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Monthly Meeting 9-12-2018

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Wednesday, September 12, 2018
9:13 a.m.
3 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: Good morning.

3 Thank you for your patience and
4 thank you also for adapting to a slightly
5 different day of the week and a slightly different
6 start time. But we're -- let's get started.

7 So, I'm John Rhodes. I'm the Chair
8 of the Public Service Commission and I call this
9 session of the Public Service Commission to order.

10 Before we start, a couple comments.
11 One, about mechanics, I would like to note that
12 our live webcasting will end by noon today. We
13 don't expect that to be a constraint, but if
14 necessary, the recording, but not the live
15 webcasting, will be continued beyond noon and the
16 complete recording and transcript will be posted
17 on the website.

18 That's obviously an important item,
19 in order to stay within process, but now I'd like
20 to go to another item, which is important in a --
21 in a very different way and I'd like to ask my
22 colleague, Commissioner Burman, to provide some
23 comments and remarks about our colleague, Jeremiah
24 -- Jeremy Belda.

25 Commissioner Burman?

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2 COMMISSIONER BURMAN: One of our
3 own at the Department Commission died last week.
4 Jeremy Belda, twenty-six years old, was an
5 Assistant Mechanical Engineer in our Gas Safety
6 Division.

7 I, along with some of the staff, on
8 behalf of the Commission and the Department, met
9 his father, sister and one of his brothers this
10 Sunday, when they came in from California and we
11 spent time with them, talking and reminiscing
12 about Jeremy.

13 It's important for us to take a
14 little bit of time and let you know who Jeremy
15 was. He graduated from the University of
16 California, San Diego, in 2014, with a Bachelor of
17 Science Degree in Environmental Engineering. He
18 was a Certified Engineer in Training, issued by
19 the California Board for Engineers, Land Surveyors
20 and Geologists, since August of 2014.

21 In February, 2015, we were lucky
22 enough to hire him in the Albany Office. Truth be
23 told, he was supposed to go to our New York City
24 Office, but due to a personnel snafu, he got
25 assigned to our Albany Office.

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2 For a kid from California, moving
3 across the country, he was focused on living the
4 dream in New York City. We tried to convince him,
5 our Albany, New York was the Albany, California
6 area that he grew up in. He did love our Albany,
7 just not the cold.

8 While here, he became familiar with
9 federal and state pipeline safety regulation, as
10 well as with the operations of the major gas
11 utilities in New York State. His duties included
12 reviewing proposed pipeline designs, reviewing
13 proposed updates to gas utility operations and
14 maintenance procedures, reviewing proposed changes
15 to federal and state pipeline safety codes and
16 preparing citations for enforcement of probable
17 violations relating to damage prevention. His
18 other duties included conducting field and
19 construction inspections of local distribution
20 companies and interstate pipeline operators, to
21 ensure compliance with federal and state pipeline
22 safety regulations.

23 But these work duties don't fully
24 capture the kind of worker Jeremy was. Jeremy was
25 one of our rising stars. He was going to be the

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2 one we would all say, when he made it big, we knew
3 him when. He was an essential member of the
4 pipeline safety team.

5 He read chemical chemistry and
6 thermodynamic books, just for fun. His
7 intelligence was unparalleled and he often was
8 called upon by his colleagues and managers because
9 he was considered the smartest one in the room,
10 even with those who had years and years of
11 experience.

12 He wanted to be challenged and
13 excelled at everything he did. He made friends
14 with co-workers, easily and built an incredible
15 rapport with many people in the gas safety world.
16 He was respected for his knowledge and dedication
17 on the job and he was regarded as highly
18 dependable, even when he didn't have to be.

19 It's no surprise that everyone who
20 knew Jeremy, loved him. Everyone who was lucky
21 enough to be his friend, was gifted with his
22 friendship. He was a very loving and kind young
23 man.

24 He was the youngest of four
25 children, born to George and Susan. The theme in

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2 his family, is if you're a girl, you're name
3 started with an S and if a boy, it started with a
4 J. His sister Sarah and brothers, Joe and Joshua,
5 loved their little brother, as did his two nieces
6 and two nephews.

7 Sarah shared that her brother loved
8 to light up a room, especially if he was in an
9 airport, or a bar, or at a party and people
10 weren't feeling, initially, upbeat or happy. He
11 was a trained concert pianist and would sit, if
12 there was a piano and play what he knew would
13 instantly connect with people and get them
14 instantly bonding and happy. Of course, he played
15 Piano Man.

16 He was very close to his family,
17 loved his Philippino heritage and loved as the
18 only grandchild born in the U.S. His now deceased
19 grandfather would introduce him as this is my
20 grandson, the one who will become the President of
21 the United States someday.

22 He was also civic minded,
23 volunteering for the Boys and Girls Club and in
24 honor of one of his nephews, who had a successful
25 kidney transplant, giving blood routinely. He had

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2 been a straight-A student, but once, getting his
3 first and maybe his only B in cooking, he was so
4 incensed that he got a B, that he went out and
5 perfected the art of cooking, even working for
6 some time in the food industry, proving he was
7 really deserving of that A.

8 But I think the story that truly
9 captures the essence of Jeremy was shared on
10 Sunday, jointly, by his sister and brother. He
11 was fourteen years old, home alone and his parents
12 were out of town. Bored, he decided to take his
13 sister's car and drive it. Unfortunately, without
14 ever having driven a car before, he crashed it
15 into a tree and he was unharmed, but the car was
16 badly damaged.

17 He somehow managed to get it home
18 and it sat in the driveway. He immediately called
19 his sister and told her he messed up, explained
20 what happened and said how sorry he was.

21 She called her other brother and
22 they, as a family, discussed what to do, knowing
23 how angry and upset his parents would be, when
24 they came home. Jeremy's siblings decided, since
25 his brother was old enough to drive, his brother

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2 would willingly take the blame for Jeremy and
3 Jeremy could, when his parents come home, rat --
4 rat out his brother to his parents and say his
5 brother drove the car.

6 When his parents came home, he
7 immediately sat down with them and confessed that
8 it was he, Jeremy, who drove his sister's car
9 without permission and was willing to take
10 whatever punishment was due. To all of us, that
11 sums up the kind of character that Jeremy was made
12 of.

13 Over the last week, we've all been
14 struggling to make sense of this sudden and
15 painful loss. Many in the gas safety division
16 were getting ready to celebrate with him on his
17 upcoming birthday, September 23rd. We are
18 heartbroken and so sad for his family.

19 In closing, I'd like to say Jeremy
20 was one of our own. Jeremy's absence will leave
21 in our gas safety family and in our hearts, but he
22 also leaves us wonderful memories that will
23 endure, so that he will always be with us.

24 May we strive to make Jeremy proud
25 of us, as we continue in our important work.

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2 Thank you, Chair.

3 CHAIRMAN RHODES: Thank you for
4 that human moment.

5 This is -- obviously, very -- this
6 was, is very tough news. It's a very hard loss.
7 The hardest of all, on his family and on his close
8 colleagues and friends. Our thoughts are with
9 them.

10 Thank you.

11 So, I'd like now, to move to the
12 regular business of the -- of the Commission.

13 Secretary Burgess, are there any
14 changes to the final agenda?

15 SECRETARY BURGESS: Good morning,
16 Chair and Commissioners.

17 There are no changes to this
18 morning's agenda.

19 CHAIRMAN RHODES: Thank you.

20 With that, we'll move to the first
21 item for discussion. Item 101, case 18-G-0278,
22 which is the petition of Brooklyn Union Gas
23 Company, doing business as National Grid, New
24 York, for a limited waiver of tariff provisions
25 for interruptible service to multiple customers,

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2 presented by Mike Reider, Chief Gas and Water
3 Rates and Supply. Cindy McCarran, Deputy Director
4 for Gas and Water and Aric Rider, Utility
5 Supervisor, Gas and Water Rates and Supply, are
6 available for questions.

7 Mike, please begin.

8 MR. RIEDER: Good morning, Chair.

9 Good morning, Commissioners.

10 Item 101 addresses the petition of
11 National Grid, New York, requesting a limited
12 waiver of its tariff provisions, regarding penalty
13 charges for unauthorized use of gas, for 89
14 temperature controlled, or commonly called TC,
15 interruptible customers.

16 The company's tariff allows it to
17 impose unauthorized use of gas prices, at either
18 the higher, two times the sum of the daily market
19 price of natural gas, plus the applicable
20 transportation rate, or nine times the applicable
21 sale's rate. The company requests that it be
22 allowed to impose the -- the lesser of the two
23 penalty options.

24 TC service is a longstanding
25 demand-response program that allows National Grid

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2 to reduce gas during periods of peak usage, by
3 offering a reduced delivery rate to customers who
4 agree to interrupt gas service during cold weather
5 periods. This type of service benefits all
6 customers, by using the gas-distribution system
7 more efficiently. TC customers use the
8 distribution system, when it is free of capacity
9 constraints, but during times of peak demand,
10 remove their usage from the system. This allows
11 the company to spread the cost of operating the
12 system, over a larger customer base, without the
13 need for system enhancements, to meet a higher-
14 peak demand.

15 However, if TC customers do not
16 interrupt service, when required to do so by the
17 company, gas demand is not reduced and system
18 reliability is jeopardized. Therefore, a penalty
19 for the unauthorized use of gas is used to incent
20 TC customers to interrupt service, when the
21 temperature drops below a designated threshold.

22 The magnitude of the penalty is
23 designed to ensure that customers do not choose to
24 use gas during interrupt -- interruption and pay
25 the penalty, rather than use their alternate fuel,

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2 when they have access to it. In order to ensure
3 the reliability of its system, natural -- National
4 Grid must have confidence that TC customers will
5 not use natural gas when an interruption is
6 called.

7 To that end, TC customers must have
8 access to a minimum of ten-days supply of an
9 alternative fuel source, typically number two oil.
10 Access can mean either sufficient, physical
11 storage on site, or contracts, guaranteeing the
12 delivery of fuel.

13 National Grid also conducts an
14 annual test of all TC customers' ability to
15 interrupt service. All 89 TC customers involved
16 in this petition, passed that preparedness test in
17 November, 2017.

18 In December 2017 and continuing
19 into January 2018, National Grid's TC customers
20 were required to interrupt service during two,
21 nearly-consecutive, but distinct extreme cold-
22 weather periods. The first event lasted seven
23 days, from December 28th, to January 3rd and the
24 second event last four and a half days, from
25 January 4th, to January 8th.

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2 46 TC customers used natural gas
3 during the first interruption period. 89 more
4 customers used natural gas during the second
5 interruption period, for a total of 135 customers.

6 The 89 TC customers, subject to
7 this petition, appropriately refrained from using
8 gas during the entire first interruption period
9 and during the beginning of the second
10 interruption period. However, as the second
11 interruption period continued, an unexpect --
12 unexpected shortage of fuel-delivery services
13 occurred in New York City. In order to provide
14 heating for schools, city buildings and public
15 housing, during the extreme cold, the 89 TC
16 customers used gas without authorization,
17 subsequent to notifying the company.

18 National Grid's tariff calls for
19 the imposition of unauthorized use of gas
20 penalties for TC customers, at the higher of two
21 times the sum of the market place, plus the
22 transportation rate, or approximately twelve and a
23 half dollars per therm, which would have resulted
24 in aggregate penalties of approximately 1.5
25 million dollars. Or, nine times the applicable

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2 sales' rate, or approximately five dollars per
3 therm, which would have resulted in aggregate
4 penalties, of approximately 600,000 dollars.

5 National Grid has not yet billed
6 customers the penalty charges. Instead, in its
7 position, the company requests a waiver of the
8 tariff provisions, so that it can charge the 89 TC
9 customers, who used gas during the latter stages
10 of the second event and not during the first
11 event. Penalties, using the lesser penalty
12 option.

13 National Grid has not requested a
14 waiver of the 46 TC customers that used natural
15 gas, during the first and second interruption
16 period.

17 All 89 TC customers subject to this
18 petition demonstrated the ability to interrupt
19 service, as of November 2017. However, given the
20 length of the nearly consecutive interruption
21 periods, the limited supply of oil during the
22 interrupt periods, the limited supply of oil
23 during the interruption periods and the need to
24 heat the premises, such as public buildings,
25 including schools and multi-family dwellings.

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2 These customers were unable to interrupt service -
3 - interrupt service, during the entire second
4 interruption period.

5 It should be acknowledged that
6 these customers are neither firm natural-gas
7 customers, nor firm oil customers. As a result,
8 neither the gas utility, nor the oil in --
9 industry, prioritizes the delivery of fuel to
10 these customers.

11 These 89 TC customers' unauthorized
12 use of gas reflects neither poor planning on the
13 part of the customers, or that they chose to use
14 gas during the interruption, even though they had
15 access to their alternative fuel.

16 In this instance, due to the spike
17 in natural gas prices at the time of the
18 interruption, staff believes that the penalty
19 charges indicated by the tariff, exceed the level
20 necessary to ensure future compliance, by these 89
21 customers.

22 The penalty charges oppose --
23 proposed in the petition, reflecting the -- the
24 lesser tariff option of nine times the applicable
25 sales rate, should adequately serve the purpose of

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2 the unauthorized use of gas penalty charge in this
3 instance. Accordingly, National Grid's request
4 for a limited one-time waiver, of the unauthorized
5 use of gas penalty for the specified 89 TC
6 customers, is recommended to be approved.

7 Thank you.

8 We are available to answer any
9 questions you may have.

10 CHAIRMAN RHODES: Thank you, Mike.
11 Thank you for the presentation.

12 This strikes me as a reasonable
13 remedy, reasonable in scope and character, to some
14 clear and compelling and unusual facts. I'm going
15 to be in favor of this item.

16 I'll now turn to my fellow
17 Commissioners.

18 Commissioner Sayre?

19 COMMISSIONER SAYRE: To me, this is
20 a simple item of fairness for customers in an
21 unexpected extreme and unavoidable situation.

22 For the future, however, although I
23 support this item on a one-time waiver basis, this
24 situation can no longer be considered unavoidable
25 or unexpected. We may need tariff changes and I

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2 understand they're being discussed. Customer
3 behavior and back-up arrangements may need to be
4 changed.

5 So, I do want to stress that
6 although what we're doing today is fair for these
7 customers, under the current circumstances, it's a
8 one-time deal.

9 CHAIRMAN RHODES: Thank you.
10 Commissioner Burman?

11 COMMISSIONER BURMAN: Thank you.

12 I just wanted to -- I do support
13 the item. I think it is important that we grant
14 this waiver, but I do just want to point out a
15 couple of things.

16 I spent a considerable amount of
17 time going over this item and looking at what led
18 up to this item.

19 I don't necessarily consider it a -
20 - a shock that we were looking at potential
21 waivers. Back at the polar vortex, we opened a
22 proceeding, case 15-G-0185, that looked at this
23 very issue of interruptible customers,
24 temperature-controlled customers and what were the
25 necessary communication protocols because at that

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2 time, we had a -- a -- a -- circumstances where
3 there was delivery of heating fuel to customers,
4 were challenged and we made some changes there.
5 But we didn't necessarily address it completely,
6 as this item shows us.

7 What we did, in the 2016 rate case
8 was we issued a directive for a collaborative.
9 Actually, the report for that collaborative is
10 going to be due, September 17th, Monday, of this
11 year. So, that's two years later from -- or
12 almost two years later because it was December,
13 from the rate case.

14 And so, for me, it was a question
15 of understanding why it took that long and I think
16 that it was a -- it has been a thoughtful process.
17 The rate case and the joint proposal, looked at a
18 temperature-control moratorium in the joint
19 proposal, during the term of the rate case. So,
20 there was sort of three criterias that were
21 established.

22 One, was you could -- couldn't add
23 new temperature-controlled customers. Two, was
24 all temperature-controlled customers could remain
25 in that class, if -- and then the third, was they

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2 could -- temperature-controlled customers could
3 only switch to firm, if the companies were able
4 to.

5 The thing that concerned me -- or
6 concerns me, is we have seen, since that rate
7 case, a decrease in the temperature control
8 customers. But it is, for me, us to explore and
9 that's why I look forward to the September 17th
10 report. It is to look -- look at what this means
11 for the upcoming winter and future winters, but it
12 also means what are we doing, to look at the
13 natural gas demand that we may need.

14 Switching to alternative fuels and
15 customers who choose to be a part of that, is very
16 helpful. But if in fact it is causing a problem,
17 as this item shows, when there is not that
18 alternative fuel to switch to and some of those
19 temperature-controlled customers are locked into a
20 situation where they can't switch to firm, even if
21 they would choose to because there is not an
22 increase -- there is not the ability for capacity
23 purposes, to -- to do so, if the company is still
24 working through those issues with what they need
25 to be able to and they can't because it would put

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2 the system in a dire situation. So, we really do
3 need to look at that.

4 Plus, how many customers are not
5 choosing to go on to temperature-control because
6 they can't because of our moratorium on that,
7 that's actually causing a problem, so that we
8 should be looking at all of those items and how to
9 address it and what that protocol means.

10 I do flag that there have been
11 other waiver situations before us. We had one
12 with SUNY Downstate, where there was a settlement
13 agreement that we approved.

14 SUNY Downstate, after the issue,
15 moved to firm and that solved their problem. So,
16 there may be, out of these 89 and I point out, 89
17 of these customers, 48, or 49 of them, are -- I
18 believe all of them are schools, or they're
19 government, they're city-owned and a large portion
20 of that are schools.

21 Is that correct?

22 MR. RIEDER: Yes.

23 COMMISSIONER BURMAN: Yes?

24 MR. RIEDER: That's true.

25 COMMISSIONER BURMAN: Okay. And

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the city itself submitted a petition -- excuse me,

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submitted a response in support of the petition,

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talking about the critical need for the gas to be

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available to those customers and also looking

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forward to the collaborative, to address the

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issues and to help, in terms of some of the --

8

some of the needs for those customers, including

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whether it would be a -- a opportunity for moving

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to firm.

11

So, I do think that for me, what I

12

take pause at, is that we're all in this together.

13

So, it's not just the companies being told this is

14

a one-time waiver.

15

Like with SUNY Downstate, the

16

company worked with the customer and then was able

17

to move to firm. That's not going to be the case,

18

for a large majority of these customers and

19

therefore, they may be in a perilous position and

20

we need to be able to have the energy needs, in

21

this case, gas, if the alternative fuel is not

22

available.

23

So, I just want to flag that for

24

us.

25

Thank you.

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2 CHAIRMAN RHODES: Thank you.

3 Commissioner Alesi?

4 COMMISSIONER ALESI: Thank you, Mr.

5 Chairman.

6 I'm willing to support this
7 recommendation, with the understanding that we're
8 not establishing a permanent benchmark for
9 situations that are similar in the future.

10 CHAIRMAN RHODES: Thank you very
11 much.

12 With that, we'll proceed to call
13 for a vote.

14 My own vote is in favor of the
15 recommendation to grant the limited waiver, as
16 discussed.

17 Commissioner Sayre, how do you
18 vote?

19 COMMISSIONER SAYRE: Aye.

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

22 COMMISSIONER BURMAN: Aye.

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

25 COMMISSIONER ALESI: Aye.

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2 CHAIRMAN RHODES: The item is
3 approved and the recommendations are adopted.

4 We'll now move to the second item
5 for discussion. Item 302, case 16-E-0060, which
6 addresses Consolidated Edison's Smart Charge New
7 York program, presented by Rob Cully, Utility
8 Engineering Specialist II.

9 Rob, please begin.

10 MR. CULLY: Good morning, Chair
11 Rhodes and Commissioners.

12 Item 302 is a draft order,
13 addressing a petition by Consolidated Edison
14 Company of New York, Inc., referred to as
15 ConEdison, or the company, seeking to expand
16 eligibility of its Smart Charge New York Off-peak
17 Electric Vehicle, or EV Charging program, to
18 medium and heavy-duty EVs.

19 The Smart Charge New York program
20 was initially approved as part of the joint
21 proposal, describing ConEdison's latest rate
22 proceeding and the Commission's order, approving
23 electric and gas rate plans, on January 25th,
24 2017. I'll refer to this as the 2017 rate order.

25 As part of the joint proposal

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2 adopted by the 2017 rate order, the Smart Charge
3 New York program was initially limited to light-
4 duty EVs, such as passenger vehicles. However,
5 the joint proposal required ConEdison to commence
6 discussions with interested parties, to consider
7 development of incentive programs, and other
8 initiatives, to incentivized off-peak charging of
9 EVs, including cars, light trucks, heavy trucks
10 and busses.

11 On March 1st, 2018, ConEdison filed
12 the petition requesting authorization to expand
13 its Smart Charge New York off-peak charging
14 incentive program, to include medium and heavy-
15 duty EVs. The expanded program would operate
16 under the budget authorized in the 2017 rate order
17 and would begin testing the responsiveness of a
18 number of larger EVs to off-peak charging
19 incentives.

20 Five parties commented on
21 ConEdison's petition. CalStart, the city of New
22 York, or city, the Metropolitan Transportation
23 Authority, or MTA, Green Lots and BYD America.
24 The parties were unanimously supportive of Con
25 Edison's proposal to expand eligibility to

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participate in the Smart Charge New York program,

3

citing numerous environmental and economical

4

benefits of electrifying vehicles, in the medium

5

and heavy-duty sector.

6

Two parties, MTA and Green Lots

7

proposed further revisions, including adding a

8

callable, demand response like aspect, to the

9

Smart Charge New York program and suggested that

10

base electric rates for EVs include the value-

11

environmental benefits.

12

The draft order before you,

13

Commissioners, approves ConEdison's petition to

14

expand eligibility for the Smart Charge New York

15

program, to include medium and heavy-duty EVs.

16

The draft order also states that consideration of

17

the program and rate modifications, beyond the

18

scope of the company's petition, as proposed by

19

Green Lots and the -- and the MTA would be better

20

suited for discussion, as part of the ongoing

21

generic EV proceeding, in case 18-E-0138.

22

This concludes my presentation.

23

I'm happy to answer any questions you may have at

24

this time, long with John Sipos.

25

CHAIRMAN RHODES: Thank you, Rob.

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2 This strikes me as a useful,
3 budget-prudent limited expansion of existing and
4 innovative program, tailored to some market
5 realities, as those are presented to us, with a
6 smart delineation of what this order -- limited
7 order will take up and what will be reserved for
8 action in the generic proceeding. I find it
9 sensible and I will be in favor of this item.

10 Commissioner Sayre?

11 COMMISSIONER SAYRE: I'm a fan of
12 the electrification of transportation and also of
13 well-designed voluntary time of use rates.

14 What's a good program though and
15 what are good rates, involve some very difficult
16 issues. The program has to be attractive to
17 customers, it has to be beneficial to the
18 environment, it has to tend to reduce the
19 utility's costs and at worst, it has to be no
20 additional burden on non-participating customers.
21 These are conflicting goals that are not easy to
22 achieve.

23 In my view ConEd's program, as
24 expanded by this item, will help us answer these
25 issues and hopefully get to increased acceleration

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2 of electrification of transportation and good time
3 of use rates.

4 CHAIRMAN RHODES: Thank you.

5 Commissioner Burman?

6 COMMISSIONER BURMAN: So, I do have
7 issues with this item.

8 I looked at the record and went
9 back. In 2017, as you said, the ConEd rate order
10 looked at this Smart New York program and it was
11 in limited fashion and we supported it at that
12 time.

13 The -- the rate order, the joint
14 proposal and this order, does not clearly define,
15 or give clear guidance on the specifics of the
16 implementation plan and what exactly we are
17 drilling down to look at and get information from.
18 Generically, we do it, but we don't give real,
19 clear guidance on exactly what we're looking at.
20 Plus, we're not necessarily addressing, except for
21 acknowledging, that there are potential issues
22 with this.

23 The other parties point out
24 specific logistical challenges. We acknowledge
25 that there are potential issues and concerns and

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2 we -- we sort of give lip service to it, by saying
3 that's why this program is going to help highlight
4 that, without necessarily us doing the hard work
5 of clearly expressing some of what those issues
6 will be and how we will be looking to identify and
7 capture and evaluate and in what timeframe.

8 And we also, while we seem to say
9 it's okay because they're not increasing the
10 budget, we didn't do a due-diligence in going back
11 and looking at why we gave that initial budget at
12 that time and what some of the impact may be and
13 why they can do it within the budget now,
14 increasing to heavy and medium EVs and giving some
15 analysis for that and showing that there's no
16 harm.

17 And also, part of the reason that
18 we did it in a limited fashion before, was so that
19 we could look at it and have some clear guidance,
20 before we moved in to the next phase, which may be
21 this. And since there is a natural fit to other
22 ongoing proceedings, we shouldn't side-step and
23 decide some of those things until we clearly look
24 at what's going on in the larger picture.

25 And my fear, is that we are just a

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2 slippery slope to get to an end result that has
3 not carefully been evaluated and that concerns me.

4 I do want to say that some of the
5 issues, as it applies to the EV charging rate
6 design and EV tariff, are -- are definitely things
7 that we really need to take a hard look at and
8 especially because the Legislature had imposed
9 some tariff requirements for EV before, if I'm not
10 mistaken.

11 Tammy, is that correct?

12 MS. MITCHELL: Yes.

13 COMMISSIONER BURMAN: Yes.

14 MS. MITCHELL: That's right.

15 COMMISSIONER BURMAN: So -- I just
16 want to make sure I'm right.

17 It might be appropriate, especially
18 as it relates to MTA and budget, to look at it as
19 a -- those aspects of it and what it means for the
20 budget and that, just for me, gives me pause.

21 We're not addressing that now. We say we'll look
22 at it later, but I do just want to make sure that
23 it's not just us, the Commission, but there are
24 other folks who have to be involved in some of
25 those decisions, as it relates to that.

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2 Overall, I'm going to be voting no,
3 without prejudice because I do think that if we
4 came back and looked at it more holistically and
5 had some more actual analysis on some of the items
6 and the timeframe. Plus we have not seen an
7 analysis on how it's worked so far, with the
8 ongoing program because it's just getting off the
9 ground, so that concerns me.

10 So, I'll be voting no, without
11 prejudice to come back.

12 CHAIRMAN RHODES: Thank you.
13 Commissioner Alesi?

14 COMMISSIONER ALESI: Thank you.
15 I have nothing to add.

16 CHAIRMAN RHODES: All right. Thank
17 you very much.

18 With that, we will proceed to call
19 for a vote.

20 My vote is in favor of the
21 recommendation to expand eligibility for the Smart
22 Charge New York program, as discussed.

23 Commissioner Sayre, how do you
24 vote?

25 COMMISSIONER SAYRE: Aye.

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

4 COMMISSIONER BURMAN: I vote no,
5 without prejudice to come back.

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

9 COMMISSIONER ALESI: Aye.

10 CHAIRMAN RHODES: The item is
11 approved and the recommendation is adopted.

12 We will now move to item three for
13 discussion, item 301, case 18-E-0485, which is the
14 petition of NRG Community Solar, LLC, for a
15 declaratory ruling, presented by Ted Kelly,
16 Assistant Counsel. Marco Padula, Acting Director
17 of Markets and Innovation and Warren Myers,
18 Director of Office of Market and Regulatory
19 Economics, are available for questions.

20 Ted, please begin.

21 MR. KELLY: Thank you.

22 Good morning, Chair Rhodes and
23 Commissioners.

24 This item is a declaratory ruling,
25 regarding a petition filed by NRG Community Solar,

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2 LLC, regarding the compensation applicable to
3 several community-distributed generation, or CDG
4 projects, owned by NRG Community Solar.

5 CDG was authorized by the
6 Commission in July 2015, to offer the benefits of
7 clean, distributed energy to ratepayers that might
8 not otherwise have access to them and to encourage
9 the continued development of renewable resources.
10 The CDG program allows the owner of an eligible
11 distribution gen -- distributed-generation
12 project, referred to as the sponsor, to inject
13 electricity into the utility system, in return for
14 credits, which are distributed to members of the
15 CDG program, in order to reduce the utility bills
16 of those members.

17 Under the CDG order, the value of
18 those credits is based on utility rates concerned
19 with net-energy metering, also call NEM rules.
20 The CDG order stated that non-demand metered CDG
21 projects, would generate volumetric credits, which
22 are transferred to a subscriber's utility bill, as
23 kilowatt hour credits and reduce that bill, based
24 on the dollar per kilowatt hour rate applicable to
25 that individual subscriber. The CDG order also

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2

stated that by contrast, demand-metered CDG

3

projects would generate monetary credits which are

4

transferred to subscriber's utility bills as

5

dollar-value credits, based on the dollar per

6

kilowatt hour rate applicable at the site of the

7

project.

8

The Commission modified this rule -

9

- the compensation rules for CDG projects in the

10

value of distributed energy resources, or VDER

11

transition order, issued in March 2017, which

12

directed trans -- the transition of compensation

13

for distributed generation resources from net-

14

metering to the value stack. As transitional

15

mechanisms, the VDER transition order established

16

phase-one NEM, a limited continuation of net-

17

metering style compensation and an adder to the

18

value stack for mass-market customers, which was

19

referred to as the market-transition credits, or

20

MTC

21

Three declining tranches of set

22

numbers of megawatts, of CDG capacity were

23

established in each utility service territory.

24

Projects in tranche zero slash one received either

25

phase-one NEM, or the value stack with the highest

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2 level of MTC, depending on when they met specific
3 qualification requirements, while projects in
4 tranches two and three received the value stack
5 with reduced levels of MTCs.

6 The MTC for tranche one was
7 designed to make the total value stack for
8 projects receiving that MTC, approximately equal
9 to the value of NEM, as calculated for a project
10 receiving volumetric crediting. The order
11 explained that this would result in phase-one NEM
12 projects and tranche-one projects, receiving
13 approximately equivalent compensation. The VDER
14 transition order also calculated the cost of the
15 transitional mechanisms, by assuming that phase-
16 one NEM projects and tranche-one projects, would
17 impose the same costs on -- on utilities.

18 In its petition, NRG Solar explains
19 that it is the owner and CDG sponsor for several
20 projects in the service territories of Central
21 Hudson and Orange and Rockland, that are in
22 tranche zero and that -- that are entitled to
23 phase-one NEM compensation.

24 The petition states that based on
25 utility statements, several of these projects, are

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2 or are likely to be subject to demand-metered
3 service classes. The petition explains that the
4 utility tariffs for phase-one NEM in the -- at
5 those utilities applied monetary crediting to CDG
6 projects served under demand-metered service
7 classes, based on the utilities' interpretation of
8 the CDG order.

9 NRG solar explains that had -- that
10 it had planned the projects, invested substantial
11 funds and signed up customers, based on a belief
12 that the projects would receive volumetric
13 crediting and states that receiving monetary
14 crediting instead, would substantially impair the
15 value of the projects. NRG Solar argues that the
16 application of demand-metered service classes and
17 monetary crediting to these projects, is
18 inconsistent with the VDER transition order and
19 requests that the Commission issue a declaratory
20 ruling, stating that Central Hudson and O&R's
21 interpretations of their SC Two and VDER tariffs
22 are inconsistent with the VDER transition order
23 and the CDG order.

24 Several solar developers submitted
25 comments supporting the petition. Orange and

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2 Rockland and Central Hudson, each submitted
3 comments opposing the petition.

4 O&R states that it is and has been
5 plain, in the relevant tariff, that NRG's solar
6 projects, as designed, would be demand metered and
7 that demand-metered projects would receive
8 monetary crediting. O&R argues that this is the
9 obvious and correct interpretation of its tariff
10 and that NRG Solar has failed to meet the high bar
11 for a tariff waiver.

12 Central Hudson argues that the
13 petition is premature with respect to its utility
14 territory because it is not known at this time,
15 whether any of NRG's solar projects in that
16 territory will be served, based on demand-metered
17 service classes. In addition, Central Hudson
18 argues that all customers, CDG projects, should be
19 re -- required to install demand meter and pay
20 demand charges, whether their usage meets the
21 relevant standard to avoid inequitable cost shifts
22 among service classes and to ensure proper
23 metering.

24 The declaratory ruling determines
25 that O&R and Central Hudson are correctly

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2

determining the appropriate service class for each

3

customer, including CDG projects, based on their

4

tariffs. The standards for classifying customers,

5

as well as the rates applicable to each class,

6

have been established by -- for each utility, as

7

part of comprehensive rate cases and found by the

8

Commission to result in just and reasonable rates.

9

As Central Hudson and O&R argue,

10

the bar for a waiver to a tariff is very high and

11

NRG Solar has not met that burden. However, NRG

12

Solar, as well as commenters supporting the

13

petition, correctly identify a conflict between

14

the VDER transition order and the utility's phase-

15

one NEM tariffs.

16

The -- as discussed, the VDER

17

transition order, clearly identifies tranche zero,

18

which entitles projects to phase-one NEM, as

19

financially equivalent to tranche one. As the MDC

20

for tranche one was calculated, based on

21

volumetric crediting, this is only true where

22

tranche zero projects receive volumetric

23

crediting, since CDG projects that receive

24

monetary crediting would receive significantly

25

less value for their subscribers.

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2 Similarly, the calculation of net-
3 revenue impacts of the tranches, assume that
4 tranche zero and one would have the equivalent
5 costs, which is only true, if they provide
6 equivalent compensation. Therefore, this
7 declaratory ruling declares that pursuant to the
8 Commission's VDER transition order, CDG projects
9 that receive compensation under phase-one net-
10 metering rules, shall have credits distributed to
11 their subscribers, using a volumetric-crediting
12 methodology, regardless of the project's service
13 class, meter type or billing methodology.

14 This ruling does not affect the
15 compensation of CDG projects receiving value-stack
16 compensation, including projects in tranches one,
17 two, three and four.

18 That concludes my presentation and
19 I, along with Marco and Warren, am available for
20 any questions.

21 Thank you.

22 CHAIRMAN RHODES: Thank you, Ted.

23 That there is in fact a con -- a
24 inconsistency between orders and tariffs that are
25 cited here, that fact of inconsistency is

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2 objectibly true. I find this recommendation
3 carefully addresses that inconsistency, carefully
4 and clearly, in a manner that's aligned with the
5 development of Commission findings and guidance.
6 That development, in turn, reflects the evolution
7 of market realities.

8 I think this is an appropriate
9 resolution and I'm going to be in favor of this
10 item.

11 Commissioner Sayre?

12 COMMISSIONER SAYRE: I fully agree
13 with the Chair.

14 We never intended tranche zero to
15 be worse off than tranche one. The developers
16 have correctly interpreted our order. The
17 utilities have not.

18 This is a simple resolution.

19 CHAIRMAN RHODES: Commissioner
20 Burman?

21 COMMISSIONER BURMAN: So, what if
22 the issue is we didn't intend it, but it is what
23 happened and we didn't do the right analysis?

24 So, that's what gives me pause,
25 that if we're saying that there's an inconsistency

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2 between the VDER order and the tariff, maybe we
3 need to look more closely at some of the
4 challenges that are being raised with the VDER
5 order, which are not just in this particular
6 declaratory ruling, but looking at all of the
7 different aspects and making sure that we
8 holistically address them, which we are doing in
9 other cases, but I feel like we're doing it very
10 clunky and not necessarily in a systematic way
11 that is -- is, for me, concerning.

12 This declaratory ruling is missing
13 what I see as a key element, which is the analysis
14 on the impact of customers and the grid. What are
15 the number that we're looking at? How far-
16 reaching, besides this particular customer? What
17 does it mean?

18 Here, we make a -- in this order,
19 we make a very broad statement where we apply it
20 to all utilities because we say it's okay, we can
21 do that because it's just clarifying the existing
22 orders.

23 For me, I look and I say well, did
24 we give those other utilities, who did not have
25 the opportunity to respond, some type of notice

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2 that we ere going to take it past these two
3 utilities, Orange and Rockland and Central Hudson
4 and apply it to them because maybe them -- the --
5 maybe those other utilities, as well as those
6 other customers, in those utility areas, would
7 have had some comments that would have helped us
8 in understanding and also, in the record, to
9 support or not, what we were doing. And so, for
10 me, I am very cognizant of the fact that the
11 failure for us to do that, means that we don't
12 necessarily have as full of a record, as that --
13 we could, if we had -- had taken the time.

14 We don't have to, legally. It's a
15 declaratory ruling, so I know you're getting ready
16 to talk over there, but I'm -- I'm -- I am
17 acknowledging, we don't have to. The question
18 isn't do we have to, legally.

19 UNIDENTIFIED SPEAKER: Uh-huh.

20 COMMISSIONER BURMAN: The question
21 is should we have, as a pure matter of a -- a
22 fuller record and an opportunity for making sure
23 that we have the full -- full information that we
24 need. So, that concerns me, significantly.

25 The other issue that I have here,

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is that we do not, in the discussion phase,

3

discuss expressly, how different it is from

4

Cornell matter and I think we should have taken

5

the time, legally, to map out, very expressly,

6

what the clear distinction was, or not and how

7

relevant it was. There is the -- the parties took

8

time to discuss Cornell and I think we should have

9

expressly taken the time to answer it, very

10

directly and -- and make the analysis that we --

11

how we support it, even if I would disagree.

12

I think that there was also

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comments made by the -- at least one of the

14

utilities, that they were open to discussing

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solutions. I think that, to me, goes to the heart

16

of what are we doing, in terms of bringing parties

17

together, before we issue our rulings. We have,

18

in some cases, done that. We have an ombudsman on

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interconnection issues as well and I think this

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would've been an opportunity, while again we think

21

that it's clear, they could have come together and

22

resolved their issues that would have at least

23

made it helpful to -- to those parties, as well as

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then the larger and we should've taken that

25

opportunity to say let's think about what that

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2 means and where is the ombudsman's role in this
3 and working with them, but also as it goes towards
4 the other utilities, where this order will apply
5 to them and to their customers.

6 The -- the response to the petition
7 also raised issues about NRG and whether or not
8 they should have had notice and whether or not
9 they failed to do their due diligence, in looking
10 at the tariff, as well as the fact that they
11 acquired these -- these properties, the
12 development, after the fact. And so, we do not
13 mention at all, in the order, that issue,
14 expressly and resolve that issue.

15 We have, in other cases, where
16 we're looking at going, you know, in -- in main
17 tier and -- and we haven't said to parties, you
18 know, do -- you -- you -- you can take what you
19 have and we're applying it to you, even if it's
20 unfair. You're, you know, you're -- have to deal
21 with that.

22 And so here, we should've made a
23 distinction on why, you know, and how -- how
24 widespread this is and we should've known and we
25 should do our due diligence in exactly how many

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2 potential, other companies and customers this will
3 affect, so that we could make sure that we're
4 carefully evaluating it on that perspective.

5 So, I'm going to be a no on this
6 and I think that it's important that we do get the
7 process right, but also substantively work through
8 some of the challenges.

9 I do note also, that the town of
10 Woodstock, in another proceeding -- an energy-
11 efficiency proceeding, raised concerns the the
12 VDER order, as it relates to LED street lighting
13 and that also gives me pause because again, we're
14 looking at what it means for VDER and then there
15 are other side issues that get raised, that seem
16 outside of the scope of this.

17 And then the fourth and final -- I
18 think I already said final, but now it is really
19 the final. The other issue is what other
20 declaratory rulings -- or what other declaratory
21 requests are out there, that may be impacted by
22 this?

23 For example, I know there's a
24 recent filing from AES and to the extent that if
25 it is impacted, we should be addressing that and

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2 we should, as a Commission, know what the list of
3 outstanding declaratory requests are out there, on
4 -- that might impact this, to know whether or not
5 we need to have a fuller discussion in those
6 issues and how it relates. I don't want to just
7 see that in that -- petitions that wind up
8 beginning withdrawn because now we've dealt with
9 something we should clearly know ahead of time,
10 what the impact be on some of those.

11 Okay. Thank you.

12 CHAIRMAN RHODES: Thank you,
13 Commissioner Burman.

14 Commissioner Alesi?

15 COMMISSIONER ALESI: I'm all set.
16 Thank you.

17 CHAIRMAN RHODES: Thank you.

18 With that, I will proceed to call
19 for a vote.

20 My vote is in favor of the
21 recommendation to issue the declaratory ruling, as
22 discussed.

23 Commissioner Sayre, how do you
24 vote?

25 COMMISSIONER SAYRE: Aye.

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

4 COMMISSIONER BURMAN: No.

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

7 COMMISSIONER ALESI: Aye.

8 CHAIRMAN RHODES: The item is
9 approved and the recommendation is adopted.

10 We will now move to the fourth item
11 for discussion, item 303, cases 15-E-0751, et al,
12 as they relate to expansion of value-stack
13 eligibility and interzonal crediting, presented
14 again by Ted Kelly and again, Marco Padula and
15 Warren Myers are available for questions.

16 Ted, please begin.

17 MR. KELLY: Thank you.

18 As I discussed in the context of
19 the previous item, the value of distributed energy
20 resources, or VDER order issued on -- in March
21 2017, directed the trans -- the trans -- the
22 transition of compensation for distributed
23 generation, from net-metering to the value stack.
24 Eligibility for value-stack compensation was
25 initially limited in that order, to projects that

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2 were previously eligible for net-metering, which
3 includes solar, wind, hydro-electric, farm-waste
4 anaerobic digester and fuel-cell projects, with a
5 rated capacity of two megawatts or less, as well
6 as combined heat and power, or CHP units, with a
7 rated capacity between one and ten kilowatts, as
8 well as storage paired with any eligible resource.

9 In a February 2018 order, the
10 Commission expanded eligibility to projects that
11 used one of those same technologies, other than
12 CHP and had a rated capacity of more than two
13 megawatts, but less than five megawatts. The VDER
14 transition order directed staff, in collaboration
15 with stakeholders to develop proposals for
16 expanding value-stack eligibility, to other
17 distributed energy resources, or DERs, in --
18 including specifically, stand-alone storage or
19 battery projects.

20 Staff worked with stakeholders
21 through the VDER Value Stack working group, to
22 pursue these objectives and filed a staff proposal
23 on value-stack eligibility expansion, on May 22nd,
24 of this year. In addition, a notice soliciting
25 comments on the staff proposal and related

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2 matters, was issued on the same date.

3 The staff proposal recommended that
4 value-stack eligibility be extended based on a set
5 of principles. The practicality of such
6 extension, the ripeness of a particular
7 technology, a finding that there would be no
8 negative environmental impacts, a finding that
9 there would be no expected non-participant cost
10 impacts, technology neutrality to the extent
11 possible, based on similar values created by
12 different technologies, the use -- the continued
13 use of value-based crediting, an electricity-
14 injection focus and the use of the market-
15 transition credit, only as a transitional element
16 for NEM-eligible resources.

17 Based on these principles, the
18 staff proposal recommends the removal of customer-
19 type based technologies and size limits, such as
20 limits on exactly how big a residential solar
21 system -- project can be, as opposed to a
22 commercial solar project. In addition, it
23 recommends the extension of value-stack
24 eligibility to all clean generation resources, as
25 defined, based on eligibility for the Commission's

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renewable energy standard, with a capacity of five

3

megawatts or less.

4

One significant resource that will

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be included under the standard, that -- that was

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not previously value-stack eligible, are food-

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waste based anaerobic digesters. There are also

8

other more minor and -- and unusual technology

9

types, such as tidal-energy generators.

10

The order -- the -- the staff

11

proposal also recommends the extension of value-

12

stack eligibility, to stand-alone storage

13

projects, as well as projects involving the

14

injection of energy recovered through gen --

15

regenerative breaking into the grid.

16

The staff proposal recommended

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certain specific position -- provisions to ensure

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that the -- that these changes will not create

19

inequities for non-participating ratepayers, or

20

encourage uneconomic arbitrage. In particular,

21

that storage projects be subject to mandatory

22

hourly pricing, so that the cost to -- of energy

23

to charge the storage, will be calculated in an

24

equivalent manner, to the compensation of energy

25

injected from the storage and unless those

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2 projects are designed only to offset load.

3 Secondly, that generators eligible for the value
4 stack, pursuant to these order, be subject to the
5 standby tariff rules, as other customers.

6 In addition, the notice issued the
7 same day, requested comment on inter-zonal
8 crediting, which is permit -- which would permit
9 community-distributed generation projects, as well
10 as remote-crediting projects, receiving
11 compensation based on the value stack, to share
12 credits with customers in the same utility-service
13 territory, but in a different load zone than the
14 part -- than the generator and also requested
15 comment on whether the minimum CDG subscription
16 size, which is currently one thousand kilowatt
17 hours per year, should be reduced.

18 A number of stakeholders submitted
19 comments regarding the staff proposal and the
20 notice. The comments generally supported the
21 proposed principles and proposed expansion of
22 eligibility. Some commenters requested that
23 combined heat and power also be included in the
24 eligibility expansion, while others opposed
25 eligibility for larger CHP projects at this time.

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2 Some commenters opposed the recommended
3 modifications to the applicability of standby
4 rates as well.

5 With regard to the notice, most
6 commenters, including the joint utilities,
7 developers and non-profit groups, supported inter-
8 zonal crediting, while the city of New York
9 opposed inter-zonal crediting, based on the
10 potential for it to discourage development of
11 projects within the limits of New York City.

12 The joint utilities opposed the
13 change to the minimum subscription size, while
14 some developers and non-profit groups supported
15 the elimination or reduction of the minimum
16 subscription size.

17 The order before you today, adopts
18 the recommendations in the staff proposal. It
19 finds that the proposed principles are an
20 appropriate method for determining what technology
21 should be eligible. It finds that the removal of
22 customer-based -- that customer-type based
23 technology and size limits will eliminate rules
24 that are unnecessary in the VDER framework.

25 It determines that extension of the

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2 value-stack eligibility, to clean resources that
3 are not currently eligible, such as food-waste
4 digesters, will further encourage the development
5 of and appropriate compensation of distributed-
6 energy resources. The order finds, that
7 consistent with the staff proposal, CHP
8 eligibility should not be expanded at this time.
9 It instructs staff to work with stakeholders in
10 NYSERDA, the New York State Energy Research and
11 Development Authority, to develop the record that
12 is -- to develop a record that establishes under
13 what condition CHP can be made eligible, while
14 ensuring that its greenhouse gas emissions are no
15 worse than system power and that it does not cause
16 local impacts in sensitive areas, such as
17 environmental-justice areas.

18 The order states that staff's
19 proposed methods for avoiding inequities to non-
20 participating customers, including the application
21 of mandatory hourly pricing to storage projects
22 and the application of standby rates, where
23 otherwise applicable, are a necessary and
24 appropriate to ensure that participants in the
25 value stack will pay appropriate rates and will

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2 not impose costs on other non-participating
3 customers.

4 The order also authorizes inter-
5 zonal crediting. It finds that for projects based
6 on the value-stack, inter-zonal crediting will not
7 impose new cost shifts because the compensation
8 for the project will be based on the value of the
9 electricity at the generator site. Allowing
10 inter-zonal crediting will simplify project
11 development and provide benefits to customers.

12 The order notes that consistent
13 with the joint-utility comments, CDG sponsors will
14 need to clearly communicate the expected
15 compensation of inter-zonal crediting projects to
16 customers and notes that the mandatory disclosure
17 forms, under the Commission's DER oversight rules
18 should include that information -- or all -- all -
19 - already do include that information and will,
20 when they're prepared for those customers.

21 The order explains that the
22 Commission does agree, that with the city of New
23 York's goal of ensuring that projects are built
24 throughout the state, including in the NYC area,
25 but states that other methods, including the

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recent modifications to the New York Sun program

3

and the ongoing collaboration between the city of

4

New York, ConEdison and the New York Power

5

Authority, with the Department staff's

6

participation, are a more-effective means of

7

achieving that goal, than imposing restrictions on

8

other projects.

9

The order does not modify the

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minimum CDG subscription size. It finds that any

11

reduction in the -- in the subscription size would

12

create some additional administrative costs and

13

that comments, in favor of a modification, fail to

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demonstrate a meaningful benefit that would

15

justify those -- that cost.

16

The current minimum, one thousand

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kilowatt hours per year, represents a very-low

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level of usage, equivalent to a customer who has -

19

- who owns a refrigerator, average lighting and

20

occasionally uses a TV and some other appliances

21

and therefore, is an appropriate and reasonable

22

minimum limit.

23

The decisions made in this order

24

continue the evolution of VDER tariffs as

25

effective compensation mechanisms for distributed

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energy resources in New York and the goal of

3

ensuring that projects are appropriately

4

compensated, based on their value and -- and

5

support of the development, for renewable energy

6

resources.

7

Thank you.

8

CHAIRMAN RHODES: Thank you very

9

much, Ted.

10

The value stack is now firmly and

11

appropriately established, as New York's useful

12

and sensible approach for compensation for

13

distributed energy resources. This item extends

14

that useful and sensible approach to further DERs,

15

in a way that is pro-value and neutral on

16

technology type and use case. This is what we

17

should be doing.

18

The other item -- aspects of the

19

order, make sense to me -- recommended order make

20

sense to me as well. Inter-zonal crediting is a

21

useful compliment to our other approaches,

22

providing flexibility that can help achieve our

23

policy goals, while fully -- fully protecting the

24

ratepayer and public interest. I agree that the

25

subscription size asked is not supported by the

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2 facts on the record.

3 I am going to be in favor of this
4 item.

5 Commissioner Sayre?

6 COMMISSIONER SAYRE: I agree with
7 the Chair.

8 In my view, it's good policy to
9 continue to expand the value stack to new types of
10 projects and to larger sizes of existing types of
11 projects. This will help the state expand its use
12 and installation of distributed energy resources,
13 with benefits, of course to the participating
14 customers, but also lower cost to the network
15 overall and improved amounts of renewable energy
16 in the system.

17 But at the same time, we have to
18 take good care that we meet these goals with our
19 expansions and that we don't harm existing
20 ratepayers and we don't increase worse emissions,
21 than we have already on the network.

22 The proposed order, in my view,
23 takes appropriate, cautious, steps to expand the
24 value stack. We're far from the end of the road
25 here, but I agree that we need to take reasonably

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2 small, cautious steps, as the market develops.

3 I support the order.

4 CHAIRMAN RHODES: Commissioner
5 Burman?

6 COMMISSIONER BURMAN: Thank you.

7 I have a couple of questions.

8 Could you give me a status update
9 on the DER oversight rules, what's going on, how
10 we're monitoring them and what the status is?

11 MR. KELLY: Yes.

12 So, the DER oversight customer-
13 disclosure form that will be provided to all
14 participant -- all customers participating in CDG
15 projects or rooftop solar, as well as the
16 registration form, were finalized by staff earlier
17 this year. All -- the -- all DER providers
18 building either -- who participate in either CDG
19 or onsite generation such as rooftop solar, were
20 required to submit the registration forms by --
21 shoot. It was either June 1st, or July 1st.

22 I'm sorry. I don't have the date
23 in front of me, but it was earlier in the summer
24 and we're currently reviewing those forms and
25 also, we're comparing them to lists of providers

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2 available at NYSERDA and the utilities, to ensure
3 that everyone has complied with that requirement.
4 And in addition, as of that same
5 date, the providers were required to start
6 providing the -- a -- a completed customer-
7 disclosure form, to every customer and also, to
8 submit sample forms to us, to ensure that they're
9 filling them out correctly. So, we are, you know,
10 get -- actively engaged in monitoring that market.
11 I'm working with our Office of Consumer Services
12 team, to ensure that all the applications are
13 filled out correctly and to go back to any
14 companies who didn't fill out a complete
15 application, or who raised concerns. But so far,
16 you know, I think that process is going well.

17 We're also accepting complaints for
18 -- from those types of companies through our call
19 center and appropriately responding to those types
20 of complaints. I don't have any data right now on
21 whether, or how many we've received at this point,
22 but we've worked with the call-center staff and
23 OCS, to ensure that they're trained to accept and
24 process those types of complaints.

25 COMMISSIONER BURMAN: Okay. Thank

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2 you.

3 I think it is important, when we
4 talk about something in an order, like the DER
5 oversight rules, that we are affirmatively making
6 sure that we are sharing the status of them,
7 rather than waiting for a Commissioner to ask and
8 make sure that we are engaging, as it effects
9 those -- that analysis and -- and what's
10 happening. We may need to look at that and make
11 sure that all staff and then folks involved, are
12 clearly looking at that and giving their input and
13 feedback, to make it a better product.

14 Some of the concerns that I have
15 with this order and I will be voting no, is it, in
16 my mind, inappropriately discriminates against
17 CHP. I think we have not clearly addressed that
18 and somehow, we seem to be shying away from
19 addressing that, in a way that doesn't make sense
20 to me and we're not necessarily giving a timeframe
21 on when we may look at that, however it may be
22 decided.

23 Similarly, along that same vein, on
24 page ten, New York Power Authority argues that the
25 electricity-injection focused principle should be

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2

rejected and explains why they believe that it

3

should be rejected. We reject NYPA's rejection.

4

We basically say that the

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electricity-injection focused principle is

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appropriate at this time. We don't explain why we

7

disagree with NYPA and we don't go in to that

8

analysis, but we also, when we say while such

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consideration may be appropriate in the future, it

10

would require significantly more analysis and

11

modifications to VDER tariffs and perhaps to the

12

applicable retail consumption tariffs, that the

13

expansion's considered in this order.

14

The question that I have when we

15

look at this, is that that is a mouthful that

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doesn't necessarily explain the when, the how, the

17

who and the specifics on that. And my concern, is

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by saying we may look at it in the future, or it

19

may be appropriate to look at it in the future,

20

that that future could be next month. And so --

21

or a year from now, or two years from now and I

22

think, that if we're going to look at it, we need

23

to carefully send a regulatory signal of why it's

24

appropriate now and why it may be appropriate to

25

look at NYPA's position in the future and how we

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2 may go about that.

3 My concern is also, because we
4 don't have specific direct oversight over NYPA, to
5 the extent that NYPA is involved in this
6 discussion and this issue, we need to be very
7 clear, as a Commission, when we may look at that
8 for consideration, how does that get done and if
9 it gets done outside of the Commission proceeding,
10 we need to be carefully aligned with NYPA and also
11 not blindside folks in terms of how the proper
12 process is. So, for me, when I see that, I have
13 more questions than answers, in terms of that and
14 that concerns me.

15 Overall, I do think that we try to
16 address the anaerobic digester issue. However, I
17 am mindful of the fact that while it does look at
18 that and make some accommodations and expansion of
19 NEMA issue for anaerobic digesters, it is not
20 addressing, nor does it attempt to address all the
21 issues, as it relates to the food-waste digesters
22 and it is something that we need to look at. It
23 is appropriate not to look at it here, but it is
24 appropriate to look at and to address, in a way
25 that resolves fully, some of those issues. And

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2 so, I just flag that.

3 Thank you for your work on this
4 issue. I am going to be voting no, but it is
5 something that I think in light of some of my
6 other concerns, in the other item, are applicable
7 here. Some of this has direct impact on other
8 pending proceedings, including some declaratory
9 ruling requests, I believe and I think it's
10 important for us to clearly look at those and make
11 sure that we're expressly addressing what those
12 may mean, or not, rather than having to guess
13 because we don't want parties then having to ask
14 for more clarification on our recent orders as
15 well.

16 So, thank you.

17 CHAIRMAN RHODES: Thank you very
18 much.

19 Commissioner Alesi?

20 COMMISSIONER ALESI: I have nothing
21 further.

22 Thank you very much.

23 CHAIRMAN RHODES: Thank you.

24 So, I will now proceed to call for
25 a vote.

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2 My vote is in favor of the
3 recommendation to the -- to expand value-stack
4 eligibility and authorize inter-zonal crediting,
5 as discussed.

6 Commissioner Sayre, how do you
7 vote?

8 COMMISSIONER SAYRE: Aye.

9 CHAIRMAN RHODES: Commissioner
10 Burman, how do you vote?

11 COMMISSIONER BURMAN: No.

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

14 COMMISSIONER ALESI: Aye.

15 CHAIRMAN RHODES: The item is
16 approved and the recommendation is adopted.

17 We will now move to the fifth item
18 for discussion, or the fifth pair of items for
19 discussion. Items 501 A and 501 B, case 15-M-
20 0388, as they relate to confirming orders,
21 granting extensions to Charter Communications,
22 Inc., presented by John Sipos, Acting General
23 Counsel. Brian Ossias, Managing Attorney is
24 available for questions.

25 You're both here. John, please

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2 begin.

3 MR. SIPOS: Thank you.

4 And good morning, Chair Rhodes and
5 Commissioners.

6 Today, for your consideration, are
7 two items. 501 A, Alpha and 501 B, Beta, in case
8 15-M-0388, which concerns Charter Communications.

9 The two items are related. They
10 both involve scheduling issues and this
11 presentation will seek to discuss them together,
12 unless otherwise noted.

13 Both items concern the proposed
14 confirmation of two earlier, one-Commissioner
15 orders, that provided short extensions of time,
16 for Charter Communications to make certain
17 filings. And in each circumstance, the extensions
18 were requested by Charter.

19 The first one-Commissioner order,
20 which was issued on August 22nd, 2018, granted
21 Charter's request to extend the time to submit
22 petitions for rehearing, pursuant to Public
23 Service Law Section 22, by the fourteen days, or
24 until September 10. And I should note, that the
25 secretary, earlier, had granted Charter's request

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2 to extend the time to submit a six-month exit
3 plan, by fourteen days, or until October 9.

4 The second one-Commissioner order,
5 which was issued earlier this week, on Monday,
6 September 10, granted Charter's request to extend
7 the time to submit the Public Service Law Section
8 22 hearing petitions, by thirty additional days
9 and that same September 10, 2018 one-Commissioner
10 order, also granted Charter's parallel request to
11 extend its time to submit the six-month exit plan,
12 by thirty additional days.

13 The requested schedule extensions,
14 addressed in the two orders reflect modest
15 enlargements of time and are appropriate, given
16 the specific facts present here.

17 In its extension requests, Charter
18 stated that it and Department of Public Service
19 Representatives, have recently engaged in
20 productive dialogue, in connection with the
21 pending civil enforcement proceeding, in Albany
22 County Supreme Court and that Charter was
23 collecting and assembling information regarding
24 network-expansion efforts, in New York State.

25 In addition, as noted in the

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2 September 10, 2018 one-Commissioner order, the
3 Office of Counsel had directed the cessation of
4 certain advertisements, which were considered to
5 be false, or misleading. Charter, thereafter,
6 ceased such advertisements.

7 The one-Commissioner orders granted
8 Charter's request for thirty-day extensions,
9 contingent upon the company's continued compliance
10 with the Public Service Law, commitment not to run
11 any false or misleading advertisements and
12 continued productive engagement with the
13 Department, to address outstanding issues. During
14 this brief extension, provided by the one-
15 Commissioner orders, Charter is continuing its
16 network expansion work, towards the June 2018
17 regulatory milestone and remains subject to the
18 applicable Public Service Law provisions and
19 regulations, as noted above.

20 The legal standard here has been
21 met and in summary, the two orders, which are
22 before the Commissioners today, for confirmation,
23 provide for modest scheduling extensions,
24 extensions that were requested by Charter
25 Communications.

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2 And this concludes the presentation
3 on the scheduling issues in item 501 A and 501 B
4 and we'd be happy to answer questions the
5 Commissioners may have.

6 Thank you.

7 CHAIRMAN RHODES: Thank you, John.

8 The discussion on the order and the
9 presentation today, demonstrates that the company
10 has been responsive in a couple of important ways.
11 One, in improving attachment practices, in
12 concrete ways that promote safety. That's a very
13 good thing. And then exchanging information that
14 could develop the -- the record and then exploring
15 how we can most-appropriately deal with the issues
16 that are at issue in front of us.

17 These are carefully and I believe,
18 correctly grounded procedural extensions that
19 allow this productive engagement to continue.
20 These are also procedural extensions, re-
21 emphasizing that word, leave fully intact, the
22 obligation of the -- on the part of the company,
23 to comply with the Public Service Law and with our
24 regulations and findings, in the interim.

25 I am going to be in favor of this

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2 item.

3 Commissioner Sayre?

4 COMMISSIONER SAYRE: I am
5 comfortable that in light of ongoing discussions
6 and data gathering, that the extensions are
7 warranted and that customers are protected.

8 CHAIRMAN RHODES: Commissioner
9 Burman?

10 COMMISSIONER BURMAN: This I -- two
11 items, have been carefully evaluated by me. I am
12 a no on both items and I think it's important that
13 folks understand why.

14 It is, for me, thrust -- some
15 threshold issues, in terms of the special session.
16 I believe it was wrong to have that special
17 session and I don't believe that the rationale for
18 it is -- is the right one. I think it is a
19 slippery slope that there was a special session,
20 without me present and that is concerning.

21 From my perspective though, I take
22 a step back and I'm not voting no because I was
23 not at the special session and didn't have the
24 opportunity. It's deeper than that.

25 When I look at the issues, I need

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2 to look at the whole record before us. To the
3 extent that the -- we are deciding whether or not
4 there's good cause for an extension of time on
5 both issues, it has been couched as it's just
6 process, it's procedural and therefore, granting
7 it is in the best interest and we should do it.
8 There's good cause.

9 For me, I need to look at what we
10 have done and where we may go. And that, is
11 something that I think is very important. The
12 integrity of the Commission is vital and the
13 processes are very important.

14 Under the Public Service Law
15 Section 22, the Commission does have discretion,
16 if good cause is found, to extend the timeframe
17 for a petition for a hearing, but we cannot -- not
18 abuse that discretion and we must look at that.

19 This body -- the four of us, have
20 never looked at what is good cause before and to
21 the extent that we go to the prior precedent, we
22 don't have any prior precedent that Counsel has
23 found, to show us. There is one Entergy case,
24 where there was an -- an allowance of a one-day
25 delay for a petition for rehearing and therefore,

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2 that's really it. The one-day delay and again,
3 the facts of that case and the delay, were
4 related, very specifically, to, I believe, a
5 computer glitch and therefore, it was appropriate.
6 They thought they had filed, they did not.

7 For me, when I look at it, it's --
8 the message that I fear that we're sending, is
9 that if there is an order, that someone --
10 someone's disagreed with and they're going to file
11 a petition for rehearing, before they file that
12 petition for a rehearing, they -- if they're
13 engaged in productive, whatever that term may be,
14 productive dialogue between the staff, we can wait
15 for the petition for rehearing to be filed past
16 the thirty days. We've already seen where we've -
17 - there was a one-Commissioner order granted for a
18 short time and then, before that filing, September
19 10th, there was another request for an extension
20 of that time because of productive discussions.

21 For me, that means that if we allow
22 that, there is no end in sight, on when that good
23 cause for productive discussions can be stopped.
24 So, the clock is not necessarily stopped because
25 before that next extension, if there are still

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2 ongoing productive dialogues and the termination
3 of that productive dialogue is -- is subjective,
4 then we are continuing on this track of approving
5 because we have met the low bar of the good cause.

6 While we may or may not like that,
7 the Legislature did say, within thirty days, they
8 must be a petition for rehearing, unless good
9 cause is shown. We've never used that.

10 In this very session, we have two
11 cases where we're extending the petition for a
12 hearing. One, is in item 268's case number 17-M-
13 0815. In that case, when I look at it and I look
14 at the good cause, it is focused on -- because of
15 the Jewish Holidays, because of Labor Day and --
16 and working through the fact that, you know, it is
17 a -- a problem because they also need to reach
18 out. It's a -- a member organization that on
19 behalf of their members, needs to -- in a short
20 timeframe, August was the -- was the -- when the
21 order was done, they have a very short timeframe
22 to file it and it seems like we would be doing a
23 disservice by not extending that. And so for me,
24 I can see that being good cause because of the
25 specific cases and this goes to specific

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2 circumstances.

3 Here, the good cause, being that
4 staff and the company are having productive
5 discussions, while that is a good thing, to me, it
6 is not the thing that says therefore, we will stop
7 the clock and not allow the petition for rehearing
8 to be filed. Why is it important, that that
9 petition for rehearing be filed?

10 We just saw in, when we looked at
11 the 101 item, how in 2016, there was a rate case
12 decision, December 2016 and there was a piece of
13 that, looking at setting forth a collaborative.
14 And as we saw, it took nearly two years to get
15 through because we had to go through a phase one
16 collaborative process and then a phase two and
17 then after that phase two collaborative report,
18 then they had sixty days from that, to file their
19 report.

20 Both the phase one and the phase
21 two reports also had some extension requests, not
22 related to petition for rehearing and it had some
23 other back and forth delays. So, we can see, that
24 the slippery slope of allowing delays can also
25 impact other things.

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2 For me, the impactful piece of it,
3 is that by -- by saying you don't file now, we are
4 blocking the SAPA process, the notice process and
5 the opportunity to start that clock, so that
6 people have an opportunity to comment on what we
7 may be doing, which may be helpful. In fact, in
8 the one-Commissioner order, it talks about needing
9 -- this will help us with a fuller record.

10 Ironically, if we had allowed the
11 initial -- original petition for rehearing, which
12 was denied at the July session, if we had allowed
13 that original petition for rehearing to be noticed
14 and SAPA'd, we might have gotten comments and an
15 opportunity for the parties, not just the
16 Commission and the staff, but others, to be able
17 to, under our normal processes, engage in
18 productive dialogue within that proceeding itself.
19 And therefore it is, for me, problematic to grant
20 for good cause here, when I am not truly
21 understanding the connection between the failure
22 to submit your petition for rehearing and engage
23 in productive dialogue. Somehow, I think that we
24 need to be able to allow that petition for
25 rehearing to be filed and shared, so that it can

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2 move forward in the process, while still
3 maintaining the opportunity for productive
4 discussions and dialogue. And perhaps, we would
5 need to look at what that would mean, if the
6 making public, petition for rehearing would have a
7 chilling effect on those productive discussions,
8 in a way that would still allow the clock to be
9 filed.

10 For me, when I also look at the
11 one-Commissioner order, that speaks to, in
12 Ordering Clause Three -- and this is really a
13 question for our General Counsel. When I look at
14 that order in Clause Three, it talks about --
15 well, let me make sure I -- that today's extension
16 is contingent on and is granted upon the expressed
17 condition that Charter continue to comply with the
18 Public Service Law and Regulations and not err no
19 misleading advertisements.

20 My question really is from a
21 process perspective. If Charter does not con --
22 continue to comply with the Public Service Law and
23 Regulations and airs misleading advertisements,
24 what is the trigger then and what's the date that
25 the petition for rehearing is due?

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2 MR. SIPOS: So, Commissioner
3 Burman, the -- taking a step back, I guess I would
4 first observe, I think it's important for
5 litigators to be open to the possibility of
6 settlement discussions, or productive settlement
7 discussions. I think that is an appropriate
8 function that counsel and -- and litigators can
9 perform.

10 The -- and would also note that the
11 company approached the Commission and the
12 Secretary, regarding -- regarding the extensions.

13 As to Ordering Clause Three, there
14 are -- there are continued obligations upon --
15 upon Charter, as -- as indicated, the Public
16 Service Law -- the Public Service Law and
17 Regulations and there is still the issue about
18 compliance with the June 2018 build-out metric,
19 that the company is -- is still working on. And
20 the, you know, you know, the coming -- the coming
21 days, the coming weeks, will depend on --

22 COMMISSIONER BURMAN: Let --

23 MR. SIPOS: -- on --

24 COMMISSIONER BURMAN: -- let me --

25 MR. SIPOS: -- on --.

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2 COMMISSIONER BURMAN: -- stop you.

3 The question isn't about that. The
4 question is a simple one.

5 On the Ordering Clause Three, if
6 they violated, what is the date that the petition
7 for rehearing would be due? It's contingent upon
8 and is granted upon the expressed condition that
9 Charter continue to comply with the Public Service
10 Law an Regulations and not err misleading
11 advertisements.

12 MR. SIPOS: Yes.

13 COMMISSIONER BURMAN: I would say
14 we need to have a firm date.

15 I'm not looking to trick you. I'm
16 really -- and I'm not -- I agree. Settlement --
17 productive settlement discussions can be helpful.
18 I just think we need to clarify what that means,
19 when we say the extension is contingent on and is
20 granted, upon the express condition.

21 My fear is and this is why I raise
22 it, if we are saying the petition for rehearing is
23 extended, if they somehow fail to comply with the
24 Public Service Law and Regulation, that's outside
25 of -- forget about the misleading ads for a

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2 moment, or the -- the alleged misleading ads. If
3 they fail to continue to comply with the Public
4 Service Law and Regulations, which would need who
5 makes that decision, there may be questions on
6 that. The issue is, does that mean that the
7 petition for rehearing, that should have been
8 filed, is not accepted because it's late, because
9 it was only contingent upon if they fail -- if
10 they continue to comply, or does it mean the
11 trigger is that the petition for a rehearing is
12 now due by the close of business, when we give
13 them notice?

14 MR. SIPOS: Understood,
15 Commissioner. I think I understand your question.
16 The orders, which are before the
17 Commissioners, for confirmation today and
18 specifically, the September 10 order, extend the
19 Public Service Law Section 22 deadline, out until
20 October 10.

21 COMMISSIONER BURMAN: So,
22 regardless of whether in-between this time, they
23 may do something, it's still do October 10?

24 MR. SIPOS: On or before. Yes.
25 That -- but that's a -- that's as

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2 to a precise day --

3 COMMISSIONER BURMAN: So --

4 MR. SIPOS: -- that that is --

5 COMMISSIONER BURMAN: Ordering

6 Clause --

7 MR. SIPOS: -- is --

8 COMMISSIONER BURMAN: -- Three then

9 --

10 MR. SIPOS: -- the third --.

11 COMMISSIONER BURMAN: -- has no

12 meaning?

13 MR. SIPOS: No.

14 It -- it -- it -- it does have
15 meaning and it goes to the legal standard, which
16 is a standard for -- which vests the Commission
17 with discretion, on reviewing petitions and -- and
18 requests, such as this. But as to the outer date,
19 that date is October 10, 2018.

20 If something else occurred -- so
21 full stop. Second question --

22 COMMISSIONER BURMAN: Right.

23 MR. SIPOS: -- if something else
24 occurs during that time, if there is a -- an issue
25 regarding compliance with a regulation, for

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example, hypothetically, I think that will have to

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be evaluated and determined what the appropriate

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enforcement action is and you know, one option is

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to pursue further civil-enforcement tools, in --

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in State Supreme Court.

7

But the -- that is -- that's a

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hypothetical question and I think that's about as

9

much as could say right now, given -- given the

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question.

11

COMMISSIONER BURMAN: Okay.

12

MR. SIPOS: Those are two separate

13

-- I see those as two separate issues.

14

COMMISSIONER BURMAN: Thank you. I

15

appreciate that.

16

Ordering Clause Three is ambiguous

17

and therefore, I think we clarified now, what the

18

meaning of Ordering Clause Three is. So, in my

19

mind, Ordering Clause Three means that the -- we -

20

- this petition for rehearing is due, regardless

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of what happens, October 10th and that is separate

22

issue, that we're just saying -- I guess, if you

23

do something, you know, we want you to still

24

comply, but it has nothing to do, meaning that the

25

trigger is -- if in between this time, something

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2 happens, or we deem it to happen, that we're going
3 to now say either we gotcha, it's still, you know,
4 it's late, or now you owe us the petition for
5 rehearing today. That still, no matter what, the
6 date is now October 10th.

7 I would not have interpreted it
8 that way, without this clarification.

9 MR. SIPOS: With respect to Public
10 Service Law Section 22, petitions for rehearing,
11 the outer date is October 10, 2018.

12 COMMISSIONER BURMAN: Okay. Thank
13 you.

14 I do think that there is an
15 opportunity, as to -- relating to what I see is
16 the threshold issues for what I see as threshold
17 problems and concerns, as raised in having the
18 special session, as well as the underlying orders
19 at that special session, that those are
20 opportunities for me and for the parties, at the -
21 - when the petition for rehearing is filed. It is
22 not, especially as it relates to the threshold
23 issue of the validity of the special session, it
24 is not necessarily just for the parties to raise,
25 but it is something, at the core of the Commission

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2 taking a look at it and addressing it at that
3 time, if and when appropriate.

4 I do think that there are lessons
5 to be learned from having the special session,
6 without me there and I do think, that going
7 forward, we need to be more cognizant of taking
8 the -- in to consideration what the perception is,
9 by not having a full Commission body, minus one
10 because there's a vacancy, regardless of whether
11 Counsel believes that there is a -- an appropriate
12 quorum or not.

13 There is no one perfect regulatory
14 model, with processes and it is important for us,
15 that we move forward with appropriate legal
16 mandates, adequate resources and clear regulatory
17 values and operating processes. We can always do
18 continuous improvement and evaluating how we are
19 doing things and clarity, consistency and
20 stability of the regulatory structure is crucial
21 and that includes making sure the Commission, each
22 and every one of us has a timely opportunity to
23 have their voice heard and it's not an after-the-
24 fact situation.

25 And I do think that we need, as a

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2 regulatory body, to be working together in that
3 and I look forward to focusing us on being
4 unified, on when the Commission needs to act. The
5 Commission does so as one body and each and every
6 one of us are able to contribute, other -- in
7 their way. So, thank you.

8 CHAIRMAN RHODES: Thank you very
9 much for that, Commissioner Burman.

10 Commissioner Alesi?

11 COMMISSIONER ALESI: Thank you.

12 I'm going to support this and
13 applaud the efforts of our very-dedicated and
14 capable staff in the Department and recognize that
15 they have the same assets on the other side, as
16 far as talent, but we're still together and we're
17 still communicating and apparently, it looks as
18 though we're still negotiating and that's the net
19 result of the value and power of time.

20 So, we did set a limit on time last
21 month. In fact, we took time away. We still have
22 the power now, to give time back and I think that
23 exercising the power that comes with having the
24 time, is the best opportunity that we all have at
25 this point, to move forward. Moving forward

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2 simply means that we have to extend the power and
3 the time that we have and I can't see for any
4 reason, why, after the actions we took last month,
5 that we wouldn't try to continue to move forward.
6 That was the -- as far as I'm concerned, that was
7 the engine that gave us this opportunity.

8 So, I'm going to support this and I
9 actually am glad that we had the opportunity to
10 agree on this extension, assuming that we do
11 agree. I'll be voting yes.

12 CHAIRMAN RHODES: Thank you very
13 much, Commissioner.

14 So, I will now proceed to call for
15 votes, plural, two items and I will start with 501
16 A, or Alpha, I guess.

17 My vote is in favor of the
18 recommendation to confirm the August 22, 2018
19 order, granting an extension to September -- to
20 October 10, as discussed.

21 Commissioner Sayre, how do you
22 vote?

23 COMMISSIONER SAYRE: Aye.

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

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2 COMMISSIONER BURMAN: No.

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

5 COMMISSIONER ALESI: Aye.

6 CHAIRMAN RHODES: The item is
7 approved and the recommendation is adopted.

8 COMMISSIONER BURMAN: Excuse me,
9 Chair.

10 If I could just interrupt for one
11 second, the first vote was an extension until
12 September 10th --

13 CHAIRMAN RHODES: Oh, sorry.
14 Thank you.

15 COMMISSIONER BURMAN: -- just to be
16 clear.

17 CHAIRMAN RHODES: My vote is -- so
18 now we'll call for a vote on 501 B.

19 My vote is in favor of the
20 recommendation to confirm the September 10, 2018
21 order, granting a thirty-day extension to October
22 10, as discussed.

23 Commissioner Sayre, how do you
24 vote?

25 COMMISSIONER SAYRE: Aye.

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

4 COMMISSIONER BURMAN: No.

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

7 COMMISSIONER ALESI: Aye.

8 CHAIRMAN RHODES: The item is
9 approved and the recommendation is adopted.
10 We will now move to the consent
11 agenda.

12 Do any Commissioners wish to
13 comment on, or recuse from voting on any items of
14 the consent agenda, or to specifically have a
15 specific vote, with respect to any item on the
16 consent agenda?

17 COMMISSIONER BURMAN: Yes.

18 I'll be voting no on item 264,
19 which is the granting -- Commission recommending
20 to grant the NYSERDA's petition to allow any of
21 the 216 million allocated in 2013, to the New York
22 Sun program, from the former RPS main tier funds,
23 that become uncommitted, due to project attrition
24 to remain available to the New York Sun program.

25 While this may seem like a

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housekeeping item to other folks, I think it's

3

very important that we look more holistically at

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all of the different funding streams and make it

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more clear and clarify and look more carefully, at

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all of the different buckets, especially those

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items that in programs like New York Sun, where

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the -- we had, from the outset, focused on the

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program going away and then now, we seem to be

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moving the money. And while we have done that in

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other avenues, I think it's appropriate to look at

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all of it, especially in light of the fact that we

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did get a lot of filings in the last week and a

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half from NYSERDA, related to the Clean Energy

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Fund.

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I do think a careful and more

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comprehensive analysis of all of that is important

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for the Commission to have, even on voting on what

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to some, may seem like a housekeeping item,

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especially because there were no comments filed.

21

So, for that, I am concerned and I will be voting

22

no.

23

As to item 367, which is -- I'd

24

just like to comment on this item, which is the

25

energy-storage deployment program, I'd like to

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2 recognize that this is just voting on the final
3 GEIS and not on the underlying matters that will
4 come before us. The energy-storage roadmap,
5 a.k.a., staff white paper is on a separate track,
6 has been SAPA'd and noticed for comments. They've
7 been coming in and I expect, in line with the
8 Legislation, PSL Section 74 and Commission
9 precedent, it'll then come before the entire
10 Commission body as a whole for a decision and I
11 have no further comments.

12 CHAIRMAN RHODES: Thank you.

13 With -- with those specific votes
14 factored in, I will -- we will now move to vote
15 and I will call for the vote.

16 My vote is in favor of the
17 recommendation -- recommendations on the consent
18 agenda.

19 Commissioner Sayre, how do you
20 vote?

21 COMMISSIONER SAYRE: Aye.

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

24 COMMISSIONER BURMAN: Except for
25 item 264, which I vote no on, all the other items,

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2 I vote in favor of.

3 CHAIRMAN RHODES: Thank you.

4 Commissioner Alesi, how do you
5 vote?

6 COMMISSIONER ALESI: Aye.

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

9 Before I ask the secretary if there
10 are any further business matters, I'd like to take
11 a moment, while we're in session to recognize Life
12 Line Awareness Week, which is this week, September
13 10th through 14th. Since 2009, State Utility
14 Commissions, like us and including us, the PSC
15 here in New York, have recognized that -- the
16 first week after Labor Day as Life Line Awareness
17 Week and our collective efforts, make an important
18 difference to help eligible consumers participate
19 in this vital program.

20 We'll -- and awareness week is an
21 opportunity to remind folks. This is my
22 opportunity to join in that reminding, so I do
23 that and there's a reason why I care and I believe
24 we all need to do care. It's an important federal
25 initiative, but what's important is, that it's

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2 about safety and it's about protecting citizens,
3 especially the most vulnerable.

4 Now, these are programs that help
5 qualifying, low-income customers, connect to the
6 nation's communication's network. It positively
7 benefits millions of New Yorkers, including more
8 than a million here in -- millions of Americans,
9 including more than a million here in New York.
10 It's an important program because it provides
11 these consumers, access to voice and/or broadband
12 services, that can be a vital link in emergency
13 healthcare, in -- and in dealing in government and
14 emergency situations, in employment, in ordinary
15 services. This matters and I'm -- I -- I'm --
16 enthusiastically remind us of -- of the -- of this
17 -- of this.

18 With that, I will now turn to the
19 secretary.

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

22 SECRETARY BURGESS: There's nothing
23 further to come today and the next Commission
24 meeting is October 18th, at ten-thirty.

25 CHAIRMAN RHODES: Okay. With that,

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we are adjourned.

Thank you very much.

(The meeting adjourned.)

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2 STATE OF NEW YORK

3 I, ALISSA STEFANINI, 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 90, 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 19th day of September, 2018.

11

12

13 ALISSA STEFANINI, Reporter

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