interim basis, in case 17-E-0758,  
24 pursuant to 16NYCRR Part 105.

25 Further, the utilities are

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2 directed, pursuant to this draft order, to show  
3 cause why the utility should not implement and  
4 incorporate the recommendations, contained in  
5 Staff's 2018 winter and spring storm report, into  
6 each utilities' emergency-response plan.

7 As discussed in my colleagues, Mr.  
8 Bonvin present -- presentation, in the wake of  
9 Winter Storms Riley and Quinn, the Department of  
10 Public Service began a comprehensive investigation  
11 of New York's major electric utilities, following  
12 the storm response and restoration efforts of the  
13 state's electric utilities, which expanded to  
14 include storms that occurred in the spring of  
15 2018.

16 The Department's investigation  
17 considered whether each utility, including PSEG  
18 Long Island, properly prepared for and  
19 appropriately responded to the effects of the 2018  
20 winter and spring storms, in compliance with their  
21 annually filed emergency-response plans,  
22 Commission regulations and orders, the Public  
23 Service Law and the Public Authorities Law.

24 Upon completion of the Department's  
25 investigation and analysis, Staff concluded the

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2 utilities' protocols and practices, need to  
3 improve during outage events. Further, in some  
4 instances, the ability of the utilities to provide  
5 safe and adequate service under Public Service Law  
6 Section 65-1, can be called in to question.

7 Staff -- Staff identified numerous  
8 potential regulatory violations, which warrant  
9 Commission action, requiring the utilities to  
10 formerly respond to the conclusions drawn in  
11 Staff's report and this draft order. Staff  
12 identified over 40 potential violations in the  
13 areas of damage assessment, estimating restoration  
14 times, maintaining a functioning outage-management  
15 system, during periods of storm response,  
16 effectuating life-support equipment customer  
17 communications and conducting appropriate and  
18 effective communications, through the utilities'  
19 press releases, interactive voice-response system,  
20 website and call-center staffing. NYSEG had the  
21 most potential violations, followed by Con Edison  
22 and Orange and Rockland.

23 The Department's review of the  
24 utilities' performance, during the 2018 winter and  
25 spring storms, identified many opportunities for

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2 improvement, that in Staff's opinion, should be  
3 resolved by implementing the Department's  
4 recommendations, discussed in Staff's reports and  
5 this draft order.

6 Per the order, the utility should  
7 address the implementation of each specific  
8 recommendation contained in the D.P.S. report.  
9 Whether the Commission should mandate, reject, or  
10 modify, in whole or in part, such recommendations.

11 Staff recommends that each  
12 utilities' response include a discussion of which  
13 recommendations it opposes, the reasons for such  
14 opposition and any indication of any alternatives  
15 it proposes, to address the root cause of all  
16 recommendations to which it is objecting.

17 In addition the utility should  
18 demonstrate how any alternative more-effectively  
19 addresses the issues identified in Staff's  
20 underlying findings, how those alternatives  
21 produce more, or greater benefits, less risk  
22 and/or are more technically feasible. For  
23 recommendations posed without any alternative,  
24 Staff believes the utility should provide a  
25 justification as to why alternatives are not

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2 available and/or are not feasible.

3 Finally, to the extent a  
4 recommendation, or recommendations have already  
5 been initiated, Staff recommend that the utilities  
6 evidence their agreement to the implementation,  
7 along with an appropriate compliance timeline.

8 Furthermore, PSEG Long Island  
9 should comply with the E.R.P. process, as  
10 contemplated by the Public Service Law, Public  
11 Authorities Law and their amended and restated  
12 operation-services agreement, with the Long Island  
13 Power Authority. As provided for in the draft  
14 order, to ensure the timely implementation of the  
15 recommendations in to each E.R.P., the utilities,  
16 other than PSEG Long Island, are ordered to  
17 respond within 30 days of the date of the issuance  
18 of this order to show cause and within 10 days  
19 regarding the recommendations of the utilities,  
20 that the utilities have accepted or begun to  
21 implement.

22 Concerning the Department's  
23 identification of violations of the utilities'  
24 E.R.P.s, the Commission's E.R.P. order and its  
25 regulations under 16NYCRR Part 105, as

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2 contemplated in the draft order, the utilities are  
3 ordered to show cause within 30 days of the date  
4 of this order, why the Commission should not seek  
5 administrative penalties, for the companies  
6 failure to comply with the requirements of its own  
7 procedures, contained in their respective E.R.P.s,  
8 thereby violating each utility's E.R.P. order and  
9 16NYCRR Section 105.6.

10 While Staff's 2018 winter and  
11 spring storm report forms the basis for this draft  
12 order to show cause, it should be noted that this  
13 order is not a final determination by the  
14 Commission, concerning Staff's report and Staff's  
15 identification of violations. Rather, it provides  
16 an opportunity for the utilities to submit their  
17 response to Staff's report and the further  
18 identification of -- of various violations.

19 Their submissions will continue to  
20 develop the record in these cases and enable Staff  
21 to work with the utilities to implement its  
22 recommendations, regarding their E.R.P.s and in  
23 turn, further enable the Commission to act upon  
24 the utility showing, regarding the identified  
25 violations.

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2 This concludes my presentation.

3 Christian Bonvin and I are now available answer --  
4 to answer any of your questions.

5 I appreciate the opportunity to  
6 present this item. Thank you.

7 CHAIRMAN RHODES: Thank you.

8 I -- I -- I see this storm report  
9 as a well-documented presentation of findings and  
10 evidence, that are gathered through a thorough and  
11 probing investigation, as well as an -- an  
12 impactful and justified set of recommendations. I  
13 think all of us are going to make the same point  
14 that we can't control mother nature and sometimes,  
15 she just delivers a major event.

16 But what we can control,  
17 collectively, is whether we are organized, so to  
18 be as effective as possible in the run-up to the  
19 event and then during the event. And I -- I see  
20 the recommendations as doing a very good job of  
21 taking learnings from what was -- what we learned  
22 about ourselves and where there were gaps and  
23 shortcomings and we could do better and find them  
24 to be a very-solid set of improvement actions,  
25 which is of -- of course, the ultimate goal of all

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2 of this. You know, basically, trying to do better  
3 next time.

4 I find the order to show cause  
5 items to be appropriate. They're appropriate  
6 steps to deliver accountability. The utilities,  
7 in varying degrees, had a failure in delivering on  
8 their commitments to New Yorkers. You know, most  
9 -- mainly -- mostly with respect to the actions  
10 that they should be taking, before and during and  
11 the communications that they should be delivering  
12 on, before and during. And I'm going to -- I -- I  
13 think this is a well done bit of Staff work.

14 Commissioner Sayre?

15 COMMISSIONER SAYRE: I am  
16 personally convinced that climate change is making  
17 storms more frequent and more severe.

18 Like the Chair, I -- I see this  
19 problem as -- as a serious one, that utilities  
20 just simply have to address and like the Chair, I  
21 commend Staff for a very thorough review and its  
22 nearly 100 recommendations. This problem is only  
23 going to get worse until we address climate  
24 change. I think we have to take whatever steps we  
25 need to take here at Commission, to ensure that we



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2 have resilient plant, adequate service and speedy  
3 restoration.

4 Compared to the years when I was  
5 growing up, extended outages are much more  
6 disruptive to daily lives and the economy of the  
7 state. In terms of daily lives, it's particularly  
8 important for people to have a good idea of when  
9 an outage is going to be cleared, so that they can  
10 make the basic decision whether they're going to  
11 stick it out and stay in place, or whether they  
12 need to find some place to go.

13 Staff's report has many  
14 recommendations in this area, for improvements and  
15 I look forward to -- to working with those  
16 improvements. Overall, there must be many other  
17 improvements to communications, from utilities to  
18 their customers, particularly with respect to  
19 those on life-support equipment.

20 I support the use of every tool at  
21 the Commission's disposal, to drive the necessary  
22 improvements in these areas. I'm in favor of  
23 these items.

24 CHAIRMAN RHODES: Thank you.

25 Commissioner Burman?

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2 COMMISSIONER BURMAN: Thank you.

3 Again, I'm going to hold my  
4 specific comments on how I'm going to vote, until  
5 all of the items are discussed. I do have a  
6 couple of questions, surrounding the 302 item, but  
7 it also may bleed in to follow-up on -- with Judge  
8 Mullany on 301, so I just want to make you aware  
9 of that.

10 On -- in the 302 item, before us  
11 today is an order to show cause. The storms  
12 occurred, the 5, March 3rd, 2018, March 7th, 2018,  
13 April 4th, 2018, May 4th, 2018, May 15th, 2018.  
14 Those 5 storms were part of the collective  
15 investigation and report, which is before us  
16 today.

17 So, from that period to now, the  
18 same question I asked at 301, how much of the  
19 time, when you started the investigation until  
20 pencils down, not when the report was finalized,  
21 but when you're investigation was complete, how  
22 much time was devoted to that?

23 MR. FORST: Go ahead.

24 MR. BONVIN: So, like the other  
25 one, I would say out investigation continued

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2 throughout much of that. In this event, I can say  
3 for certain, we were doing interviews with  
4 counties and -- and municipalities, in July. So,  
5 that process was still ongoing, even through then.

6 I think the mandatory filing for  
7 the Part 105, didn't even come in, until July, for  
8 the May event. So, you know, having those extra  
9 events certainly extended the timeframe, compared  
10 to this -- the start time of -- of the May event -  
11 - of the March storms and added complexity.

12 You know, and I know for that one,  
13 we issued I.R.s, even in December, you know.

14 COMMISSIONER BURMAN: Okay. So,  
15 we're looking at almost a year, from the end of  
16 the last storm, over a year from the beginning of  
17 the first storm, in 2018, until it comes before  
18 us.

19 With that, with the -- in-between  
20 that, there was an order improving the emergency-  
21 response plans. So, the 2017 emergency-response  
22 plans were approved on an interim basis, April  
23 19th, 2018, is that correct?

24 MR. FORST: That's correct,  
25 Commissioner.

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2 COMMISSIONER BURMAN: Okay. And at  
3 that time, the -- all of the recommendations from  
4 the 2017 event, were -- the 30, were incorporated  
5 in some fashion, in to the ones that we were now  
6 approving, on an interim basis, in the April 2019  
7 -- excuse me. April 19th, 2018 order?

8 MR. FORST: So, the E.R.P. process,  
9 as they are approved, on an annual basis, is  
10 really an iterative process. Obviously, as the  
11 plans improve, they go through refinement, year  
12 after year.

13 So, to the extent that  
14 implementation of certain recommendations  
15 contained in the 2017 report were included, I'd  
16 have to double-check on the extent to which they  
17 were included. But it is an ongoing process.

18 COMMISSIONER BURMAN: Okay. It's  
19 important for me to know, when we're looking at  
20 this and looking at not only order to show causes  
21 on certain recommendations, but then looking at  
22 the approval of the plans, to know if those  
23 recommendations were incorporated in to the most  
24 recent plan that's coming up for our approval.  
25 And if not, why not and why they changed because

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2 there may have been a valid reason, but it also  
3 gives me a window in to whether or not the initial  
4 recommendations that came in the order to show  
5 cause, actually then found it's way in to the  
6 emergency-response plans and if not, why not.

7 MR. BONVIN: I -- I would say a  
8 significant number of the recommendations from the  
9 2017 storm, were in the plans that were approved  
10 last -- last year.

11 Again, the -- most of that work was  
12 being done, prior to the event occurring --

13 COMMISSIONER BURMAN: Okay.

14 MR. BONVIN: -- that we were doing  
15 very -- we were doing very well, on -- on a lot of  
16 those recommendations. But I -- I would have to  
17 double-check again, to make sure, to get an exact  
18 count of how many were, or weren't.

19 COMMISSIONER BURMAN: Okay. Great.

20 Thank you.

21 Now, there's about 94  
22 recommendations, is that correct? And --

23 MR. FORST: That's --.

24 COMMISSIONER BURMAN: -- out of  
25 these recommendations, how many of them were

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2 violations of the existing, which would be the  
3 2017 emergency-response plan, approved in 2018, I  
4 believe.

5 MR. FORST: So, I would --

6 COMMISSIONER BURMAN: How many --?

7 MR. FORST: -- differentiate  
8 between recommendations, as they're contained in  
9 the report and the identification of violations.  
10 While many of the recommendations seek to address  
11 issues that were violations, the -- the number of  
12 violations and recommendations are not subsumed  
13 within one another.

14 COMMISSIONER BURMAN: Right.  
15 That's my point.

16 So, my question is how many of  
17 those recommendations were in the emergency-  
18 response plan -- how many of these are violations,  
19 of the existing 2018, which is the 2017 emergency-  
20 response plan, that was approved in 2018?

21 MR. BONVIN: So, we -- we usually  
22 approve plans as a basis to determine whether or  
23 not the companies were acting with them because  
24 we've specifically asked whether or not those were  
25 in use. What the -- what plan they were using,

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2 when they went in to the March storms and then for  
3 subsequent storms, they were actually approved.  
4 So, it -- it's clear.

5 COMMISSIONER BURMAN: So, the March  
6 storm would've been the 2017 order, that approved  
7 the 2016 plans, is that correct?

8 MR. BONVIN: So --

9 COMMISSIONER BURMAN: I may be  
10 wrong on my years, but I'm just -- that's why it's  
11 important to know, when we're looking at these,  
12 are we looking at it for the existing plan, or the  
13 old plan?

14 MR. BONVIN: -- so, we were looking  
15 at it, you know, I guess for the March Riley and  
16 Quinn Storms, we were using plans that were filed,  
17 that was their latest version, although --

18 COMMISSIONER BURMAN: Uh-huh.

19 MR. BONVIN: -- they had yet to be  
20 approved. We were working on modifications that  
21 were in there.

22 COMMISSIONER BURMAN: Right.

23 MR. BONVIN: And those were the  
24 plans that they were using, to respond to those  
25 events.

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2 COMMISSIONER BURMAN: Okay.

3 MR. BONVIN: So, we based our  
4 analysis off of that and then again, for the May  
5 one, it's a lot cleaner because those plans were  
6 approved, so --

7 COMMISSIONER BURMAN: Right.

8 MR. BONVIN: -- they were using  
9 those approved --

10 COMMISSIONER BURMAN: Okay.

11 MR. BONVIN: -- plans.

12 COMMISSIONER BURMAN: That -- that  
13 makes sense.

14 Thank you.

15 Out of these 94 recommendations,  
16 they're actually in several buckets. There's 17  
17 buckets. I'm going to read each one.

18 1, road-clearing efforts. 2, wire-  
19 guarding. 3, resource acquisition and mutual  
20 assistance. 4, damage assessment. 5, outage-  
21 management systems. 6, estimated time of  
22 restoration. 7, restoration process. 8,  
23 restoration of critical facilities. 9, mass-  
24 communications. 10, municipal liaisons. 11,  
25 municipal calls. 12, call-center operations. 13,



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2 life-support equipment customers. 14, dry-ice  
3 distribution. 15, customer reimbursements. 16,  
4 hardening the electric system. 17,  
5 telecommunication-provider service reliability and  
6 resiliency. And actually, I miscounted. It's 18,  
7 is for tree management.

8 So, out of these 18 buckets, we  
9 came up with then sub-recommendations, which -- so  
10 94. I think it's important for us to recognize  
11 that we're looking at 18, as primary  
12 recommendations and 94 of sub-recommendations.  
13 So, when we look at this, it's, you know, it is a  
14 -- while we're announcing 94 recommendations, it's  
15 really out of 18 primary recommendations, that the  
16 94 sub-recommendations come from.

17 So, for me, it's important to look  
18 at that and each one of those recommendations in  
19 those buckets and see what we're saying for each  
20 one. Out of these 94, it applied, across the  
21 board, pretty consistently, to all electric  
22 utilities, these recommendations. However, there  
23 were some recommendations that were then  
24 identified, as just going to one particular  
25 company, or several particular companies.

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2 Out of these, it's a smaller number  
3 for NYSEG, RG&E, O&R, Con-Ed, PSE&G and Central  
4 Hudson, that have specific ones attached to them,  
5 rather than the collective whole. Is that fair?

6 MR. BONVIN: Nick?

7 MR. FORST: That would be fair,  
8 Commissioner.

9 COMMISSIONER BURMAN: Okay. So,  
10 the recommendations, as to some of these, I think  
11 apply to the -- all of the -- the utilities across  
12 the board, but then we identify some specific ones  
13 for a utility.

14 I'm in particularly focused on one  
15 right now, which is the I.V.R. for Central Hudson  
16 and why that was given -- it was Central Hudson,  
17 Con Ed, National Grid and PSE&G Long Island. I --  
18 I'm a little confused by that because I -- I had  
19 thought that -- that that was not an issue for  
20 Central Hudson, on this I.V.R. recommendation.

21 Is that a mistake?

22 MR. BONVIN: I think Bruce can  
23 answer that one.

24 MR. FORST: I believe Mr. Alch can  
25 answer that question for you, Commissioner.

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2 MR. ALCH: Well, Mr. Alch would  
3 like to get back to you on the specifics on that  
4 one. That's pretty --.

5 COMMISSIONER BURMAN: Okay.

6 MR. ALCH: Okay.

7 COMMISSIONER BURMAN: Yeah.

8 I -- I didn't think there were any  
9 issues with their response and I'm not saying I  
10 didn't. I -- I -- I believe that we had gotten  
11 something, so I just am flagging that, in case  
12 that needs to be updated.

13 MR. ALCH: I -- I'll get back to  
14 you on the --

15 COMMISSIONER BURMAN: Okay.

16 MR. ALCH: -- details.

17 MR. BONVIN: All right.

18 COMMISSIONER BURMAN: Thanks.

19 Is there -- for each of these  
20 recommendations, is there a cost attached to -- if  
21 they're implemented, what that cost would be?

22 MR. BONVIN: It -- so there isn't a  
23 -- a cost attached for doing that. However, for  
24 some of the ones that we know will have sizeable  
25 costs, we request a plan with budgets and

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2 timeframes for implementation.

3 COMMISSIONER BURMAN: Okay.

4 MR. BONVIN: So, we are seeking  
5 what the costs will be before taking steps as part  
6 of rate cases, or -- or other act -- actions.

7 COMMISSIONER BURMAN: Okay. So,  
8 there has actually not been a benefit-cost  
9 analysis done, to date, on these recommendations?

10 MR. FORST: No.

11 That's correct, your --  
12 Commissioner.

13 I think the order to show cause  
14 also offers the utilities an opportunity to  
15 provide alternatives, or less-costly alternatives  
16 that may extenuate and develop the record, for  
17 future determinations.

18 COMMISSIONER BURMAN: Okay. When  
19 we take these in to account and we're -- in the  
20 order to show cause, saying that we want them to  
21 do this, unless they have alternatives, or some  
22 other reason, essentially, we're expecting that  
23 these will be there in some form, whether there's  
24 these recommendations, or some alternative. But  
25 we have not yet actually identified what that

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2 would mean, from a cost perspective, going  
3 forward.

4 Not looking back on the penalty  
5 portion, but going forward, if they adopted each  
6 and every one of these recommendations and said  
7 yes, we agree, we would put these in our plans, we  
8 cannot come up with an alternative that's less --  
9 less costly, what would that dollar figure be and  
10 why haven't we done an analysis?

11 MR. BONVIN: So, we -- we -- we  
12 didn't do an analysis of the entire one. I think  
13 some, are -- are -- are simple and -- and probably  
14 are low-cost and those are the ones, such as  
15 reworking how -- who's responsible for certain  
16 activities within your plan, how you go to --  
17 manage and -- and -- and do other activities, to  
18 make sure that things are executed properly.

19 Again, we kind of noted the ones  
20 that were -- we knew were going to have  
21 significant budget impacts, or activities that  
22 weren't already being done by the companies  
23 themselves and asked for that information, so we  
24 could do a -- a more holistic view of what it  
25 would take, as -- as well as part of integrating

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2 that in with other activities, to determine, you  
3 know, what is the best schedule for tree trimming,  
4 for example, instead of deciding it in the  
5 isolated vacuum.

6 So, will they get to -- not on the  
7 penalty portion of it, but going forward, will  
8 they be able to have full cost recovery, if all 4  
9 -- if -- if all 94 of these recommendations, plus  
10 the others that are in the emergency-response  
11 plans, how does that work, in terms of cost  
12 recovery?

13 MR. BONVIN: Nick?

14 MR. FORST: That would be covered  
15 in a separate rate-case proceeding.

16 COMMISSIONER BURMAN: Okay. But  
17 because they're mandated, going in to it, they --  
18 would it be true, or fair to say, that they would  
19 expect cost recovery because they were mandated to  
20 do these and the Commission is then going to  
21 approve that? So, going in to it, there's a  
22 dollar figure that they -- that we should expect,  
23 at least a figure, that this is what is -- these  
24 are what these -- these are costing, this plus  
25 anything else and we'll take care of it in a rate

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2 case?

3 MR. FORST: I think the order to  
4 show cause itself, separate from the violation  
5 component, just to be clear, allows for discussion  
6 of those concerns. And so, I think it's  
7 preemptory to assume that we've worked to a -- a  
8 determination on, you know, what items will be  
9 accepted, rejected, modified, etcetera and the  
10 ultimate conclusion of where we'll land on some of  
11 these recommendations.

12 Obviously, it's Staff's assertion,  
13 that you know, as it's recommend -- recommending  
14 to the utilities, that they do -- and go forward  
15 with these items, but it is not ultimately a -- a  
16 determination that is forcing those utilities to  
17 do that, as of yet.

18 COMMISSIONER BURMAN: Okay. I'll  
19 save my comments for after all -- we do that.

20 With LIPA and PSE&G, they obviously  
21 also were investigated. PSE&G Long Island was  
22 investigated, in looking at what could be done and  
23 recommendations were adopted.

24 What is the process that happens  
25 after this, for them and is there any order to

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2 show cause that would come against them?

3 MR. FORST: So, as is noted in the  
4 order, there's a separate procedure, as laid out  
5 in the Public Service Law, the Public Authorities  
6 Law and as required by the amended and restated  
7 services agreement with the Long Island Power  
8 Authority, between PSEG and the -- and the power  
9 authority. So, they are to follow that process,  
10 which includes a similar process to the filings  
11 that are filed by the utilities for their E.R.P.s,  
12 to include recommendations from Staff.

13 And so, Staff would go through that  
14 process with PSEG Long Island to that extent, to  
15 discuss its recommendations.

16 COMMISSIONER BURMAN: So, LIPA  
17 could also then bring an order to show cause?

18 MR. FORST: I don't believe LIPA  
19 would necessarily bring an order to show cause. I  
20 think that's a little bit more far afield from our  
21 discussion.

22 But ultimately -- and the PSE&G  
23 Long Island is required by the Public Authorities  
24 Law, as LIPA surface -- service provider, to file  
25 with the Department, its emergency-response plan,



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2 which then is subject to review and recommendation  
3 by the Department and then ultimately adopted by  
4 the LIPA board.

5 COMMISSIONER BURMAN: So, what are  
6 they adopting, the LIPA board, to be --

7 MR. FORST: The LIPA --

8 COMMISSIONER BURMAN: -- clear?

9 MR. FORST: -- board is adopting  
10 PSE&G's -- PSE&G Long Island's emergency-response  
11 plan.

12 COMMISSIONER BURMAN: Okay. And  
13 there's no discussion of -- as there is here, for  
14 the other utilities, a penalty action?

15 MR. FORST: That's correct,  
16 Commissioner.

17 COMMISSIONER BURMAN: Okay. So, if  
18 there -- so here, it's only those utilities under  
19 our jurisdiction and there would not be ever, a  
20 penalty action, against PSE&G Long Island?

21 MR. FORST: That's correct.

22 The -- the jurisdiction under 25  
23 and 25A does not apply to PSE&G Long Island.

24 COMMISSIONER BURMAN: Okay. In all  
25 of the discussion, in the orders to show causes,

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2 we've been focused on emergency-response plans  
3 that the utilities have to file.

4 What about the score cards that  
5 came about, from 2013 order?

6 MR. BONVIN: So, the data that was  
7 included as part of the score cards, was included  
8 as part of our review and analysis and that also  
9 triggered certain areas where we looked in to poor  
10 performance, or helped gauge performance, one that  
11 comes to mind.

12 An easier one, is the requirement  
13 to contact L.S.E.s with -- 80 percent of the  
14 L.S.E.s, within 12 hours. That --

15 COMMISSIONER BURMAN: Okay.

16 MR. BONVIN: -- that's a measure  
17 and that's what we've worked in to the plans to  
18 codify it better and that's one of the items that  
19 we have noted in our report, as certain companies  
20 not being able to perform.

21 COMMISSIONER BURMAN: So, after  
22 today, if the companies accept all of the  
23 recommendations, what's the next step, those  
24 companies that have -- that we have jurisdiction  
25 over?

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2 MR. FORST: So, the next step for  
3 the utilities would be -- would be per the order  
4 to file the -- in response to the order to show  
5 cause, their responses. And if they were to  
6 modify or adopt all of those recommendations, we  
7 would then use those filings to -- to come back to  
8 the Commission.

9 COMMISSIONER BURMAN: Okay. And in  
10 December 2018, the utilities that we have  
11 jurisdiction over, filed emergency-response plans  
12 -- their 2018 emergency-response plans.

13 Have those been SAPA'd?

14 MR. ALCH: Yeah.

15 MR. BONVIN: Yes.

16 They were SAPA'd as soon as they  
17 were filed.

18 COMMISSIONER BURMAN: They are --  
19 they were SAPA'd?

20 MR. BONVIN: Correct.

21 COMMISSIONER BURMAN: Okay.

22 Counsel Sipos, is that correct?

23 MR. SIPOS: I believe so,  
24 Commissioner.

25 COMMISSIONER BURMAN: Okay. Thank

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2 you.

3 So, those are SAPA'd and now there  
4 is an amendment process, is that correct?

5 MR. FORST: That's correct,  
6 Commissioner.

7 COMMISSIONER BURMAN: And those --  
8 any amendments to it would not be SAPA'd? Is that  
9 correct, or would they have to be SAPA'd?

10 MR. FORST: I believe the utilities  
11 file a revised plan during the process, that it --  
12 then is presented to the Commission.

13 COMMISSIONER BURMAN: But those  
14 revisions to those plans and those amendments,  
15 that wouldn't potentially incorporate these 94  
16 recommendations, that may or may not have costs  
17 attached to them, would not be SAPA'd, is that  
18 correct?

19 MR. FORST: The --

20 COMMISSIONER BURMAN: So, we would  
21 --

22 MR. FORST: -- individual --.

23 COMMISSIONER BURMAN: -- be working  
24 off of the -- we would be working off of the ones  
25 that were filed for the original December 2018

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2 plans?

3 MR. FORST: For the purposes of the  
4 -- the SAPA notice itself, it's based on the  
5 original filing, in December.

6 COMMISSIONER BURMAN: Okay.  
7 Normally, if we didn't have the investigation  
8 report and now the order to show cause, from the  
9 beginning of the December 2018 filings, which are  
10 December 15th, 2018, under the Law, that's when  
11 they're supposed to be filed by.

12 Normally, when we would be looking  
13 at then adopting, with modifications or not, the  
14 plans? What's the -- what's the session that we  
15 would normally do that around, assuming we SAPA'd  
16 it right away?

17 MR. FORST: It -- it -- it's an  
18 approximate. I mean, I don't want to be married  
19 to an individual date, but ultimately it's in the  
20 spring time, around now.

21 COMMISSIONER BURMAN: Right.

22 Okay. Like last year, we did it  
23 April 19th, 2018. The year before that, I think  
24 was similar.

25 MR. FORST: That's correct,

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2 Commissioner.

3 COMMISSIONER BURMAN: Okay. So  
4 now, with this, with the next steps on this order  
5 to show cause, not as the penalty portion, but as  
6 to these direct com -- recommendations, now if  
7 there was a storm that happened, let's say, after  
8 session, the order is issued, the utilities agree  
9 to all of these recommendations, but we still have  
10 not adopted the 2018 plans, in 2019, if there's a  
11 storm, what are we looking at, in terms of whether  
12 or not there are violations? We're looking at the  
13 old plan, not the -- this?

14 Because we haven't -- we're not  
15 doing anything here. This is an order -- we're  
16 not doing anything affirmatively, as to adopting  
17 these recommendations --

18 MR. BONVIN: I think it's a --.

19 COMMISSIONER BURMAN: -- even if  
20 the utilities accept all of them.

21 MR. BONVIN: Right.

22 So, if we had another storm event  
23 and there was going to be -- an investigation  
24 following it, I think we'd do similar to what we  
25 did in -- in -- in the first questions that we

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2 ask, which is to say which plans were you  
3 following and if we already didn't have a copy of  
4 that, we would request a copy, so that we could  
5 analyze and compare against what they -- their  
6 plan that they were using --

7 COMMISSIONER BURMAN: Right.

8 MR. BONVIN: -- versus that.

9 And you know, to the extent that  
10 that was omitting pieces that were filed in, you  
11 know, or back in December, that were suddenly  
12 removed for some reason, we would note that in  
13 this part of our investigation.

14 COMMISSIONER BURMAN: Okay. All  
15 right. The report seems to be focused on just an  
16 assessment of what the utilities have done and how  
17 they performed and was focused on that.

18 What about our own self assessment  
19 and what we might be able to do, not only from our  
20 own self assessment of what we could do better,  
21 but from what other stakeholders may find, that  
22 would help them, whether it's the utilities, or  
23 the municipalities, or other sister agencies, in  
24 doing a better job? Where is that self  
25 assessment?

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2 MR. FORST: So, that self  
3 assessment was not included in the report.  
4 Obviously, the report looks at the performance of  
5 the utilities.

6 I can't speak to, you know, whether  
7 we'll be conducting a self assessment. But  
8 ultimately, I think the report does take in to  
9 account, input from stakeholders, municipalities  
10 and those interested customers who did voice their  
11 opinion, who were quite a few and -- and those  
12 comments did make its way in to the report.

13 COMMISSIONER BURMAN: Okay. Thank  
14 you.

15 But there's been no formal self --  
16 no formal self assessment, to date?

17 MR. FORST: Not that I'm aware of.

18 COMMISSIONER BURMAN: Okay. Is  
19 anyone else aware of that?

20 MS. MITCHELL: There is nothing  
21 formal.

22 I just wanted to point out, that of  
23 course, in any of these, we will be looking  
24 internally, you know, at our processes and -- and  
25 our staffing and our response. But we do have a



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2 -- a new office, which will focus on these events.  
3 The Office of Resilience and Emergency  
4 Preparedness.

5 So, I think we're always looking  
6 internally at -- at anything we could do better,  
7 as well as you know, meetings that we've had with  
8 public officials and with the utilities because --

9 COMMISSIONER BURMAN: Right.

10 MS. MITCHELL: -- you know, we're  
11 all in this together and we all play a part in  
12 preparedness and response.

13 COMMISSIONER BURMAN: Yeah.

14 Thank you. I very much agree with  
15 that.

16 MR. ALCH: And Commissioner, I  
17 would just add, that informally, Office of  
18 Consumer Services has also been reviewing some of  
19 the lessons learned and we're revisiting how we  
20 coordinate with the L.S.E. customers and getting  
21 consistent data from the utilities and reporting  
22 of consistent L.S.E. customer data, which was a  
23 primary concern for us.

24 COMMISSIONER BURMAN: Great.

25 Thank you.

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2 Now, one of the questions I have,  
3 relates to an entity that we have not talked about  
4 today. The New York Power Authority. And my  
5 understanding is, at least from public filings, or  
6 public statements, they had a significant role in  
7 all of these storm recoveries, 2017 and 2018.

8 So, to the extent that when we're  
9 looking at investigations and reports, how do we  
10 incorporate external parties, that we are not  
11 necessarily making mandated recommendations to,  
12 but their processes and performance, may help or  
13 hinder, depending on the particular issue, how do  
14 we incorporate that, in a way, whether it's our  
15 own self assessment, or the self assessment of the  
16 utilities, but also the -- what I see as that  
17 bucket of self -- needing to assess those parties  
18 who are part of the process with us? How do we do  
19 that?

20 MS. MITCHELL: So again, NYPA is  
21 another party involved.

22 One of the areas that we turn to  
23 NYPA for, the utilities turn to NYPA for, is  
24 providing some mutual assistance with some of  
25 their crewing. So, we -- we do reach out and --

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2 and talk to NYPA as well.

3 COMMISSIONER BURMAN: One of the  
4 things that I have concerns with, is to the extent  
5 that the utilities are engaging in arrangements  
6 with NYPA, especially because we are the ones  
7 under the Law, that ultimately have oversight of  
8 the utilities that are in our jurisdiction, as  
9 well as looking at it from any potential  
10 violations, or recommendations without penalty  
11 violations, that would be incorporated in to their  
12 plans, one of the concerns I have is making sure  
13 that the Commission itself, is very-well aware of  
14 and embracing, or not, what those arrangements  
15 are, in a way that may be helpful.

16 So, I say that, understanding that  
17 there are arrangements that happen outside of the  
18 plan, but that we really need to make sure that  
19 we, as the lead entity, are the ones that are  
20 giving direction to the utilities. And also, the  
21 ones that if we are to delegate that  
22 responsibility or direction, it's very clear what  
23 those -- what those chains of commands are and  
24 what those protocols are and that we're not  
25 outside of that process.

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2 So, I've went -- I said I was going  
3 to save my comments, but it did seem like an  
4 appropriate one to raise now. It's not at all  
5 meant to chill. In fact, it's meant to make sure  
6 that we're working together and so, I embrace that  
7 the New York Power Authority is very-much engaged  
8 in this, but we need to be engaged as well, in  
9 that process, to make sure that we're not doing  
10 anything -- unintended consequences, that are not  
11 helpful to our folks, especially the ones that  
12 will be on the ground. It's very important.

13 It's very different, sitting here  
14 versus being on the ground and those processes of  
15 chains of commands are very important to  
16 understand. So, I just raise that as something  
17 that's important to -- where I sit.

18 One of the things that is not in  
19 this, is what we have accomplished, post Super  
20 Storm Sandy, in terms of those items that have  
21 been done by the utilities and many times, at the  
22 direction of the Commission, for such things as  
23 storm hardening and other, that have been seen as  
24 helpful and also, have come with costs attached to  
25 them, as well. Where is the assessment of how

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2 those assets, whether it's, you know, whatever it  
3 happens to be and all the different activities and  
4 actions have taken place and how they have held up  
5 what is -- from the accountability perspective,  
6 needing to either be changed or supports that  
7 those costs were worth -- were worth it?

8 I guess where does that come?  
9 Where do we do that analysis?

10 It's not in the report, so --.

11 MR. FORST: So, I think that  
12 analysis is done, on a project-by-project basis.  
13 I wouldn't necessarily say that there is a -- one  
14 central-focused report, or overarching report that  
15 looks at all of those items.

16 But I think we do look to  
17 continually refine what we consider to be success  
18 in those areas and we continue to implement better  
19 and stronger projects, as we go along. So, I  
20 think we're constantly learning and -- and  
21 analyzing and -- and learning and taking that data  
22 and pushing that forward, as we move in to new  
23 resiliency projects.

24 COMMISSIONER BURMAN: Thank you.

25 Out of these 18 primary

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2 recommendations, do we identify any -- do we have  
3 these identified in order of magnitude?

4 MR. FORST: Can you repeat your  
5 question again, Commissioner? I apologize.

6 COMMISSIONER BURMAN: So, there's  
7 18 primary recommendations, 94 sub-  
8 recommendations.

9 Do we identify, out of these 18, or  
10 94, depending how we count, do we identify which  
11 ones will rise to the level of most serious? Is  
12 there any kind of hierarchy of recommendations?

13 MR. FORST: So, the -- the 18  
14 primary recommendations as you would call them,  
15 are -- are 18 subject area. I would say that  
16 inform, or to categorize those 94 recommendations.

17 The report does not list them in  
18 any kind of ranking order as such. I think Staff  
19 would contend that they're all very important.  
20 That's why we're recommending them.

21 But I think that it would be  
22 something that we can discuss with the utilities  
23 upon their -- their filings, as to how best to  
24 deal with such an issue.

25 COMMISSIONER BURMAN: Okay. I --

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2 MR. BONVIN: And --

3 COMMISSIONER BURMAN: -- I would --

4 MR. BONVIN: -- and I -- I would --

5 COMMISSIONER BURMAN: -- just --.

6 MR. BONVIN: -- just also add, that  
7 some of them are -- are -- have a very short term  
8 implementation, you know, not a -- not very  
9 difficult to implement and as well -- as some of  
10 the are more -- longer term. It'll take some  
11 time.

12 You know, for example, meeting with  
13 counties, sharing information, coordinating with  
14 counties, doing all that is not going to happen in  
15 a week.

16 COMMISSIONER BURMAN: Right.

17 MR. BONVIN: So, I think we're also  
18 looking at it from not just the -- the impact  
19 it'll have, but you know, how quickly you can  
20 actually resolve them and -- and try to get as  
21 many in, as -- as we can.

22 COMMISSIONER BURMAN: I think  
23 that's actually a really helpful point because to  
24 the extent that when we were looking at these  
25 recommendations, not only in terms of what the

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2 cost is, but also what takes long -- a long time.  
3 So, when we finally adopt these in to the  
4 emergency-response plans, they also may take time  
5 to ramp up and we should be looking at what that  
6 means.

7 So for example, one of the  
8 questions I would then have, is on the order to  
9 show cause, today, but also from 2017, what ones -  
10 - because remember, this -- the plans on an  
11 interim basis, were adopted at the April 19th,  
12 2018 session. There was an order, approving plan  
13 on an interim basis. That happened -- two more  
14 storms happened, out of the five storms that were  
15 investigated.

16 So, looking at those two, some of  
17 those violations, or potential recommendations,  
18 may logistically, feasibility-wise, not have been  
19 able to then implement it or not. So, it would be  
20 helpful, when we're approving in the future, the  
21 plans and also any recommendations, that we also  
22 clear establish what the expectation is for that  
23 timeline, for them to actually be implemented  
24 because I think that also gives us -- one, it  
25 gives us a -- a -- a clear understanding, if the



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2 utilities or other stakeholders that may be  
3 involved, see that that -- that timeline is  
4 appropriate or not. They'd have an opportunity to  
5 say it.

6 But also, we'd also be able to know  
7 clearly, right after we adopt the plans and if  
8 there was an unfortunate extreme-weather event, we  
9 would also be able to know what we were looking  
10 at, in terms of, you know, whether or not they  
11 should have had those in place because it -- some  
12 of them probably would not be. So, it's -- just  
13 gives us that further information.

14 And since it would seem like, in  
15 many times, I think before, when we were adopting  
16 these plans, it would not have seemed like  
17 necessity. But since we adopted the plans in  
18 April 19 -- April 19th, 2018 and then had two more  
19 storms that became the subject of investigation,  
20 just less than a month later, now I see that -- to  
21 me, that would be important to know and would also  
22 put us all on the same page of what we were  
23 looking at.

24 Does that make sense? You could  
25 say if it doesn't make sense.

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2 MR. FORST: Well, I would certainly  
3 note that the order does take in to account that  
4 we're asking utilities to file a compliance  
5 timeline, with implementation -- with  
6 recommendations that they're already in progress  
7 of implementing, so that would assist in those  
8 efforts.

9 I think that we continue to work  
10 with the utilities in each -- in every major-storm  
11 event, to determine the gravity of the impacts, as  
12 well as where we are in those processes, as far as  
13 the next iteration of their emergency-response  
14 plans.

15 COMMISSIONER BURMAN: Out of these  
16 18 primary recommendations, 94 sub-  
17 recommendations, how many of them have already  
18 been -- are indicated will be implemented?

19 You seemed to indicate that that  
20 was something that you -- they're already doing.  
21 So, I just want to make sure we understand what  
22 we're looking at, in terms of the recommendations.

23 MR. FORST: That's part of what the  
24 order seeks to get from the utilities, is an  
25 official reporting on that.

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2 COMMISSIONER BURMAN: But we don't  
3 know? We haven't asked how many of these are  
4 already being done?

5 MR. BONVIN: So again, I would  
6 probably say that -- that we know that there's  
7 some paths that are very parallel to what we're  
8 recommending. They might not be in lock-step,  
9 however.

10 So, you know, for example, I know  
11 that utilities are very much trying to improve the  
12 processes for liaisons and getting them  
13 information, making sure they have access to -- to  
14 better dashboards and -- and information, while  
15 they're out in the field, or at a location. So, I  
16 know a lot of that's already been happening,  
17 whether it matches a hundred percent with what  
18 we're looking for, is I think what we're going to  
19 ask them to do and then if -- if there is a gap,  
20 we're going to close the gap.

21 COMMISSIONER BURMAN: Okay. Thank  
22 you.

23 Looking at the next steps on the --  
24 on these plans, is it anticipated -- excuse me.  
25 Not on the plans.

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2 On this order to show cause, is it  
3 anticipated, not on the penalty section, but on  
4 the -- on the recommendations, it is anticipated  
5 that those recommendations, if adopted in some  
6 fashion, by the utilities, agreed to, reject and  
7 modified, whatever happens -- whatever they happen  
8 to do, it has to -- they have to come back to the  
9 Commission for adoption? And how would that work?

10 MR. FORST: So, I think it would be  
11 two-fold. I think part of the order to show cause  
12 would respond to the violation section as well,  
13 but we also have their E.R.P. plans that would  
14 come before the Commission as well.

15 So, it's sort of a two-pronged  
16 approach, where we would then both entertain the  
17 recommendations and the filings from the  
18 utilities, in the order to show cause proceeding,  
19 but as well as how they've been implemented in  
20 their E.R.P.s, in those -- in that proceeding, as  
21 well.

22 COMMISSIONER BURMAN: Has anyone  
23 looked at the December 2018 emergency-response  
24 plans that have currently been submitted and  
25 matched up these recommendations, to see if

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2 they're already in there?

3 MR. BONVIN: So, we're currently  
4 going through our process of reviewing those  
5 plans, as well as determining if whether or not --  
6 if these areas are in there.

7 Some of the recommendations in our  
8 report, however, do not apply to the E.R.P.s.  
9 They're -- they're outside of them. But in the  
10 cases that they are, we are going through, as part  
11 of our analysis, which is another reason why you  
12 haven't see the plans for your approval, you know,  
13 around the normal time you would have, normally.

14 COMMISSIONER BURMAN: Okay. All  
15 right. So, there -- there is -- it's fair to say,  
16 at least -- it's fair at least to me, to say that  
17 there is now a delay in this, while we work  
18 through this.

19 Understandably, my concern is  
20 focusing on this, while we also have to get moving  
21 forward on the approval of the plans, keeping in  
22 terms of -- we have score cards, plans that need  
23 to be amended, these recommendations need to be  
24 gone through and identifying which falls in that  
25 E.R.P. and which doesn't. And also, to the extent

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2 that there's a mismatch, some of the mismatch may  
3 be that the December 2018 plans, are actually  
4 potentially better than the recommendation -- some  
5 of these recommendations that we are asking for  
6 and attaching an order to show cause from.

7 So, it does seem like waiting, you  
8 know, we had the plans and now, we're bringing an  
9 order to show cause. It does seem like there's  
10 just -- we could've done some engagement, in terms  
11 of making sure we knew.

12 What if they amend the plans and it  
13 goes to our recommendations, but it actually is  
14 diluting what the plan may have recommended? Do  
15 we -- will we work through that, say we like your  
16 recommendation, better than our recommendation?

17 MR. BONVIN: So, if the companies,  
18 during our discussions and review of what changes  
19 we'd like to make, are -- are proposing something  
20 that meets our requirements, or exceeds it, based  
21 --

22 COMMISSIONER BURMAN: Okay.

23 MR. BONVIN: -- on what their  
24 capabilities --

25 COMMISSIONER BURMAN: Okay.

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2 MR. BONVIN: -- are --

3 COMMISSIONER BURMAN: Yeah.

4 MR. BONVIN: -- we certainly would  
5 not throttle them back to our --

6 COMMISSIONER BURMAN: Perfect.

7 MR. BONVIN: -- exact  
8 recommendation, you know. But we want to make  
9 sure that they meet the base line that we're  
10 trying to establish as part of our recommendation.

11 COMMISSIONER BURMAN: Okay. So, in  
12 some of the analysis then, that would come to us,  
13 with the 2019 -- or 2018 plans, in 2019 to  
14 approve, it'll be helpful to know if they meet or  
15 exceed the recommendations.

16 And also, it would be helpful to  
17 know, since a lot of these recommendations go  
18 across to all of the utilities, a sharing, in some  
19 fashion that makes sense, so that the ones --  
20 especially the ones that exceed, might be looking  
21 at what that means to put in to their plans, even  
22 if they meet our recommendations here, but someone  
23 else is exceeding it and what that would look  
24 like?

25 MR. FORST: It's --.

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2 MR. BONVIN: Absolutely.

3 And that's --

4 COMMISSIONER BURMAN: Okay.

5 MR. BONVIN: -- that's part of the  
6 activity that we've done in -- in the past, is to  
7 try to show best practices, from one plan to  
8 another company.

9 COMMISSIONER BURMAN: Okay.

10 Thanks.

11 What are we doing to match up the  
12 2018 State Energy Emergency Plan, with the  
13 utilities' plans and with what our actions are?

14 If you don't know, that's fine.

15 MR. FORST: Yeah.

16 That's something that's fallen  
17 outside of our work, in particular.

18 COMMISSIONER BURMAN: I think  
19 that's really important, especially since on some  
20 issues, we're a lead agency, but also, some we're  
21 not and to the extent that we are identifying and  
22 looking at these plans, are making -- excuse me,  
23 making recommendations that may not match up, or  
24 needs to be socialized with other stakeholders  
25 involved in the process.



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2 I do think that the -- the -- there  
3 is a need, when we're issuing recommendations,  
4 that we look at other things, like the State  
5 Energy Emergency Plan, but there are various other  
6 entities involved with their own processes and  
7 some of that is helpful, but some of that is also,  
8 I think, causing confusion. So, I would just flag  
9 it as something -- it's important to me, when we  
10 look at our recommendations, that we fully know if  
11 there has to be any changes to -- there might not  
12 be, but in case there's any changes that have to  
13 happen to the State Emergency -- Energy Emergency  
14 Plan processes, that would be helpful to identify.

15 And to the extent that those others  
16 are also -- even if they're not formally, they  
17 should be, I would hope they would be, doing their  
18 own self assessments as well. And to the extent  
19 that they're finding things that we could benefit  
20 from and the utilities could benefit from, it  
21 would be helpful to have that information.

22 Okay. Were the same Staff doing  
23 the investigations, that were also part of the  
24 storm recovery processes and restoration  
25 processes?

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2 MR. BONVIN: There was some  
3 overlap.

4 COMMISSIONER BURMAN: How much  
5 overlap?

6 MR. BONVIN: So, myself for  
7 example, as -- as somebody who is both, you know,  
8 most of our, you know, when we respond to a storm,  
9 it takes a -- a sizeable amount of -- of Staff, so  
10 we used that were involved. Not all of them were  
11 the ones that were in -- in the field, but you  
12 know, without going back to look at the exact  
13 staff team, to say who was deployed, who wasn't, I  
14 could get you that count. But it -- I don't have  
15 it off the top of my head.

16 COMMISSIONER BURMAN: Okay. If you  
17 were to rewrite the legislation, December 15th,  
18 2018 in filing the plan and you were asked, what's  
19 the best date for the plans to be filed, knowing  
20 now our processes, in terms of SAPA and getting  
21 engagement before the Commission adopts it and  
22 knowing that the same Staff who's involved in the  
23 storm preparations and restorations and also  
24 knowing that at the utilities, probably a lot of  
25 them are also -- would you give a different date

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2 and if so, what would the -- be the date?

3 MR. BONVIN: Well --.

4 MR. FORST: I'd --

5 MR. BONVIN: Go ahead.

6 MR. FORST: -- I'd certainly  
7 hesitate to supplant Staff's thinking, for the  
8 thinking of the Legislature in -- in that case.

9 MR. BONVIN: But I -- that and I --  
10 I was just going to add, that, you know, I mean,  
11 the -- the difficulty is we don't know when a big  
12 storm is going to hit, you know, and -- and you  
13 know, pretty much any date you pick, has a chance  
14 of -- of being right in the middle of an  
15 investigation.

16 COMMISSIONER BURMAN: So, maybe --

17 MR. BONVIN: Or -- or --

18 COMMISSIONER BURMAN: -- you would

19 --

20 MR. BONVIN: -- in some --

21 COMMISSIONER BURMAN: -- ask for --

22 ?

23 MR. BONVIN: -- cases, might --

24 might just miss one and -- and --

25 COMMISSIONER BURMAN: Right.

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2 MR. BONVIN: -- what we just  
3 approved, we might find out a few days later,  
4 doesn't work because of the lessons that we're  
5 learning, during that response.

6 COMMISSIONER BURMAN: Right.

7 Sounds to me like you maybe need  
8 some flexibility on that date.

9 MS. MITCHELL: I -- I think this is  
10 a continuous improvement process. So, regardless  
11 of where you are, in -- in the year, what storm  
12 event's going on, or if there's an investigation -  
13 -

14 COMMISSIONER BURMAN: Right.

15 MS. MITCHELL: -- going on, or not,  
16 we are working with the utilities all the time,  
17 just prior to events, during events and after  
18 events, to look at lessons learned and to try to  
19 improve any preparation and response to those  
20 events.

21 COMMISSIONER BURMAN: Okay. That's  
22 very helpful. Thank you.

23 Is there any question I had not  
24 asked, that I should be asking? No? Now's your  
25 time.

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2 Okay. Thank you.

3 I'm going to wait to give my  
4 comments.

5 CHAIRMAN RHODES: Thank you.

6 Commissioner Alesi.

7 COMMISSIONER ALESI: Thank you, Mr.  
8 Chairman.

9 Actually, I -- I'm looking at this  
10 large number of recommendations and I'll just deal  
11 with the total number, rather than breaking them  
12 down, but I really see this as an opportunity for  
13 improvement and -- and based on a number of  
14 things, including what Commissioner Sayre said  
15 about what appears to be a changing climate  
16 patterns, etcetera. But it is an outgrowth -- the  
17 recommendations are an outgrowth of some large-  
18 scale failures, that we have seen.

19 The -- again, a large number of  
20 recommendations, I think, are a testament to the  
21 hard work and determination of the Staff and the  
22 Department and I'm sure it didn't come easily, so  
23 you're to be thanked for that and I'll be  
24 supportive.

25 CHAIRMAN RHODES: Thank you. Thank

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2 you, Commissioner Alesi.

3 So, we'll now move to the third  
4 item for discussion in this set of storm-related  
5 items.

6 Item 304, case 19-E-0288, which is  
7 in the matter of commencement of a judicial  
8 enforcement proceeding, against New York State  
9 Electric and Gas Corporation, presented by  
10 Nicholas Forst, Assistant Counsel, still and  
11 Christian Bonvin, also still Chief of Electric  
12 Distributions. This is -- he's available for  
13 questions.

14 Nicholas, please begin.

15 MR. FORST: Good morning, Chair  
16 Rhodes. Good morning, Commissioners.

17 Item 304 of the draft order before  
18 you, directs the Counsel to the Commission, to  
19 commence a special proceeding, or action in New  
20 York State Supreme Court, pursuant to Public  
21 Service Law, Section 26, to prevent future  
22 violations of the Public Service Law, Commission  
23 Regulations and Orders, by the New York State  
24 Electric and Gas Corporation.

25 Staff's 2018 winter and spring

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2 storm report identified a litany of storm-related  
3 issues, raising questions about NYSEG's emergency  
4 response and restoration performance, for certain  
5 less-central portions of its electric-service  
6 territory including the Brewster service area.  
7 Staff remains concerned with NYSEG's apparent  
8 continued inability to respond to storm events and  
9 in turn, its poor-restoration performance.

10 Dating back to Super Storm Sandy  
11 and more recently, during the 2017 wind storm,  
12 NYSEG has demonstrated that is unable to respond  
13 and restore service to the satisfaction of its  
14 customers and governmental entities. NYSEG's  
15 inability is documented in various Staff reports  
16 and Commission orders and ultimately points to a  
17 pervasive pattern of inadequate response and  
18 restoration performance.

19 The apparent inability to  
20 sufficiently improve the company's storm response  
21 and service-restoration performance, through  
22 implementation of an adherence to repeated  
23 directives by the Commission, is in Staff's  
24 opinion, sufficient to warrant further Commission  
25 action. Staff's report identified numerous

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2 deficiencies in NYSEG's past emergency response  
3 and restoration efforts, which provide evidence of  
4 NYSEG's continued inability to satisfactorily --  
5 satisfactorily adhere to the procedures and  
6 processes detailed in its E.R.P., as approved by  
7 the Commission.

8 It is this repeated non-compliance  
9 that supports the Staff's recommendation to pursue  
10 further enforcement action, to ensure compliance  
11 with the company's E.R.P., the E.R.P. order and  
12 Commission regulations. The Department and the  
13 Commission have regulatory authority to ensure  
14 that NYSEG provides safe and adequate service,  
15 which includes satisfactorily meeting, or  
16 satisfactory emergency response and electric  
17 service -- service outage restoration.

18 The Public Service Law, also  
19 authorized the Commission, via its counsel, to  
20 seek judicial enforcement of the Commission's  
21 requirements. Pursuant to Public Service Law,  
22 Section 26, the Commission may direct the Counsel  
23 to the Commission to commence enforcement  
24 proceedings in New York State Supreme Court.

25 It is in the public interest, for



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2 the Commission to direct the Counsel to the  
3 Commission, to commence a special proceeding, or  
4 action in New York State Supreme Court, in the  
5 name of the Commission and the people of the state  
6 of New York, to stop and prevent ongoing, or  
7 future violations of Commission Regulations and  
8 orders by NYSEG. The draft order before you this  
9 morning, directs the Commission's Counsel to  
10 commence a judicial-enforcement action, seeking to  
11 enjoin NYSEG from further violating the E.R.P.  
12 order and Commission Regulations concerning the  
13 utility emergency response and restoration.

14 This concludes my presentation.  
15 Christian Bonvin, John Sipos and I are now  
16 available to answer any questions you may have.

17 Thank you.

18 CHAIRMAN RHODES: Thank you.

19 So, I'll just start with a couple  
20 of the point I've made consistently for the other  
21 two items.

22 There are aspects of these storms  
23 and recovery response to them that we can control  
24 and others that we can't and we're focused here on  
25 the items that are in our control. I find that

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2 this is an appropriate step to deliver  
3 accountability, essentially to the customers of  
4 the state of New York and it's appropriate, in  
5 light of the especially-noteworthy level of and  
6 steady pattern of issues that relate to NYSEG's  
7 response and preparation.

8 Those are my comments.

9 Mr. Sayre?

10 COMMISSIONER SAYRE: My comments on  
11 the last item apply to this item as well.

12 Here, I think we're in the position  
13 of a blacksmith fixing a broken wheel. Sometimes,  
14 you have to get out a bigger hammer.

15 CHAIRMAN RHODES: Commissioner  
16 Burman?

17 COMMISSIONER BURMAN: So, I have a  
18 couple of questions with this order itself and the  
19 -- and the language in the order.

20 So, this order has the same clause  
21 that has been utilized in Charter and American  
22 Water, I believe, pretty much verbatim. Counsel  
23 to the Commission shall commence a special  
24 proceeding or an action, in the New York State  
25 Supreme Court, in the name of the Commission and

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2 the people of the state of New York, to stop and  
3 prevent ongoing, or future violations, by New York  
4 State Electric and Gas Corporation, of Commission  
5 Regulations and Orders. Is that correct?

6 MR. SIPOS: Good morning,  
7 Commissioner Burman. John Sipos.

8 I believe that is correct. It's  
9 either similar, or identical to.

10 COMMISSIONER BURMAN: Okay.  
11 Because the Commission of -- and according to the  
12 order, determines it's in the public interest for  
13 the Counsel, you, to the Commission to commence a  
14 special proceeding, or an action in New York State  
15 Supreme Court, pursuant to Public Service Law  
16 Section 26. That's different. Public Service Law  
17 Section 26, to stop and prevent ongoing, or future  
18 violations of the P.S.L., Commission Regulations  
19 and Orders by NYSEG.

20 So, looking at this, there's then  
21 an actual other clause here, that says going  
22 forward, the Commission may also separately  
23 consider other potential pathways and measures, to  
24 protect ratepayers and deter unsatisfactory  
25 performance by NYSEG, as well as determine whether

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2 certain costs should be born by NYSEG  
3 shareholders.

4 I guess my question is and my  
5 confusion, lies in what are we asking the Court to  
6 do, exactly?

7 MR. SIPOS: So, this order would  
8 authorize Counsel to Commission, to the Office of  
9 General Counsel, to bring a civil action, in  
10 Albany County Supreme Court, seeking injunctive  
11 relief, to compel compliance with Commission  
12 orders and with the underlying plans. It -- it  
13 seeks an injunctive -- an affirmative, injunctive  
14 order, requiring compliance and that -- that is  
15 within the scope of Public Service Law Section 26.

16 COMMISSIONER BURMAN: So, we're  
17 asking the Court to tell the utilities, they have  
18 to follow our orders? This order and any future  
19 order?

20 MR. SIPOS: So, there is an  
21 existing order and it would seek compliance with  
22 that and depending on how the litigation could go,  
23 if it was off -- if the litigation was authorized,  
24 it could seek future compliance as well.

25 But it --

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2 COMMISSIONER BURMAN: The exist --?

3 MR. SIPOS: -- it -- it need not.

4 I mean, that -- that is all part of the details of  
5 -- of -- of how that case might work out.

6 COMMISSIONER BURMAN: Okay. We'll  
7 get --

8 MR. SIPOS: But there --

9 COMMISSIONER BURMAN: -- back to  
10 the --

11 MR. SIPOS: -- there is --.

12 COMMISSIONER BURMAN: -- details in  
13 a minute, but --.

14 MR. SIPOS: We are seeking -- it --  
15 the order, or the -- the order before the  
16 Commissioners would authorize Counsel to seek a  
17 Court order, compelling compliance with this  
18 Commission's orders.

19 COMMISSIONER BURMAN: Okay. So,  
20 you said there's an existing order.

21 That's the one that we haven't  
22 voted on yet?

23 MR. SIPOS: No.

24 I was referring to underlying  
25 Commission order, regarding emergency-response

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2 plans.

3 COMMISSIONER BURMAN: The orders  
4 adopting the emergency-response plans?

5 MR. SIPOS: Yes.

6 And -- as well as the plans  
7 themselves.

8 COMMISSIONER BURMAN: From as far  
9 back as when?

10 MR. SIPOS: Well, it would -- it --  
11 it would go back to -- to -- to 2017 --

12 COMMISSIONER BURMAN: To --

13 MR. SIPOS: -- if --

14 COMMISSIONER BURMAN: -- 2017?

15 MR. SIPOS: -- if not -- if not  
16 before.

17 I mean, we would -- we would look  
18 at the plans.

19 COMMISSIONER BURMAN: Right.

20 MR. SIPOS: We would determine the  
21 violations and we would seek to compel compliance  
22 with -- with the aspects of those -- of those  
23 plans.

24 COMMISSIONER BURMAN: We're going  
25 back on -- so, we have today -- let me just -- I

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2 just want to make sure --

3 MR. SIPOS: Well --.

4 COMMISSIONER BURMAN: -- I  
5 understand this.

6 We have -- I'm sorry. You -- I  
7 don't mean to cut you off.

8 MR. SIPOS: There is an existing  
9 order -- there are existing orders regarding  
10 emergency-response plans and there could be a --  
11 an order at some point in the future, regarding  
12 other aspects of emergency-response plans.

13 COMMISSIONER BURMAN: And we want  
14 the Court to tell them to listen to us?

15 MR. SIPOS: To -- to comply with  
16 Commission orders. Yes.

17 COMMISSIONER BURMAN: Okay. I'm  
18 not sure I understand and it may be me, but I  
19 think my -- our Commission orders should speak for  
20 themselves and any utility that's under our  
21 jurisdiction that fails to take in to account, our  
22 orders, in an appropriate way, we should be  
23 discussing what that means.

24 Now, I don't want to water down  
25 anything and I understand the hammer reference and

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2 -- and I think that was a good one, but I've also  
3 tried to hang pictures and sometimes I've used a  
4 hammer and I've broken the picture. So, sometimes  
5 we need to look at what we're doing and whether or  
6 not that power that we have, is one that we fully  
7 understand, before we swing that hammer.

8 So, let me ask you, you said there  
9 are details in the -- in the action that may come.  
10 Is there a petition, or a complaint, or something  
11 that we have to look at, in what exactly you're  
12 going to go forward and say to the Court?

13 MR. SIPOS: No.

14 As of today, we do not have a draft  
15 complaint prepared. We are -- the -- the Staff  
16 and the Department are seeking authorization from  
17 the Commission --

18 COMMISSIONER BURMAN: Right.

19 MR. SIPOS: -- to commence such a  
20 proceeding, to go forward, to start it.

21 COMMISSIONER BURMAN: So, if the  
22 history is right, in looking at the other two,  
23 which were supposed to be unique situations, in  
24 the other two matters, where we've done similar  
25 things, you very much, very-soon after, go in to



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2 settlement discussions that take place outside of  
3 our normal Commission processes.

4 Is there an anticipation that there  
5 will be settlement discussions?

6 MR. SIPOS: So, I can't say that  
7 there would not be. It's -- settlement  
8 discussions are a possibility in litigation, but  
9 so is go -- driving forward to seek compliance --

10 MR. BONVIN: But --.

11 MR. SIPOS: -- with the -- with --  
12 with the -- with the judicial process.

13 COMMISSIONER BURMAN: Okay. Who's  
14 your principal, when you do this?

15 MR. SIPOS: So, as Counsel to the  
16 Commission, my principals are the Commissioners,  
17 this order is under the auspices of Section 26.  
18 It seeks the authorization from the Commissioners  
19 and from the Commission, for a green light to  
20 start with the process.

21 There -- there is also -- that's  
22 under Section 26 of -- of the Public Service Law.  
23 There's also a Section 12, which provides that  
24 counsel, at the direction of the Chair of the  
25 Commission, shall prosecute litigation and --

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2 litigation.

3 COMMISSIONER BURMAN: But this one  
4 is under Public Service Law Section 26, which is  
5 the Commission is given by the Legislature to  
6 require utilities to provide -- to give you the --  
7 to -- so explain to me -- let's just take a step  
8 back.

9 Explain to me Section -- Public  
10 Service Law Section 26 gives the Commission  
11 itself, the authority to tell you to do this?

12 MR. SIPOS: That is correct.

13 COMMISSIONER BURMAN: Okay. So,  
14 while I know you referenced Public Service Law  
15 Section 12, I don't think you meant to then  
16 suggest that when you go to the judicial  
17 proceeding, that your principals change from the  
18 Commission itself, to then the Chair, by  
19 referencing Section 12.

20 MR. SIPOS: What I was suggesting  
21 is that under Section 12, with respect to day-to-  
22 day litigation matters, the Chair has  
23 authorization under Section 12 of the Public  
24 Service Law --

25 COMMISSIONER BURMAN: So, similar -

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2 -

3 MR. SIPOS: -- to --

4 COMMISSIONER BURMAN: -- to when --

5 when our Secretary to the Commission is given  
6 certain ministerial attributes, to decide whether  
7 to extend the time period. Here, the full weight  
8 of the Commission, not only from the Public  
9 Service Law Section 26, but from this order, is  
10 giving you that authority.

11 So, unless we know clearly, like so  
12 I'm just trying to get at whether or not the  
13 Commission itself will be involved in, not -- not  
14 just briefed after the fact, or during, exactly  
15 how much, since we're your principals, not only  
16 because you're the Counsel to the Commission, but  
17 under Section 26 and this order, the Commission  
18 itself, is giving you that authority. To the  
19 extent that when you go there and you're engaged  
20 in not just day-to-day filing, but the actual  
21 substantive work that may include litigation and  
22 it may include settlement and it may include other  
23 things, your principals are still the Commission  
24 itself, is that fair to say?

25 MR. SIPOS: That is.

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2 The Commission would have, under  
3 that scenario that you provided, would have  
4 authorized the commencement of the case. However,  
5 there is also provision in Section 12 of -- of the  
6 Public Service Law, for the counsel to commence  
7 and prosecute and if there is an authorization to  
8 commence a case, then it is also the  
9 responsibility of the counsel, to -- to prosecute  
10 that case going forward and that is -- that is  
11 provided under Section 12, to be done under the  
12 direction of the Chair of the Commission.

13 COMMISSIONER BURMAN: So --

14 MR. SIPOS: There -- there's a  
15 whole --

16 COMMISSIONER BURMAN: -- there's  
17 actually an -- an --.

18 CHAIRMAN RHODES: Ambiguity.

19 COMMISSIONER BURMAN: Thank you.

20 In that section, so I understand  
21 that there -- we've taken liberties in what that  
22 Section 12 means and I do understand that we've  
23 gone further than it has been done before, in many  
24 ways.

25 I am very, very focused on the

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2 delegation of duties to Staff and to Counsel to  
3 the Commission. As Counsel to the Commission,  
4 this order is coming to us as Public Service Law  
5 Section 26.

6 I understand you've put in a  
7 footnote to Section 12, which I think is the  
8 cliffhanger, in whether or not the Commission  
9 itself are your principals, which they will be,  
10 regardless of whether you take direction from the  
11 Chair. But to the extent you still need to keep  
12 in mind that you're acting on -- he -- the Chair  
13 is acting on behalf of the Commission and Counsel  
14 to the Commission, is acting on behalf of all of  
15 your principals, whatever that happens to be. In  
16 this case, it's four right now.

17 So, to the extent that settlement  
18 discussions, or litigation is happening, there  
19 needs to be a lot more robust communication and  
20 getting authority, from the Commission itself, to  
21 the extent that your principals are interested in  
22 being involved.

23 Is that fair to say?

24 MR. SIPOS: That's fair to say and  
25 it's also fair to say that I understand that and

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2 it has also been my practice to make sure that  
3 Commissioners are kept up to date, with -- with  
4 aspects of litigation, significant aspects.

5 COMMISSIONER BURMAN: Up to date  
6 and involved, are two different things.

7 So, I would very much look at this  
8 order, Public Service Law Section 26, however I  
9 vote, even if my vote doesn't carry, that the  
10 authority and weight of this, includes the  
11 Commission body, even that Commissioner one or  
12 two, who may descent from this.

13 So, to the extent that when you  
14 look at this order and going forward, you're  
15 Counsel to the Commission and you're moving  
16 forward on Public Service Law Section 26, on  
17 behalf of the Commission, not only from that  
18 section, but also from the order itself. In here,  
19 is there an anticipation that the petition will be  
20 drafted and we'll be approving that?

21 MR. SIPOS: Well, there are -- at -  
22 - at a -- at a formal Commission hearing, is that  
23 what you are asking?

24 COMMISSIONER BURMAN: I'm asking  
25 what the next --

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2 MR. SIPOS: Because --

3 COMMISSIONER BURMAN: -- steps are.

4 MR. SIPOS: -- the -- that -- there  
5 would be -- if that's -- if that's the question, I  
6 mean, I would suggest without getting in to it in  
7 too much detail right now, that there could be,  
8 you know, potential Open Meetings Law, issues like  
9 that, but -- and I think that is part of what  
10 Section --

11 COMMISSIONER BURMAN: Uh-huh.

12 MR. SIPOS: -- 12 goes to -- goes  
13 to, that the Counsel, at the direction of -- of  
14 the Chair, commences and prosecutes.

15 COMMISSIONER BURMAN: I --.

16 MR. SIPOS: I'm certainly, you  
17 know, I believe that -- that I and the Office of  
18 Counsel, you know, we endeavor to be as collegial  
19 as possible.

20 COMMISSIONER BURMAN: Uh-huh.

21 So, I would just say --.

22 CHAIRMAN RHODES: Just -- just if I  
23 may, for a moment, the Counsel commences at the  
24 direction of the Commission?

25 MR. SIPOS: That's correct.

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2 CHAIRMAN RHODES: And then

3 prosecutes at the direction of the --

4 MR. SIPOS: That --

5 CHAIRMAN RHODES: -- Chair?

6 MR. SIPOS: -- is correct.

7 CHAIRMAN RHODES: And but -- okay.

8 COMMISSIONER BURMAN: Well, I think

9 I need to see Public Service Law Section 26 for a  
10 moment.

11 This is a huge issue, not just with  
12 here, but going forward and there's not a lot of  
13 clarity, on what we're doing. Not only here, but  
14 even in terms of the process.

15 Public Service Law Section 12  
16 references you as the Counsel to Commission and  
17 gives you some authority, at the direction of the  
18 Chair. That, too, is not clear on what that is.

19 I would actually say it's the  
20 direction of the Chair on behalf of the Commission  
21 and it's for ministerial -- in many ways,  
22 ministerial matters, so that you can appear,  
23 without having to get all four of us, or five, to  
24 say, you know, is it okay if I appear. So, some  
25 of that ministerial day-to-day activity, I



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2 understand, but when then you're referencing  
3 Public Service Law Section 26, which is clearly  
4 specific to what we're ask -- being asked to vote  
5 on, you can't then flip to Section 12, to get  
6 around that the Commission as a body, is your --  
7 is your principals.

8 I know I'm a difficult client. I  
9 get that. But I also think that there's a need  
10 for us to clearly understand what we're  
11 substantively asking you to do.

12 This order doesn't give us any  
13 substance, or even exactly what your next steps  
14 are. There's no petition attached. We're not in  
15 executive session to discuss the litigation, or  
16 anything else.

17 So, I understand your reference to  
18 Open Meetings Law. I don't want to violate the  
19 Open Meetings Law at all, but there's nothing --  
20 there's nothing confidential attached to this, to  
21 -- even for us to look at. So, I'm basically  
22 giving you blank authority -- or we would be,  
23 blank authority to go to the Court and say we want  
24 this utility to be told to listen to our orders,  
25 whatever they may be.

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2 Now, there's a reference in here --  
3 there's a -- I -- I -- there's a reference in  
4 here, that says essentially, that part of the  
5 reason we're doing this is because -- let me just  
6 make sure I get to the right section. Talking  
7 about Hurricane Sandy, as well, as the 2017 storm.  
8 So, we're going back all the way to Super Storm  
9 Sandy.

10 So today, it's NYSEG. Next month,  
11 if there's a storm and another utility in -- in --  
12 is determined to be significantly in violation or  
13 not, we haven't acted on that. A order to show  
14 cause is not taking -- is -- is not actually  
15 deciding that. We're just listening to Staff and  
16 asking the -- the utilities to say that. So, if  
17 we do that, each and every utility, we can be  
18 going back to Super Storm Sandy and revisiting all  
19 of that.

20 So, I'm just confused because I  
21 want to know clearly and from a liability  
22 perspective and from investment perspectives, as  
23 well as customers, how far back are we going. And  
24 so therefore, I we actually going to potentially  
25 chill any movement because if they're tied to

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2 potentially going back, as far back as Super Storm  
3 Sandy, we need to get under the hood more on what  
4 that means.

5 MR. SIPOS: So Commissioner Burman,  
6 the reference to Super Storm Sandy and the 2017  
7 storm, as well as the Staff's 2018 storm report,  
8 were intended, as part of this presentation, to  
9 provide a basis for the Commission to include in  
10 its consideration of this, that there actually has  
11 been something of a track record here, with this -  
12 - with -- with this utility and that is a basis --  
13 it's a -- it's a basis for the Commission, if the  
14 Commission so decides and so votes, to authorize  
15 Counsel to go to seek injunctive relief.

16 It's -- it's not just a single  
17 event. It's not just two events. It -- there's  
18 actually a continuum that has -- that has occurred  
19 and that has befallen here.

20 COMMISSIONER BURMAN: I -- I  
21 honestly am very confused and dumbfounded by what  
22 exactly this means because if we're saying that  
23 dating back to Super Storm Sandy and more  
24 recently, the 2017 wind storm, NYSEG's inability  
25 to respond and restore service to the satisfaction

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2 of its customers, governments and the Commission  
3 and we're only getting to this now, in 2019, to  
4 showcase that -- that we have a problem, that  
5 doesn't make sense to me and there were issues in  
6 other areas, from Super Storm Sandy and other  
7 storms, that we didn't then go to go for judicial  
8 enforcement of future proceedings and reference  
9 back other ones.

10 So, if we're going to be going back  
11 to that, why are we adopting a settlement in the  
12 2017 storm?

13 MR. SIPOS: So, this reference that  
14 we're having a discussion about, is -- goes to  
15 potential evidence and goes to potential  
16 considerations that the Commission may take in to  
17 account, as it reviews the proposed order today.  
18 It's -- it's not -- it's not -- well, I'll leave  
19 it at that.

20 COMMISSIONER BURMAN: Okay.

21 CHAIRMAN RHODES: May I -- so, my  
22 understanding and I'm probably the least legally-  
23 trained person in the room, is that Section 26 was  
24 there -- is there, excuse me, and its intent and  
25 its language, relate to the possibility that a

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2 utility may not follow an order and that -- so  
3 that they're -- for those -- if that con -- if  
4 that contemplated possibility comes to pass, that  
5 there's an ability to go get further enforcement  
6 authority. And my understanding, with that  
7 understanding of Section 26, is that a track  
8 record here, rises to the level where the not  
9 following of an order, is no longer just a  
10 theoretical possibility, but has some basis in the  
11 evidence.

12 So, I don't -- I'm not sure -- I  
13 think your fear is that we're going to go and  
14 sanction the utility for failures back in 2011 --  
15 what -- right? Super Storm Sandy, '10?

16 COMMISSIONER SAYRE: '12.

17 CHAIRMAN RHODES: '12.

18 But that's not what I read this  
19 order as doing, nor do I understand that as the --  
20 the position that Counsel's proposing.

21 COMMISSIONER BURMAN: Thank you.

22 That was helpful.

23 The order doesn't tell you that and  
24 the petition itself doesn't -- that we don't have,  
25 doesn't tell you that.

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2 The order says dating back to Super  
3 Storm Sandy and more recently, the 2017 wind  
4 storm, NYSEG's inability to respond and restore  
5 service to the satisfaction of its customers,  
6 governmental entities and the Commission, is well-  
7 documented and demonstrates pervasive -- pervasive  
8 pattern of inadequate response and restoration  
9 performance.

10 We're going to use the evidence  
11 from Super Storm Sandy and 2017, which by the way,  
12 the settlement does not say that they did anything  
13 wrong. So, we're using that evidence, that's  
14 potentially stale and potentially something that  
15 when they agreed to settle, they were not  
16 expecting to now be utilized against them here, to  
17 prove evidence that they have a pervasive pattern  
18 of inadequate response and restoration  
19 performance.

20 That may or may not be the case,  
21 but we're -- and we, as the Commission waited till  
22 now, to tell them that and put them on notice.

23 So, I guess I go back to why the --  
24 the 2017 settlement J.P. and the investment J.P.,  
25 happened in May 18th -- May 18th -- May 18th, 2000

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2 and -- I'm sorry. Let me look.

3 MR. BONVIN: '18.

4 COMMISSIONER BURMAN: '18?

5 MR. BONVIN: Correct.

6 COMMISSIONER BURMAN: Okay. There  
7 were 4 storms in 2018, that were subject -- there  
8 were 5 storms --

9 MR. BONVIN: 5.

10 COMMISSIONER BURMAN: -- but there  
11 were 4 storms that were then part of that, right?  
12 When was the last -- 5th storm, in --

13 MR. BONVIN: It -- .

14 COMMISSIONER BURMAN: -- 2018,  
15 that's subject to?

16 MR. BONVIN: So, our -- the 2 --  
17 2018 investigation included 5 storms, winter (sic)  
18 and Quinn kind of get pushed together a lot, so  
19 that it actually looks like 4, when you --.

20 COMMISSIONER BURMAN: Right.

21 CHAIRMAN RHODES: And -- and when -

22 -

23 COMMISSIONER BURMAN: And when --

24 CHAIRMAN RHODES: -- was the --

25 COMMISSIONER BURMAN: -- was the

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2 last --

3 CHAIRMAN RHODES: -- last of those?

4 COMMISSIONER BURMAN: -- one?

5 MR. BONVIN: May -- May 15th.

6 COMMISSIONER BURMAN: May 15th.

7 And we have a settlement J.P. and  
8 an investment J.P., May 18th, 2018, correct?

9 So, we had that information, but  
10 there was no asterisk, by -- by the way, we may  
11 bring a Public Service Law Section 26 order  
12 against you, asking the Court to tell you to  
13 listen to our orders and any future orders. Why  
14 did we -- why are we, today -- why would we -- if  
15 we have an issue with their -- allegedly, their  
16 pervasive lack of response, why would see in our -  
17 - in the settlement and in here, that we're good  
18 with things?

19 Plus, we're not factoring in other  
20 storms that has happened since then, that my  
21 understanding is NYSEG got credit for, be -- doing  
22 well. So, I'm just trying to figure out what the  
23 disconnect is here because you're going to the  
24 Court, on behalf of the Commission and you're  
25 going to use evidence on Super Storm Sandy, on



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2 2017, but our 2017 storm is potentially being  
3 settled and there was no -- no -- we agreed that  
4 no one was saying that they -- they did anything  
5 wrong and that's part of the settlement.

6 A.L.J. MULLANY: Can I just clarify  
7 something, Commissioner?

8 The settlement under item 301, is  
9 an agreement to provide recommendations to the  
10 Commission, to accept the proposed settlement.  
11 The settlement relates to potential liability  
12 under the auspices of a action brought under 25A -  
13 -

14 COMMISSIONER BURMAN: Okay. So,  
15 that's --.

16 A.L.J. MULLANY: -- for penalties.

17 COMMISSIONER BURMAN: You're right.  
18 That's a -- that's --

19 A.L.J. MULLANY: So, this is --

20 COMMISSIONER BURMAN: -- very good.

21 A.L.J. MULLANY: -- a key  
22 distinction between that and the injunctive relief  
23 being sought, in the item currently before the  
24 Commission.

25 COMMISSIONER BURMAN: Yeah.

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2 That -- thank you because that even  
3 makes my argument or my analysis actually better  
4 because we -- they accept it, so there's no  
5 pervasive disregard for the Commission order  
6 because they agreed to the recommendation. So,  
7 every utility on the order to show causes before  
8 us today on the 302, would be mindful that at some  
9 point in another future storm, they may wind up  
10 having this evidence used against them, in a way  
11 that doesn't make sense if -- I -- I -- I -- I --  
12 maybe I'm missing something, but I think that we  
13 would do well to rethink bringing forth an order,  
14 asking the Court to tell the utility to listen to  
15 us, when we're not even sure what we're listening  
16 to ourselves.

17 And maybe it's better for us to  
18 have engagement and look at whatever that petition  
19 might look like, as well as the exhibits to the  
20 evidence that would be here because part of the  
21 issue for me, is that these reports and -- are a  
22 snapshot. So, it doesn't talk about the hardening  
23 of the assets, it doesn't talk about all of the  
24 good things that may also tell a story about about  
25 what we've done to fortify the grid and what the

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2 utilities have done. And yet, we're focusing on -  
3 - and the recommendations to help. Everything is  
4 about lessons learning, right, whether -- our own  
5 self assessment.

6 So, we're really basically saying  
7 if you do well, you're okay. If you have some  
8 challenges, we -- we're -- may decide that we're  
9 going to come back at you and I'm not really sure  
10 -- like I'm not -- I'm not sure whether this  
11 actually will produce effective changes, to help  
12 us in our future reliability and resiliency of the  
13 grid, in a way that actually is going to be  
14 helpful.

15 MR. SIPOS: Well, I would  
16 respectfully suggest that it could and it -- and  
17 it likely will.

18 Section 26 is one of the tools that  
19 the Commission has. It's a tool that the  
20 Legislature gave to the Commission. It is a  
21 powerful tool. You're absolutely correct about  
22 that.

23 It's a tool that requires judicious  
24 use and I think that the track record here that we  
25 have discussed, is sufficient to propose this

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2 order to the Commission.

3 Then given the track record, it is  
4 appropriate to go and use this tool that the  
5 Legislature has provided, that has been with the  
6 Public Service Commission for decades and to now  
7 use it in this situation, to -- to obtain  
8 additional enforcement power, to ensure  
9 compliance, going forward.

10 COMMISSIONER BURMAN: I'm  
11 disappointed to hear you say that. It undermines  
12 the Commission --

13 MR. SIPOS: No.

14 COMMISSIONER BURMAN: -- and --.

15 MR. SIPOS: I didn't say it  
16 undermines. I'm sorry.

17 COMMISSIONER BURMAN: No.

18 MR. SIPOS: If -- if --

19 COMMISSIONER BURMAN: You didn't  
20 say that.

21 MR. SIPOS: -- if I said that, I --  
22 I misspoke.

23 COMMISSIONER BURMAN: I -- no.

24 You didn't --

25 MR. SIPOS: I did not mean --

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2 COMMISSIONER BURMAN: -- say that.

3 MR. SIPOS: -- to say --

4 COMMISSIONER BURMAN: I'm --

5 MR. SIPOS: -- that.

6 COMMISSIONER BURMAN: -- saying  
7 your thinking, for me, undermines the Commission  
8 authority.

9 The Commission's orders are very  
10 important and if we're going to do Public Service  
11 Law Section 26, I think you need to have an order  
12 that actually is very specific about what -- what  
13 evidence we're bringing forward. So, a reference  
14 to Hurricane Sandy and a reference to the 2017  
15 storm, without actually any specifics, not --  
16 you're not referencing the plans, but they go back  
17 to -- I think you said 2017, even though the plans  
18 have been in existence.

19 But we're -- so, what -- what I  
20 hear now, is 2017 plans are included. Evidence of  
21 things that happened in Hurricane Sandy, evidence  
22 that happened from 2017 and there -- that those  
23 things are all in -- going to be included, in some  
24 way, in a petition that is going to ask the Court,  
25 to tell them -- to tell the company to listen to

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2 us now and whatever future things we may do and  
3 the injunctive relief is something we could do on  
4 our own anyway, but somehow, we're going to get  
5 the Court to bless that.

6 Now, I'm the parent of 2 children  
7 and I've been very focused on the -- working in  
8 having a very-collaborative process in how I raise  
9 my children, with my husband. I don't say to my  
10 children that I'm going to tell daddy, to tell you  
11 to listen to me.

12 I may engage with my husband. I  
13 may work on it.

14 MR. SIPOS: Uh-huh.

15 COMMISSIONER BURMAN: But I find  
16 this to be just as dismissive of the Commission,  
17 as if it was that I was saying to my children,  
18 daddy's going to tell you to -- to -- that you  
19 should listen to mommy. I don't get it.

20 So, I would go back a step and say  
21 what is it that we're trying to do. We're trying  
22 to drive behavioral changes, that we see as  
23 problematic and we want to capture what that  
24 means, to make course corrections, in a way that  
25 helps us, not only as we regulate, but helps the

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2 utility.

3 And yet, we haven't yet, in here,  
4 in this order to show cause, nor by the way, the  
5 2017 one, which we brought an order to show cause,  
6 we never said that they were not being responsive.  
7 They adopted those recommendations. They worked  
8 out that -- and we never said you're not listening  
9 to us. In fact, they did listen to us because  
10 they made those changes.

11 Now, they may not have implemented  
12 them effectively and we may need to look at that,  
13 but I'm just trying to get understanding exact --  
14 and so this most recent one, we have not -- this  
15 order, the order to show cause for 302, it's not -  
16 - it's very clear in the language, that we are not  
17 saying that they did -- any of the utilities did  
18 anything wrong, though we do reference that we're  
19 going to potentially bring penalty violations  
20 against each and every one of them, not just  
21 NYSEG, except for PSE&G Long Island, who doesn't  
22 have that as -- has -- doesn't have that -- we  
23 don't have that teeth.

24 So, I'm just trying to understand,  
25 for you as Counsel to the Commission, when you

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2 leave here today, what actually we're asking you  
3 to do, except to take this order and say please  
4 tell them to listen to us.

5 MR. SIPOS: Well, I would  
6 characterize it a different way.

7 It is seeking an infirmative (sic)  
8 -- this order, should the Commission grant it, I  
9 want to be clear about that, this order would  
10 authorize counsel to seek an affirmative judicial  
11 order, requiring compliance. It is a tool that  
12 the Commissioners have, as part of their  
13 enforcement and their compliance toolbox. It --

14 COMMISSIONER BURMAN: Okay.

15 MR. SIPOS: -- is -- I -- I  
16 respectfully suggest, it is a -- it's a  
17 significant tool and I -- I guess -- I would also  
18 add, having had some experience before I came  
19 here, with other state agencies, that other state  
20 agencies, from time to time, seek civil-  
21 enforcement action in state's -- in -- in New York  
22 State Supreme Court.

23 I -- I --

24 COMMISSIONER BURMAN: So, your  
25 reference --



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2 MR. SIPOS: -- see this as --.

3 COMMISSIONER BURMAN: -- is to the  
4 Attorney General?

5 MR. SIPOS: Well, on behalf of  
6 various other agencies.

7 I -- I don't want to go off on a --  
8 on a tangent, but from time to time, state  
9 agencies in the state of New York, seeks  
10 injunctive relief in State Supreme Court. That --  
11 that's -- there are several examples of that.

12 COMMISSIONER BURMAN: All right. I  
13 very much think we need to think very clearly  
14 about the tools in the toolbox and whether or not  
15 we are appropriately using them, in a way that is  
16 helpful, not disruptive. And also, at the same  
17 time, remembering who owns that toolbox and who  
18 gets to decide the use of that and then how much  
19 is used and when.

20 This order is very open-ended and  
21 very concerning. And when we first moved on the  
22 American Water one -- so, we only have 2 other  
23 examples of that, that I -- it's my history that I  
24 know. I don't know if there are others, but at  
25 least in my time, is the American Water one and

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2 Charter. Charter I wasn't a part of.

3 And I am concerned that both of  
4 those were seen as unique-situational ones, that  
5 demanded that. And now, here we have, in a very-  
6 short time, a 3rd one, that again, gives no more  
7 clarity than the others and I hope that the  
8 process that was done in both of those, is not  
9 continued. Here, it's different because this is a  
10 little bit more reference to the Public Service  
11 Law Section 26 and we're talking about it here as  
12 the primary vehicle and reminding you that your --  
13 your -- your principals are the Commission, as a  
14 body.

15 I do think we need to take a harder  
16 look at what we're trying to achieve because I'm  
17 very afraid that we're moving in a direction that  
18 becomes one that's chilling, rather than one that  
19 is working with all stakeholders. Tammy  
20 referenced in the -- her comments, about during  
21 storm recovery and preparations, the importance of  
22 working with all stakeholders. I very much  
23 support that.

24 But it also means, after the event,  
25 working together and figuring it out. And to the

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2 extent that we've seen a track record, where these  
3 settlements then, are just between Staff and the  
4 companies, in a way that is not necessarily  
5 focused on appropriate next steps, but mat -- rat  
6 -- met -- rather on figuring out a dollar figure.

7 One, we need to see what the costs  
8 -- the real costs are, before we even look the the  
9 penalties and we need to see, from those costs --  
10 so when you're looking at it, what's the dollar  
11 figure attached to that, as well. Because it's  
12 not just about the penalty amount. It's about the  
13 dollar figures.

14 If the costs -- if you're settling  
15 for less than the costs of some of these  
16 recommendations that you think have been  
17 flagrantly violated, well that's different. We  
18 need to look at that.

19 And also, looking at whether these  
20 recommendations, if they had all been implemented,  
21 would that have prevented the outages? No. How  
22 much would have been prevented? How much earlier  
23 would it have happened? For each one, what is the  
24 forecast, looking backwards, at what that would  
25 have done?

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2 I don't know the answer to any of  
3 that. It's disappointing.

4 But I do -- I do think that you are  
5 very focused on your role as Counsel to the  
6 Commission and I do very much appreciate your  
7 concern, as it relates to your role. I just  
8 don't think that it's appropriate for us to  
9 delegate such authority, without fully  
10 understanding the ramifications of that and also,  
11 worrying about the next steps.

12 We got to get back to the business  
13 of doing what we need to do, to be prepared for  
14 the next storm. Okay.

15 CHAIRMAN RHODES: So Commissioner  
16 Burman, a question to you.

17 As we went through the prior items,  
18 you indicated that you'd be reserving some of the  
19 comment --

20 COMMISSIONER BURMAN: Yes.

21 CHAIRMAN RHODES: -- for the end.

22 COMMISSIONER BURMAN: We've reached  
23 the end?

24 CHAIRMAN RHODES: Well -- well,  
25 ordinarily, we -- we'd -- we'd -- we'd proceed to

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2 calling the vote and I want to respect your, you  
3 know, your ability to make the comments --  
4 COMMISSIONER BURMAN: Okay.  
5 CHAIRMAN RHODES: -- you're like.  
6 And --  
7 COMMISSIONER BURMAN: Thank you.  
8 CHAIRMAN RHODES: -- so if -- if  
9 now's a good time --  
10 COMMISSIONER BURMAN: Yes.  
11 CHAIRMAN RHODES: -- I'll --.  
12 COMMISSIONER BURMAN: I think --  
13 CHAIRMAN RHODES: Okay.  
14 COMMISSIONER BURMAN: -- we need to  
15 -- Commissioner Alesi, if he wants to say anything  
16 --  
17 CHAIRMAN RHODES: Oh.  
18 COMMISSIONER BURMAN: -- on this  
19 item --  
20 CHAIRMAN RHODES: I -- I'm --  
21 COMMISSIONER BURMAN: -- before --.  
22 CHAIRMAN RHODES: -- so sorry.  
23 Commissioner Alesi?  
24 COMMISSIONER ALESI: Nothing to  
25 add.

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2 CHAIRMAN RHODES: Sorry. I -- I --

3 I beg your pardon.

4 Thank you.

5 COMMISSIONER BURMAN: Thank you.

6 So, Hurricane Sandy reinforced the  
7 importance of reliability and resiliency in New  
8 York. After Super Storm Sandy, the state amended  
9 Commission statutes to address the electric-  
10 emergency plans and to increase our oversight and  
11 enforcement role, with respect to the plans.

12 In fact, the amended rules  
13 specified certain subject areas to be included in  
14 the electric-emergency plans and the electric-  
15 emergency plans always were included before Super  
16 Storm Sandy and -- but it was the first time that  
17 the Commission was now adopting them, after Super  
18 Storm Sandy. And also, we were focused on certain  
19 newer subject areas and we're requiring utilities  
20 now, to file them.

21 They would be then be SAPA'd and  
22 the Commission would adopt them and approve them  
23 and they were filed on or before December 15th of  
24 each year. Commission Staff would review them,  
25 then approve them.

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2 There was an order to show cause,  
3 brought from the 2007 -- March 2017 storm and it  
4 was the first time that we were looking at that  
5 and issuing it, after Super Storm Sandy. The  
6 companies responded and then it led to the next  
7 phase and it led to a penalty action and then  
8 there was from that, a settlement.

9 Really, it leads me to the critical  
10 issue of how to incorporate in to our emergency  
11 plans and in to utility-emergency plans, what  
12 lessons can be learned. Again, March 2017 was the  
13 first storm that rose to the level of a storm,  
14 after Super Storm Sandy, that required this type  
15 of review or us.

16 Not only is it just from the  
17 lessons from a storm, but it's lessons learning,  
18 not lessons learned. We have to look at the  
19 impacted areas, how can we take those lessons  
20 learning and incorporate them in a way that makes  
21 significant changes, if necessary.

22 The plans themselves, were supposed  
23 to be live, working documents, that helped tell a  
24 story. So, that -- it's before, during and after,  
25 that we need to make sure we understand and have

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2 robust emergency plans that work. And then after  
3 the fact, look at it to implement and make  
4 corrective changes, as needed and as appropriate.  
5 Each event is different, so we need to take that  
6 in to account, what we're learning.

7 There's no one perfect way to be an  
8 energy regulator. However, an active openness to  
9 continuous learning and improving are critical. A  
10 good energy regulator recognizes the need for  
11 independence, true transparency, investor-consumer  
12 protections, instilling public confidence and  
13 being forward thinking, while understanding the  
14 history of what got us here.

15 Actively-engaged regulators must be  
16 focused on both the historical and present context  
17 of our energy regulations. Doing so, could help  
18 shape and understand our desired future energy  
19 needs. It can help define short and long-term  
20 economically-sound solutions, encourage true,  
21 sustainable innovations, ensure continuous drive  
22 to improve reliability and resiliency of the grid  
23 and foster productivity growth.

24 Regulators can and must strive to  
25 do this, through timely sensible and thoughtful



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2 regulatory-approval processes, with decisions that  
3 give clarity and certainty, while also allowing  
4 some level of flexibility, so as not to become  
5 stagnant and stale. It is not enough for us to  
6 pat ourselves on the back and say we have the  
7 power. We designed well rules and regulations, so  
8 you're mandated to follow them.

9 Instead -- and then thus, we've  
10 said we've succeeded. Look, we've produced good,  
11 regulatory outcomes, because we drove them to do  
12 X. We have to be better than that. We must be  
13 mindful of our regulatory power and focus on using  
14 judiciously and as appropriate, our powers.

15 We can't just be reactive. We're  
16 supposed to be developing policies and helping to  
17 set up frameworks to implement, so that we truly  
18 are moving forward in a way that has long-lasting  
19 soundness.

20 In the aftermath of any storm  
21 event, there are always going to be questions. No  
22 amount of preparedness can eliminate completely,  
23 outages, in extreme-weather events. Our focus is  
24 on working to reduce and shorten them.

25 We look at storm preparation,

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2 restoration processes, coordination with local  
3 government and public outreach and others. Our  
4 focus has to be on accountability. It has to be  
5 on how to align with others, how to be accessible,  
6 how to have things accessible and affordable.

7 Primarily, when we move forward  
8 with REV, when we began it, we made a promise to  
9 bring improved reliability and resiliency to our  
10 state grid. We must be mindful of looking at that  
11 and what that means. Our analysis must be focused  
12 on that.

13 I very much understand the desire  
14 to point fingers. I very much understand the  
15 desire at times, to do that and also, to hold  
16 people accountable and entities accountable, when  
17 they fail to perform and they should have  
18 performed.

19 We must do better. We must  
20 continue to do better.

21 When I look at 301, in isolation, I  
22 could say yes, I concur, I agree with that. But  
23 then when we move on to 302 and 304, the orders to  
24 show cause on the 2018 storms and then 304, which  
25 is an order directing us to give you a -- give --

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2 giving you authority to go to Court, to say tell  
3 them to listen to us, I have to take a pause. I  
4 don't understand why we are adopting and approving  
5 301, at the same time that we're saying 302, we're  
6 giving an order to show cause and we're moving in  
7 to 304. It seems like a disconnect.

8 At the same time, we have another  
9 item on session, which is 382 and in that case, in  
10 382, there was a discreet issue with vegetative  
11 right-of-way management for NYSEG and there was a  
12 discreet issue, came to light and Staff and the  
13 utility worked together. There was no order to  
14 show cause. There was no threat of penalty  
15 actions. There was no threat of an order to go to  
16 Court. They worked together. They came up with  
17 it and then they said, we'd like you to bless this  
18 because it's important, especially in the upcoming  
19 season and we've entered in to this consent and  
20 we'd like to say yes. And we're doing it, here.

21 So, what I see is a disconnect in  
22 what our processes are. Now, I do believe that we  
23 have enforcement powers. I think that's a good  
24 thing, but I think we need to be mindful of when  
25 we use that and how we're using it and to give

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2 regulatory certainty, not only to utilities, but  
3 to those other engaged stakeholders and direction  
4 to Staff because it will be harmful to us, if we  
5 do not take the time, to get the under the hood  
6 and see what we're doing.

7 What is the metric that gets us to  
8 an enforcement proceeding, that may take you in to  
9 Court? What is the metric that gets you in to an  
10 enforcement proceeding, that may not take you in  
11 to Court, but give you -- subject you to penalty  
12 violations?

13 We need to be careful and we need  
14 to look at that, especially as we're looking to,  
15 every year, update these plans because it's going  
16 to have a chilling effect. Not only on the  
17 utilities, but the stakeholders because these  
18 plans are supposed to be live, working documents,  
19 helping.

20 If -- they're going to have to look  
21 at that and assign now, a litigation risk, to each  
22 and every one. We all need to be mindful of what  
23 that is.

24 Now, we also -- in one item, which  
25 I don't have before me, we address the fact that

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2 there are costs associated and resources  
3 associated, with Section 25 and 25A and therefore  
4 -- I think it might be 382, the language in there,  
5 which is why we're okay with doing it outside of  
6 25 and 25A.

7 So, it's really food for thought.  
8 I don't believe I'm going to be able to convince  
9 my fellow Commissioners, but I think we need to  
10 really figure out what it is that we're doing, in  
11 a way that gives clear direction on the next  
12 steps.

13 I'm willing to roll up my sleeves  
14 and work with all of us on doing that. I'm not  
15 comfortable with delegating to you, with broad  
16 parameters, without any real specifics, on what  
17 you're actually being asked to do.

18 It puts you in a bad position  
19 because then you have this disconnect between  
20 Public Service Law 26 and Public Service Law 12.  
21 I would focus very much on the fact that you're a  
22 Counsel to the Commission and therefore, as to  
23 substantive issues, it's very important that the  
24 Commission itself, especially under Public Service  
25 Law 26, has to move together, in a way that

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2 produces a regulatory certainty and stability,  
3 that helps us in what we're doing, to have safer,  
4 reliable service.

5 It's too important to our role and  
6 it's too important to the -- to the people in the  
7 state, who need to rely on us to have this  
8 oversight role.

9 So, the one thing that is really  
10 striking to me, as of all things, is the failure  
11 for us to have a benefit-cost analysis on these  
12 recommendations. That information is very  
13 important to me, especially being an economic  
14 regulator.

15 This complex focus and transition,  
16 in our energy future and our energy grid, it needs  
17 to be managed in an orderly way, with a focus on  
18 community and customer expectations about their  
19 essential services. We need to have that  
20 engagement.

21 There's work to be done and we  
22 should be doing it together. We can do it better  
23 together, so I look forward to that.

24 Thank you.

25 CHAIRMAN RHODES: Thank you for

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2 those -- those very thoughtful comments.

3 Commissioner Sayre, any --

4 Commissioner Alesi, anything you want to --?

5 COMMISSIONER ALESI: No.

6 CHAIRMAN RHODES: Thank you.

7 So, with that, we will -- I will  
8 move to call for a vote, first on Item 301, case  
9 17E0594.

10 My vote is in favor of the  
11 recommendations adopted, in terms of the joint  
12 proposals, as discussed.

13 Commissioner Sayre, how do you  
14 vote?

15 COMMISSIONER SAYRE: Aye,

16 CHAIRMAN RHODES: Commissioner  
17 Burman, how do you vote?

18 COMMISSIONER BURMAN: I concur,  
19 with reservation.

20 CHAIRMAN RHODES: Commissioner  
21 Alesi, how do you vote?

22 COMMISSIONER ALESI: Aye.

23 CHAIRMAN RHODES: The item is  
24 approved and the recommendation is adopted.

25 We move now, to a vote on Item

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2 302B, cases 19E0105, et al.

3 My vote is in favor of the  
4 recommendations to direct each utility to show  
5 cause why the utility should not implement Staff's  
6 recommendations and to show cause why the  
7 Commission should not pursue a penalty action, as  
8 discussed.

9 Commissioner Sayre, how do you  
10 vote?

11 COMMISSIONER SAYRE: Aye.

12 CHAIRMAN RHODES: Commissioner  
13 Alesi, how do you vote?

14 COMMISSIONER ALESI: Aye.

15 CHAIRMAN RHODES: Sorry.  
16 Commissioner Burman, how do you  
17 vote?

18 COMMISSIONER BURMAN: No, without  
19 prejudice.

20 I'd like to first hear from the  
21 utilities and make determination, based on that.  
22 So, no -- without prejudice.

23 CHAIRMAN RHODES: Thank you.

24 COMMISSIONER BURMAN: -- without  
25 prejudice.



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2 CHAIRMAN RHODES: And Secretary, I  
3 seem to be dropping the ball, repeatedly today.

4 Did I vote on item 301?

5 COMMISSIONER ALESI: Yeah.

6 COMMISSIONER BURMAN: You voted --

7 SECRETARY BURGESS: Yes --

8 COMMISSIONER BURMAN: -- no.

9 SECRETARY BURGESS: -- you did.

10 CHAIRMAN RHODES: Okay. Well, in  
11 that case, I'm going to make sure I vote on Item  
12 302 and I -- yeah. So -- so I voted in favor of  
13 the recommendation.

14 Now, I'll proceed to call for a  
15 vote on Item 304, case 19-E-0288.

16 My vote is in favor of the  
17 recommendation to direct Counsel to the Commission  
18 to commence a special proceeding or action, in New  
19 York State Supreme Court, as discussed.

20 Commissioner Sayre, how do you  
21 vote?

22 COMMISSIONER SAYRE: Aye,

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

25 COMMISSIONER BURMAN: No.

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2 CHAIRMAN RHODES: Commissioner

3 Alesi, how do you vote?

4 COMMISSIONER ALESI: Aye.

5 CHAIRMAN RHODES: The item is

6 approved and recommendations are adopted.

7 So, we now come to the 4th item for  
8 discussion, which is Item 303, case 15-E-0751, as  
9 it relates to value-stack compensation, presented  
10 by Ted Kelly, Assistant Counsel. Warren Myers,  
11 Director of Office of Market and Regulatory  
12 Economics and Marco Padula, Director of Markets  
13 and Innovation are available for questions.

14 May I go off-book for just a  
15 second?

16 I'm -- I'm mindful that we've been  
17 at this for a while. Do people need a recess of -  
18 - for a minute or two, or shall we just keep --  
19 keep -- keep working through the agenda?

20 The default is we keep working.

21 COMMISSIONER SAYRE: Yes.

22 COMMISSIONER BURMAN: Keep working.

23 CHAIRMAN RHODES: All right. Ted,  
24 take a seat.

25 MR. KELLY: Thank you, Boss.

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2 Good afternoon, Chair Rhodes and  
3 Commissioners.

4 Item 303 is a draft order, adopting  
5 modifications to the value-stack and Value of  
6 Distributed Energy Resources Policy, for new  
7 distributed generation projects going forward, as  
8 well as certain projects in development.

9 The value of distributed energy  
10 resources, or V.D.E.R. Transition Order, issued in  
11 March 2017, directed transition of compensation,  
12 for distributed generation, from net-metering to  
13 the value-stack, which bases compensation on the  
14 actual calculable benefits that the distributed  
15 energy resources, or D.E.R.s, create. D.E.R.s  
16 subject to the value-stack, receive compensation  
17 for the energy they inject in to the utility  
18 system, for a set of values, calculated based on  
19 the utility costs they offset.

20 The energy value, based on the  
21 energy-commodity purchase requirements off-set by  
22 each kilowatt hour injected, the capacity value,  
23 based on the installed capacity or I-cap purchase  
24 requirements off set by injections, the  
25 environmental value, based on the renewable energy

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2 credit, or REC-compliance costs off set by each  
3 kilowatt hour injection, the demand-reduction  
4 value, or D.R.V., based on the distribution costs  
5 off set by injections, averaged across each  
6 utility service territory and the locational  
7 system value, or L.S.R.V., available only in  
8 locations that the utility has identified as  
9 having higher than -- having specific high needs  
10 that can be addressed by D.E.R.s and based on the  
11 higher, specific distribution costs, off set by  
12 injections in that area.

13 The transition order also  
14 established a number of transitional mechanisms to  
15 moderate the change over, from net-energy  
16 metering, to the value stack, for various customer  
17 classes and project types, including phase-one  
18 net-energy metering, which includes a limited  
19 continuation of net-metering style compensation  
20 for certain projects and the market-transition  
21 credit, or the M.T.C., which is added that allows  
22 the value-stack to approach the previous level of  
23 compensation under net -- net metering, in a  
24 declining block fashion.

25 The transition order was followed

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2 by the implementation order, excuse me, in  
3 September 2017, which provided the details  
4 necessary to produce actual effective tariffs,  
5 based on the value-stack compensation method  
6 developed in the implementation order -- or the  
7 transition orders.

8 Following the implementation of the  
9 value-stack, New York State has experienced robust  
10 D.E.R. development, including a record year for  
11 solar deployment in 2018 and enough projects  
12 currently in development to double statewide  
13 distributed solar capacity. However, the  
14 Commission acknowledge in the transition order and  
15 implementation order, that the value-stack as  
16 established, was an initial transitional  
17 compensation mechanism and would require further  
18 development.

19 The transition order directed Staff  
20 to convene a process to work on improvements to  
21 the value-stack. A number of stakeholders raised  
22 concerns about certain elements of the value-stack  
23 and recommended modifications, both within the  
24 value-stack working group established by Staff and  
25 through other forums.

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2 In response to those concerns and  
3 as the culmination of a multi-year stakeholder  
4 process that included working-group meetings,  
5 presentations, exchanges of proposals and multiple  
6 rounds of written comments, Staff released a set  
7 of white papers, recommending modifications to  
8 certain aspects of the value-stack and V.D.E.R.  
9 policy. The proposed orders addresses  
10 recommendations from 2 white papers released in  
11 December 2018. The white paper regarding future  
12 value-stack compensation, including for avoided  
13 distribution costs and the white paper regarding  
14 capacity-value compensation.

15 The decisions in the draft order  
16 reflect the robust comments filed by stakeholders  
17 on these white papers. I will summarize the major  
18 decisions in the draft order, which adopt, modify,  
19 or reject recommendations from the white papers.

20 First, the draft order initiates a  
21 proceeding to examine utility marginal costs of  
22 service studies and directs Staff to develop and  
23 issue an -- develop and issue a work plan and  
24 schedule for the proceeding. The M.C.O.S.  
25 studies, which are used to determine distribution

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2 system and locational values, are important now  
3 only to the value-stack, but also to a number of  
4 other aspects of planning and valuation, in the  
5 dynamically evolving utility systems under the  
6 reforming the energy vision proceeding.

7 Unfortunately, there has not been  
8 sufficient opportunity for meaningful external  
9 review, of new approaches adopted by utilities in  
10 those studies, or sufficient consideration of the  
11 differences between approaches by different  
12 utilities. Value-stack compensation, based on  
13 M.C.O.S. studies, will not be modified based on  
14 new studies, until this proceeding is complete and  
15 results in Commission approved methodologies and  
16 studies of each utility.

17 Second, the draft order rejects  
18 Staff's recommendation that the locational system  
19 relief value be eliminated. A number of  
20 commenters, including the utilities, solar and  
21 storage developers and environmental non-profits,  
22 expressed concern regarding this recommendation.

23 As the draft order explains, while  
24 issues may exist with the current methodology, the  
25 development of locational price signals, is an

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2 important component of V.D.E.R. and the  
3 alternative discussed by Staff, including demand-  
4 response programs and non-wires alternative, do  
5 not sufficiently meet the need to reflect specific  
6 locational values for distributed generation  
7 projects. To maintain alignment of the L.S.R.V.,  
8 with actual system needs, while increasing  
9 project-owners ability to predict and manage  
10 L.S.R.V. compensation, the order directs that the  
11 L.S. -- the L.S.R.V. be modified to a call system,  
12 similar to demand-response programs, where  
13 projects are compensated, based on their  
14 performance during utility calls.

15 Third, several changes are made  
16 related to the demand-reduction value. Staff had  
17 recommended certain modifications to the overall  
18 dollar per kilowatt year value. Those changes are  
19 not adopted because they were based on the  
20 elimination of the L.S.R.V., which was not  
21 adopted.

22 However, the method of providing  
23 that compensation is modified to provide the  
24 dollar per kilowatt year value, by a number of  
25 hours reflecting the likely peak hours in each



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2 relevant system. For most utilities, those hours  
3 are two p.m. to seven p.m., on non-holiday  
4 weekdays, from June 24th, to September 15th. For  
5 NYSEG, certain hours, during January are all --  
6 are also including, reflecting higher winter usage  
7 in NYSEG, compared to its peak. And for Con  
8 Edison, the hours are based on previously  
9 established areas, generally covering summer  
10 mornings, summer afternoons, or summer evenings,  
11 based on what local peaks are in each of the four  
12 previously-established areas.

13 Previously, the D.R.V. dollar per  
14 kilowatt year value, was locked in for a project,  
15 for three years. The Staff proposal recommended  
16 moving to a system where the overall value was  
17 updated for all projects, every two years, but  
18 with changes limited to 5 percent in each two-year  
19 update.

20 However, as commenters note, the  
21 M.C.O.S. proceeding could result in substantial  
22 changes, upwards or downwards to this value, such  
23 that the 5 percent limit significantly hinders  
24 sending meaningful price signals. Therefore, that  
25 is not adopted.

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2 Rather, the D.R.V. will be locked-  
3 in for each project, for 10 years. It will be  
4 updated for new projects, once the M.C.O.S.  
5 proceeding is finished and based on a schedule of  
6 new M.C.O.S. studies, in the future, following  
7 that.

8 Fourth, the draft order adopts  
9 Staff's recommendation that phase-1 net-energy  
10 meeting -- metering eligibility be offered to on-  
11 site commercial projects that receive demand  
12 charges, with a rated capacity of 750 kilowatts,  
13 or smaller and designed solely to offset on-site  
14 load.

15 The Commission finds that due to  
16 these customers paying demand charges, for the  
17 crime -- for the majority of their delivery costs,  
18 or in some cases, the entirety of their delivery  
19 costs, this will have no meaningful cost impact on  
20 non-participating customers and will offer a  
21 simple option to commercial customers, who wish to  
22 use distributed generation, solely to serve their  
23 own electric needs.

24 Fifth, the draft order adopts  
25 Staff's recommendation to move from the market-

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2 transition credit, to a new community credit, in  
3 NYSEG, RG&E and National Grid. The draft order  
4 also finds that moving to a community credit in  
5 Con Edison, is beneficial and appropriate and  
6 therefore, directs a move to a community credit  
7 there, which is -- it's different than what Staff  
8 had recommended.

9 Transitioning to a community  
10 credit, which will be provided to all C.D.G.  
11 subscribers, rather than only mass-market  
12 customers and will not prevent -- prevent receipt  
13 of the demand-reduction value, as the M.T.C. did,  
14 allows the funding of more projects at the same or  
15 lower costs, with the 2 percent net-revenue impact  
16 target that each utility maintained and it allows  
17 this, by leveraging the potential for cheaper  
18 financing, due to the presence of large anchor  
19 customers and by including the locational and  
20 time-varying incentive of the demand-reduction  
21 value.

22 It also enables tenants in mass or  
23 metered buildings, to subscribe to community  
24 distributed-generation projects, under the same  
25 terms as direct-metered ratepayers, which was not

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2 previously possible.

3 The draft order rejects Staff's  
4 recommendation that a community credit also be  
5 applied to large commercial customers, in projects  
6 that currently receive a market-transition credit,  
7 finding that the recommendation does not  
8 sufficiently demonstrate that this will re --  
9 result in lower costs for non-participating  
10 ratepayers.

11 Sixth, the draft order adopts  
12 Staff's recommendation to replace the market-  
13 transition credit at Orange and Rockland and  
14 Central Hudson, with an upfront community ad, or  
15 funded by previously-collected uncommitted  
16 ratepayer funds, held by the New York State Energy  
17 Research and Development Authority. This will  
18 encourage continued development in those areas,  
19 without imposing a further impact on customers and  
20 service territories, where that 2 percent target  
21 has already been reached.

22 Moving forward, as community-credit  
23 availability is exhausted and to the extent that  
24 the above value-stack compensation continues to be  
25 needed to ensure robust development of C.D.G.

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2 projects, in various parts of the state, it would  
3 be appropriate to consider extending this  
4 incentive to other projects, in other utility  
5 territories, not once they are no longer receiving  
6 an M.T.C., or community credit, as well as to  
7 extend fur -- its availability further, in Central  
8 Hudson and O&R, if that -- if and when that is  
9 exhausted.

10 However, any such extension would  
11 require fur -- further Commission consideration in  
12 -- and in particular, a funding source incentive  
13 level. So, it would require a -- a future  
14 proposal, followed by opportunities for comment  
15 and then action by the Commission.

16 Seventh, the draft order adopts  
17 Staff's proposed changes to the capacity-value  
18 calculations, with some modifications. The  
19 changes result in capacity value being train --  
20 calculated in a transparent matter, using  
21 publicly-available New York independent system  
22 operator capacity prices, rather than as they  
23 currently are, based on somewhat opaque utility-  
24 tariff calculations.

25 They also increase the alignment of

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2 those values, with actual utility-capacity costs  
3 from -- reflecting utility purchases from the  
4 independent system operator.

5 Several commenters identified  
6 errors in Staff's proposals and those errors are  
7 correct the draft order.

8 The decisions made in the draft  
9 order continue the evolution of V.D.E.R. tariffs,  
10 as an effective compensation mechanisms for  
11 D.E.R.s in New York. The draft order is  
12 particularly timely, as a number of developers  
13 with projects in the early stages of development,  
14 are waiting for a decision on the Staff white  
15 papers, before making a -- final investment  
16 decisions.

17 These changes and in particular,  
18 the availability of the community credit and  
19 community adder, will provide for more than 1000  
20 megawatt, or 1 gigawatt, of additional C.D.G.  
21 development in New York State, on top of the more  
22 than 500 megawatts of C.D.G., already qualified  
23 under the value-stack and on top of projects in  
24 development and expected to be developed under  
25 remote crediting and on-site generation, rather

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2 than C.D.G. This represents a meaningful step  
3 towards achievement of the state's goals, for a  
4 cleaner, more-distributed electric system.

5 Thank you.

6 And Warren, Marco and I, are  
7 available for comments -- or question -- available  
8 for questions. Sorry.

9 CHAIRMAN RHODES: Or comments.

10 MR. KELLY: All -- also for  
11 comments.

12 MR. MYERS: Comments.

13 CHAIRMAN RHODES: So thank you,  
14 Ted.

15 I find this to be a set of clear,  
16 concrete and useful recommendations that deliver  
17 progress towards our goals of a clean, smart --  
18 clean, smart and valuable deployment, at the  
19 fairest and most cost-effective economics. I'm  
20 intending to support this item.

21 Commissioner Sayre?

22 COMMISSIONER SAYRE: As part of  
23 REV, we're restructuring the market for energy and  
24 paradoxically, we have to set market rules and  
25 even in some cases, have to set prices, in order

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2 to move towards our goals, which include not just  
3 clean energy and -- and more distributed energy,  
4 but also the use of market forces and competition  
5 to -- as drivers, to get us to where we want to  
6 go, in terms of these goals, which also include  
7 more choices and lower costs and better service.

8 I sometimes feel, in this endeavor,  
9 like we are steering the Queen Mary through a very  
10 narrow channel, that hasn't yet been complete --  
11 completely charted. I see this item as a series  
12 of rutter tweaks that get around a few shoals and  
13 keep the ship on course.

14 I think Staff's recommendations are  
15 well-reasoned, well-supported and I support the  
16 item.

17 CHAIRMAN RHODES: Some excellent  
18 metaphors today Commissioner Sayer.

19 COMMISSIONER ALESI: Yes.

20 COMMISSIONER SAYRE: Yeah.

21 COMMISSIONER ALESI: For sure.

22 MR. KELLY: Aye, Aye.

23 CHAIRMAN RHODES: Yeah.

24 Commissioner Burman?

25 COMMISSIONER BURMAN: Well, I could



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2 do your hammer one, but this one I can't.

3 So -- so thank you to Staff. I  
4 know you worked really hard on this and you've  
5 been working really hard and you can see, that you  
6 put a lot of thought in to this and tried to  
7 capture modifications from the Staff white papers  
8 that would help to set the course.

9 I do have -- I do have a couple of  
10 questions.

11 One, relates to -- in here, NYSERDA  
12 and their role, where we direct them to be more  
13 transparent, not that they're not transparent, but  
14 would direct them to be more transparent on the  
15 website. Could you go in to a little bit about  
16 that and that specific --.

17 MR. KELLY: Sure.

18 So, I can -- I can certainly kind  
19 of point to a couple specific parts of their  
20 website, that we currently use and that I think  
21 generally, are -- are -- are fairly good, but  
22 could -- could use even some more detail.

23 One, is they have a specific  
24 V.D.E.R. web page that gets updated, primarily  
25 with information from the utilities, regarding the

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2 availability of currently the market-transition  
3 credit in each utility and that also kind of shows  
4 you the progress of projects in each utility  
5 territory. So, that would be updated to include  
6 further details, based on this order, on both the  
7 community-credit availability from the utilities,  
8 as well as the community-adder availability,  
9 directly from NYSERDA. So, that would essentially  
10 be, you know, updated and -- and a little  
11 additional information provided there.

12 In addition, in the open-data  
13 platform that's -- that's used by -- across all  
14 state agencies, NYSERDA provides information on  
15 the number of projects built in New York, in  
16 particular on -- through New York Sun and through  
17 other NYSERDA programs, for clean generation. So,  
18 those are both areas that would be kind of further  
19 updated and detailed, based on this order.

20 And then in terms of their  
21 expenditure of funds, that really would come  
22 through the reporting they provide us, quarterly,  
23 in some cases and annually in others.

24 COMMISSIONER BURMAN: Thank you.

25 Would NYPA be involved in these

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2 projects, based on the changes in this order?

3 MR. KELLY: So, there's nothing  
4 that changes in this order, that relates to NYPA.

5 There is currently the ability for  
6 solar to be put on rooftops of NYPA buildings and  
7 feed in to the Con Edison system and that's  
8 already in Con Edison's tariff and reflects prior  
9 -- reflects essentially what was in the transition  
10 order, but that doesn't then go to NYPA customers.  
11 It goes to other Con Edison customers and there's  
12 nothing in this order that would -- that would  
13 change that -- that, as being the current option  
14 for NYPA buildings.

15 COMMISSIONER BURMAN: Okay. Thank  
16 you.

17 And to the extent that we've had  
18 prior orders that talked about the M.T.A., working  
19 with Con Ed on regenerative breaking --

20 MR. KELLY: Uh-huh.

21 COMMISSIONER BURMAN: -- what does  
22 this do in here and what is the status?

23 MR. KELLY: So, I -- I believe  
24 there are still discussions underway on that,  
25 between Con Edison and the M.T.A. and potentially

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2 -- did we discuss that potentially there's some  
3 pilot that they're working on --

4 MR. PADULA: Yeah.

5 MR. KELLY: -- getting in to  
6 motion?

7 I don't think it's -- and I don't  
8 think there's any kind of steel in the ground yet,  
9 but I think they're working on a pilot on that.

10 The change -- that wouldn't be  
11 eligible for to -- a -- a -- for a market  
12 transition credit or community credit, but the  
13 changes in, for example, demand-reduction value  
14 and capacity-value calculations could potentially  
15 apply to that type of project, if it -- if and  
16 when it becomes effective and connects to the  
17 utility system and starts providing energy.

18 COMMISSIONER BURMAN: Okay. And  
19 has our finance folks looked at this, from a  
20 fiscal perspective and what this means, if all  
21 these changes --?

22 MR. KELLY: In terms of this order?

23 COMMISSIONER BURMAN: Uh-huh.

24 MR. KELLY: So, the -- the capacity  
25 value -- many of the changes are designed to

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2 essentially be kind of neutral, with -- with prior  
3 -- with the prior orders and we have taken a look,  
4 you know, as we move from the M.T.C. to the  
5 community credit, to ensure that that still fits  
6 within that 2 percent target, net-revenue impact  
7 cap that the Commission initially set in the  
8 transition order. So essentially, we've made sure  
9 that we are kind of moving around the way that  
10 money is distributed, but not spending more  
11 ratepayer money.

12 COMMISSIONER BURMAN: And out  
13 finance folks have looked at this and -- and have  
14 blessed your analysis?

15 MR. KELLY: I --.

16 MR. MYERS: Since we weren't  
17 changing anything, there really wasn't a need to  
18 impose it on their time. I -- I'm not sure what  
19 we would've had the finance folks look at.

20 COMMISSIONER BURMAN: Okay.

21 MR. KELLY: Yeah.

22 I think, essentially, I took a  
23 spreadsheet from the transition order, that had  
24 originally been developed by Warren, working with  
25 -- with some of the finance folks who were

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2 involved back then and I, basically, you know,  
3 with Warren kind of looking over my shoulder, to  
4 make sure I wasn't screwing up any of the  
5 equations, updated that spreadsheet to reflect the  
6 new numbers and make sure that it still fell  
7 within the same guidelines.

8 COMMISSIONER BURMAN: I think it  
9 might be prudent though, to always have our  
10 finance folks look, even if you think that it's  
11 not changing anything. My preference would be  
12 that our finance folks are under the hood a little  
13 bit on that --

14 MR. MYERS: Uh-huh.

15 COMMISSIONER BURMAN: -- even if  
16 it's to confirm old numbers that, you know, may  
17 not actually still be relevant, or need some  
18 updating, or have found to be forecasted wrong.

19 MR. KELLY: Certainly take that in  
20 to consideration in the future. Certainly makes  
21 sense.

22 COMMISSIONER BURMAN: Yeah.

23 So, there's this new community  
24 credit. We're taking money from uncommitted  
25 funds?

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2 MR. KELLY: For the community  
3 adder.

4 It's -- I'm sorry. I know the  
5 names --

6 COMMISSIONER BURMAN: The community  
7 --

8 MR. KELLY: -- are --

9 COMMISSIONER BURMAN: -- adder.

10 MR. KELLY: -- similar.

11 COMMISSIONER BURMAN: Right.

12 MR. KELLY: For the community  
13 adder, we're taking it from uncommitted funds.  
14 For the community credit, it's money that  
15 utilities would've spent on the market-transition  
16 credit, just spent in a slightly different way.

17 COMMISSIONER BURMAN: Right.

18 You know, I -- I'm always very  
19 concerned about these uncommitted funds, that  
20 always seem to be able to found, whenever we need  
21 money and I'd like to really try to address that.  
22 It gets back to the transparency on the website,  
23 from NYSEDA and the New York Sun funds. I think  
24 it's very hard to track, even for those who know  
25 where to look for it and know how to read them and

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2 we do need some more -- we need to instill public  
3 confidence, but investor confidence as well and to  
4 the extent that all of this does come with  
5 ratepayer funds attached to it and potentially,  
6 especially with the community credit, we may wind  
7 up looking at future charges, on -- on customers.

8 So, I think I'm -- I'm really very  
9 hesitant, without some drilling down and that, in  
10 fact, this aspect of it, could've been looked at  
11 it by our finance folks as well because there are  
12 dollars attached to it and making sure that we  
13 are, in our oversight role with NYSERDA as well,  
14 looking at what that is and also, engaging on if  
15 that's the proper usage of, you know, the funds  
16 for that. It's really important to me.

17 I don't know normally do this. I  
18 was disappoint -- and to say this publicly, I was  
19 very disappointed that I did not get this order  
20 until 9 o'clock Monday night, to look at. It is  
21 too significant of an issue. And it's then led to  
22 not being able to be fully briefed on it, until  
23 the other day and there is a lot here.

24 Now, you can point to the Staff  
25 white papers, as something to say well, we just



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2 made modifications to that. It's not good enough,  
3 especially because it requires going through, not  
4 just the white papers and looking at the potential  
5 modifications, but it really goes through looking  
6 at all of the different things that this hits.

7 It's not just VDER and as we know,  
8 even in VDER, it's a big -- big bucket of issues.  
9 It's in all of our different -- a lot of our  
10 different REV proceedings. We talk about  
11 community-distributed generation. There's a whole  
12 slew of them as well. We also have in rate cases  
13 and other cases, that may not be attached to VDER  
14 and community D.G. and rate cases, where we have  
15 said we're going to address this in a future case.

16 Now, I am confident that Staff has  
17 captured a lot of that, but the reality of your  
18 capturing it and my feel comfortable,  
19 substantively, are two different things. It's not  
20 unheard of, that I might vote differently, or  
21 think differently than my fellow Commissioners and  
22 Staff. So therefore, it's important for me, for a  
23 detailed analysis and going back over all of those  
24 different orders and things that it may touch.

25 We're also not addressing the

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2 standby rates and we're also adding in community  
3 credit and using uncommitted funds.

4 I'm a no, from a philosophical  
5 perspective, but I think that we need to do a  
6 better job and I have talked about this internally  
7 before. It's not the -- the latest item I've ever  
8 gotten, but it's becoming a -- enough of an issue,  
9 that I need to say I can't feel comfortable voting  
10 on an item, without much-more engagement and it's  
11 incumbent upon everyone, to make sure that before  
12 I vote on an item, that I am comfortable.

13 And so, I share that with you.  
14 It's not to take away the hard work that you've  
15 done and in fact, I do think that you and your  
16 fellow colleagues really were committed the other  
17 day, to working with me and going through it, but  
18 it's not good enough.

19 So, therefore, I'll be voting no.

20 CHAIRMAN RHODES: Just for good-  
21 orders sake, I'll note that I heard that comment  
22 as well.

23 COMMISSIONER BURMAN: Thank you.

24 CHAIRMAN RHODES: Okay.

25 Commissioner Alesi?

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2 COMMISSIONER ALESI: Thank you.

3 I am viewing this as a -- a -- a  
4 ticket to the path forward. I fully anticipate  
5 that years down the road, we're going to look back  
6 at this and say that was quite a step to get us  
7 where we are now and where we will be down the  
8 road, will be built upon, as I said before, the  
9 hard work and determination of the Staff. I'll  
10 throw in the brain trust as well.

11 So, thank you for your hard work  
12 and look forward to whatever this brings us to  
13 down the road, in pursuit of what we're looking  
14 for, as far as the energy and the environment and  
15 a better life. I'll be supporting it.

16 CHAIRMAN RHODES: Thank you.

17 So, we'll now proceed to call for a  
18 vote.

19 My vote is in favor of the  
20 recommendations to adopt, with modifications. The  
21 recommendation in Staff's white paper, is  
22 regarding value-stack compensation and capacity-  
23 value compensation, as discussed.

24 Commissioner Sayre, how do you  
25 vote?

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2 COMMISSIONER SAYRE: Aye.

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

5 COMMISSIONER BURMAN: No.

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

8 COMMISSIONER ALESI: Yes.

9 CHAIRMAN RHODES: The item is  
10 approved and the recommendations are adopted.

11 We will now move to the consent  
12 agenda.

13 Do any Commissioners wish to  
14 comment on, or recuse from, voting on any items on  
15 the consent agenda?

16 Commissioner Sayre?

17 COMMISSIONER SAYRE: No.

18 CHAIRMAN RHODES: Commissioner  
19 Burman?

20 COMMISSIONER BURMAN: Yes.

21 I have a few items I'd like to  
22 comment on.

23 On item 265, which is in the matter  
24 of earnings-adjustment mechanism and scorecard  
25 reform, supporting the Commission's Reforming the

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2 Energy Vision, this is an order eliminating the  
3 interconnection earning-adjustment mechanism.

4 On October 24th, 2018, Staff  
5 proposed the Commission eliminate the  
6 interconnection earning-adjustment mechanism.  
7 This draft order will do that.

8 I have concerns with this. I do  
9 note that the joint utilities raise concerns in  
10 eliminating these because the I.E.A.M.s were  
11 carefully negotiated in rate cases, as part of an  
12 overall package, intended to support REV  
13 objectives. So, to now eliminate can add  
14 uncertainty to both the rate case process and  
15 undoes negotiated resolutions. That is a concern  
16 for me.

17 I think the -- the joint utilities,  
18 rightfully so, raised these concerns. These  
19 resolutions were relied on by the utilities, to  
20 plan their investments and objectives. It was  
21 also relied upon those who were -- who entered in  
22 to joint proposals.

23 I do understand, other like the  
24 city and M.I., view that differently, especially  
25 because it doesn't seem compelling evidence, that

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2 the I.E.A.M.s represent an effective use of  
3 ratepayer funds. A triple E and I.R.E.C. and the  
4 clean-energy parties, also warned about getting  
5 rid of this and says that it should have more time  
6 on this.

7 I do think that we need to keep in  
8 place, during -- I do think keeping them in place  
9 during the duration of applicable rate year, in  
10 order to bolster, not only utility confidence, but  
11 those public confidence, who entered in to this,  
12 as part of the rate settlements, or rate cases, in  
13 E.A.M.s, as a source of earnings, may have been a  
14 better approach. It is odd to me, we're still  
15 moving forward with the system efficiency E.A.M.  
16 proposals In the next major rate filings, when  
17 here, we're sending a signal that you can enter in  
18 to these, in rate cases, but we may undo it later,  
19 before the end of the rate case.

20 As you know, I've raised issues on  
21 rate cases, where we generically have boiler-plate  
22 language that says oh, and by the way, REV  
23 objectives may change things, so you're  
24 forewarned. I think we need to get under the hood  
25 more on that and even if I disagree with the way

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2 something lands in a rate case and an order, if it  
3 has been agreed to, we should really have much  
4 more of a focus on why we're now undoing it.

5 I do understand and recognize the  
6 analysis for that, but I think that we need to be  
7 mindful of the concerns and truly lay that out,  
8 more clearly, when we enter in to something, that  
9 like this, may wind up showing that it's not  
10 necessary to do. So, I just raise that from that  
11 perspective.

12 I also raise that there are several  
13 street-light items. I'm not going to go in to  
14 detail on them. I think it's appropriate -- I was  
15 -- I am noticing a trend in the -- the press  
16 world, where I am seeing a lot of articles now,  
17 looking at street lights and they range from being  
18 happy that they're getting street lights and --  
19 but I -- they also range from those who are either  
20 upset that the -- it's taking too long, or that  
21 there is -- are issues with, you know, some of the  
22 parameters of what's being done.

23 I think utilities unfairly get  
24 tagged, as being part of the problem and I think  
25 that it could be from a stakeholder perspective,

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2 all of us now taking a look under the hood and we  
3 have -- NYSERDA had done years ago, a analysis --  
4 a white paper, with the -- I believe a consultant,  
5 on street lights and the benefits and the barriers  
6 and to the extent that we now have a -- a -- a  
7 track record on these street-light proceedings, I  
8 do think that to the -- that it is important for -  
9 - whether it's the Commission or the state, to  
10 really take a deep dive and see how are they  
11 panning out, especially if municipalities are now  
12 finding that they may have some challenges to what  
13 they saw as a potentially good investment, to make  
14 sure that they are being properly dealt with.

15 There was one recently. There was  
16 a municipality, I believe, that was concerned  
17 about signing on to it because of a need that they  
18 -- that another -- that the utility needed for  
19 emergency response planning. To the extent that  
20 they may impact us, we also need to look at that.

21 So, I just raise it. I don't have  
22 specific facts, but I am getting concerns about it  
23 and want to make sure that we're truly helping to  
24 not only enable the market, but to provide the  
25 communities with something that can alleviate



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2 their energy costs a little bit, as well as  
3 provide other -- other benefits to them. So, it's  
4 important for us to look at that.

5 Then, on item 376, which is the  
6 recommendations of the 2008 outcome-based  
7 earnings-adjustment mechanisms collaborative  
8 report, I will be concurring on this.

9 I do have concerns. U.I.U., again,  
10 is raising, rightfully so and we're not paying  
11 attention to it, that their opposition to  
12 incentives for air-source heat pumps due to  
13 concerns that the resources may cause future  
14 growth. So, to the extent that in this  
15 collaborative report, which we are adopting, I do  
16 think it's something that this is not the first  
17 time that U.I.U. has raised these -- this concern.  
18 It gets to the heart of reliability and resiliency  
19 and it gets to the heart of cost impacts and we  
20 need to take a deeper dive.

21 It's not enough for us to just  
22 acknowledge that they're raising it. They're  
23 raising it for a reason and we need to really take  
24 a careful look at what that means. It doesn't  
25 just go to air-source heat pumps, but anything

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2 that has potential impact, is -- is important.

3 This is also where the Con Ed,  
4 M.T.A. regenerative-breaking issue is, I believe  
5 in this item, as well. So, I do think that that's  
6 something that I'll be following and to the extent  
7 that we're looking at that, it -- it's helpful  
8 because that again, is -- is something that could  
9 be helpful to customers.

10 So, with that, thank you very much.

11 I have no other comments.

12 CHAIRMAN RHODES: Commissioner  
13 Alesi?

14 COMMISSIONER ALESI: Nothing to  
15 add.

16 Thank you.

17 CHAIRMAN RHODES: Thank you.

18 So, with that, I call for a vote on  
19 the consent agenda.

20 My vote is n favor of the  
21 recommendations on the consent agenda.

22 Commissioner Sayre, how do you  
23 vote?

24 COMMISSIONER SAYRE: Aye.

25 CHAIRMAN RHODES: Commissioner

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2 Burman, how do you vote?

3 COMMISSIONER BURMAN: So, I forgot  
4 1 item, too.

5 I am voting now in 562, which is  
6 the charter item and I am voting -- on 265, I am -  
7 - I'm voting no. And 376, I am voting, I am  
8 concurring with reservations, based on my comments  
9 and all others, I'm voting yes on.

10 Sorry.

11 CHAIRMAN RHODES: Thank you.

12 Including the street-light items,  
13 which you had general comments on?

14 COMMISSIONER BURMAN: Uh-huh.

15 CHAIRMAN RHODES: Thank you.

16 Commissioner Alesi?

17 COMMISSIONER ALESI: I vote aye.

18 CHAIRMAN RHODES: The items are  
19 approved and the recommendations are adopted.

20 Secretary Burgess, is there  
21 anything further to come before us today?

22 SECRETARY BURGESS: There's nothing  
23 further today.

24 The next meeting is May 16th.

25 CHAIRMAN RHODES: Thank you.

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Thank you, everybody.  
We are adjourned.  
(The meeting adjourned.)

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2 STATE OF NEW YORK

3 I, DONNA LAFOREST, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place,  
5 as stated in the caption hereto, at Page 1 hereof; that  
6 the foregoing typewritten transcription consisting of  
7 pages 1 through 174, is a true record of all proceedings  
8 had at the hearing.

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

11

12

13 DONNA LAFOREST, Reporter

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