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**STATE OF NEW YORK**

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**Special Meeting of the Public Service Commission**  
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**WEDNESDAY, SEPTEMBER 3, 2008**  
**Agency Building 3, 19th Floor**  
**Albany, New York**

**COMMISSIONERS:**

- GARRY A. BROWN, CHAIRMAN
- PATRICIA L. ACAMPORA
- ROBERT E. CURRY, JR.
- MAUREEN F. HARRIS

D I S C L A I M E R

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3 of the New York State Public Service Commission held on  
4 September 3, 2008 in the Commissions's Offices at Three  
5 Empire State Plaza, 19th Floor Board Room, Albany, New  
6 York.

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1           CHAIRMAN BROWN: Good morning. I would like  
2 to call the Public Service Commission session of  
3 September 3, 2008 to order.

4           Madam Secretary, are there any changes to  
5 the agenda today?

6           SECRETARY BRILLING: There are no changes.

7           CHAIRMAN BROWN: First item for discussion  
8 and the only item for discussion today is to complete  
9 our discussion of case 07-M-0906, the joint petition for  
10 approval of the acquisition of Energy East corporation  
11 by Iberdrola SA.

12           And I would like once again to ask  
13 Administrative Law Judge Rafe Epstein in the Office of  
14 Hearings and Alternate Dispute Resolution to continue  
15 our discussion as he did in the last meeting.

16           Judge.

17           JUDGE EPSTEIN: Thank you, Chairman. Good  
18 morning, Chairman, Commissioners.

19           As we did in the last meeting, the procedure  
20 we have in mind this morning is to go through a number  
21 of different topics and invite discussion and questions  
22 before we move on to the next topic.

23           The first of these would be -- just by way  
24 of introduction, at the last session I gave you a quick

1 update concerning the additional correspondence that had  
2 come in since the previous session, and since last week  
3 I would say we received 50 to 60 additional letters in  
4 opposition to the proposed transaction.

5           And that's all that I really have by way of  
6 introduction. The remaining topics to, again, announce  
7 the road map so that people can follow, item II is  
8 vertical market power, where we are expecting  
9 presentations by Raj Addepalli, Mark Reeder and Jean  
10 Cleary.

11           III is financial protections. IV is capital  
12 -- I am sorry. On financial protections we will be  
13 hearing from John Stewart.

14           IV is capital expenditures or cap ex, and  
15 the related topics of safety, reliability and customer  
16 service quality, on which we will be hearing from Tom  
17 Dvorsky and Sandra Sloane.

18           And fifth and finally, is public benefit  
19 adjustments or PBAs and related ratemaking questions on,  
20 which we will be hearing again from John Stewart.

21           So, with that, I think we are ready to move  
22 into the vertical market power issues.

23           MR. REEDER: I am going to start on this  
24 one.

1           We recommend that you continue to affirm the  
2 Commission's statement of policy regarding vertical  
3 market power and to apply it in this case.

4           The policy statement establishes a  
5 rebuttable presumption that ownership of generation by a  
6 T&D company affiliate would unacceptably exacerbate the  
7 potential for vertical market power.

8           Under the policy, the presumption of  
9 unacceptability can be overcome in one of two ways. The  
10 first is a showing that vertical market power cannot be  
11 exercised either because circumstances do not give the  
12 T&D company an opportunity to exercise market power, or  
13 because vertical market power can be mitigated. In this  
14 case, we mean fully mitigated.

15           This exception to the presumption of  
16 unacceptability does not apply here. As has been  
17 previously described, the newly formed company will  
18 clearly have an incentive to take T&D actions or  
19 inactions that constitute an exercise of vertical market  
20 power, and there is a risk that actions of this type  
21 will take place.

22           Furthermore, while we recommend the  
23 employment of mitigation measures herein, as I just  
24 said, they are not complete, meaning that they will

1 continue to be a residual risk that the T&D company will  
2 be able to exercise vertical market power despite these  
3 mitigation measures.

4           The second exception to the presumption of  
5 unacceptable vertical market power is a demonstration  
6 that substantial ratepayer benefits, together with  
7 mitigation measures, warrant overcoming the presumption.

8           In the case before us, there are ratepayer  
9 benefits in the form of the public benefit adjustments;  
10 detriments and risks in the form of the vertical market  
11 power and the financial aspects of the acquisition; and  
12 a relatively neutral effect of the acquisition -- I'm  
13 sorry -- effect of the acquisition on the state's wind  
14 goals.

15           As for the vertical market power risks, we  
16 have noted at the last session that there are  
17 circumstances here that were not necessarily present in  
18 other settings that make the size of the vertical market  
19 power risks less than they could be.

20           Therefore, in the context of an approval of  
21 the acquisition, in which you permit Iberdrola to  
22 continue to own wind generation, we recommend that you  
23 impose several conditions on the transaction designed to  
24 mitigate, although we recognize that they do not

1 completely eliminate, the risk that Iberdrola could  
2 exercise vertical market power.

3 And that you take note of substantial  
4 ratepayer benefits in the form of positive benefit  
5 adjustments in determining that the vertical market  
6 power policy statement's presumption has been rebutted  
7 here.

8 Such a decision does not change the  
9 Commission's policy on vertical market power. The  
10 presumption of unacceptability of ownership of  
11 generation by a T&D company remains.

12 Any future Section 70 filings that involve  
13 the ownership of generation by a T&D company affiliate  
14 will need to demonstrate either that vertical market  
15 power cannot be exercised or that substantial ratepayer  
16 benefits analogous to those in this case, together with  
17 mitigation measures, warrant overcoming the presumption.

18 I am available for questions, or Raj could  
19 just go into the discussion of mitigation measures.

20 CHAIRMAN BROWN: I think the way we will do  
21 it today is give Commissioner Curry first shot at  
22 questions if he wants since he missed last discussion,  
23 but obviously everybody else will have an opportunity to  
24 comment or question.

1                   COMMISSIONER CURRY: First let me apologize  
2 for falling ill last week. It was actually harder on me  
3 than on you, but I do apologize.

4                   Raj, could you go over again the study that  
5 is item 13 in your vertical market power conditions, and  
6 lay out, if you would, what you hope and expect this  
7 study to gain us, as a Commission, in identifying the  
8 transmission and interconnection concerns in this area.

9                   MR. ADDEPALLI: Good morning, Commissioner  
10 Curry.

11                   In response to your question, the concern is  
12 that there could be in the coming future, in the coming  
13 years, as a result of additional wind generation being  
14 placed on line, there could be potential bottlenecks of  
15 generation where generation may not be able to sell  
16 outside of the pocket due to transmission constraints.

17                   So, this is not unique to NYSEG and RG&E,  
18 but it could be an issue with other utilities as well,  
19 such as Niagara Mohawk and New York Power Authority.

20                   So, the study that we are contemplating or  
21 recommending that you ask the utilities to conduct is to  
22 identify such potential congestion pockets in your  
23 service territories where generation could be bottled,  
24 and it should also identify what transmission measures

1 would be required to alleviate the congestion and assess  
2 the cost effectiveness of doing so, of implementing  
3 these transmission upgrades.

4           And we have given a little bit more  
5 definition since the last time we spoke to this, and  
6 first, the study shall be conducted by an independent  
7 third-party using shareholder funding, but NYSEG and  
8 RG&E shall work with the Department of Public Service  
9 staff in developing the precise scope of the study.

10           In the event that NYSEG and RG&E and  
11 department staff cannot resolve a dispute, the staff  
12 shall request the PSC to provide resolution of the  
13 dispute.

14           We are looking at this in two steps. In the  
15 first step, NYSEG and RG&E shall provide a detailed and  
16 comprehensive scope of the study, and associated  
17 timeline with milestones with the Commission within 30  
18 days of the issuance of this order.

19           And the study shall, at a minimum, include  
20 planning for the next ten years. That's the planning  
21 horizon for the New York ISO reliability needs  
22 assessment, as well.

23           And model any wind projects in the ISO que,  
24 interconnection que, any projects of which NYSEG and

1 RG&E are aware, with an in service date through the end  
2 of 2013. That's the RPS goal timeline.

3 The scope of the study that they file should  
4 include the base case assumptions and describe all the  
5 sensitivity analysis they would include in the study.

6 And the final results of the study should be  
7 submitted with the Commission no later than the middle  
8 of 2009, June 30.

9 But, in the first instance, the scope of the  
10 study within 30 days would help us shape it better and  
11 we can bring it back to the Commission for its review  
12 and take your comments and continue the study.

13 COMMISSIONER CURRY: Thank you, Raj.

14 How does that dovetail, if at all, with the  
15 position we took in the Marble River -- approving the  
16 Marble River wind project?

17 MR. ADDEPALLI: It dovetails nicely.

18 In the Marble River proceeding the  
19 Commission asked future developers to come in and  
20 explain to the Commission as part of the CPCN process  
21 whether the generation would be bottled and whether it  
22 will displace potentially other renewable resources as  
23 opposed to just fossil resources.

24 And they would have to work with the utility

1 and the ISO and perhaps other utilities as needed. So,  
2 this study would be more of a generic study as opposed  
3 to one by one to help identify what you identified as a  
4 concern before.

5 So, it will be a helpful exercise for all  
6 the developers and the state.

7 COMMISSIONER CURRY: Thank you.

8 I think I also was remiss in not thanking my  
9 fellow Commissioners for asking a lot of good questions,  
10 forcing me to read the transcript three times the last  
11 time. So, I think a number of the questions that I was  
12 concerned about were discussed at the last session.

13 Thank you.

14 CHAIRMAN BROWN: Should we have Raj do his  
15 presentation? Okay.

16 MR. ADDEPALLI: Thank you.

17 At the last two sessions we laid out  
18 conditions that would help mitigate vertical market  
19 power. The conditions provided for various reporting  
20 requirements and restrictions.

21 In the item in front of you today,  
22 Attachment B to the revised PBA memo dated August 29th  
23 that's describing the vertical market power related  
24 conditions, we tightened up the language a bit more

1 again in terms of which entity should file and the dates  
2 for filing.

3           We have one change from before that I will  
4 describe in a minute, but in summary, without repeating  
5 all the conditions, let me just summarize. There are 14  
6 conditions altogether, and I am using the phrase  
7 "condition" pretty loosely here.

8           Four of those conditions, number five  
9 through eight, deal with generator interconnection  
10 process. Three of those conditions deal with energy  
11 deliverability issue that you just talked about, 9, 10,  
12 and 13.

13           Two of the conditions deal with divestiture  
14 of fossil units, conditions three and four. Three of  
15 them deal with restrictions and reporting requirements  
16 and new investments, conditions 11, 12 and 14.

17           And two conditions deal with dispute  
18 resolution.

19           The one change we made from the last session  
20 is in condition number four. Previously we recommended  
21 that Iberdrola and their affiliates should be prohibited  
22 from constructing new fossil generation within New York  
23 State.

24           We are modifying that now to say that they

1 should be prohibited from owning any interest in fossil  
2 generation in New York State.

3 I would also like to offer another  
4 clarification. It's not in the conditions in Attachment  
5 B, but it is in the text of the session item. This is  
6 regarding the 90/10 sharing mechanism for net proceeds  
7 from sale of fossil facilities.

8 To clarify again, we are recommending to say  
9 that the Commission defer the sharing mechanism decision  
10 to phase two in this proceeding, where it considers the  
11 divestiture plan of the utilities.

12 In the past the Commission has allowed some  
13 sharing in some cases and no sharing in some cases of  
14 the net proceeds from the sale of fossil units.

15 By deferring this issue the Commission would  
16 retain its flexibility to decide on an appropriate  
17 sharing mechanism in phase two, considering various  
18 interests it may have to balance in the divestiture  
19 process.

20 That concludes my presentation. I would be  
21 happy to take any additional questions.

22 CHAIRMAN BROWN: Any?

23 COMMISSIONER ACAMPORA: Yes. Not more of a  
24 question, but just to make sure there is a clarification

1 with regard to a prior Commission decision on the  
2 Russell Station.

3 So that there is no misunderstanding or  
4 characterization, that it would be included in this  
5 particular decision.

6 MR. ADDEPALLI: I think this Commission  
7 order will clearly spell out that we are accepting the  
8 offer to sell or divest these fossil units, and would  
9 require the utilities to file within 90 days the  
10 divestiture plan for Commission approval.

11 This was done previously in the auctions of  
12 other sales in other utilities in a two-step process  
13 where in step one they would file a divestiture plan of  
14 logistics of how it will happen and then actual  
15 divestiture.

16 So, we recommend that be adopted here, too,  
17 that they file within 90 days a plan for divestiture.

18 COMMISSIONER ACAMPORA: I just wanted a  
19 clarification for the record.

20 COMMISSIONER HARRIS: Raj, did you mention a  
21 phase two?

22 MR. ADDEPALLI: Filing of this plan within  
23 90 days, I adopted as phase two.

24 COMMISSIONER HARRIS: That's all to date

1 that's in phase two of this proceeding, correct?

2 MR. ADDEPALLI: As we go along if there are  
3 other issues we can pick them out and call them phase 2,  
4 2A. For now I'm just calling this phase two, the second  
5 session.

6 COMMISSIONER HARRIS: You created phase two.

7 MR. ADDEPALLI: Yes.

8 COMMISSIONER HARRIS: I just wanted to make  
9 sure I'm not missing anything.

10 CHAIRMAN BROWN: Let's clarify this. I  
11 think there's an awful lot of things in this case that  
12 we are requiring things to be filed within so many days,  
13 information to be provided, transmission studies, and I  
14 think Raj just shorthanded that to call it the next  
15 phase of this case.

16 There's no formal phase two. It is going to  
17 be an outgrowth of the conditions and the requirements  
18 that we put in.

19 MR. ADDEPALLI: You are correct.

20 COMMISSIONER CURRY: I assume that would  
21 apply also to John's discussions with the company  
22 regarding his -- the conditions in the finance and  
23 accounting area.

24 CHAIRMAN BROWN: Correct.

1 MR. STEWART: Every additional filing  
2 requirement later on.

3 COMMISSIONER CURRY: You should have  
4 copyrighted the phase two, Raj.

5 CHAIRMAN BROWN: Raj, I have one question.  
6 I'm just going to be following up on Commissioner  
7 Harris' consistency of policy here and it goes to Mark  
8 and to Raj.

9 What we have said our policy currently is,  
10 we have discussed it frequently, that vertically  
11 integrated -- we don't want vertically integrated  
12 generation with the transmission and distribution  
13 companies unless substantial benefit, I think is the  
14 phrase, or some phrase very akin to substantial benefit.

15 Here I think what you just said is that we  
16 are going to preclude Energy East from owning any fossil  
17 generation facilities.

18 Does that differ from our current policy or  
19 would they still have the ability to say, hey, here's my  
20 substantial benefit claim. Can we build? I just want  
21 to clarify that because it sounded a little  
22 inconsistent.

23 MR. REEDER: I think you might need a legal  
24 answer there.

1 I mean the vertical market power policy  
2 statement establishes a presumption that in a Section 70  
3 case, and that's where someone would acquire through a  
4 purchase, that a T&D company owning generation would be  
5 unacceptable, but let's, one, overcome that presumption.

6 Now, if we are having this as a condition  
7 here, I guess I am going to have to defer to the lawyers  
8 if there is still an opportunity for someone to plead to  
9 you, here we are, we think we can overcome the  
10 presumption and talk you out of your condition you had  
11 earlier.

12 MS. CLEARY: In this case, in directing or  
13 acknowledging that the fossil fuel generation would be  
14 sold, there is no need to then determine whether a  
15 substantial benefit will be provided to ratepayers.

16 CHAIRMAN BROWN: I understand. I guess I  
17 was responding to Raj changed the language of one  
18 condition today.

19 Maybe you could read that again, Raj, where  
20 you said you changed--

21 MR. ADDEPALLI: I think that last time we  
22 said that they should not be constructing new fossil  
23 generation. And I think that modifying to be more  
24 encompassing to say that they should be prohibited from

1 owning any interest, even if they might not be  
2 constructed, but purchasing other fossil units.

3 CHAIRMAN BROWN: So I guess my question is:  
4 Are we establishing a different policy for NYSEG and  
5 Energy East than currently exists for Con Ed or National  
6 Grid? The presumption is they can't own generation, but  
7 as we are proving here you could under certain  
8 conditions if substantial benefits were proven.

9 COMMISSIONER HARRIS: Can I just jump in  
10 also?

11 But we -- following up on that, the  
12 condition says they can't acquire or construct fossil  
13 fuel generation.

14 So, is not mentioning all -- the broader  
15 context of all generation allowable? I mean if it's not  
16 fossil fuel are we then granting permission for them to  
17 own other non-fossil fuel generation?

18 MR. ADDEPALLI: I believe we are. In this  
19 context we are allowing them to own wind, renewable  
20 resource generation, and continue to own hydro resources  
21 as well, on a rate based treatment.

22 So we are differentiating.

23 MR. DVORSKY: I got to correct a statement.

24 We are not allowing Energy East companies to

1 purchase or invest or own wind or have interest in wind  
2 generation affiliate. So, we got to watch out.

3 CHAIRMAN BROWN: Actually we are allowing  
4 Energy East to own hydro.

5 MR. DVORSKY: Hydro as a rate base, which is  
6 existing right now. We are not recommending them to  
7 divest that facility.

8 As far as wind, or any other generation, we  
9 are not in this order recommending you allow them to  
10 have any interest in other generation.

11 COMMISSIONER HARRIS: So, in this particular  
12 proceeding, one of the conditions is that -- in this  
13 proceeding we would allow them to own the wind that they  
14 currently have and come back to us for approval to own  
15 wind above 80 megawatts.

16 That was one of the conditions.

17 CHAIRMAN BROWN: Any company has to clear--

18 MS. CLEAR: That's the requirement of the  
19 Public Service Law, so it's not our condition.

20 COMMISSIONER HARRIS: So, by us saying they  
21 have to -- they can't own or acquire or construct fossil  
22 fuel, can they go and acquire a photovoltaic company?

23 CHAIRMAN BROWN: Company or facility?

24 COMMISSIONER HARRIS: Anything, both.

1           MR. REEDER: The way we wrote it was we left  
2 it broad in that they could certainly be a photovoltaic  
3 or things like that, or hydro.

4           We didn't narrow it solely to wind. We just  
5 narrowed it to -- we left out renewables generally from  
6 the prohibition by prohibiting fossil.

7           MR. DVORSKY: Let me add to that: But they  
8 would have to come in and show a rebuttable assumption  
9 that there is significant benefits of doing, in your  
10 example, photovoltaics, and the Commission would have to  
11 weigh the benefits to the customers of New York.

12           COMMISSIONER HARRIS: And have the same  
13 balancing test here, but my point is that: If we  
14 approve this merger with this condition we have now  
15 opened up the gates to allow other utilities to come and  
16 petition us for renewable generation.

17           MR. DVORSKY: The gates were always open  
18 with the waiver and the rebuttable assumption.

19           COMMISSIONER HARRIS: Now they have  
20 precedent.

21           MR. DVORSKY: They have basically, if you  
22 approve this -- I wouldn't go that far.

23           They have an example that the Commission  
24 allowed under this record and your order, if you do

1 approve it, a case to look at.

2 MS. CLEARY: Commissioner Harris, it is not  
3 controlling precedent. And each case that comes before  
4 you with respect to this is just a very new thing, new  
5 development.

6 It is going to present a lot of challenges  
7 if what you discuss actually comes into fruition. But  
8 the Commission will have an opportunity to look at all  
9 the different facts and circumstances that are presented  
10 in this case and has broad authority under the Public  
11 Service Law to do so.

12 So, it is not controlling.

13 COMMISSIONER HARRIS: It's not controlling  
14 but it sure gives some weight to it, doesn't it?

15 MS. CLEARY: Yes. And you have to -- and  
16 arguments will be made about the decision in this case  
17 by parties involved in any future type of petition along  
18 those lines, this is true.

19 COMMISSIONER HARRIS: I guess that's what I  
20 have always wanted to get my arms around what exactly  
21 are the substantial ratepayer benefits we are  
22 attributing to the vertical market power.

23 I mean that's -- how much of the PBAs are we  
24 attributing to offsetting vertical market power risk?

1 That's...

2 MR. REEDER: I don't think we are picking  
3 any particular amount of that. I think we are looking  
4 at the whole package and it's hard to slice down and say  
5 this many million overcomes this.

6 The whole package, we talked about the \$250  
7 to \$300 million range, and that's the substantial  
8 ratepayer benefit in total that overcomes the vertical  
9 market power risk and the financial risk in combination.

10 CHAIRMAN BROWN: The point I was trying to  
11 make a little bit was I don't believe we are trying to  
12 change any policies in this case that exist.

13 We are applying the existing test to this  
14 case and trying to determine whether sufficient evidence  
15 exists to move on that. I think, however, and I would  
16 like to suggest, that at some point in the future it  
17 might be ripe for us to take a look at the existing  
18 policy, especially perhaps in light of renewable  
19 development as opposed to fossil fuel plant.

20 It just may be something that we want to  
21 look at, but I'm in complete agreement with Commissioner  
22 Harris, we don't want to be setting those precedents in  
23 individual cases that makes it difficult to determine  
24 exactly what our consistent policy is.

1           Sometimes you are better off to take a  
2 generic look at the issue and try to determine where we  
3 want to be.

4           So, I would suggest that what we have done  
5 if we approve this today is not changing our policy in  
6 any way but strictly applying our policy. And that at  
7 some point in the future we as a Commission may want to  
8 take a look at the way the existing policy works and  
9 whether we think there's any tweaks to it that are  
10 necessary or not.

11           MS. CLEARY: I'm delighted to say that from  
12 a legal perspective that's correct, Chairman.

13           CHAIRMAN BROWN: I sit next to enough  
14 lawyers and I've learned something.

15           Rafe.

16           JUDGE EPSTEIN: If that closes out the  
17 discussion of vertical market power, then, as I said,  
18 item III would be proposed financial protections, and  
19 that would be John.

20           MR. STEWART: Good morning, Chairman. Good  
21 morning, Commissioners.

22           I think we are going to divert a little bit  
23 from that schedule because I have an issue that is  
24 related to wind and I think we want to bring it to your

1 attention as an additional recommendation and while we  
2 are close to the topic I think we should probably  
3 address it.

4           We have considered that Iberdrola has a  
5 binding commitment to invest \$100 million in wind assets  
6 in New York. While we recognize that there are vertical  
7 market power risks associated with such investments, we  
8 also recognize that the wind investments by Iberdrola  
9 have positive effects on the economic development of New  
10 York, and that the PBA and related vertical market power  
11 protections are adopted or that we recommend to you  
12 today also address some of the risks and challenges  
13 posed by wind power.

14           As a result, we would like to assure more  
15 economic development benefits for the State of New York  
16 and the residents of New York in the future.

17           As such, we now recommend that as a  
18 condition for approving the merger the company, or the  
19 Commission, you, require Iberdrola to increase its  
20 bonding commitment for wind investment by \$100 million,  
21 from \$100 million to \$200 million.

22           Moreover, to assure that New Yorkers receive  
23 economic development benefits, we would also recommend  
24 that you require that in the event Iberdrola is unable

1 to spend all of its additional \$100 million amount  
2 within --I think we were thinking about a two year  
3 period at this point.

4 In the event it is unable to spend that  
5 entire incremental amount, it set aside 25 percent of  
6 that amount for the purpose of funding additional  
7 economic development programs.

8 This, again, would happen I think after two  
9 years. The idea here is to the extent that Iberdrola  
10 does not spend specific amounts over the \$100 million on  
11 our additional wind investments to help spur the  
12 economy, it would set aside a sum of money to basically  
13 help attract businesses, hopefully create jobs, and  
14 create additional load which would help hold down  
15 electric prices and gas prices in the state.

16 That concludes the recommendation.

17 CHAIRMAN BROWN: Let me just start out and  
18 then I will -- when you say -- see if I understand the  
19 proposal.

20 It is that the company had committed \$100  
21 million of investment in wind. We are asking for an  
22 incremental \$100 million for a total of 200.

23 MR. STEWART: Yes.

24 CHAIRMAN BROWN: If that incremental 100

1 million is not spent they would have to provide some  
2 sort of alternative economic development measures to the  
3 tune of 25 million, about a quarter of that?

4 MR. STEWART: If they -- if, for example,  
5 that they did not spend the whole \$100 million, it could  
6 be 25 million, if they spent 150 million then it would  
7 be if they were \$50 million short, so it could be 12 and  
8 a half million.

9 CHAIRMAN BROWN: What sort of economic  
10 development programs could we envision? I mean I think  
11 if I understand the proposal, it's a fairly liberal  
12 interpretation. They could say -- they could make  
13 proposals to staff and say this fulfills our requirement  
14 if we need to fulfill that.

15 Could you give me some examples?

16 MR. STEWART: Yes. I think Sandra has some  
17 people here that can help us on that.

18 MS. SLOANE: Good morning, Chairman and  
19 Commissioners.

20 There is a fundamental connection between  
21 energy and economic development and currently NYSEG and  
22 RG&E both have rate funded economic development  
23 programs.

24 But I think John Calcagni, who heads up the

1 economic development programs, and he could give you a  
2 couple of examples of programs that have added jobs and  
3 incremental load.

4 MR. CALCAGNI: Good morning, thank you.

5 Couple of examples that I have just right  
6 offhand. In RG&E's territory, a project in Monroe  
7 County, five-story, 120,000 square foot business  
8 attraction.

9 For receiving a grant, a targeted financial  
10 assistance grant, from RG&E, a capital investment of \$59  
11 million was made. 50 jobs were retained. 40 new jobs  
12 were created. And an incremental load of up to 3400  
13 kilowatts is expected at that project.

14 A large major pasta company was attracted  
15 with the assistance of a \$35,000 grant to improve the  
16 gas infrastructure. As a result of that, in Livingston  
17 County, a capital investment of \$96 million was made,  
18 created 121 jobs, and added a gas load of 110,000 therms  
19 per month.

20 In NYSEG's service territory in Broome  
21 County, a commercial printing operation was built on a  
22 100-year-old brownfield manufacturing site. They  
23 totally rebuilt the site. A capital investment of \$50  
24 million was attracted. 87 new jobs were created. And

1 3200 kilowatts of incremental load was added.

2 Also, in Chemung County, a manufacturer --  
3 international manufacturer of orthopedic implants and  
4 instruments expanded their existing facilities by 25,000  
5 feet. It helped to retain 300 jobs that otherwise would  
6 have been relocated to perhaps either Westchester,  
7 Pennsylvania or Zurich, Switzerland.

8 And they also -- because of the expansion  
9 they created 100 new jobs and 800 kilowatt incremental  
10 load increase, just on those two projects.

11 CHAIRMAN BROWN: Thank you.

12 One other thing, I wasn't here then, I'm not  
13 sure if anybody can address this, but when the Energy  
14 East merger with Central Maine, etc., all took place,  
15 it's my belief we lost a lot of utility jobs to Maine at  
16 that point, and much of their headquarters is now in  
17 Maine?

18 MR. STEWART: We -- the headquarters of  
19 Energy East is still technically located within New York  
20 State. There's not a lot of employees that actually  
21 work there. Most of the holding company's service  
22 functions are located in New Gloucester, Maine, which is  
23 just outside of Portland.

24 As far as head count changes, I asked people

1 to look at the change in employee levels at RG&E and  
2 NYSEG since 2004. It looks like there's a total  
3 reduction of employees of 800 -- about 800 people.

4 It's not entirely clear that all of that is  
5 total job losses. Some of that probably involved people  
6 relocating from New York to the offices in Maine. So,  
7 it's not a total loss of overall jobs from the company  
8 but it's definitely a loss of New York jobs.

9 CHAIRMAN BROWN: If the company had to meet  
10 this economic development requirement, would bringing  
11 some of those jobs back home, would that be eligible, do  
12 you believe?

13 MR. STEWART: I would certainly consider it.

14 CHAIRMAN BROWN: Okay.

15 COMMISSIONER CURRY: John, although I don't  
16 get priority on this because this is new, the spending  
17 of the money -- I am delighted we are focusing now on  
18 \$100 million commitment, which was one of Rafe's first  
19 points, and increasing or entertaining the suggestion we  
20 increase it.

21 As I read the corporate structure of  
22 Iberdrola, the entity that's going to do that is  
23 Iberdrola Renewables, which is an 80 percent owned  
24 subsidiary, meaning 20 percent is owned by the public at

1 large.

2           How do you see tying this commitment, both  
3 the 100 million and the incremental 100 million you are  
4 now suggesting, back into the approval of this case?

5           MR. STEWART: This probably involves a legal  
6 interpretation, but I also remember that Iberdrola has  
7 basically made a binding commitment subject to a show  
8 cause order. They just agree to make a binding  
9 commitment subject to a show cause order to make the  
10 investments.

11           So I don't know if we really have to be  
12 worried about where the investments -- what part of the  
13 entity investments come from. It's making a binding  
14 equipment subject to show cause to do the investments.

15           COMMISSIONER CURRY: So, just to follow that  
16 string out. In the event, for whatever reason, either  
17 the basic \$100 million commitment or the enhanced \$200  
18 million commitment is not fulfilled, our recourse would  
19 be against the operating companies, and essentially the  
20 shareholders of the operating companies, which is  
21 ultimately the parent, is Iberdrola.

22           MR. STEWART: Iberdrola.

23           COMMISSIONER CURRY: That's basically the  
24 enforcement mechanism for that.

1 MR. STEWART: Yes.

2 COMMISSIONER CURRY: Why did you pick 25  
3 percent of the additional 100 million as opposed to 25  
4 percent of your recommended 200 million?

5 MR. STEWART: I think we just focused on the  
6 increment of what we are doing that's really on the  
7 margin -- this is a new recommendation here -- rather  
8 than focusing on what the entire record was considering.  
9 So it's just focusing on the incremental piece.

10 CHAIRMAN BROWN: Commissioner Harris, you  
11 look like you are thinking of questions.

12 COMMISSIONER HARRIS: I am thinking.

13 CHAIRMAN BROWN: Pat, do you have any?

14 COMMISSIONER ACAMPORA: No.

15 COMMISSIONER HARRIS: You are talking about  
16 a binding commitment. In the RD, the judge had many  
17 concerns about all the caveats and escape clauses that  
18 would render the \$100 million commitment  
19 non-enforceable. And that was a big concern, I believe,  
20 of Judge Epstein's.

21 How do we plan on making this commitment as  
22 airtight as possible?

23 MR. STEWART: I think it would have to still  
24 require -- the same conditions that would require --

1 would be applied to the original commitment would still  
2 have to be required here.

3 COMMISSIONER HARRIS: But I thought on the  
4 original commitment of the petitioners they had escape  
5 clauses for siting and some other measures that would  
6 render it null and void. I am just concerned about  
7 calling it a binding commitment if it's not really an  
8 enforceable commitment.

9 CHAIRMAN BROWN: What I think we have here  
10 that's different is a fallback spot. In other words,  
11 if, let's say, the federal tax credit never gets  
12 renewed, our RPS program disappears, and it's determined  
13 that building the wind is not economically viable, then  
14 there is this new requirement that didn't exist before.

15 And the new requirement is this \$25 million  
16 of economic development benefits. I think that's what  
17 makes it different than what -- Rafe's proposal, which  
18 was they would make this commitment but if those things  
19 went away, well, the commitment went away.

20 This puts a fallback on it.

21 COMMISSIONER HARRIS: So, if we had the tax  
22 credits, and the federal tax credits and everything  
23 else, but for siting purpose they can't get sited.

24 MR. STEWART: The recommendation, which I

1 made, is if Iberdrola is unable to make that investment,  
2 that additional \$100 million, the 25 percent provision  
3 takes over and doesn't -- that didn't -- my  
4 recommendation did not say basically unable because of  
5 X, Y and Z. Just said if they are unable to do it.

6 COMMISSIONER HARRIS: For any reason, if  
7 they are unable.

8 MR. STEWART: That's what my recommendation  
9 was. I'm sorry for confusion. I was...

10 COMMISSIONER HARRIS: That's okay. What  
11 exactly are we considering as investment?

12 COMMISSIONER CURRY: Could I perhaps clarify  
13 for a second?

14 The way that I read this is that the  
15 condition on the \$100 million commitment is "no material  
16 adverse change to the existing fundamental economics of  
17 wind generation in New York State. This limited  
18 condition" -- I'm quoting from petitioners -- "This  
19 limited condition to Iberdrola's commitment is necessary  
20 to address events beyond Iberdrola's control that relate  
21 to fundamental changes, e.g., elimination of federal  
22 production tax credits or the renewable portfolio  
23 standard.

24 This limitation does not relate to the

1 economics associated with any individual Iberdrola  
2 Renewables project, e.g., land write acquisition,  
3 turbine write acquisition, financing construction, etc."

4 I don't know whether that's helpful.

5 CHAIRMAN BROWN: Was your other question,  
6 Commissioner Harris, what constitutes an incremental  
7 investment?

8 COMMISSIONER HARRIS: What are we -- what  
9 are we putting into the dollar pool? What exactly are  
10 we considering an investment?

11 MR. STEWART: It could be focused on new  
12 projects rather than acquisitions of projects that are  
13 already underway or already operating.

14 COMMISSIONER HARRIS: So, the projects that  
15 the company has in the pipeline to receive RPS  
16 subsidies, it's net of the RPS subsidies, the  
17 investment?

18 I mean if these projects are awarded and  
19 start operation, I mean what exactly are we constituting  
20 an investment?

21 MR. STEWART: I am not sure I understand  
22 your question.

23 MR. DVORSKY: I would say it's the capital  
24 expenditure that the company put out for building the

1 facility, not the energy or the RPS funds.

2 It's actually incremental. They can't buy  
3 existing wind power. And this is, like the Chairman  
4 indicated, a new mechanism.

5 There is no waiver. If they can't build an  
6 incremental 100 million or they don't get up to the 100  
7 million for whatever reason, they couldn't get siting or  
8 it didn't make sense to them, whatever, this new  
9 mechanism kicks in to the tune of -- the maximum would  
10 be \$25 million for economic development.

11 In other words, the logic is that the  
12 investment of wind not only helps the policy of clean  
13 energy. It also provides for those locations economic  
14 development.

15 So we want to assure that's not going to  
16 happen, which we believe is somewhat of a benefit to the  
17 area, that we have a mechanism to capture some dollars  
18 for economic development for the State of New York.

19 And that's the concept that we are trying to  
20 do, so there is no real waiver associated with this  
21 mechanism.

22 COMMISSIONER HARRIS: So it's capital  
23 expenditures.

24 MR. DVORSKY: Yes, it is.

1                   COMMISSIONER HARRIS: All right.

2                   When would we have the date begin? I mean  
3 it's not capital expenditures on projects that are in  
4 the pipeline. It would be money that's spent after a  
5 certain time certain?

6                   MR. STEWART: I would assume it would be  
7 after consummation of the merger.

8                   COMMISSIONER HARRIS: Will we be spelling  
9 all of this out in ordering clauses with specificity?

10                  MS. CLEARY: Now we will.

11                  CHAIRMAN BROWN: When would you envision  
12 them coming back to us and reporting on their progress?  
13 How much time would be appropriate?

14                  MR. STEWART: Two years is what we are  
15 thinking right now.

16                  CHAIRMAN BROWN: Would they have to have  
17 spent that money within two years or how would we...

18                  MR. STEWART: Clearly we would want -- not  
19 want to be as inflexible to simply say that they spent  
20 \$150 million in two years and if they have a new project  
21 underway and we know they are going to spend \$100  
22 million in the next year, we wouldn't require the  
23 imposition of the 25 percent in those circumstances, but  
24 it's going to be some informed judgment that would have

1 to be employed at that point in time.

2 CHAIRMAN BROWN: But you envision about a  
3 two year window for them to come back, do the report,  
4 and say here's the investment that we made or are making  
5 and here are the dates we are going to make and we would  
6 hold them to that I would think.

7 MR. STEWART: Or here are the investments we  
8 are about to make.

9 COMMISSIONER HARRIS: Whose informed  
10 judgment then? So, if they don't spend the money would  
11 it come back to us for a decision?

12 MR. STEWART: It has to come back to you.

13 MS. CLEARY: The Commission might want to  
14 consider requiring periodic reports on how the progress  
15 is going.

16 COMMISSIONER HARRIS: Right, because hearing  
17 a project is in the pipeline and it's going to be up and  
18 running next year, I mean, we will face that when we  
19 come to it, but I think the more facts that we have  
20 before us the better.

21 So, you are right. Reporting requirements  
22 would be good.

23 CHAIRMAN BROWN: Any other questions on this  
24 fairly new concept today? Hearing none...

1 MR. STEWART: I will get into the financial  
2 protections.

3 I have counted 34 different issues that  
4 related to financial protections in this case that were  
5 outstanding among the parties.

6 I believe we have resolved all of them in a  
7 fair and equitable manner that protects the interests of  
8 New York ratepayers.

9 I just want to give you kind of a recap of  
10 all of the --

11 COMMISSIONER HARRIS: I'm sorry. Can I just  
12 go back to the -- I'm sorry. This has just been a new  
13 proposal as of this morning so I am still digesting it  
14 here.

15 The economic development money, this is  
16 shareholder money, this is not ratepayer money, but  
17 would it go for -- to offset economic development rate?  
18 I mean how do we envision the economic development funds  
19 being spent?

20 MR. DVORSKY: No, I would -- it would  
21 definitely be shareholder money, unlike the existing  
22 programs that John gave you examples of.

23 And I suggest at that time if a pot is  
24 developed to have a collaborative basically is the size

1 of the pot. If it's large enough you may want a  
2 collaborative to see how you spread out those dollars in  
3 upstate New York.

4 The other method, if it's smaller dollars,  
5 come on a case by case basis. I think it's the nature  
6 of the size of the pot and how you want to distribute it  
7 and I would go with that type of process and you could  
8 give the options in the order.

9 COMMISSIONER HARRIS: So, we are not  
10 envisioning that it's offsetting the ratepayer economic  
11 development rates, this would be in addition to?

12 MR. DVORSKY: Yes.

13 COMMISSIONER HARRIS: But it's our  
14 discretion.

15 MR. DVORSKY: Yes. Could come to you on a  
16 case by case basis or through John Calcagni, economic  
17 development, people bring it to you. If it's a large  
18 pot of money there are many options to distribute the  
19 funds. There are many ways of addressing the  
20 distribution of these funds to the better of the upstate  
21 region.

22 MR. ADDEPALLI: Perhaps, Commissioner  
23 Harris, to give you a perspective.

24 The current amount, my understanding, is

1 about \$34 million in economic funding between the two  
2 companies on an annual basis.

3 COMMISSIONER HARRIS: On an annual basis.

4 CHAIRMAN BROWN: Then we would necessarily,  
5 if they wanted to spread this out over three years or  
6 some program like that, I don't think we -- I mean I'm  
7 not going to prejudge what we are going to do, but I  
8 could see options available that it wouldn't necessarily  
9 have to be a one time one shot.

10 You might get more effectiveness out of it  
11 if it was spread out a little, correct?

12 MR. DVORSKY: Yes. I think those  
13 determinations of how you spread out the dollars, who  
14 you spread it, what programs, should be made at the two  
15 year time frame, see where the economy is and what's the  
16 best.

17 An industrial park may want to come into an  
18 area versus another -- there may be competing proposals,  
19 hopefully all good ones, but one may provide better  
20 benefits to the area than another one.

21 So, I don't think we should prejudge it and  
22 it may come one year later than another one. So, I  
23 think timing should be on the table as far as spreading  
24 the dollars.

1 CHAIRMAN BROWN: Commissioner Curry.

2 COMMISSIONER CURRY: John, going back a  
3 pace.

4 Your recommendation is to up by doubling the  
5 commitment and using the extra \$100 million to balance  
6 out in an economic development setting if things don't  
7 work right.

8 In considering the various options that we  
9 have under the PBA, you were careful to relate them to  
10 experiences we have had in other settings. And I am  
11 wondering what caused you to focus on doubling instead  
12 of, say, multiplying by 20, which would get us to 2  
13 billion, or 10, which would get us to a billion.

14 What was the basis in your mind for arriving  
15 at 100 million?

16 MR. STEWART: I think I was cognizant of the  
17 fact that the PBA recommendation we have before you at  
18 \$275 million is the midpoint of a range.

19 And I think it's possible we could have come  
20 up with a higher commitment, but I think we are really  
21 looking for a way of assuring that ratepayers are going  
22 to receive added value, either -- through economic  
23 development, hopefully, or through wind or through  
24 something else in a way that could enable the Commission

1 to be more comfortable with our \$275 million PBA  
2 adjustment.

3 So, it's somewhat of a pragmatic approach,  
4 but it's also recognizing the positive impact of further  
5 wind investment or economic development programs on New  
6 Yorkers.

7 COMMISSIONER HARRIS: John, how much -- what  
8 would \$200 million of investment generate in megawatts  
9 for wind, do you know?

10 MR. STEWART: 100 megawatts, approximately.

11 COMMISSIONER HARRIS: For \$200 million it's  
12 100 megawatts?

13 MR. STEWART: Yes.

14 MR. ADDEPALLI: Using \$2,000 a kw estimate.

15 COMMISSIONER HARRIS: Thank you.

16 MR. STEWART: I will go back to my financial  
17 protections.

18 This is just going to be a fairly high level  
19 summary. There was 34 issues of disagreement at one  
20 point in time on financial protections. Eventually  
21 staff and the petitioners reached agreement on 16 of  
22 them.

23 Ranging -- a variety of issues from  
24 prohibiting recovery of goodwill in rates, to money pool

1 protections. In most cases these agreements were pretty  
2 much structured along the lines of what was in the  
3 KeySpan-Niagara Mohawk case.

4 One thing noteworthy of telling you about is  
5 the idea of at least one situation or several situations  
6 the protections here are stronger than protections in  
7 Niagara-Mohawk KeySpan.

8 I will refer you to the idea that Iberdrola  
9 has agreed that after the approved acquisition of Energy  
10 East, that Energy East continue to comply with the  
11 provisions of Sarbanes-Oxley as if they were still bound  
12 directly by those provisions.

13 That includes attestations and the  
14 certifications by officers, while not legally required  
15 any more, they still agree to continue them. So, it  
16 provides us an added degree of certainty in that  
17 individuals from Energy East are basically staking their  
18 name on the accuracy of the books and records and the  
19 statements made in their financial reports.

20 So, that's a very positive thing from my  
21 perspective.

22 Obviously, if there is 34 issues and there's  
23 agreement on 16 then there is disagreement on 18. Two  
24 of those 18 issues were established -- were decided

1 entirely in staff's favor.

2           These are provisions relating to dividend  
3 restrictions in the event that, one, Iberdrola's bond  
4 rating is in danger of falling outside the investment  
5 grade or has fallen outside the investment grade.

6           Or, two, NYSEG and RG&E's bond rating is in  
7 danger of falling outside the investment grade rating.

8           We basically put exactly the same provisions  
9 in place for Iberdrola as we have for Grid and KeySpan.  
10 We see these dividend restrictions as the cornerstone of  
11 our financial protections and we do not want to deviate  
12 from them.

13           Two items were decided in favor of staff.  
14 Six items were decided in favor of petitioners. And  
15 there's a whole variety of things ranging from language  
16 on the special class of preferred stock, which we think  
17 is workable the way they proposed it.

18           There's various reporting requirements that  
19 the company said are burdensome, which we agreed, we  
20 agreed with, and have eased.

21           And there's additional financial information  
22 that staff wanted the company to file as part of rate  
23 cases which we again said is not needed because that  
24 financial information would be filed annually as part of

1 other reporting requirements in this deal.

2 We resolved five issues partially in favor  
3 of both sides. And the key theme here was that staff  
4 said we needed lots of financial statements about the --  
5 lots of information about all of Iberdrola's individual  
6 affiliates and we want that information in GAAP based  
7 accounting.

8 Iberdrola's response was basically we can't  
9 do GAAP because we have never done GAAP for most of  
10 these operations and providing you individual statements  
11 for all of our regulated and unregulated operations  
12 around the world is really burdensome.

13 We tried to take a middle ground by coming  
14 up with a streamline approach that gives staff as much  
15 of the information as requires and also allows Iberdrola  
16 to aggregate a lot of their foreign information in a way  
17 that would be less burdensome on them.

18 In addition, it would allow Iberdrola to  
19 file international information based on international  
20 accounting with the proviso that they address any staff  
21 questions about what the accounting means in 10 business  
22 days.

23 Clearly, the key to this whole thing is  
24 Iberdrola's cooperation with this provision -- these

1 provisions. We are going to have to monitor that  
2 carefully because that's critical to the success of this  
3 provision.

4 There is four issues related to code of  
5 conduct affiliate transactions and cost allocations  
6 which, in my view, there's insufficient record evidence  
7 to decide.

8 I also suspect there's actually more than  
9 four issues here. There's probably a lot of tiny  
10 language issues that have to be resolved, too.

11 My experience in other situations is these  
12 are the kind of issues that are resolved at the end when  
13 all the big issues are put out of the way, so it's very  
14 likely the parties just didn't get to this level of  
15 detail.

16 So, as a result, I would like to send this  
17 back to the parties for them to resolve. After 120  
18 days, the parties would present the resolution of the  
19 issues to you for approval or, alternatively, to the  
20 extent they cannot reach agreement, they would have to  
21 make an argument to you about why they think their  
22 position is better than someone else's and you would  
23 have to make a decision about any outstanding issues.

24 COMMISSIONER ACAMPORA: John, can I

1 interrupt at this point.

2 I have a concern about the 120 days. I  
3 think it's too long. Is there a reason why the 120 days  
4 and not possibly 60 days?

5 MR. STEWART: It's just my judgment. It  
6 might be -- I don't think there is any magic in the 120  
7 days. I think usually we recognize that getting the  
8 parties together and doing the negotiations and doing  
9 the drafting of some of this fairly detailed language  
10 can be -- can take longer than you would think.

11 COMMISSIONER ACAMPORA: I know. I just  
12 think it's, you know, for a decision to be made, 120  
13 days is a long time. I would like to see it tightened  
14 up to 60 days.

15 CHAIRMAN BROWN: John, wouldn't the existing  
16 code of conduct remain in effect? It's not -- we don't  
17 have a vacuum, do we?

18 MR. STEWART: Basically the recommendation  
19 right now is that Iberdrola would step into existing  
20 Energy East's shoes as far as all of the protections  
21 already in place for code of conduct, cost allocations  
22 and affiliate transactions.

23 So, there is still protections in place --  
24 there's just areas where some of the parties thought

1 that it needed to be upgraded and modified and just  
2 brought up to date to where we are at with other  
3 companies.

4 CHAIRMAN BROWN: You would like to -- I am  
5 afraid if we go to 60.

6 COMMISSIONER ACAMPORA: I would like to see  
7 it changed. I think 120 is too long.

8 Even if they come in at 60 and then you  
9 could grant another 30 days, just to make sure that  
10 things are progressing and they are not just laying  
11 around.

12 MR. STEWART: Okay.

13 CHAIRMAN BROWN: Is everybody comfortable  
14 with that? We will modify that language to move it a  
15 little quicker.

16 I think she has a good idea there. At the  
17 end of 60 days maybe we could have a report to us that  
18 says we have agreed or we need an additional X amount of  
19 days we are asking or that they totally hit an impasse  
20 and say, well, might as well bring it to you now.

21 SECRETARY BRILLING: May I suggest that they  
22 report to you at 60 but that they have until 90 to file  
23 the recommendations?

24 That would give them an opportunity and you

1 could guide them if they are not progressing along the  
2 lines that you think appropriate.

3 CHAIRMAN BROWN: Everybody comfortable with  
4 that?

5 COMMISSIONER ACAMPORA: Yes. Thank you.

6 MR. STEWART: That brings me to one last  
7 issue. It's a new issue which actually the parties  
8 didn't argue about, but it's an issue we would like to  
9 introduce here and it's related to the savings from any  
10 new mergers involving Iberdrola and United States based  
11 utilities.

12 And to the extent that new mergers occur, we  
13 want to have a mechanism put in place to assure that  
14 ratepayers of NYSEG and RG&E are allocated a share of  
15 any cost savings produced by that merger in the event  
16 that NYSEG and RG&E are not in the rate case mode at  
17 that point in time.

18 CHAIRMAN BROWN: How long is the window  
19 open, John?

20 MR. STEWART: This window's going to be open  
21 until -- well, the calculation of the add on savings  
22 would accrue automatically until the next time that  
23 NYSEG or RG&E's rates will be set.

24 The idea being the specifics of how we

1 capture their savings on an ongoing basis would be dealt  
2 with in the rate case that was underway.

3 CHAIRMAN BROWN: Thank you.

4 MR. STEWART: That concludes the financial  
5 protections.

6 COMMISSIONER CURRY: John, just one  
7 question.

8 In the event that there isn't an acquisition  
9 by Iberdrola, from a process standpoint, and there isn't  
10 a rate case pending at the time, how would you envision  
11 trying to capture the ratepayer share of the synergy  
12 savings?

13 MR. STEWART: Right now? The ratepayer  
14 share of the synergy savings from the proposed  
15 transaction before us?

16 COMMISSIONER CURRY: No. What I am asking  
17 is: Going forward, assuming the follow on -- assuming  
18 there's an adoption of -- the merger closes and the  
19 follow on merger savings clause kicks in with another  
20 transaction, how would you describe the process for that  
21 kicking in, assuming there is no rate case?

22 MR. STEWART: I think we would like to at  
23 least start out and trying to model it similar to what  
24 we used for Niagara Mohawk, by just making some generic

1 assumptions about what the costs to achieve are and how  
2 they relate to the steady state level of expected  
3 synergy savings and efficiency gains, and make some  
4 general assumptions about how costs to achieve phase  
5 down over time while savings phase up over time.

6 And it's basically it's going to come down  
7 to some give and take among the parties, too. There's a  
8 lot of moving pieces and there's probably more than one  
9 way to do it.

10 MR. DVORSKY: There is another safety valve  
11 that we are recommending as part of option three, that  
12 if the Energy East companies do not come into rate cases  
13 within 18 months, the 80/20 sharing at a lower return  
14 kicks in.

15 So there is another acquisition, and its  
16 experience with savings and the Energy East companies, I  
17 believe you capture a lot of it with that mechanism in  
18 place without any determination.

19 Also, you have to realize we know of nothing  
20 on the table right now, so if they even announce  
21 something tomorrow, or after you issue your order, it  
22 takes awhile to get approved, as you know, through  
23 processes.

24 COMMISSIONER CURRY: I have heard that.

1 MR. DVORSKY: So, 18 months is...

2 CHAIRMAN BROWN: Some states longer than  
3 others.

4 MR. DVORSKY: Protections there.

5 COMMISSIONER ACAMPORA: Doesn't option three  
6 say 12 to 18 months?

7 MR. DVORSKY: 12 to 18 months, but if they  
8 don't come at 18 months, then the new mechanism of 80/20  
9 sharing, ratepayer 80, shareholder 20, to excess  
10 earnings, kicks in with a lower return on equity than  
11 if, in fact, they did experience another merger and  
12 there was synergy savings associated with that, that  
13 Energy East costs reflect, you would be picking up a  
14 lion's share of that through that mechanism.

15 MR. STEWART: Just to be -- so we are  
16 totally clear, that's where you filed the mechanism.  
17 The mechanism would basically identify the savings and  
18 it would be deferred for use in the next rate case for  
19 NYSEG or RG&E.

20 COMMISSIONER CURRY: That's exactly what I  
21 was going to ask you, John, so.

22 JUDGE EPSTEIN: So then I think we are ready  
23 to move on to capital expenditures and safety and  
24 reliability, and that would be Tom.

1 MR. DVORSKY: Good morning, Chairman Brown,  
2 Commissioners.

3 At the last two sessions I addressed  
4 electric reliability and gas safety performance  
5 mechanisms and capital expenditure issues for electric  
6 and gas in this proceeding.

7 I recommended adding several safeguards to  
8 ensure the utilities maintain the proper focus on  
9 reliability and safety.

10 Those recommendations were consistent with  
11 the recommendations contained in the National  
12 Grid-KeySpan merger.

13 Let me briefly recap those recommendations.

14 First, we recommend the doubling of  
15 previously established negative revenue adjustment for  
16 substandard electric performance compared to the  
17 previous target levels.

18 We also propose an additional doubling of  
19 the revenue adjustments in the following years should  
20 either utility continue to perform poorly.

21 On the gas side we recommend that the safety  
22 performance measures be adjusted to reflect historical  
23 performance levels and that the revenue adjustments  
24 levels also be subject to the same doubling provisions

1 as adopted in the National Grid-KeySpan merger.

2 Each company should also accelerate its pipe  
3 replacement levels to remove leak prone infrastructure.

4 Our second recommendation would be to  
5 require each company to file a report detailing the  
6 physical condition of all elements in its electric  
7 system, and prepare a plan and schedule identifying  
8 needed repairs, remedial actions, or monitoring  
9 programs.

10 Our third recommendation is that the  
11 companies must spend their proposed budgets for 2009 and  
12 2010. This results in an annual commitment for electric  
13 of approximately \$140 million for NYSEG and \$90 million  
14 for RG&E.

15 For gas, the annual commitment would be  
16 approximately \$20 million for each company.

17 Finally, we recommend that NYSEG and RG&E be  
18 required to provide five years' spending forecast  
19 annually. Forecast should include planned system  
20 upgrades and associated expected costs and  
21 reconciliation between the past year's actual  
22 construction activities and the previous forecasted  
23 expenditures.

24 By recommending these safeguards, it is our

1 intent that the company decisions post merger properly  
2 reflect safety and reliability concerns. It also allows  
3 us to take prompt actions to ensure proper levels of  
4 investment are being made.

5 I would be glad to answer any questions, and  
6 after which Sandra Sloane will give the consumer service  
7 safeguards presentation.

8 COMMISSIONER CURRY: I guess the only  
9 question I have, Tom, is on cap ex.

10 While we have -- you articulated what it is  
11 that we are going to be requiring now, are there  
12 provisions -- assuming that there is no rate case -- are  
13 there provisions for a rolling report?

14 Because I think knowing a little bit about  
15 how Con Ed does cap ex it's not just a two year process,  
16 it's a five to seven year process. Are there provisions  
17 for rolling?

18 MR. DVORSKY: Yes. More detailed in the  
19 memos that you have before us in our recommendation. We  
20 recommend if the company is proposing to spend or spends  
21 90 percent of the previous year's budget, that it comes  
22 in with a report and shows specifically why that level  
23 maintains safe and reliable service.

24 And we would look at that in each subsequent

1 year if they are spending below the levels that I  
2 articulated. So, there is that process.

3 Also, one of the recommendations, as an  
4 early warning, is looking at their five year projection  
5 that's going forward each year. So, they are proposing  
6 a reduction in their capital expenditures in subsequent  
7 years of '10.

8 We can then go in, have a dialogue with them  
9 and understand the nature of why they are proposing less  
10 capital projects to get a feel, maybe a substation  
11 slippage, and so on, so forth, that justifies a lower  
12 level.

13 Or some other slippage that is adequate or  
14 it may not be adequate and they are just cutting where  
15 they shouldn't be cutting. We would have an early  
16 warning of that and give our perspective to them and  
17 dialogue.

18 If we are really concerned that it will  
19 impact reliability we would -- could issue or recommend  
20 to the Commission to do a show cause order before it  
21 happens.

22 COMMISSIONER CURRY: Thank you.

23 COMMISSIONER HARRIS: We had mentioned -- we  
24 had discussed last week about the condition assessment

1 report. And I made some comments, suggestions or voiced  
2 some concerns about having some uniformity as to  
3 assessing the age of the infrastructure to assist us so  
4 we aren't comparing apples and oranges, but we can  
5 actually use it as a guiding tool in assessing the  
6 entire state of the infrastructure for New York State.

7 So, I was hoping we could, in the ordering  
8 clauses, with the condition assessment get some  
9 uniformity here to assist us.

10 MR. DVORSKY: I would recommend against  
11 that, and I will give you an example.

12 I would hate to have a criteria where you  
13 would have to replace a certain amount of wooden poles  
14 or a certain amount of rot or whatever, have you, of the  
15 poles as a consistent statewide standard.

16 I am just giving you that as an  
17 illustration. Or rust level of a lattice tower, so on  
18 and so forth. I don't think we have the intelligence or  
19 the information enough to articulate those specifics  
20 based on this record.

21 We have our transmission folks, system  
22 people, and our distribution sections looking at and  
23 having dialogues with each utility, just not this  
24 utility. Periodic meetings to go over why they are

1 proposing their projects, why they feel --why they  
2 replaced the program.

3 So, it's not a small task and I don't think  
4 we are capable of doing it, quite frankly.

5 COMMISSIONER HARRIS: Maybe I am -- what I  
6 am only suggesting is a common definition possibly of  
7 "deterioration" and having the company explain their  
8 prioritization and their assessment of that so we can  
9 get -- we can start comparing.

10 MR. DVORSKY: What we could do is we could  
11 put at a minimum type of provisions that we want to see  
12 in this report.

13 In other words, if they feel like there's a  
14 replacement at a certain level justify why they feel.  
15 Is it a standard? Is it just for this type of facility?

16 COMMISSIONER HARRIS: What is deteriorating  
17 and what is -- and what would define something that  
18 needs to be replaced in four to six years.

19 Let's compare that. I think it will help us  
20 with planning purposes. I mean I see what you are  
21 saying but just even getting a common definition out  
22 there or having them justify or explain exactly what  
23 their--you are pointing.

24 MR. DVORSKY: Mike Worden, who is the Chief

1 of the Distribution section, as you know.

2 MR. WORDEN: If I can try to comment on that  
3 a little.

4 I think we are trying to address some of  
5 what your concern is with the electric safety standards.  
6 In fact, in these standards that were put out for  
7 comment a couple months ago, we proposed common  
8 definitions for problems that are identified during  
9 inspections.

10 I think Tom's also right that we are kind of  
11 in the infancy of this thing and it's something that we  
12 are trying to develop right now as we speak.

13 COMMISSIONER HARRIS: And without any hard  
14 and fast roles, just since we are at the infancy, let's  
15 get some common definitions, some clear justifications  
16 or clear explanations so can prioritize and can start  
17 comparing for planning purposes.

18 MR. WORDEN: Our expectation is to come back  
19 to you this Fall with the electric safety standards.  
20 Again, that's an inspection criteria and common  
21 definitions in some of those sections.

22 MR. DVORSKY: I think you will be seeing  
23 more of that.

24 COMMISSIONER HARRIS: Would that be then

1 incorporated into their condition assessment report  
2 going forward?

3 MR. WORDEN: Should be part of it, yes.

4 MR. DVORSKY: That's the distribution part,  
5 which is a big, big chunk.

6 MR. WORDEN: Affect the transmission as  
7 well.

8 COMMISSIONER HARRIS: I know National Grid  
9 right now is filing their condition assessment reports.  
10 I wouldn't want to have them have one set of standards  
11 and another utility another set of standards so then we  
12 are left, again, comparing oranges and bananas.

13 MR. DVORSKY: I am a hundred percent with  
14 that goal. I'm just saying I don't want to lay out what  
15 the common one is yet until we get this intelligence of  
16 what Grid is doing, what NYSEG is doing, what Con Edison  
17 is doing.

18 And understand, if there are differences,  
19 where there's commonality, that's the low hanging fruit.  
20 That's -- I am a hundred percent with your goal, though.

21 COMMISSIONER HARRIS: Okay.

22 COMMISSIONER CURRY: Following on with  
23 Commissioner Harris' comments.

24 Mike, when you do come back to us with these

1 proposed standards perhaps you could include examples,  
2 if not all instances, where there is a distinction and a  
3 difference between how one utility defines something and  
4 another utility defines something.

5           Because, as we have seen in certain other  
6 sectors, I know what it means because I said it but it  
7 doesn't necessarily give us the tools from a management  
8 standpoint to assist in auctioning at all.

9           MR. DVORSKY: Just to give you some  
10 historical perspective.

11           In gas, we had the same concern where  
12 different companies were identifying or interpreting  
13 leak prone outages and stuff of that nature differently,  
14 so we had a workshop. We had to make sure the industry  
15 had commonality.

16           Took us about a year to get through that, so  
17 we would be on a common criteria basis. So, when you  
18 look at the gas safety performance measures it was  
19 apples and apples.

20           So, the same goal we were trying to attempt  
21 that we are not saying one decaying or deteriorating  
22 pole or line in one franchise area and then right next  
23 door is different than Grid versus NYSEG.

24           That's not our goal. Our goal is make sure

1 we are on a common record.

2 CHAIRMAN BROWN: Thank you.

3 Sandy.

4 MS. SLOANE: It's still morning. Good  
5 morning, Chairman Brown and Commissioners.

6 I will just take a minute and briefly review  
7 our recommendations on customer service. You will  
8 recall in the National Grid-KeySpan merger case the  
9 Commission established that safeguards are necessary to  
10 ensure that customer service does not suffer as a result  
11 of any change of ownership. We propose that that same  
12 policy should be adopted here as well.

13 We recommend that the potential negative  
14 revenue adjustments for NYSEG and RG&E be doubled.  
15 NYSEG would be increased to a maximum of \$7 million in  
16 electric revenue, \$1 million of gas revenues.

17 RG&E would be increased to \$5 million of  
18 electric revenues and \$1.4 million of gas revenues.

19 If in 2009 or any subsequent year the  
20 companies fail to meet the service quality thresholds,  
21 the adjustments would be doubled again.

22 We feel that these measures will ensure that  
23 customer service quality is corporate priority and that  
24 levels of customer service remain at high levels.

1           If you have any questions I would be glad to  
2 take them.

3           CHAIRMAN BROWN: I just want to reiterate  
4 what I said last time. We are not changing the  
5 standards, we are changing penalties, correct?

6           MS. SLOANE: That's correct. And only if  
7 they fail -- if they fail the measures will these  
8 increased penalties come into play.

9           CHAIRMAN BROWN: Thank you.  
10 Rafe.

11          JUDGE EPSTEIN: Thank you.

12          That brings us to the fifth and final  
13 subject area, which is PBAs and some ratemaking process  
14 issues, which are related.

15          John.

16          MR. STEWART: We presented three options to  
17 you a couple weeks ago regarding the PBA and related  
18 issues. You could require any of those options as a  
19 condition for approving the acquisition of Energy East  
20 by Iberdrola.

21          We have eliminated option two because in our  
22 view it does not provide sufficient benefits to  
23 ratepayers when compared with option one and option  
24 three. So that obviously leaves us with options one and

1 three.

2 Both options rely on a PBA of \$275 million,  
3 which again, is the midpoint of what I think is a  
4 reasonable range. The major differences between the  
5 options concern a treatment of possible synergy savings  
6 and efficiency gains which would occur in the short run.  
7 And I define the short run as the next 12 to 24 months.  
8 So, basically the first two years after merger  
9 consummation.

10 Option one establishes fairly stringent  
11 earnings sharing provisions. 50/50 sharing at a return  
12 on equity of 9.9 to 10.9 percent. 75/25 ratepayer/  
13 shareholder savings returns in equity are earned between  
14 10.9 percent and 11.9 percent. And 100 percent for  
15 ratepayers if the return on equity exceeds 11.9 percent.

16 Option one also requires NYSEG and RG&E not  
17 to file cases for 12 months. So, it's effectively a 23  
18 month stay out provision.

19 By contrast, option three introduces no new  
20 earnings sharing provisions upfront, but rather relies  
21 on the sharing provisions already in place.

22 I will recap those for you. For RG&E gas  
23 earnings sharing begins at 12 percent. Electric for  
24 RG&E begins at 12.25 percent.

1           For NYSEG, gas earnings sharing begins at  
2 12.5 percent, and there is not an electric delivery  
3 earnings sharing mechanism in place for NYSEG at this  
4 point.

5           However, there is a commodities provision in  
6 place for NYSEG related to its fixed priced option, FPO.  
7 More specifically, NYSEG keeps our earnings from the FPO  
8 up to \$10 million and shares excess earnings beyond the  
9 \$10 million, 85/15 ratepayers and shareholders. NYSEG  
10 is fully at risk for FPO losses.

11           We also adopted a similar mechanism for RG&E  
12 on the commodity side at the main session in August  
13 where -- exactly the same as NYSEG except that the  
14 threshold is \$6 million of profits rather than \$10  
15 million of profits.

16           Option three also requires the companies to  
17 either file rate cases in the next 12 to 18 months, or  
18 become subject to earnings sharing commencing at 10  
19 percent and 80/20 ratepayer/shareholder allocation after  
20 18 months. So, effectively, option three would be a 23  
21 to 29 month stay out at minimum.

22           Your determination of whether option one or  
23 option three better meets the public interest depends on  
24 your expectations about four things.

1           They are: The level of energy efficiency  
2 savings and efficiency gains available from a  
3 transaction; the level of the costs to achieve these  
4 savings; the timing of these savings and costs. And how  
5 likely you believe it is that the more stringent short  
6 run earnings sharing provisions of option one could lead  
7 to the merger not being consummated.

8           If you expect large net savings from this  
9 transaction in the short run, and do not believe there's  
10 great uncertainty about merger consummation, then option  
11 one is superior to option three.

12           If you expect there are no short run synergy  
13 savings or efficiency gains from the merger and are less  
14 concerned about the merger being consummated -- merger  
15 not being consummated, then option three is the better  
16 of the two options.

17           To help sort this out, I can also provide  
18 you with just a little bit more information.

19           Iberdrola expressed a strong dislike for an  
20 earnings sharing mechanism put forth by staff that is  
21 quite similar to what we have recommended under option  
22 one in this case.

23           Thus, while it's very difficult to predict,  
24 there is some basis for determining that there is some

1 risk that the merger might not be consummated under  
2 option one. There's probably more risk under option one  
3 than option two -- I'm sorry, option three.

4 Also, experience in recent mergers, National  
5 Grid's acquisition of Niagara Mohawk, National Grid's  
6 acquisition of KeySpan, and Energy East's acquisition of  
7 RG&E, all suggest that net savings from the merger and  
8 in the short run are not likely to be very great. That  
9 they could be zero or less.

10 This occurs because, as I alluded earlier,  
11 the costs to achieve synergy savings is often the  
12 greatest in the early years and the synergy savings and  
13 efficiency gains themselves are often the lowest in the  
14 early years.

15 So, the cost to achieve a savings start out  
16 high and go down, synergy savings and efficiency gain  
17 potentials start out lower and increase.

18 So, generally, there's not a lot of  
19 potential for gains in the short run from mergers in New  
20 York. At least that's what we have seen.

21 What this suggests is a little added value  
22 in the use of the stringent earnings sharing provisions  
23 in option one.

24 However, I also recognize that Commissioner

1 Curry two weeks ago asked a real good question. I  
2 already noted the significant short run savings that  
3 Iberdrola realized as a result of the Scottish Power  
4 transaction and questioned why it would not be  
5 unreasonable to expect similar savings here.

6 I just want to bring you up to date because  
7 I have done a little more research on what those savings  
8 are.

9 You can go to the Iberdrola and Scottish  
10 Power's web sites and you can see copies of presentation  
11 and guidance documents suggesting that in the longer run  
12 Iberdrola expects to realize about 20 percent reductions  
13 in net operating expenses at Scottish Power, which  
14 sounds pretty good.

15 But if you go and look at a little more of  
16 the detail, you will find, for example, on page 37 of  
17 their June 2008 quarterly report that their actual  
18 review of Scottish Power indicates that approximately 15  
19 or 16 months into the transaction they were able to  
20 identify that the net operating expenses for Scottish  
21 Power are about 8 percent lower after the merger than  
22 they were before the merger, which is still a  
23 substantial number.

24 But to put in context for New York, similar

1 reduction for NYSEG and RG&E would be about \$40 million  
2 based on net operating expenses.

3 So, that's just the background information.  
4 I am going to tell you why I don't think the Scottish  
5 Power template fits that well with the Energy East  
6 situation and it's based on the evidence provided in  
7 this record.

8 And that is that Scottish Power had several  
9 hundred individual information technology applications  
10 outstanding and they specifically contracted for those  
11 applications. They basically had business arrangements  
12 with a variety of entities to deliver those  
13 applications.

14 After the merger, Iberdrola kind of cut  
15 through this morass and consolidated its IT functions  
16 and realized significant savings.

17 By contrast, the record here indicates that  
18 Energy East consolidated its IT functions several years  
19 ago at about the same time as when it acquired RG&E. In  
20 addition, it also looks like the bulk of the Iberdrola  
21 savings were realized from IT applications on the  
22 generation side of the business, but only about 10  
23 percent of the savings were realized from the T&D side  
24 of the business.

1           So, it does not appear that the same  
2 opportunities that existed for Iberdrola as part of the  
3 Scottish Power transaction present themselves here.

4           Two other points which were also touched on  
5 earlier which also suggested it may be difficult for  
6 Iberdrola to immediately come in and find savings  
7 reference the fact that Energy East's acquisition of  
8 RG&E already provided significant synergy savings for  
9 ratepayers. The record in this case indicates over the  
10 next five years it could be as much as \$400 million.

11           Moreover, I already talked about the  
12 declines in head count for Rochester Gas & Electric and  
13 NYSEG that have occurred since 2004. So, I think  
14 together this information suggests that Energy East has  
15 already realized large savings and as such it may be  
16 more difficult for Iberdrola to come in and find added  
17 savings as easily as it did with Scottish Power.

18           With all that said, I think there is  
19 potential for synergy savings and efficiency gains in  
20 the long run. I base this on the evidence provided by  
21 staff in the record, the rebuttal testimony by Iberdrola  
22 which basically admitted that, and the very fact that  
23 Iberdrola paid a price substantially above Energy East's  
24 book value when they acquired the company.

1           This all suggests that it is reasonable to  
2 expect savings from the merger at some point in the  
3 future.

4           Because of this conclusion, and because of  
5 where I think the timing of the savings are likely to  
6 be, I think it is more important to have a stringent  
7 earnings sharing mechanism in place, or alternatively, a  
8 rate review in place by the third year after merger  
9 consummation, than it is to have a very stringent  
10 earnings sharing provision upfront.

11           So, overall, it's my conclusion that  
12 stringent short run sharing provisions and stay out  
13 provisions, option one, don't represent a dramatic  
14 improvement over the provisions of option three.

15           And given the added certainty under option  
16 three that the merger will be consummated, I see option  
17 three as providing the best combination of value,  
18 protections and certainty.

19           That concludes my presentation.

20           COMMISSIONER CURRY: John, this may be going  
21 over a little bit some of the ground you already covered  
22 last week.

23           What is your best guess as to the likelihood  
24 that the targets in either option one or -- I guess that

1 sort of answers it -- or option three will be invoked,  
2 based on what you have seen thus far for this year, last  
3 year the historical trends, how do you see the process  
4 working?

5 MR. STEWART: At this point the only company  
6 that would be -- on the basis of 2007 results, the only  
7 company that looks like it would be in any danger of  
8 invoking the delivery sharing provisions on a going  
9 forward basis would be RG&E.

10 However, something has happened with RG&E  
11 that is going to significantly reduce their earned  
12 return, and that is the fact that the Rochester  
13 transmission project is gone -- have gone into the rate  
14 base.

15 That's a significantly large investment,  
16 that it will likely reduce the earned return on equity  
17 for RG&E by 200 to 300 basis points. So, that's going  
18 to substantially bring RG&E's return on equity down.

19 In addition, the NYSEG returns on equity for  
20 electric and gas operations are in the tens right now on  
21 the basis of 2007 results. Given ongoing effects of  
22 inflation, and assuming that there aren't major savings  
23 out there along the lines of what I have concluded, I  
24 suspect those numbers are going to be lower in 2008 and

1 2009, and in all likelihood the amount of sharing under  
2 either option -- the amount of sharing under option  
3 three is probably just non-existent and the amount of  
4 sharing under option one is very low at best.

5 COMMISSIONER CURRY: Thank you.

6 One additional point. Does the stay out  
7 provision in option one cause you to reconsider the  
8 commencement point of 9.9?

9 MR. STEWART: I have been actually thinking  
10 about that as I was saying it today because I didn't  
11 have the information in the last -- at the last session.

12 But, in effect, what we have under both  
13 scenarios are stay outs of two to two and a half years.  
14 So, given what we have done in other cases we could  
15 easily justify adding 20 basis points on to the starting  
16 point for the sharing provisions.

17 So rather than sharing provisions starting  
18 at 9.9 percent, which is our current cost to equity  
19 estimate for NYSEG and our Rochester Gas & Electric,  
20 their sharing provisions could start 20 basis points  
21 higher or 10.1 percent.

22 COMMISSIONER CURRY: Thank you.

23 COMMISSIONER HARRIS: Following up on that,  
24 so, if we had a higher starting point for an earning

1 sharing mechanism going forward it would sort of be a  
2 hybrid of option one and option three?

3 Or if we were to have an earnings sharing  
4 mechanism, let's say 50/50, and beginning at 11.9 or 11  
5 point -- I mean we can really come up with any  
6 combination, could we not?

7 MR. STEWART: If you -- I mean if you are  
8 talking about what I just -- you are talking about what  
9 I just said about the adjustment? I just said we could  
10 justify going from 9.9 to 10.1.

11 That doesn't--that's not going to change the  
12 sharing percentages. It's just going to increase the  
13 threshold at which sharing would begin under option one  
14 and then the 18 month part of option three.

15 COMMISSIONER HARRIS: But couldn't we have a  
16 50/50 earning sharing mechanism from option one, and  
17 keep it out 12, 18 months under option three, so if  
18 there are any synergy savings in the short term, as you  
19 define it, it might be captured at 50/50 but keep it out  
20 12 to 18 months.

21 MR. STEWART: Under -- well, under option  
22 three what we would have to do is we would have to  
23 change the starting point for the sharing. Right now  
24 under option three we are leaving the existing sharing

1 provisions unchanged in the rate plan.

2           So you would effectively have to modify  
3 option three to basically take the sharing provisions of  
4 option one. You just overlay that.

5           That's probably in my view something that  
6 the companies would see as the worst of both options  
7 because you are taking the stringent sharing provisions  
8 of option one, and you would be layering those on top of  
9 the very stringent, even more stringent, longer term  
10 sharing provisions of option three.

11           COMMISSIONER HARRIS: So, having --  
12 reviewing our discussion of last week, and I will just  
13 reiterate my question or concern about you say, well,  
14 the company has strongly opposed an earning sharing  
15 mechanism so it's not being recommended necessarily,  
16 strongly recommended here.

17           But they strongly opposed a lot of other  
18 items that are being recommended. So I just -- I know  
19 we are trying to pick and choose and I'm trying to  
20 obviously come up with the best possible scenario for  
21 the company and the ratepayers.

22           I am not looking to do anything other than  
23 try to get a fair or a good scenario, but I am looking  
24 at sort of a little bit of option one and a little bit

1 of options three, as opposed to making it so black and  
2 white and trying to come up with something that might be  
3 more reasonable for everybody.

4 MR. STEWART: I understand that. Again, I  
5 am somewhat concerned about if we put more sharing into  
6 option three, which it sounds like what you are  
7 recommending, you increase the likelihood that they are  
8 not happy with option three and we risk losing the PBA  
9 balance.

10 So, I'm just -- it's obviously a judgment  
11 call and you are just going to have to use your judgment  
12 on this, but I just see more risk of the deal not being  
13 consummated if we were to do that and if we just simply  
14 go with option three as it stands.

15 As I said earlier, I don't see really that  
16 much value in going with the additional or the more  
17 stringent short term sharing provisions.

18 COMMISSIONER HARRIS: But what if there are  
19 synergy savings?

20 MR. STEWART: If there are synergy savings  
21 in the short run, then under -- if you go to option  
22 three then we basically would have to -- we would get  
23 them after 18 months under the sharing provisions, or we  
24 would get them when they -- if they file a rate case

1 after 12 months effectively when we set -- when we reset  
2 rates.

3 CHAIRMAN BROWN: That's a good thing. I  
4 mean if they can aggressively achieve synergy savings  
5 and we get to capture them in 18 months that overall is  
6 positive to the ratepayer, not a negative, even though  
7 there would be a short term ability for them to get  
8 above what we might consider a reasonable--

9 COMMISSIONER HARRIS: But it might not be 18  
10 months. It's more likely to be 12 to 18 months plus 11  
11 months, so it's 29 months.

12 MR. STEWART: But there would be a sharing  
13 -- the sharing mechanism could kick in if they did not  
14 file a rate case.

15 COMMISSIONER HARRIS: Within?

16 MR. STEWART: Within the 18 month time  
17 frame.

18 COMMISSIONER HARRIS: Even if they did file  
19 a rate case in 18 months it would take 11 months, so  
20 it's still 29 months until we...

21 CHAIRMAN BROWN: Potentially.

22 COMMISSIONER HARRIS: Potentially.

23 MR. STEWART: Yes.

24 COMMISSIONER HARRIS: So, potentially, even

1 if they did file it could be 29 months.

2 MR. STEWART: Yeah. The only other thing I  
3 would add is something that I think Tom Dvorsky said at  
4 last session, and that is: Based on our experience, the  
5 risks of going out and spending the money to achieve  
6 those synergy savings, because they have not come in  
7 asking for any kind of special accounting treatment and  
8 deferral, along those lines in other mergers, that's  
9 totally on their dime.

10 They are totally at risk for spending those  
11 monies and trying to achieve those savings in the short  
12 run. So again, I just don't see a great potential for  
13 significant short run earnings above those caps.

14 MR. DVORSKY: Yeah, it's a judgment call.  
15 I'm not going to indicate -- and we just have to look at  
16 what they have to achieve to get the synergies.

17 And the best comprehensive -- the most  
18 recent and best comprehensive review that was put on the  
19 record and cross-examined and testified to, etc., was  
20 the KeySpan-Grid merger.

21 And what was that? That was two New York  
22 companies, plus some New England companies, merging.  
23 And it wasn't the first one -- entry into the United  
24 States, which was done by Grid and Niagara Mohawk

1     beforehand.

2                     Looking at those numbers and let me -- for  
3     Long Island, for the two year period we are talking  
4     about, the costs to achieve was 17.2 million and the  
5     synergies was 14.8 after two years. It drastically  
6     flipped the third, fourth year where the synergies were  
7     much greater than the costs to achieve. Drastically.  
8     Started \$10 million difference, for example, for the New  
9     York companies, and about the same for the Long Island  
10    companies.

11                    For New York, the cost to achieve was 29  
12    million in the first two years and the synergies was 25  
13    million, so that gives us some comfort that -- and  
14    John's analysis of what they are earning at this point  
15    does not include any costs to achieve into it.

16                    So if you add this number as a net negative,  
17    that reduces their return and also you are getting 50  
18    percent of zero. And you have to judge that. You could  
19    get 50 percent of something else and you have to judge  
20    that in terms of with all the other factors on whether  
21    or not the deal is a deal from their perspective.

22                    I am not saying it is or isn't because I am  
23    not in their boardrooms or their strategies and so on,  
24    so forth. And it's going to be a judgment call.

1           So, we are just giving you a perspective  
2 from our experience that we don't see any really  
3 significant synergy savings in that two to 29 -- two  
4 years to 29 months and there is a risk.

5           And the \$275 million, there is an analysis  
6 in your report. Just in order of magnitude, you could  
7 use it different ways, but that's about a five percent  
8 reduction of delivery for five years for these  
9 companies.

10           That's significant. It's the only rate case  
11 for that long. That's a significant reduction. And  
12 while everybody looks at different numbers, from my  
13 perspective, that's real.

14           On another context, the ratepayer has an IOU  
15 of about \$400 million that it owes the Energy East  
16 companies net. It's like 800 and 400 when you net it  
17 rough.

18           So the 275 million--

19           CHAIRMAN BROWN: Just to be clear on that,  
20 Tom. That's due to deferrals that have accrued over the  
21 years both ways?

22           MR. DVORSKY: Yes. That what the customer  
23 owes the company right now that they would have to pay  
24 through different ratemaking mechanisms from the get go.

1           So, this really dents that, if you just want  
2 to offset the 275 against the 400. Just want to  
3 understand when you are weighing these things --and it's  
4 a judgment call, I'm not going to say it's an easy one,  
5 I just want to make sure at least you understand the  
6 issues and the money we are talking about.

7           COMMISSIONER ACAMPORA: I will kick in here.

8           Last week when we talked about the 275, we  
9 kind of alluded to the fact that we thought -- John, you  
10 mentioned you could go to the \$300 million range, so  
11 that's where I was hoping to go.

12           But I think when we just talked about the  
13 additional 100 million, and your offering of the 25  
14 percent, kind of balances out that thought.

15           I am interested, however, in the rate case  
16 coming in in 12 months. I think that's important. I  
17 don't want to see it going 18 months. I see one coming  
18 in in 12 months because from the closing date of the  
19 transaction, I think it's important that as soon as  
20 possible we can effectuate a review on the fixed price  
21 offering and also the imposition of the RDMS.

22           So, I think that the 12 months is an  
23 important date.

24           CHAIRMAN BROWN: Let me just clarify

1 something on that, Pat.

2 What we would be talking about in my mind is  
3 four rate cases, correct? We got two gas companies and  
4 two electric companies.

5 Maybe what we want to consider, and maybe  
6 over the break we can talk about this a little, where we  
7 want the focus to be, where to take your overearnings  
8 concerns in account, and you just want to get going into  
9 account.

10 What company would we -- might we want in 12  
11 months. It might not make sense for any of us,  
12 including our own staff resources, to have four major  
13 cases rush in on the same day.

14 So, it's something we might want to think  
15 about and maybe you guys over the break would -- might  
16 want to make a recommendation.

17 MR. STEWART: It's probably a resource issue  
18 on this side as well as on the company's side as well.

19 COMMISSIONER ACAMPORA: Absolutely, but I  
20 think we should have something going in the 12 months.

21 MR. DVORSKY: Let's talk about that.

22 CHAIRMAN BROWN: And have staff--

23 MR. DVORSKY: Let me just clarify:

24 Basically you want us to look at a 12 month period, it

1 could be for one company or sequence them, and for that  
2 company if they don't come in for 12 months then the  
3 earnings cap of the 80/20 kicks in for that particular  
4 company at let's say 12 months and then if it's 15.

5 Okay, I just want to understand that.

6 CHAIRMAN BROWN: Something like that?

7 COMMISSIONER ACAMPORA: Yes. That's good.

8 COMMISSIONER CURRY: Going back a couple of  
9 steps, John.

10 It's my understanding, so correct me if I am  
11 wrong, that if there are costs to achieve in the synergy  
12 arena they are effectively amortized over a period of  
13 time in deferrals.

14 So that when we are speaking of whose nickle  
15 is going to be spent in costs to achieve, are we talking  
16 about it -- you have the chance to correct me if I am  
17 wrong, so, start with that. That's my premise and I  
18 have a question that follows.

19 MR. STEWART: That is a treatment in other  
20 cases where companies have provided estimates of costs  
21 to achieve, synergy savings and efficiency gains up  
22 front.

23 And as a result of those, we have decided to  
24 match the recognition of costs to achieve with the

1 timing of the synergy savings to have a more even effect  
2 on income.

3 Here the company has made no such request,  
4 so when it incurs costs to achieve, synergy savings to  
5 the extent they are operating, and maintenance expenses,  
6 those expenses are incurred and recognized in income  
7 statement in the year they are incurred. There would be  
8 no deferral treatment afforded them at this point.

9 COMMISSIONER CURRY: Then that clarifies  
10 what I was going to ask Tom. So, thank you.

11 CHAIRMAN BROWN: With that, I would just  
12 like to take a brief minute.

13 COMMISSIONER ACAMPORA: One more question.

14 Last week I asked about the Attorney General  
15 investigation. We have received many letters and  
16 e-mails from folks that are out there who are interested  
17 in ongoing problems in various municipalities. And the  
18 answer was that, oh, they can't tell us anything.

19 I did request that the Chairman look into  
20 something through the Governor's office, so as we  
21 proceed that we wouldn't be proceeding and making some  
22 wrong step in this process.

23 So, I would just like to know if we have any  
24 new news.



1 much those same facts, that at this point in time those  
2 are the companies that are the focus and we have no  
3 information whatsoever that Iberdrola is a focus in any  
4 way.

5 But, again, there is the confidentiality,  
6 so, but that's the best I've been able to figure out.

7 COMMISSIONER HARRIS: It's a concern for me  
8 as well. There is a Utica newspaper article where it  
9 mentions that the officials from Otsego 2000 have sent a  
10 letter to the New York State Attorney General requesting  
11 that they investigate the developer of the project.

12 I mean I don't know the truth of it, whether  
13 it's factually accurate or not, but there is an article  
14 looks like August 30th in the Utica newspaper where  
15 Otsego 2000 has sent a letter requesting an  
16 investigation.

17 MS. CLEARY: Investigation into what  
18 project, Commissioner?

19 COMMISSIONER HARRIS: Jordanville, in which  
20 Iberdrola Renewables is the owner.

21 MS. CLEARY: We did receive a letter,  
22 another letter, regarding that and there is concern with  
23 respect to some of the unconfirmed information regarding  
24 a change in plans with respect to Jordanville.

1                   So, it's -- there are inquiries, and we are  
2                   inquiring also on the basis of the letter that we  
3                   received.

4                   COMMISSIONER HARRIS: I would just concur  
5                   with Commissioner Acampora and the Chairman and I'm sure  
6                   Commissioner Curry that any and all information we would  
7                   like to be made aware of as soon as your office is  
8                   aware. And I guess all we have to rely upon is that and  
9                   our due diligence search.

10                  COMMISSIONER ACAMPORA: Doesn't make it  
11                  easy.

12                  COMMISSIONER HARRIS: No.

13                  MS. CLEARY: No.

14                  COMMISSIONER ACAMPORA: Doesn't make it  
15                  easy.

16                  MS. CLEARY: It doesn't. It would be  
17                  helpful to have the information.

18                  I would like to add that the alleged issues  
19                  related to Jordanville are not similar to what I  
20                  understand from the press release is the focus of the  
21                  Attorney General's investigation.

22                  So, just to clarify that. At least from the  
23                  letters that I have seen coming in.

24                  COMMISSIONER HARRIS: I think the newspaper

1 article might disagree with that statement but, again, I  
2 don't know -- I can't attest to the factual accuracy of  
3 any of this. I'm just relaying what I read in the paper  
4 here.

5 MS. CLEARY: We will keep you apprised --

6 COMMISSIONER HARRIS: Thank you.

7 MS. CLEARY: -- of any further  
8 investigation. We will also track it from our office.

9 COMMISSIONER CURRY: I would just add,  
10 because this is a significant concern to me as well, but  
11 perhaps there may come a time when we might prefer some  
12 help and assistance.

13 MS. CLEARY: We have already done that --

14 COMMISSIONER CURRY: Good.

15 MS. CLEARY: --in response to requests that  
16 came in through the Attorneys General to me.

17 CHAIRMAN BROWN: I think we will take a  
18 break. Maybe it would be worthwhile for me to attempt  
19 to summarize what the staff recommendation is to us at  
20 this point.

21 And then we can -- you can disagree with me  
22 if I get it wrong, but I think the recommendation, along  
23 with all the conditions and stipulations that you have  
24 laid out, I'll go right to the money.

1           The PBA that you are proposing at this point  
2 remains the midpoint, 275 million, but I think what's  
3 changed from the recommendation last week is an  
4 additional commitment that you are going to require of  
5 the company of a total of 200 million of wind investment  
6 that would be what I best describe as backed up by a 25  
7 percent of the incremental 100 million economic  
8 development fund that would be triggered if the  
9 commitment to the wind is not fulfilled within  
10 approximately a two year time.

11           As we discussed, not a hard two years, but  
12 two years we will then find out. And I think you are  
13 recommending option three in terms of sharing, but you  
14 admit it's a very close call and very much a judgmental  
15 call.

16           And I think one thing you have heard from us  
17 -- I think you have heard a couple things, but the one  
18 thing that I know would be Commissioner Acampora's  
19 request maybe to think about timing of rate cases and  
20 whether we might want to move -- especially if we go  
21 with option three, whether we might want to move at  
22 least one of the companies up in the time table, one of  
23 the companies.

24           Is that it?

1           MR. STEWART: The only other thing I have is  
2 just Commissioner Acampora's recommendation to move up  
3 the timing of the code of conduct issues as well.

4           CHAIRMAN BROWN: Yes, from 120 to a 60 day  
5 report and hopefully a 90 day action I believe is what  
6 we decided on.

7           So, with that, why don't we all breathe,  
8 take a break, and come back at 1:00.

9           (Recess taken.)

10          CHAIRMAN BROWN: I would like to call the  
11 session back to order, please.

12          When we left we had at least one or two  
13 outstanding issues that staff wanted to discuss. I  
14 guess the first clarification I will ask for is there  
15 was some discussion on option three about the window  
16 that currently exists I think of 12 to 18 months, and  
17 your recommendation that that could extend with an 11  
18 month rate case to 29 months.

19          And would there be any way to perhaps move  
20 that up, but there was also concern expressed would that  
21 be too much all at once.

22          So, with that, I know staff went and talked.  
23 I would love to hear staff recommendation on what you  
24 think the best course of action would be on that issue.

1 MR. STEWART: Just as background, I think  
2 the initial reaction that it would be a lot at once is  
3 still probably there, but I mean you think about it a  
4 little bit more and it becomes obvious that it's common  
5 costs, common -- a lot of common functions, and there is  
6 definite legitimate reasons for wanting to consider all  
7 four companies at the same time rather than to stagger  
8 the filings.

9 So, as a result, we would modify option  
10 three at this point to require that in the event that  
11 the companies do not file rate cases after 12 months of  
12 the earning sharing provision at 10.1 percent, 80/20  
13 ratepayer/shareholder would immediately kick in.

14 That's a modification in that it eliminates  
15 the 12 to 18 month window, and basically starts the  
16 threshold for earnings sharing after 12 months.

17 CHAIRMAN BROWN: So, let me understand this.  
18 This is not a requirement that they get in in 12 months.  
19 It is simply that if at the end of 12 months they  
20 haven't filed, the earning share mechanism immediately  
21 starts kicking in.

22 MR. STEWART: That is correct.

23 MR. DVORSKY: Not at the end of 12 months.  
24 There would be a prohibition of filing for 12 months so

1 it would have to be...

2 CHAIRMAN BROWN: So, they couldn't file  
3 before 12 months?

4 MR. DVORSKY: Yes.

5 CHAIRMAN BROWN: On the one year  
6 anniversary.

7 MR. DVORSKY: Yes.

8 CHAIRMAN BROWN: I assume we are talking  
9 about probably from the closing date of the...

10 MR. DVORSKY: Of the --

11 MR. STEWART: Consummation.

12 MR. DVORSKY: --acquisition. Consummation.

13 CHAIRMAN BROWN: At 12 months if they  
14 haven't filed a plan, and maybe there would be a small  
15 window in there.

16 MR. DVORSKY: You may want to put in the  
17 order that if they close the 15th, let's say, the 12  
18 months, the first of the year, something of that nature.

19 COMMISSIONER CURRY: First of the month.

20 MR. DVORSKY: First of the month, sorry.

21 CHAIRMAN BROWN: So, at the end of 12 months  
22 they would have the option of filing a rate case, which  
23 would then suspend the earnings sharing mechanism for  
24 that 11 month period.

1 MR. STEWART: Yes.

2 CHAIRMAN BROWN: If they didn't file a rate  
3 case the earnings sharing mechanism is in place.

4 MR. STEWART: Yes.

5 CHAIRMAN BROWN: Is that clear to everybody?  
6 Were there any other clarifications that we  
7 needed to go through?

8 Rafe, is there anything else we need to  
9 present today?

10 JUDGE EPSTEIN: Not that I am aware of,  
11 Chairman.

12 CHAIRMAN BROWN: I guess we are just about  
13 ready to go for a vote here. What I would like to  
14 provide is an opportunity for any Commissioners to make  
15 any comments that they feel they would like to make.

16 COMMISSIONER HARRIS: I know nobody is  
17 surprised that I grabbed the mike first, but...

18 I don't have any prepared statements. I  
19 just have a few points I just wanted to make.

20 When it comes to investment in New York  
21 State, I personally want to encourage and foster any  
22 businesses that want to come in and invest in New York  
23 State. I don't want to be an obstacle.

24 Our statutory obligation is to provide just

1 and reasonable rates and safe and reliable service for  
2 the ratepayers.

3 I think here a five percent delivery rate  
4 reduction for five years is a good thing, and I applaud  
5 staff for all their efforts in all the work that's gone  
6 into this, leading us up to this five percent rate  
7 reduction.

8 And as far as having the conditions and the  
9 mitigation measures, the condition assessment report,  
10 and the annual reports and the five year planning  
11 reports, those were all great things.

12 The doubling of the negative adjustments for  
13 the reliability measures, I think those are great  
14 things.

15 This isn't a perfect deal, and it may not  
16 even be a great deal, but in my opinion I think it's a  
17 good deal. And I am not comfortable gambling with other  
18 people's money.

19 And this is \$275 million, potentially \$300  
20 million, added 25 in economic development money. That's  
21 real money in a time period where the upstate residents,  
22 downstate residents, we could all use it.

23 So, like I said, I am just not comfortable  
24 gambling that the company might walk away if we impose a

1 higher PBA amount.

2 And I take great comfort that most of the  
3 parties, or all of the parties except for staff, either  
4 outright supported this transaction or supported it with  
5 conditions that I feel we have imposed here today and  
6 throughout the past few weeks -- CPB, Independent Power  
7 Producers, NRDC, and all the others, so I take great  
8 comfort in that.

9 But like I said I don't -- it's not a  
10 perfect deal, and it may not even be a great deal, but I  
11 think it's a good -- it's a good deal that I am not  
12 worth -- I am not willing to risk having the company  
13 walk away from.

14 It is my expectation, my hope, that this  
15 company, who profess to be a good corporate citizen,  
16 lives up to this reputation, and that they do provide  
17 the jobs and the investment in New York that they have  
18 referred to over and over again in the press.

19 Unfortunately, this was outside the record,  
20 and to maintain the integrity of the process and the  
21 proceeding we couldn't actually consider what was  
22 outside of the record. But it is my expectation and  
23 hope that this company does embrace the area, the  
24 geographical region, and become a good corporate citizen

1 and fulfill all the energy efficiency goals that we put  
2 forth.

3 And that's it.

4 CHAIRMAN BROWN: Thank you, Commissioner  
5 Harris.

6 Whichever order you would like to go.

7 COMMISSIONER ACAMPORA: Thank you.

8 As usual, thanks to the staff. We don't get  
9 anywhere unless the staff provides us with the  
10 information so that we can make our decision.

11 After years of being in the legislature, I  
12 have learned something that Commissioner Harris just  
13 alluded to: Nothing is ever perfect. But you try to  
14 make the best of what you can.

15 That's our job here, to weigh the positive  
16 versus the negatives, and if there are more positives  
17 then it really is your obligation to move further ahead  
18 with keeping in mind that this Commission can, at times,  
19 come back and review issues, particularly in a rate  
20 case, if we feel that there is more to be done.

21 We know, as was mentioned before, our  
22 economy is lagging, particularly upstate New York. For  
23 years it has. We will hold this company true to its  
24 word. We will make sure that it does make the

1 investment should this move forward.

2 It's been a long and arduous trip, but as  
3 soon as this train stops we will be hopping on another  
4 train to make another decision. So, it goes on and it  
5 continues to go on here.

6 But, really, my heartfelt thanks to the  
7 staff for all their hard work. Every time we kept  
8 telling them go back and give us something more and  
9 think out of the box, they always do that. Really, it's  
10 a great service to the ratepayers of the State of New  
11 York. So, I would like to say thanks again.

12 COMMISSIONER CURRY: I have very little to  
13 add to my colleagues' compliments and observations.  
14 Learned early on that the perfect is the enemy of the  
15 good. I agree with Commissioner Harris this is to the  
16 good.

17 I also very much appreciate the actions,  
18 imagination and efforts of staff to get us where we are  
19 now.

20 We built on another European company's,  
21 National Grid's acquisition of KeySpan, in certain key  
22 components of this. And I hope that the way that we  
23 deal with the issues presented here, in conjunction with  
24 the way we dealt with the KeySpan acquisition by Grid,

1 encourages companies from outside the US, companies  
2 within the US, to consider New York as a good investment  
3 locale and a good place to place their bets on the  
4 future.

5 That's it.

6 CHAIRMAN BROWN: Commissioner Harris.

7 COMMISSIONER HARRIS: I just left one point  
8 out, which was on vertical market power. I personally  
9 will be watching and reviewing -- I have three or four  
10 more years to come on my term.

11 So, I will personally be reviewing and  
12 making sure that vertical market power is not exercised,  
13 as much as we can enforce it, recognize it, to the  
14 extent possible.

15 Thank you.

16 CHAIRMAN BROWN: I can't go one more session  
17 without doing my scale one more time, though, but in the  
18 end that's how I have been thinking about this case all  
19 along is that there is no doubt that on the risk side of  
20 the scale there are some risks, and vertical market  
21 power concerns, and our steadfast policy isn't taken  
22 lightly at all.

23 I think we had the appropriate mitigation  
24 measures in place that in this instance that we allayed

1 those concerns as well as we could, but we retain those  
2 concerns.

3           On this side are the benefits. As both of  
4 the Commissioners have mentioned, the \$275 million would  
5 be better for the ratepayers if it was \$375 million. I  
6 don't know what the magic is, but I do know I think \$275  
7 million, if it's truly about a five percent for five  
8 years, is a very significant balance that gets me to a  
9 net positive.

10           Iberdrola's got a reputation of being a  
11 leader in renewable resources and that hopefully helps  
12 us achieve our renewable goal in New York State.

13           On the other hand, I think Commissioner  
14 Harris says it very well, we are going to hold them to a  
15 higher standard now because they are not just a wind  
16 developer, they are an owner of a very important  
17 franchise in New York State.

18           I think a lot of new responsibilities come  
19 with that. Sandy's consumer protections, Tom's  
20 reliability protections, we are going to be taking a  
21 good hard look at. And we hope that the experience of  
22 this utility can really be used for the benefit of New  
23 York State.

24           So, I am hopeful, I am very hopeful, that

1 new ownership of the facility will help us achieve many  
2 of the goals we are trying to achieve here in New York  
3 State.

4 And I share Commissioner Harris' -- and I  
5 know the other two Commissioners, who I can count on,  
6 for vigilance in watching out and watching behavior and  
7 certainly staff's.

8 I will just echo staff has been, and Judge  
9 Epstein and all of staff, it's been a long, hard road  
10 and I really appreciate all the work that everybody has  
11 done along the way.

12 So, with that...

13 COMMISSIONER ACAMPORA: I just want to add  
14 one more thing, Chairman.

15 I think this case has also brought out to  
16 all of us that sit here at the dais that it is incumbent  
17 upon us to review our RPS and to make sure that we are  
18 doing the right thing.

19 CHAIRMAN BROWN: I think what Commissioner  
20 Acampora is saying: Wind has some great benefits to New  
21 York but it can also have some problems. Problems in  
22 terms of deliverability, problems in terms of local  
23 impacts, problems in a variety of different ways.

24 I think it's -- I think we will be taking

1 another look at the renewable portfolio standard come  
2 this Fall, and I think we have got a lot of issues that  
3 we need to address, including some of the issues that  
4 Commissioner Harris raised of is there a different role  
5 that we should be thinking about utilities, or not, in  
6 terms of promoting renewables. So, I would take that as  
7 a lesson to be learned here, too.

8 So, I think we have a recommendation on the  
9 table. I believe I summarized it before lunch. You  
10 made the one correction in option three that I think we  
11 all agreed to, moving to the 12 month window for rate  
12 case.

13 I always like to get this right. That an  
14 earnings mechanism -- sharing mechanism will kick in  
15 after 12 months if a rate case is not filed in that  
16 period. Not earlier, that period.

17 And with that, I think we are ready to go to  
18 a vote.

19 Any other comments? Hearing none, all those  
20 in favor of the recommendation please say aye.

21 (Ayes recited.)

22 All those opposed?

23 (No response.)

24 Hearing none, the recommendation is passed.

1                   What happens next here is then we will be  
2 working diligently to get the final order prepared and  
3 public.

4                   Any comment at all on that we need to make  
5 at this point?

6                   COMMISSIONER HARRIS: I would just say I  
7 would like to make sure that we all have the final sign  
8 off before that is released to the public.

9                   CHAIRMAN BROWN: We will run it by  
10 everybody.

11                   Madam Secretary, is there any other business  
12 that comes before us today?

13                   SECRETARY BRILLING: There is no additional  
14 business.

15                   Our next regularly scheduled session will be  
16 Wednesday the 17th at 10:30 a.m. here in Albany.

17                   CHAIRMAN BROWN: Thank you. The meeting is  
18 adjourned.

19                   (Meeting adjourned.)

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