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COMMISSIONERS:

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ROBERT E. CURRY, JR.
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D I S C L A I M E R

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

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

SECRETARY BRILLING: There are no changes.

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

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

Judge.

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

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

The first of these would be -- just by way of introduction, at the last session I gave you a quick update concerning the additional correspondence that had come in since the previous session, and since last week I would say we received 50 to 60 additional letters in opposition to the proposed transaction.

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

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

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

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

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

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

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

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

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

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

Furthermore, while we recommend the employment of mitigation measures herein, as I just said, they are not complete, meaning that they will continue to be a residual risk that the T&D company will be able to exercise vertical market power despite these mitigation measures.

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

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

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

Therefore, in the context of an approval of the acquisition, in which you permit Iberdrola to continue to own wind generation, we recommend that you impose several conditions on the transaction designed to mitigate, although we recognize that they do not completely eliminate, the risk that Iberdrola could exercise vertical market power.

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

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

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

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

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

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

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

MR. ADDEPALLI: Good morning, Commissioner Curry.

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

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

So, the study that we are contemplating or recommending that you ask the utilities to conduct is to identify such potential congestion pockets in your service territories where generation could be bottled, and it should also identify what transmission measures would be required to alleviate the congestion and assess the cost effectiveness of doing so, of implementing these transmission upgrades.

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

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

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

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

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

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

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

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

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

COMMISSIONER CURRY: Thank you, Raj.

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

MR. ADDEPALLI: It dovetails nicely.

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

And they would have to work with the utility and the ISO and perhaps other utilities as needed. So, this study would be more of a generic study as opposed to one by one to help identify what you identified as a concern before.

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

COMMISSIONER CURRY: Thank you.

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

Thank you.

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

MR. ADDEPALLI: Thank you.

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

In the item in front of you today, Attachment B to the revised PBA memo dated August 29th that's describing the vertical market power related conditions, we tightened up the language a bit more again in terms of which entity should file and the dates for filing.

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

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

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

And two conditions deal with dispute resolution.

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

We are modifying that now to say that they should be prohibited from owning any interest in fossil generation in New York State.

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

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

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

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

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

CHAIRMAN BROWN: Any?

COMMISSIONER ACAMPORA: Yes. Not more of a question, but just to make sure there is a clarification with regard to a prior Commission decision on the Russell Station.

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

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

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

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

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

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

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

COMMISSIONER HARRIS: That's all to date that's in phase two of this proceeding, correct?

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

COMMISSIONER HARRIS: You created phase two.

MR. ADDEPALLI: Yes.

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

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

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

MR. ADDEPALLI: You are correct.

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

CHAIRMAN BROWN: Correct.

MR. STEWART: Every additional filing requirement later on.

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

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

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

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

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

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

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

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

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

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

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

MR. ADDEPALLI: I think that last time we said that they should not be constructing new fossil generation. And I think that modifying to be more encompassing to say that they should be prohibited from owning any interest, even if they might not be constructed, but purchasing other fossil units.

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

COMMISSIONER HARRIS: Can I just jump in also?

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

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

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

So we are differentiating.

MR. DVORSKY: I got to correct a statement.

We are not allowing Energy East companies to purchase or invest or own wind or have interest in wind generation affiliate. So, we got to watch out.

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

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

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

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

That was one of the conditions.

CHAIRMAN BROWN: Any company has to clear--

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

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

CHAIRMAN BROWN: Company or facility?

COMMISSIONER HARRIS: Anything, both.

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

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

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

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

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

COMMISSIONER HARRIS: Now they have precedent.

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

They have an example that the Commission allowed under this record and your order, if you do approve it, a case to look at.

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

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

So, it is not controlling.

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

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

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

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

That's...

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

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

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

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

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

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

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

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

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

Rafe.

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

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

I think we are going to divert a little bit from that schedule because I have an issue that is related to wind and I think we want to bring it to your attention as an additional recommendation and while we are close to the topic I think we should probably address it.

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

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

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

Moreover, to assure that New Yorkers receive economic development benefits, we would also recommend that you require that in the event Iberdrola is unable to spend all of its additional $100 million amount within --I think we were thinking about a two year period at this point.

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

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

That concludes the recommendation.

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

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

MR. STEWART: Yes.

CHAIRMAN BROWN: If that incremental 100

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

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

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

Could you give me some examples?

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

MS. SLOANE: Good morning, Chairman and Commissioners.

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

But I think John Calcagni, who heads up the economic development programs, and he could give you a couple of examples of programs that have added jobs and incremental load.

MR. CALCAGNI: Good morning, thank you.

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

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

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

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

3200 kilowatts of incremental load was added.

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

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

CHAIRMAN BROWN: Thank you.

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

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

As far as head count changes, I asked people to look at the change in employee levels at RG&E and NYSEG since 2004. It looks like there's a total reduction of employees of 800 -- about 800 people.

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

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

MR. STEWART: I would certainly consider it.

CHAIRMAN BROWN: Okay.

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

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

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

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

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

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

MR. STEWART: Iberdrola.

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

MR. STEWART: Yes.

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

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

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

COMMISSIONER HARRIS: I am thinking.

CHAIRMAN BROWN: Pat, do you have any?

COMMISSIONER ACAMPORA: No.

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

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

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

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

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

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

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

This puts a fallback on it.

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

MR. STEWART: The recommendation, which I made, is if Iberdrola is unable to make that investment, that additional $100 million, the 25 percent provision takes over and doesn't -- that didn't -- my recommendation did not say basically unable because of X, Y and Z. Just said if they are unable to do it.

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

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

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

COMMISSIONER CURRY: Could I perhaps clarify for a second?

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

This limitation does not relate to the

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

I don't know whether that's helpful.

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

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

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

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

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

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

MR. DVORSKY: I would say it's the capital expenditure that the company put out for building the facility, not the energy or the RPS funds.

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

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

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

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

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

COMMISSIONER HARRIS: So it's capital expenditures.

MR. DVORSKY: Yes, it is.

COMMISSIONER HARRIS: All right.

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

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

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

MS. CLEARY: Now we will.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And I suggest at that time if a pot is developed to have a collaborative basically is the size of the pot. If it's large enough you may want a collaborative to see how you spread out those dollars in upstate New York.

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

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

MR. DVORSKY: Yes.

COMMISSIONER HARRIS: But it's our discretion.

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

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

The current amount, my understanding, is about $34 million in economic funding between the two companies on an annual basis.

COMMISSIONER HARRIS: On an annual basis.

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

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

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

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

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

CHAIRMAN BROWN: Commissioner Curry.

COMMISSIONER CURRY: John, going back a pace.

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

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

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

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

And I think it's possible we could have come up with a higher commitment, but I think we are really looking for a way of assuring that ratepayers are going to receive added value, either -- through economic development, hopefully, or through wind or through something else in a way that could enable the Commission to be more comfortable with our $275 million PBA adjustment.

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

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

MR. STEWART: 100 megawatts, approximately.

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

MR. STEWART: Yes.

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

COMMISSIONER HARRIS: Thank you.

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

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

Ranging -- a variety of issues from prohibiting recovery of goodwill in rates, to money pool protections. In most cases these agreements were pretty much structured along the lines of what was in the KeySpan-Niagara Mohawk case.

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

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

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

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

Obviously, if there is 34 issues and there's agreement on 16 then there is disagreement on 18. Two of those 18 issues were established -- were decided entirely in staff's favor.

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

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

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

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

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

And there's additional financial information that staff wanted the company to file as part of rate cases which we again said is not needed because that financial information would be filed annually as part of other reporting requirements in this deal.

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

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

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

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

Clearly, the key to this whole thing is Iberdrola's cooperation with this provision -- these provisions. We are going to have to monitor that carefully because that's critical to the success of this provision.

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

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

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

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

COMMISSIONER ACAMPORA: John, can I

interrupt at this point.

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

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

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

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

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

So, there is still protections in place -- there's just areas where some of the parties thought that it needed to be upgraded and modified and just brought up to date to where we are at with other companies.

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

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

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

MR. STEWART: Okay.

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

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

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

That would give them an opportunity and you could guide them if they are not progressing along the lines that you think appropriate.

CHAIRMAN BROWN: Everybody comfortable with that?

COMMISSIONER ACAMPORA: Yes. Thank you.

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

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

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

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

The idea being the specifics of how we

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

CHAIRMAN BROWN: Thank you.

MR. STEWART: That concludes the financial protections.

COMMISSIONER CURRY: John, just one question.

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

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

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

MR. STEWART: I think we would like to at least start out and trying to model it similar to what we used for Niagara Mohawk, by just making some generic assumptions about what the costs to achieve are and how they relate to the steady state level of expected synergy savings and efficiency gains, and make some general assumptions about how costs to achieve phase down over time while savings phase up over time.

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

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

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

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

COMMISSIONER CURRY: I have heard that.

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

CHAIRMAN BROWN: Some states longer than others.

MR. DVORSKY: Protections there.

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

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

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

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

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

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

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

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

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

Let me briefly recap those recommendations.

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

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

On the gas side we recommend that the safety performance measures be adjusted to reflect historical performance levels and that the revenue adjustments levels also be subject to the same doubling provisions as adopted in the National Grid-KeySpan merger.

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

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

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

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

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

By recommending these safeguards, it is our intent that the company decisions post merger properly reflect safety and reliability concerns. It also allows us to take prompt actions to ensure proper levels of investment are being made.

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

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

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

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

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

And we would look at that in each subsequent year if they are spending below the levels that I articulated. So, there is that process.

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

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

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

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

COMMISSIONER CURRY: Thank you.

COMMISSIONER HARRIS: We had mentioned -- we had discussed last week about the condition assessment report. And I made some comments, suggestions or voiced some concerns about having some uniformity as to assessing the age of the infrastructure to assist us so we aren't comparing apples and oranges, but we can actually use it as a guiding tool in assessing the entire state of the infrastructure for New York State.

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

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

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

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

We have our transmission folks, system people, and our distribution sections looking at and having dialogues with each utility, just not this utility. Periodic meetings to go over why they are proposing their projects, why they feel --why they replaced the program.

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

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

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

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

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

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

MR. DVORSKY: Mike Worden, who is the Chief of the Distribution section, as you know.

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

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

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

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

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

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

COMMISSIONER HARRIS: Would that be then

incorporated into their condition assessment report going forward?

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

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

MR. WORDEN: Affect the transmission as well.

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

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

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

COMMISSIONER HARRIS: Okay.

COMMISSIONER CURRY: Following on with Commissioner Harris' comments.

Mike, when you do come back to us with these proposed standards perhaps you could include examples, if not all instances, where there is a distinction and a difference between how one utility defines something and another utility defines something.

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

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

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

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

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

That's not our goal. Our goal is make sure we are on a common record.

CHAIRMAN BROWN: Thank you.

Sandy.

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

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

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

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

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

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

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

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

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

CHAIRMAN BROWN: Thank you.

Rafe.

JUDGE EPSTEIN: Thank you.

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

John.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thus, while it's very difficult to predict, there is some basis for determining that there is some risk that the merger might not be consummated under option one. There's probably more risk under option one than option two -- I'm sorry, option three.

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

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

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

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

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

However, I also recognize that Commissioner

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

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

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

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

But to put in context for New York, similar reduction for NYSEG and RG&E would be about $40 million based on net operating expenses.

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

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

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

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

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

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

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

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

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

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

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

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

That concludes my presentation.

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

What is your best guess as to the likelihood that the targets in either option one or -- I guess that sort of answers it -- or option three will be invoked, based on what you have seen thus far for this year, last year the historical trends, how do you see the process working?

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

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

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

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

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

COMMISSIONER CURRY: Thank you.

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

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

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

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

COMMISSIONER CURRY: Thank you.

COMMISSIONER HARRIS: Following up on that, so, if we had a higher starting point for an earning sharing mechanism going forward it would sort of be a hybrid of option one and option three?

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

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

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

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

MR. STEWART: Under -- well, under option three what we would have to do is we would have to change the starting point for the sharing. Right now under option three we are leaving the existing sharing provisions unchanged in the rate plan.

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

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

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

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

I am not looking to do anything other than try to get a fair or a good scenario, but I am looking at sort of a little bit of option one and a little bit of options three, as opposed to making it so black and white and trying to come up with something that might be more reasonable for everybody.

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

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

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

COMMISSIONER HARRIS: But what if there are synergy savings?

MR. STEWART: If there are synergy savings in the short run, then under -- if you go to option three then we basically would have to -- we would get them after 18 months under the sharing provisions, or we would get them when they -- if they file a rate case after 12 months effectively when we set -- when we reset rates.

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

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

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

COMMISSIONER HARRIS: Within?

MR. STEWART: Within the 18 month time frame.

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

CHAIRMAN BROWN: Potentially.

COMMISSIONER HARRIS: Potentially.

MR. STEWART: Yes.

COMMISSIONER HARRIS: So, potentially, even if they did file it could be 29 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

So the 275 million--

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

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

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

COMMISSIONER ACAMPORA: I will kick in here.

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

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

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

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

CHAIRMAN BROWN: Let me just clarify

something on that, Pat.

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

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

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

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

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

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

MR. DVORSKY: Let's talk about that.

CHAIRMAN BROWN: And have staff--

MR. DVORSKY: Let me just clarify: Basically you want us to look at a 12 month period, it could be for one company or sequence them, and for that company if they don't come in for 12 months then the earnings cap of the 80/20 kicks in for that particular company at let's say 12 months and then if it's 15.

Okay, I just want to understand that.

CHAIRMAN BROWN: Something like that?

COMMISSIONER ACAMPORA: Yes. That's good.

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

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

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

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

And as a result of those, we have decided to match the recognition of costs to achieve with the timing of the synergy savings to have a more even effect on income.

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

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

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

COMMISSIONER ACAMPORA: One more question.

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

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

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

CHAIRMAN BROWN: Go ahead, Jean.

MS. CLEARY: I want to tell you that the attorneys in the Attorney General's office are very responsive to my phone calls, and I have spoken to one additional attorney recently.

The status with respect to the case is confidential, but I would also advise that given the timing of the press release, which was recently distributed, the investigation is also very new. It's just beginning.

So, I cannot -- I have to advise again that the information is confidential, but as I stated last time, the public information indicates that the investigation is targeting First Wind and Noble.

And these companies, according to our own staff inquiries and verification, are not interrelated with Iberdrola's corporate structure.

So, I think that it's not possible for us to know where an investigation will go, but at this point I can't provide any other additional information to you.

COMMISSIONER HARRIS: Can I --

CHAIRMAN BROWN: Let me just comment before you go.

The best I can ascertain has been pretty much those same facts, that at this point in time those are the companies that are the focus and we have no information whatsoever that Iberdrola is a focus in any way.

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

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

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

MS. CLEARY: Investigation into what project, Commissioner?

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

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

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

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

COMMISSIONER ACAMPORA: Doesn't make it easy.

COMMISSIONER HARRIS: No.

MS. CLEARY: No.

COMMISSIONER ACAMPORA: Doesn't make it easy.

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

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

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

COMMISSIONER HARRIS: I think the newspaper article might disagree with that statement but, again, I don't know -- I can't attest to the factual accuracy of any of this. I'm just relaying what I read in the paper here.

MS. CLEARY: We will keep you apprised --

COMMISSIONER HARRIS: Thank you.

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

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

MS. CLEARY: We have already done that --

COMMISSIONER CURRY: Good.

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

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

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

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

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

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

Is that it?

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

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

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

(Recess taken.)

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

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

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

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

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

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

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

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

MR. STEWART: That is correct.

MR. DVORSKY: Not at the end of 12 months. There would be a prohibition of filing for 12 months so it would have to be...

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

MR. DVORSKY: Yes.

CHAIRMAN BROWN: On the one year anniversary.

MR. DVORSKY: Yes.

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

MR. DVORSKY: Of the --

MR. STEWART: Consummation.

MR. DVORSKY: --acquisition. Consummation.

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

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

COMMISSIONER CURRY: First of the month.

MR. DVORSKY: First of the month, sorry.

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

MR. STEWART: Yes.
CHAIRMAN BROWN: If they didn't file a rate case the earnings sharing mechanism is in place.
MR. STEWART: Yes.
CHAIRMAN BROWN: Is that clear to everybody?
Were there any other clarifications that we needed to go through?
Rafe, is there anything else we need to present today?
JUDGE EPSTEIN: Not that I am aware of, Chairman.
CHAIRMAN BROWN: I guess we are just about ready to go for a vote here. What I would like to provide is an opportunity for any Commissioners to make any comments that they feel they would like to make.
COMMISSIONER HARRIS: I know nobody is surprised that I grabbed the mike first, but...
I don't have any prepared statements. I just have a few points I just wanted to make.
When it comes to investment in New York State, I personally want to encourage and foster any businesses that want to come in and invest in New York State. I don't want to be an obstacle.
Our statutory obligation is to provide just

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

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

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

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

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

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

So, like I said, I am just not comfortable gambling that the company might walk away if we impose a higher PBA amount.

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

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

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

Unfortunately, this was outside the record, and to maintain the integrity of the process and the proceeding we couldn't actually consider what was outside of the record. But it is my expectation and hope that this company does embrace the area, the geographical region, and become a good corporate citizen and fulfill all the energy efficiency goals that we put forth.

And that's it.

CHAIRMAN BROWN: Thank you, Commissioner Harris.

Whichever order you would like to go.

COMMISSIONER ACAMPORA: Thank you.

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

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

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

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

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

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

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

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

We built on another European company's, National Grid's acquisition of KeySpan, in certain key components of this. And I hope that the way that we deal with the issues presented here, in conjunction with the way we dealt with the KeySpan acquisition by Grid, encourages companies from outside the US, companies within the US, to consider New York as a good investment locale and a good place to place their bets on the future.

That's it.

CHAIRMAN BROWN: Commissioner Harris.

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

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

Thank you.

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

I think we had the appropriate mitigation measures in place that in this instance that we allayed those concerns as well as we could, but we retain those concerns.

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

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

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

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

So, I am hopeful, I am very hopeful, that new ownership of the facility will help us achieve many of the goals we are trying to achieve here in New York State.

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

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

So, with that...

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

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

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

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

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

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

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

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

(Ayes recited.)

All those opposed?

(No response.)

Hearing none, the recommendation is passed.

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

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

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

CHAIRMAN BROWN: We will run it by everybody.

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

SECRETARY BRILLING: There is no additional business.

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

CHAIRMAN BROWN: Thank you. The meeting is adjourned.

(Meeting adjourned.)

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