STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Special Meeting of the Public Service Commission

THURSDAY, MARCH 4, 2010
10:30 a.m.
Agency Building 3
19th Floor
Albany, New York

COMMISSIONERS:

GARRY A. BROWN, Chairman
PATRICIA L. ACAMPORA
ROBERT E. CURRY, JR.
MAUREEN F. HARRIS
JAMES L. LAROCCA
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CHAIRMAN BROWN: I would like to call the March 4, 2010 meeting of the New York State Public Service Commission to order.

Madam Secretary, are there any changes to the agenda for today's special meeting?

SECRETARY BRILLING: Chairman Brown, there are no changes to today's agenda.

CHAIRMAN BROWN: Very good. There is no consent agenda for our consideration today so we will move right to the regular agenda. Wanted to start off this meeting was just a little over a week ago. We had a tremendous snow storm hit the Hudson Valley/Catskill region with incredible amounts of snow and we had hundreds of thousands of New Yorkers without power.

We just wanted to get the Commission caught up on the restoration efforts and what's happening in that part of the state.

So, I will turn it over to Mike Worden, Chief - Electric Distribution System in the Office of Electric Gas and Water; Barry Bedrosian, Chief of Consumer Assistance in the Office of Consumer Services; and Alice Miller, Chief of Consumer Advocacy in the Office of Consumer Policy.

Mike.
MR. WORDEN: Thank you, Chairman Brown.
Good morning, Commissioners.
I would first like to give you -- go through
a brief slide show here, to give you and kind of tee up
and get us all in the proper frame of mind for this
discussion.

As you can see there, there is a road
there someplace but I am not sure which direction it
goes. Obviously, trees, they get enough snow on them
they kind of tend to come down.

This is just a roadway where you can see
they actually had the trees trimmed back quite well.
Again, distribution lines these things are that we are
looking at.

The next two pictures are actually the same
line. They give two different perspectives. The first
perspective shows how access is difficult. The truck
can get to that tree, can't go under it, had to clean
that stuff out. Utilities had to work with
municipalities to do that kind of stuff, to clean things
out so they can have access.

The second one shows how the pole is broke
and you have not only electric wires, you have cable
wires and telephone wires underneath that.
This last slide I have is your non-standard utility crew with snow shoes. One of utilities ran into problems where they wanted to go through their transmission right-of-ways and check for damage. They couldn't get through on snowmobiles, which they did have, because the snow was too deep.

I will first give a quick overview of the effects of the February 2010 snow storms on electric utility service and staff's efforts to monitor power restoration and investigate electric utility performance during and after the storm.

As you mentioned, Barry Bedrosian of the Office of Consumer Services will present an overview of the activities in the department's call center; and then Alice Miller will give an overview of the company's public communications, including municipal calls. After that, the three of us will be happy to answer any questions.

Beginning on the evening of Tuesday, February 23rd, 2010, a coastal storm brought heavy, wet snow to eastern New York State. Snow continued off and on for the next two days until a second wave of heavy, wet snow hit on Thursday, February 25th.

The second wave was shifted somewhat south
of the first so it wasn't entirely the same territory. The snow, measured in multiple feet in some areas, stressed and damaged trees and power lines.

Less severe, but still significant snow continued on for days, hampering restoration activities and causing addition outages. As a result, some 250,000 customers were without power.

Central Hudson was by far the most affected utility, with nearly 150,000 customers affected by the two storms. Customers were also interrupted in the service territories of National Grid, New York State Electric and Gas, Con Edison and Orange & Rockland.

Given the extreme nature of this event, the electric utilities expanded their local workforces by shifting internal line crews from unaffected divisions where possible, using contractor line crews, mutual aid line crews from around New York State and mutual aid line crews from other utilities in other states.

Mutual assistance came from as far away as Michigan, and electrical contractors literally flew employees in from around the country. Utilities also obviously contracted numerous tree services.

All told, more than 1400 crews were working following the storm to help restore power, in addition
to numerous other utility personnel supporting these efforts.

National Grid was predominantly affected by the first storm. It completed restoration Friday night. NYSEG was affected by both of the storms in two different parts of the company. It completed restoration Monday. Orange & Rockland and Con Edison were affected only by the second storm. They completed restoration Monday and Tuesday of this week, respectively. Full restoration of service for Central Hudson is expected today for some extreme outlying areas.

I would like to briefly now talk about some of the activities staff did to monitor restoration activities. Staff's effort actually began prior to the storm and included activities such as participating in National Weather Service conference calls and monitoring utility preparations.

Throughout the event, status reports were issued four times per day, as I am sure all of you saw, regarding customers affected, crew response and restoration efforts. When appropriate, the reports also included input from the Office of Telecommunications, who were monitoring the phone companies, cable and those
services, and maps produced by the department's GIS staff showing power outages by locality.

In addition to the reporting efforts, staff made several field visits to various affected locations in order to assess damage and monitor utility restoration activities. We also visited Central Hudson's storm center on a daily basis throughout the event.

Finally, the state's Emergency Management Office was not activated for our agency, however, we did provide these daily update to them and we also maintained regular communication with them throughout the event.

Due to the extended length of the outages, several of the companies had outages more than three days, Commission Regulation 16 NYCRR Part 105 requires the utilities to perform an internal performance review and submit their findings to the Commission within 60 days following the completion of service restoration.

The reports from these snow storms are due May 3rd. The utility reviews should address all aspects of preparation and system restoration performance, and staff will review the filings upon receipt and incorporate them into our investigation.
We have already started our investigation to determine if the utilities responded appropriately, and we will be looking at areas where there are lessons that can be learned from this event.

One positive thing that I can report from this storm event is that there were relatively few transmission lines interrupted due to trees in the right-of-way, and consequently, relatively few customer outages for those same things.

One of the challenges, and it's more so for distribution tree trimming where we don't have dedicated right-of-ways, it's difficult to strike a balance between the environmental and aesthetic benefits of trees and the measures needed to ensure electric reliability.

It's a difficult balancing act, and it's, frankly, difficult to perfect, but we keep trying to do so. We always take a storm like this as an opportunity to look at the clearances that the utilities have in place to see whether they need to be tweaked.

The process used by the utilities to determine restoration times will also be reviewed to determine whether information was provided to customers and officials in a timely manner. Our investigation
will look at how they communicated these restoration
times to customers, the utility's ability to provide
timely accurate restoration information to allow
customers to make informed decisions.

We really made strides in this area, we
think, since the December 2008 ice storm. We've put
together protocols that the utilities followed during
this event. We will take this as an opportunity to look
and see how they work and how we can improve them even
further.

That concludes my report. I will now turn
it over to Barry.

MR. BEDROSIAN: Good morning, Chairman Brown
and Commissioners.

Given the extreme nature of this heavy, wet
storm the Office of Consumer Services immediately
coordinated with the Office of Gas Electric and Water
and the Office of Consumer Policy, and also established
channels of communication with the customer service
organizations at each of the affected utility companies.
Our focus was to monitor utility call center operations,
customer service, and life support customer
notifications.

In addition, our own call center positioned
itself to assist customers. These activities remain in place until all customers are returned to service.

As expected, during extended power outages the OCS call center experienced additional activity as a result of the storm. On Wednesday morning, February 24th, OCS Staff reviewed the extent of the electrical outages due to the storm, focusing on health and safety of interrupted consumers, considering the current weather conditions and anticipated additional accumulation.

Staff immediately made arrangements to add additional personnel to the hotline to handle after hours calls related to the storm. In addition, at your request, Mr. Chairman, plans were made on Friday morning to extend call center hours into the weekend. The call center was open on Saturday and Sunday from 9:00 a.m. to 5:00 p.m., in addition to its normal operating hours Monday through Friday.

OCS Staff contacted each of the companies regarding the information being provided to consumers. Information included the location of warming shelters, and where customers could obtain bottled water and dry ice. Staff also monitored each company's contact with life support equipment customers throughout the storm.
All companies provided the call center with daily multiple updates regarding their customer service activity. Our call service staff had current information available for each affected utility to assist those customers who called us.

Our call center received over 120 storm related calls from customers who were requesting information on shelters, bottled water and dry ice locations, or to report outages and situations of downed wires.

OCS staff will be participating in the department's investigation of this event once the utility storm assessments are received. We will review call center performance, including timeliness of call response, and the information provided to customers.

The scope and nature of consumer complaints for all companies will also be addressed in detail in staff's final report to the Commission.

Finally, we will evaluate the implementation of recommendations from previous storm events. This concludes my report.

I would like to introduce Alice Miller from the Office of Consumer Policy.

MS. MILLER: Thank you, Barry.
Since the beginning of the storms more than a week ago, the Office of Consumer Policy has worked closely with our colleagues in the Office of Electric Gas and Water, as well as the Office of Consumer Services, to monitor utility responses to the storms.

The Office of Consumer Policy focused on the information that utilities provided to their customers, elected officials and the public. We monitored the content of these communications, including information on estimated restoration times.

As Mike mentioned, access to accurate estimated restoration times is extremely important to utility customers to allow them to make informed decisions during outages.

We also monitored how utilities delivered information, including the communication vehicles used and the frequency of the updates.

Communication with customers included press releases, outage maps and other information provided on utility websites. I would note that several utilities now use enhanced outage maps consistent with best practices recommendations that had previously been made by staff.

Our staff also monitored more than 25
conference calls convened by utilities with municipal officials beginning on the morning of Wednesday, February 24th, and continuing each day of the storm through Tuesday, March 2nd.

The calls provided information to public officials in the affected areas and helped the utilities obtain feedback and address concerns. A number of community officials expressed appreciation for the information provided during these calls.

When the utilities submit their storm reports in a few months the Office of Consumer Policy will review all aspects of the utility communications with the public to identify lessons learned and best practices.

That concludes our presentation and we will be glad to answer questions.

CHAIRMAN BROWN: Go ahead, Commissioner Harris.

COMMISSIONER HARRIS: I do have a few questions. As the Commission was receiving updates on the storm, and the restoration time, and the number of crews, it was somebody else who brought this up to our attention so I just want to inquire about it, which is, if one utility has 100,000 customers out and 75 tree
crews; and another utility has 250,000 customers out, and 90 tree crews, I mean, do we look at the proportionality of how many customers are out versus how many tree crews?

I mean it did -- once this was brought to out attention it did seem that there could be some disproportionality, if you will.

Is that something that we look -- you will be looking into with the reports?

MR. WORDEN: Look at the staffing that each of the utilities employed, and including the timing of when they brought crews in, how many they brought in, whether they were appropriate.

That will be part of our assessment. It's really premature to judge that kind of stuff but it's not as simple as just using an equation and saying, you know, if I have this many customers I need this many crews.

There are a lot of factors that go into play.

COMMISSIONER HARRIS: In the report, I mean, if you could just explain a little bit of that when it comes back in May or something, or when the staff comes back to review these reports it would be helpful.
Because when it was brought to the attention of the Commissioner, if there is an explanation to it and it's not a simple explanation.

MR. WORDEN: It wouldn't be a simple explanation. We will address that in our report, clearly, but we would also be happy to sit down with any of you and walk you through some of the considerations that come into play.

COMMISSIONER HARRIS: The next question I have is you mentioned that there's still some customers in Central Hudson that are out. Is this from the February storm that they are out these many days later?

MR. WORDEN: This morning in what I considered our last conference call, there was a customer out --

COMMISSIONER HARRIS: Just one?

MR. WORDEN: -- that was related to that. They do have, and they are going to continue, actually, probably Central Hudson more than the others, they are going to continue to have some sporadic outages that are kind of related to the storm probably throughout the weekend.

They have actually added some crews. They are going to keep more crews on than they normally do
and they are going to have their call centers open
through the weekend because they do have a number of
residents from New York City and down in the southern
part of the state, they come up and they may come up and
find out they don't have power.

So, we are also dealing with some cases
where customers had problems with their services that
aren't getting repairs made.

COMMISSIONER HARRIS: I just have two more
quick questions.

When we talk about global restoration time,
is -- I will just pick on one utility. They said global
restoration time by close of -- Tuesday evening, Tuesday
night. Does the public only get the global restoration
time or do they get a more localized restoration time?

So, in other words, if I am a -- I will pick
on Con Edison. If I am Con Edison resident and I live
in the Town of Cortlandt, and I go on and find, oh,
global restoration time is Tuesday night, compared to a
Yonkers resident where they might be up on Saturday
night.

Would they still get the same information or
is it more localized?

MR. WORDEN: It changes through the event,
all right? When you start off, if you have a storm that has customers out a long period of time, the first thing a company typically would do is give a global restoration time for its service territory that's affected by that event.

And then as time goes on, then they start giving out more localized information, but we still typically -- in our reports, if you were to read some of the detailed reports that we attach, which is difficult to do, I understand, they have more specific information, but we typically report on the overall.

COMMISSIONER HARRIS: I know we get this information. My question is does the public get this?

CHAIRMAN BROWN: Does it get the basic municipal calls?

MR. WORDEN: Yes.

MS. MILLER: The on line maps also are very helpful for giving customers information about which areas have service outages and information about restoration.

MR. WORDEN: For the most part, the maps that we send you and the reports are linked to the same system that provides the information for the customers.

COMMISSIONER HARRIS: That's great.
MR. WORDEN: Now, that's an area, though, that we are going to be looking at to see if it worked properly.

COMMISSIONER HARRIS: I mean I found it very helpful. I just know that there would probably be a lot of residents who would find that helpful, assuming they have power to go online and look.

CHAIRMAN BROWN: Commissioner Larocca.

COMMISSIONER LAROCCA: I want to thank you all for the frequency and the clarity of the reports that we received. As Commissioners, that was very helpful as we monitored all the way through this. That was very good to have.

Just an observation to Commissioner Harris' question. We deal with that question on Long Island all the time because we have population distribution between Nassau County and Suffolk County about equal geographic disproportion and the single biggest variable that figures in the deployment question is the geography.

We have as many people scattered over three times the geography in Suffolk as Nassau, and so it's not -- it has happened in the past where a political figure or other might say, well, why do you not have more crews here and there. If you're answering it on an
equity basis that doesn't really reflect the reality. I think that's what happens in these numbers, that rural parts of Niagara Mohawk's territory compared to the tri-city area here, and so forth.

The thing that seems to be evolving very quickly, which seems to be very good and I want to encourage it is that the information technology that the department itself uses to keep track increasingly be made available to the public, so there's linkage to sites where they can see the maps and they can see the information that we are all working with.

To the extent it's appropriately in the public domain I think it's very helpful. And even the onset of blackberries and everything else, even when people are out they are not necessarily now without any form of communication, so that the opportunity to service them with information is bigger than it's been in the past, and I think that's a very good thing.

Thank you.

CHAIRMAN BROWN: Commissioner Acampora.

COMMISSIONER ACAMPORA: Mike, I would just like to ask. I know that we are very interested when all the information comes back and we receive the reports, but was there anything that stuck out in your
mind, or Barry yours, or Alice's, during this that just pops out right now?

MR. BEDROSIAN: Not from what we heard from customers, no.

MR. WORDEN: I think we have been making some improvements other the years, and I think we want to take -- without judging at this point, take a close at how they've been working.

We talk -- every time we talk at one of these emergencies we tell you we do the lessons learned. I think about that. Sometimes I wonder if people say, yeah, right.

We really do learn from these things, and I really do genuinely feel that we've made improvements over the years, and I also genuinely feel we are going to make more after this event. So, I think we've done some things that have helped, and the utilities have as well.

COMMISSIONER ACAMPORA: I think we have really hit on the tree trimming the past few years. So, I think to some extent some of that has worked, but I do thank everybody for those ongoing reports, keeping us apprised of what was going on and seeing how they could deal with the loss of electricity.
And I am glad to hear that the consumers did have that information because people do have to make decisions when they know they are going to be without electricity for several days, and it's still quite cold out and maybe another storm might be coming.

Thank you, all.

CHAIRMAN BROWN: One of the areas I have seen lessons have really been learned is this municipality phone call chain that's going on now. I didn't receive a single complaint from a local official about lack of knowledge that may be frustrated by lack of speed just because when electricity is out, it's frustrating.

But I think those municipal phone calls have gone a long way. It wasn't that many years ago that was the exception rather than the rule, and now it seems to be the rule rather than the exception.

Commissioner Curry.

COMMISSIONER CURRY: First, a fact. Mike, how many customers are normally associated, in your mind, with every meter that goes down because when you refer to customers, I think you are referring to meters.

MR. WORDEN: I don't have an exact number.

COMMISSIONER CURRY: In the Long Island City
outage, we were talking in the neighborhood of three.

MR. WORDEN: On that order, but it varies.

COMMISSIONER CURRY: So you are talking -- even though you are addressing the question of customers, there is a multiplier out there that has to do with folks involved.

MR. WORDEN: We actually in our reports, the detailed reports that go to all of you, but also to SEMO, we put together a report that does include population percentages and stuff. That's something that SEMO asked us to do. Our GIS people have that information from previous census, so that is available.

COMMISSIONER CURRY: I am not being critical. I am really saying that emphasizes the scale of the difficulty that's being addressed and the difficulty the customers are feeling.

Then, to echo what some of the other Commissioners have just said, since joining the Commission in the summer of 2000 Staff has made significant and successful efforts to help improve both our regulatory approach and the utilities' approach to calamities like this outage.

And the past practices events that I have added insight into are really useful, so I share with
you that perception, you are doing and I am watching.

So, there is still a lot to be done, but an awful lot has been accomplished. Thank you to staff for having moved things along.

CHAIRMAN BROWN: We don't obviously have to take any action. I want to thank, starting with utility staff, the people that are out there in the field. And when you showed the sort of damage, Central Hudson, over half their customers were gone by Friday. Half their customers were down. You can't have enough tree crews in the world to address that sort of issue.

I know that they worked tirelessly. I talked to Jim Laurito, their CEO, every day. And he emphasized the work they are doing.

Just a little vignette. In order to keep the work going -- Mike, I'm sure you know this but I didn't -- they try to bring the food out to the workers rather than them having to take a lunch break and lose the time to get to a restaurant which may not have electricity anyway.

So, office staff are driving around in their vehicles trying to get the food to the workers so that they can keep the work going. They said over 500 people were involved in this, which doesn't sound like many
until you realize Central Hudson only has 700 employees.

So, just about everybody that works there was somehow involved in the restoration effort. It really is heroic effort. It is frustrating for people when their electricity stays out for a long time, but when you hear about and see the pictures, thank you, and you hear about 60 and 62 inches of snow in places, it's almost amazing that they are all the way back already.

And I will point that out an event like this in New Hampshire a couple years ago, they went three or four weeks without electricity. So, I am not prejudging their performance, but the fact that they managed to get through two storms in six days, while frustrating, I think is a sign of at least a lot of hard work at the very least.

I also want to thank Staff for the work that you do, the people that worked over the weekend, Mike's crew in getting down there right away. I know you guys were down there Thursday and checking things out right away. So, I want to thank you folks.

I do just want to take the opportunity to echo a little bit, one of the -- probably the least popular things the Public Service Commission and Utilities do is vegetation management. It's very
frustrating to people because people do not like to see
tree limbs come down when they don't need to, except
when there's a storm, and they realize almost all of the
damage on the distribution system tend to be these tree
contact.

And the fact that the transmission system
had no damage to it at least signals some of the
success, because if those lines go down now we are
talking the backbone of the system and it's a much
bigger problem. So, it does emphasize the importance of
our vegetation management program.

With that, I want to thank you folks. Are
there any other comments or questions? Thank you very
much.

The second item for discussion today is case
10-E-0050, proceeding on motion of the Commission as to
the rates, charges, rules and regulations for Niagara
Mohawk Power Company, our National Grid's electric
service in upstate New York, which will be presented by
Administrative Law Judges William Bouteiller and Rudy
Stegemoeller in the Office of Hearings and Alternative
Dispute.

Judge Bouteiller.

JUDGE BOUTEILLER: We have some slides.
Nothing as dramatic as Mike Worden had for you. I hope they don't put you to sleep, in fact.

CHAIRMAN BROWN: How could a rate case put us to sleep?

JUDGE BOUTEILLER: I know you have a long agenda today. I have taken a peek at your agenda and I know you have a lot of deliberations to do after this so I am going to try to keep this moving as quickly as I possibly can and just try to pique your interest in the activity that will be going on in the context of this rate case over the next ten months.

We examined an informal presentation that National Grid put together to socialize the rate filing at the time that they were submitting it in January. We culled through that presentation, we've omitted many slides that we didn't think were pertinent for your use, and we have we culled through them and we've edited it very substantially.

By doing so, it's not our intent to be adopting that rate presentation. We are just using it as a starting point to familiarize you with the information that will be thoroughly audited and examined in the context of this case.

This case will come back to you in December
if it doesn't come to you earlier than that. This asks you to make a rate determination for next year, starting in January 2011.

The story begins under the current rate plan. The current rate plan was adopted by the Commission in 2001 to last for a ten-year period. It happened at the time that Niagara Mohawk and National Grid were merging. It captured synergy savings and it led to a rate reduction of about 8 percent that was implemented and it's been maintained throughout this period.

There has been some ratemaking type activity. The technical term and the concept that you need to keep in mind throughout the remainder of this case is this notion of the competitive transition charges, CTCs. That reflects nuclear power costs from 1990s, Nine Mile Two.

The non-utility generation contracts that we had at the time, they live on in the form of the CTC things, and they are impacting upon rates, but there have been no major rate changes since 2002, and we are covering a number of deferred costs during this period, as well.

This slide is showing you National Grid's
view of where we stand today under the current plan. Clearly, the numbers that you see here are numbers that will be audited, and verified, and tested and challenged substantially during the course of the rate case.

So, while the company believes that's the right number, the process is testing that number. We have another slide that will show you some variability around the allowed return and earned returns, which just has a very preliminary cut to it. We also have some other slides I'm just going to drill a little bit deeper into the categories of costs driving the rate request. And I'll address also some of the capital work, capital construction work that's being done.

So, this is a simple slide. It shows you the magnitude of the rate request in the first year. It shows you the percentages, both on aggregate revenues and delivery rate revenues basis. After the first year the company has estimated their costs for the next three-year period and you are seeing that the first year order of magnitude increase that they are proposing does not repeat itself, either in the second or the third year.

In fact, in the third year, they are showing
that the rate level from 2012 would, in fact, decrease by about an equal amount by which it would have to increase in 2012, according to their filing. Again, I want to caution you, we haven't audited or verified any of these numbers.

The elements of the rate filing, these are the ones that the company has highlighted and we've added just a little more information here. The return on equity request is at 11.1. It's based upon a capital structure for Niagara Mohawk which is at 50 percent equity.

We have an infrastructure investment program ongoing in the future. The numbers for each year varies, but if you average them out it's somewhere around 600 million. We have a slide that will show you what that is in contrast to the historical amounts, as well.

This company does have in place some reconciliation adjustment mechanisms and they're proposing to include some more. I won't belabor the point at this time and show you which new ones they are asking for.

The company also wants to highlight for you, and we have a couple of slides addressing them, as their
commitment to economic development and low income. This would be the opportunity for us to implement a revenue decoupling mechanism for Niagara Mohawk electric, as well.

This slide does not add up to that first number that you saw. It's not intending to, because that would drill down to the panoply of matters that we would have to cover in the case that would add to the presentation, but it gives you a rough feel for how much of the rate request is relating to O&M expense items.

There is a revenue decline which contributes to this rate request as well. The capital investments that the company has made is adding to revenue requirements as they get -- enter into rate base. This shows you just the order of magnitudes affecting the total request, but not adding up to total request.

This is our first graphic and it shows you basically three lines. The straight green line is the allowed return, the expectations back in 2001, 2002. The numbered periods that you see here, one through seven, number one corresponds with 2002. And you will see that the red line is the company's demonstration of historical information.

I have been working a little bit with Joe
Lochner, who is a medium level section chief accountant with the organization. On his own, he has taken a look at these numbers, and his perspective is reflected currently in the blue line. It's not controlling, but it shows you the degree of variability around when you look at the historical information.

And it depends to some extent for what purpose, and for what application, and what kind of adjustments you might be making to the earned return to be at particular levels at any point in time. That's really all that's intended to show you.

This next slide shows you, I think the historical information probably wouldn't be controversial. You see some bars there breaking up the lines into three different periods. The first period is very historical. It shows you what was assumed in the rate plan versus what was actually happening.

In the second period, what you see is revenues coming down, sales coming down. That's attributed by the company to the impact of the recession that hit in mid 2008. They are forecasting the rate case a slow, steady recovery. Looks like it's just around the corner here and we'll cross our fingers and hope that is, in fact, the case.
The more sales and revenues would affect the forecast using the case. It would also affect the level of the rate increase that you might be considering.

On the next slide, this is a representation of the amount of capital expenditures the company has made since the time that the rate plan was adopted and coming through the most recent historical periods. The last bullet here shows you -- repeats the information about how much is projected for the rate year.

As you will see is that the amounts having increased over the years, we are not reaching any judgements at this point in time, whether or not was that sufficient, was that adequate, but it does appear on its face that we do have a company committed to making capital investments over this period of time. It will remain subject to audit and reporting by our engineers during the course of this rate case.

This graph is to demonstrate the stability of delivery rates over the period of time that the rate plan has been in place. In nominal dollars, the rates have, in effect, are shown in the blue bars. If you were to impose an inflation factor, an escalation factor on top of the starting rate, those would be discounted dollars or the amounts by which one might expect that in
2008 would be the equivalent amount you would pay for
the amount that you paid in 2001.

So, this shows that the rate plan has been
successful in maintaining constant and steady and
predictable delivery rates over this period. Again, we
have had some CTC resets during this period, but they
haven't been sufficient enough to drive the delivery
rates higher than where they have been generally
established for this period.

Two graphs on the next chart, and these are
here to just show you that the company believes -- and
they are presenting from the very start -- that they
believe that they have satisfied the criteria that's
employed for measuring system reliability. And that's
all that that graph is intended to show you. And, also,
on the right-hand side is the PSC complaint rate that
they have presented as part of this rate case.

Again, all of this information needs to be
audited and verified before we come to you to attest to
its accuracy, but this is our starting point and it's a
good starting point, as opposed to one that shows that
we had bad results or negative results to overcome
before we go forward, assuming that it's all proven out
throughout the course of the case.
This slide and the next one probably violate our guidelines for having manageable Power Point presentations, but I did not want to reduce the content on these two pages because, in this first instance, this is the company's effort to demonstrate to you that they have taken austerity and efficiency seriously, and to heart. So I have not culled down the information here. Please take it just as information in the presentation to look at at your leisure, but the company is sincerely trying to indicate that the austerity and efficiency is at the core of their activity.

Likewise, on the second slide, this demonstrates their commitment to economic development in the service area and to low income programs. And this highlights some of the elements of the rate filing which shows they have incorporated those considerations, social program type considerations and public policy considerations, in the context of the filing.

In addition to the one-year rate filing that you have, the company has presented a package sort of concept for you to consider as well. This is in addition to the straightforward analysis of revenue requirements in figuring out what the right number is for the first year.
As you recall, they did provide numbers for a second year and a third year and what they're suggesting is that you could manage over time the recovery of the competitive transition charges, and you could, in a sense, shape or fashion the rate increase over a period of three years.

The next slide will show you -- and I am just going to deal with this very roughly, it's not going to go into all the elements on the bars, but if you start out with the blue bar, that is the amount of delivery rates before their proposal, and the amount thereafter, if the delivery rate increase were to be implemented.

You could offset the impact on total rates if you were to -- now, if you focus on the yellow, reduce the size of the yellow, the CTC recovery in that next year.

If you further assume that there's no changes in commodity costs, which is a false assumption, but for analysis purposes we make it here, you could keep the current rate level in its aggregate at the same level going forward, but that is at a cost.

The CTC costs are recoverable from ratepayers. If you don't recover them in this period,
then you would have to recover them in other periods. But at the same time, we look in the rate case at the levels of revenue requirements. The patterns for their recovery will also be examined in the testimony that the company has filed. Clearly that's been teed up and it will have to be addressed one way or the other in the context of the rate case.

So, we do have a multi-year rate proposal pending in the case. We do not know what the reaction of the other parties are to that multi-year rate proposal. We will have to wait and see when their filings come in as to whether or not people think that this proposal makes any good sense, or whether or not we have other proposals, which they would have the Commission also consider.

At this point, I'd like to turn the microphone over to Rudy and he will take you through information that we have gleaned from the parties at a conference two days ago.

JUDGE STEGEMOEELLER: Thank you, Bill.

We had our initial conference two days ago, which Bill conducted with his usual ruthless efficiency. So, there are really two main orders of business. The first was to establish a schedule, and
that's a litigation schedule designed to get this case in front of you in December.

The second order of business was to identify specific areas of interest of the intervenors in the case. I don't have a slide on this, so I will just run through it briefly.

Staff, obviously, is concerned with everything in the case. Consumer Protection Board and Multiple Intervenors will be active on the general revenue requirement issues. They are concerned about some of the company's proposals for increasing reconciliation items.

There is also a concern about the nature of the three-year filing and the terms under which the company might be able to come back to the Commission within that three-year period.

In particular, CPB will be looking at the low-income program proposals. Multiple Intervenors and the Power Authority have rate design concerns and, in particular, the company has a proposal that will affect customers with Power Authority contracts and customers with negotiated contracts that presently have discounted delivery rates.

The company proposes to bring those
discounted rates up to the level -- up to the full
tariff levels by 2013. That's of particular concern for
Multiple Intervenors and Power Authority.

Finally, the Alliance for Municipal Power
has concerns over the company's proposal to revise its
exit fee formula. And I believe that's all we have this
morning. If you have any questions...

CHAIRMAN BROWN: Commissioner Larocca.

Let me just introduce what we're doing here
again. I think this is the second time we have done
this at the beginning of a rate case rather than the
first time that the Commissioners hear about the issues
in a rate case ten months into an eleven-month process.

We at least try to highlight in the first
month or the second month of the process what the key
issues are, and if there's -- and also provides an
opportunity, if there is a Commissioner wondering why a
key issue is not being discussed, can get the input in
early enough that perhaps we can have that discussion
rather than at the end of process.

So, with that context, Commissioner Larocca.

COMMISSIONER LAROCCA: I have a question and
a comment. What exactly is a competition -- or a
competitive transition charge?
CHAIRMAN BROWN: Ancient Public Service Commission history.

JUDGE BOUTEILLER: It's a mechanism that was implemented at the same time that we had the rate reduction of 8 percent implemented in 2001. Over the ten-year period, this is the vehicle by which the fixed costs for Nine Mile 2 that were stranded costs remain recovered by ratepayers as part of that merger plan.

There's also variable CTCs, and that's related to the non-utility generation contracts that Niagara Mohawk is committed to.

So, those things are being recovered. There is resets over the period. I believe -- again, I am not an expert in this area. I believe that we are managing the recovery of those costs, to the maximum extent possible, without affecting overall the delivery rate over that period.

COMMISSIONER LAROCCA: These will carry forward into the period addressed by this filing?

JUDGE BOUTEILLER: That's a possibility. They would be largely recovered during this period if we would stick strictly to the ten-year rate plan as it was filed.

So, that's, more or less, a bridge issue.
And part of the decisions you will have to make in this case is whether or not you want to still have all those things recovered within the time frame contemplated under the ten-year rate plan, or whether or not some of those costs may be pulled forward and recovered over a longer period of time.

COMMISSIONER LAROCCA: What is the period forward affected by this filing?

JUDGE BOUTEILLER: The company has raised three years. It's to your discretion whether or not you go into the entire three years, or two years or just one year.

COMMISSIONER LAROCCA: It's for a three-year case.

JUDGE BOUTEILLER: We have information going forward for three years -- 2011, 2012, and 2013, I guess.

COMMISSIONER LAROCCA: Here's the comment. We have spent some time examining management audit, and recently time on the process for making use of what we learn in management audit, the management audit process.

And I, at least, had the question and the concern of the linkage between what we are learning in
that process and the work that gets done in these cases. And that to the extent the management audit process is yielding valid information about delivery of service, and management of construction, and all the various categories that can be examined, that to the extent those things bear on rate theory and rate recovery, and all those things, I will be looking, as this case goes forward, for some linkage between those two enterprises here in the house.

What we have learned so far in the first of the modern era on the audits is that there is a time disconnect between what we learned in the Con Ed management audit and just the pendency of that case.

It seems to me you are in a more comfortable environment in terms of having more time to examine the management audit to the extent it bears on any of the matters that come up in these cases.

So, I just want to alert you that will be a continuing concern I will have as this goes forward, to see if we are getting value from the management audit process that translates to application in the rate process.

MR. STEWART: I would just like to add that, for all the parties that are watching today, to hear a
Commissioner say this is an interest and something they would like to see addressed in the case is exactly the reason we are doing this up front.

COMMISSIONER LAROCCA: Thank you.

COMMISSIONER ACAMPORA: I just wanted to comment. I was just going to say that when we got to the next case on Con Edison that the management audit tool is so important. Yet, I think that we could try to coordinate the timing better, as the Commissioner said, the linkage, so that we get the optimum out of having that management audit connect with the rate case.

CHAIRMAN BROWN: Any other comments or questions?

This was for information only. Thank you very much for the overview.

And let's move to our third item for discussion. Item 201 is an update by staff on several audits of Consolidated Edison Company. Case 06-N-1078, proceeding on motion of the Commission to audit the performance of Con Edison in response to emergency outages; Case 08-M-0152, the prementioned comprehensive management audit of Consolidated Edison; and case 09-M-0243, the matter of comprehensive investigative accounting examination of Con Edison.
Staff updates on the audit will be presented by Kate Tallmadge, unit leader of the management audit section of the Office of Accounting and Finance. Wayne Brindley, Deputy Director for the Office of Accounting and Finance, is also available for questions.

Kate, please begin.

MS. TALLMADGE: Good morning, Mr. Chairman and Commissioners.

As the Chairman said, I'm going to update you just briefly. You have a very full memo submitted to you about the updates on the specific audits, but I'm going to be talking about the Vantage management audit, that is the emergency outage response that started, I believe, 2006.

The investigative accounting examination of Con Ed, it's also known familiarly as the forensic audit. And then the comprehensive management audit of Con Ed.

Before I start, I did want to recognize the people in the group that did contribute to this memo and this whole report in front of you. That's Henry Leek, Robin Goodrich and Elizabeth Katz provided a lot of assistance in putting this report together for you.

We have talked about the fact that
management audits take a long time to complete and also to implement the recommendations. In the case of the Vantage audit, the report was issued in 2007 and the implementation is still ongoing.

Most of the recommendations have been completed, but there are still five remaining. Several others were folded into the LIC investigation which, as you know, is a very important one and ongoing.

Most notable in the implementation efforts on this audit was a significant improvement enhancement to Con Ed's emergency drill program and their exercises in preparation for emergencies. And these tests have continued with positive results.

The remaining five recommendations staff is looking at will continue through 2011. So, again, these are very long-lived projects that we get involved in. They primarily have to do with crew call out. A pilot project has been implemented in two of the divisions and will be rolled out through the rest of the organization. And the other one is the infamous vegetation management, and Con Ed is continuing to look at its vegetation management cycle.

Now, I will briefly describe the status of the forensic audit. As you know, this is the one that
arose as a result of the arrest of the 11 current and
former employees of Con Edison for taking illegal
kickbacks and bribes from contractors. That was
identified by the US Government as over a million
dollars.

On August 20, 2009, the Commission approved
the selection of Charles River Associates, also known as
CRA, as the consultant to perform this investigation.

There are two phases. Phase one, where the
consultant looked at the known improper activities, the
ones that were picked up by the US Government. Phase
two would be a much larger universe of transactions for
evidence that it might be other employees, other
contractors, a lot more money is involved in that second
universe.

CRA submitted its draft of phase one to the
staff on March 1st of this year. The report is now
being reviewed by staff before it is released and any
determination is made as to ongoing phase two
activities.

Final report I am going to make is on the
comprehensive management audit. As you know, that
covered the electric, gas and steam construction program
planning.
The audit was conducted by Liberty Consulting Group. That group delivered the final report in June 2009. We presented it to you in August 2009. There were 92 recommendations in that report.

Implementation has begun. The first implementation plan was submitted on October 5, 2009. A status report, an update, was submitted just four weeks ago on February 5th.

Con Edison grouped the 92 recommendations into 12 teams with similar recommendations put together. They assigned teams to address each area. Each team reports to a senior executive. And also the board of trustees has gotten involved.

This is something that we had been looking for is an obvious connect to the senior management of Con Ed that they understood the importance of these recommendations.

Each audit implementation team reports to a committee of the board and they prepare periodic reports and updates to that committee and also to the full board.

We are doing management audits differently than we used to back in the '80s, when a couple of us were involved in it, in that we are using the resources
of our subject matter experts in the operating offices. That OEGW, the rest of OAF, ORE, OEEE, anybody who has an interest in the subject matter of these recommendations is really looking into the implementation to give us best input as to whether Con Ed is meeting the intent and the letter of these recommendations.

OEGW has identified 71 of these 92 recommendations for which they will take the lead, and 21 more where it will support one of the other organizations.

OAF will assume responsibility of 14 recommendations and support on ten more. ORE will be the lead on seven, and OEEE will have support on 15. I love breaking down the silos between the offices so that we are all working on this together and learning so that we bring it into the rate case. We really want to be sure that these things are followed through.

Each office is going to assign specific staff to follow up on the recommendations. They will meet with Con Ed. They have access to a web portal. They can see all the documents that Con Ed uses to support its position on the completion of these recommendations.
If they have to meet, they will meet. If they have to talk, they will talk. And we are going to report to you three times a year as these recommendations are fulfilled, and ask if we need your assistance in seeing that things are completed.

As of that February 5th report, Con Ed reports that 30 of the 92 recommendations have been completed. As I mentioned, just having come in four weeks ago, we are still reviewing things. There is a lot of documentation supporting that.

There are some that have been approved by the company whose actual implementation may take several years. Staff is looking at that to see if we would really consider that complete or whether we want to keep it open and keep following up on it very closely until the implementation of the program or process is complete.

The results to date have shown a mixed bag, some of which we can believe can be closed. Pretty simple, straightforward, we will say yes. Others, as I mentioned, we may say, let's take a little bit further look into that. But closing out even small traditional ones is very time-consuming because we want to be sure that we get it right, that Con Ed has gotten it right,
and that we give you assurances that it has been done right.

The other overarching thing that comes into question every time we talk about this are the barriers issues. What are we doing about the barriers issues? They are very different from your normal recommendations in a management audit.

These barriers were identified by Liberty as being regulatory, cultural, environmental and financial. According to Liberty, these barrier issues, if not appropriately addressed, threaten the long-term sustainability of Con Ed's business model.

The audit didn't identify specific recommendations to overcome these barriers, but rather, suggested that they needed to be addressed by senior management of both the company and the department. To that end, so far, there have been four meetings between top level Con Ed employees and department representatives.

Progress has been slower than we would desire, but this doesn't come as a complete surprise, since changing culture of a large organization like Con Ed is difficult and time-consuming.

Perhaps one of the more daunting efforts
requires the company to recognize and internalize the need for change. The meetings, while producing little tangible assurance that Con Ed is adequately addressing the barrier issues, have provided a forum in which the departmental concerns can be expressed. And we believe that Con Ed, while off to a late start, has begun to make progress.

Before we recommend that the Commission take any action on the barrier issues, we suggest that Con Ed be given some additional time to demonstrate progress, and that we be allowed to report back to you at a later time.

That concludes my remarks. Wayne or I will be happy to answer questions.

CHAIRMAN BROWN: Commissioner Curry.

COMMISSIONER CURRY: I was going to actually expand the universe of people to ask questions.

MS. TALLMADGE: That's okay, too.

COMMISSIONER CURRY: I thought that would make it easier.

I think -- I commend you all for moving in the right direction and changing the fashion in which the implementation of these management audits are taking place now as compared with a while ago, which I only
know anecdotally and from reading a couple of management audits from a while ago.

But I guess the question is more addressed -- and I don't know the right person on senior staff to dress it to, but --

CHAIRMAN BROWN: That means John Stewart will have to answer.

COMMISSIONER CURRY: I did pause.

Kathleen just described a staff summary of where things are viewed in terms of the development of the response to the barriers issue. Was senior staff in concurrence with that? Did senior staff have a different opinion? Where is senior staff's view of where Con Ed is at this point on the barriers issues?

MR. STEWART: At this point, I think it is still an evolving set of discussions. Without getting into too many details, because I think we still have some relatively frank discussions we want to have with the company management.

It's proceeding fairly slowly. And we're really looking for ways to kind of speed it up and get it moving a little quicker, but that's the best general characterization --

CHAIRMAN BROWN: I think Doris has a comment
as well.

MS. STOUT: We've recently assigned Judge Jeff Stockholm to act as a liaison between senior staff and the company in an effort to help move the process along. So, I think that should aid our discussions.

COMMISSIONER CURRY: I think it should, as well.

In the rate case, I took testimony from a senior executive of Con Ed which put on the record that Con Ed saw no elements of the Joint Proposal, that we will discuss later, that would in any way interfere with the implementation of the management audit recommendations.

So, I think the intent is positive on both sides. The timing of culture change is difficult. The last time I remember Con Ed changing cultures was when most of you weren't around and Charles Luce came up from the Atomic Energy Commission to head up Con Ed, to deal with the nuclear issues.

I don't think there is anyone around here who remembers exactly what he did and how he effected culture change, but the consensus seems to be that he did, so, there is precedent.

CHAIRMAN BROWN: Time before that was when
Nicholas Tesla left the company.

COMMISSIONER CURRY: Also, it's been pointed out that in New York State, when Long Island Lighting Company was going in the wrong direction, a gentleman named Cas Metitis, who I've never met, came in and helped that entity try to get its act together before bankruptcy finally hit.

So, there are some examples around for culture change, but thank you.

CHAIRMAN BROWN: Any other comments or questions?

COMMISSIONER LAROCCA: I just -- I don't want to overstate this, but I am bothered when you report that it's slower than it needs to be. I guess we need to know why that is.

Is the company not seeing the urgency that we on this dais feel when we look at these reports? And if not, why not.

So, if there is a problem of speed and urgency here, and the company is not responding, I guess I would be looking for more than just you report that that's the case, with some, perhaps, request or guidance for how to further engage that process, because the evidence of the need for reform in many of these
management areas is pretty strong.

And when you say, well, they haven't been as responsive as we'd like them to be but it's a little better lately, that doesn't exactly excite me the way I would like to be excited.

It's a comment. It doesn't require...

MR. STEWART: The only thing I can point out is the slowness is not entirely due to just the company's side of the picture. It is also somewhat unwieldy to get the people together, the trial staff or the senior staff, and focus on the issues as well. So, it cuts both ways.

CHAIRMAN BROWN: That's fair. Okay, so I thank you for the update and all the hard work on the audits. And, obviously, the Commission remains very interested in moving along on all these issues. Thank you very much.

Next up is item 302A, case 09-E-0428, proceeding on motion of the Commission as to the rates, charges, rules and regulations for Con Edison's electric service, presented by Administrative Law Judge Kevin Casutto of the Office of Hearings and Alternative Dispute Resolution; and John Scherer, Chief in the Office of Accounting and Finance is available for
questions along the way.

So, let's start out with Judge Casutto.

JUDGE CASUTTO: Good morning, Chairman Brown and Commissioners.

I'd like to begin with an overview of the company's filing in this rate case proceeding. The case was filed on May 9, 2009, and the rate year is April 2010 through March of 2011.

The company's three-year proposal, as updated, requests for rate year one $940.4 million; rate year two, $386.0 million; and rate year three, $376.1 million. The company's levelized option requests $664 million per year, 14 and a half percent delivery increase and 5.3 percent total bill increase.

Staff filed its case on August 28, 2009. Staff's updated revenue requirement for rate year one is $512.2 million. The filing provides for stage filings for rate year two and three with an estimated revenue requirement for capital additions, property taxes and pension and OPEBs, of $300 million per year.

Other parties also made filings in response to the company's case, including the City of New York, the Metropolitan Transportation Authority, the New York Energy Consumers Council, New York Power Authority, Pace...
University, Astoria Generating Company, the County of Westchester and the New York State Consumer Protection Board.

Turning to the Joint Proposal, on November 24, 2009, the parties filed a Joint Proposal for a three-year rate plan predicated on cost of service. Cost-of-service revenue requirement is set forth on the slide that you are seeing now.

In mitigation of the first year increase, the proposal would levelize rates over the three-year plan. The annual levelized base rate increase is $420.4 million per year. Delivery and total bill increase for each year are indicated on the slide that you are seeing now.

Assuming your adoption of the capital expenditures overspend order, case 07-E-0523, the next item on today's agenda, the annual levelized rate would be $413.9 million per year. The Joint Proposal provides an overall rate of return of 7.76 percent, including a return on common equity of 10.15 percent, and a 48 percent common equity ratio.

This slide provides a revenue requirement summary for the three-year term of the Joint Proposal. The blue bars indicate the company's proposal. Purple
is Staff's proposal, and yellow is the Joint Proposal. This shows that the Joint Proposal revenue requirement is close to staff's proposal, and particularly for rate year one, lower than the company's filed request.

This slide depicts the recent rate history. The two previously litigated cases are indicated in red. And the three Joint Proposal years are indicated in green, or bluish green. This shows the effect of the Joint Proposal in providing the advantage of future reduced revenue requirement to customers sooner through a levelized approach. If you can imagine, the average of the three blue-green bars.

The Joint Proposal has the support of many diverse parties. 11 active parties signed the Joint Proposal, including the City of New York, the Metropolitan Transit Authority, New York Power Authority, the Small Customer Marketer Coalition, the Retail Energy Supply Association, Consumer Power Advocates, the E-cubed Company, on behalf of Joint Supporters, Pace Energy and Climate Center, and New York Energy Consumers Council.

Other active parties who participated in the proceedings have indicated that although declining to
become signatory parties, they do not oppose adoption of the Joint Proposal. These parties include the County of Westchester, the Utility Workers Union of America, AFL-CIO, Local 1-2, and the Consumer Protection Board, which supports provisions of the Joint Proposal regarding the low income program.

Primary drivers of rate increases for all three years are capital expenditures and property taxes in New York City and Westchester. In addition, in rate year one, pension and OPEBs are primary drivers of rates.

The slide that you are seeing now indicates the rate drivers. And the primary rate drivers account for 41 percent of rate year one rates; 85 percent of rate year two rates; and 92 percent of rate year three rates.

The Joint Proposal includes a 10.15 return on equity. It also contains earnings sharing provisions and capital expenditure cost controls. The following several slides expand upon these features of the Joint Proposal.

The next slide summarizes the rate year one earnings sharings provisions. This slide summarizes the rate year two and three earnings sharing provisions. A
modified version of the first year sharing mechanism is presented for the second and third rate years. Changes in earnings sharing thresholds and percentages are designed to capture the customer's benefit, potential savings resulting from the implementation of the Liberty Management audit recommendations.

The Joint Proposal introduces capital spending targets to more effectively discipline the capital spending process. The targets are summarized on this slide and the following slide, as well.

Regarding curtailment of capital expenditures, the Joint Proposal provides no upside protection to the company if it exceeds capital expenditures targets.

Instead, the company must demonstrate in the next rate year, first, that any investments above targets were reasonable and necessary; and, second, that any rate year one overspends were attributable to extraordinary expenses.

Further, the Joint Proposal limits the return on such rate year one investments to the embedded costs of debt for the entire life of the investment. These unique provisions are critical to controlling the company's capital expenditures.
Carrying costs on investments not made will be returned to customers. The Joint Proposal also requires the company to issue written directives to its managers with its responsibility for capital planning and budgeting that direct them to consider rate impacts on customers in developing capital plans and budgets.

These directives will be part of the company's ongoing communications to its managers and employees regarding the budgeting process. Thusly, annual reporting and meetings with Staff are required so that the company's capital expenditures throughout the term of the three-year rate plan will be monitored.

The Joint Proposal provides a continuation of reconciliation of property taxes but with a modification of the current mechanism. If actual property tax expense in any rate year, excluding the effect of property tax refunds, varies from the projected expense, then 80 percent of the variation would be deferred and either recovered from, or credited to, customers.

The company would pay or retain 20 percent of the variation, up to a maximum amount, equivalent to ten basis points on common equity for that rate year. Beyond this limit, any variation in property taxes will
be deferred for later recovery from, or credit to, customers. Currently, customers are 100 percent at risk for variation in rate level.

No variable or management incentive pay is authorized under the Joint Proposal. Non-labor operations and management growth rates are limited to 1.4 percent in rate year two, and 1.75 percent in rate year three.

The Joint Proposal provides no funding for new programs in rate years two and three. A 2 percent productivity imputation, rather than the historical 1 percent, is continued in each year of the Joint Proposal. The low-income program is substantially expanded to a funding target of $38.25 million annually. Currently, it is funded at $22 million annually.

Regarding revenue allocation, the allocation costs among Con Edison's rate classes, and particularly between the class of customers served by NYPA and other rate classes, has been a longstanding contested matter.

The Joint Proposal presents substantial progress towards mitigation and ultimate resolution of these cost allocation issues. In the first year, the NYPA class will be assigned an additional $7.2 million above the otherwise applicable rate increase. In the
third year, an additional $3.6 million.

To potentially mitigate the elimination of future disagreements regarding revenue requirement allocations, the Joint Proposal requires the company to submit a new embedded cost-of-service study with its next rate increase filing.

That filing must use data that is no older than two years prior to the year in which the filing is made. The Joint Proposal also provides for the phase out of declining block rates. Elimination of declining block rates will contribute to achieving energy efficiency goals upstate. The SC-4 and SC-9 classes will be redesignated to produce common delivery rates for those customers under a redesignated SC-9 schedule.

Also, the conventional declining block rate structure and several other classes will be replaced with a flat rate structure that will be phased in over a four- to five-year period, depending upon the service class.

The Joint Proposal continues the existing service performance mechanisms, reliability performance mechanism, and the customer service performance mechanism, maintaining the established overall levels of financial exposure under the two mechanisms.
Now, although the Liberty Management audit is a separate case, this Joint Proposal represents an initial response to several recommendations made in the Liberty audit. I have already summarized provisions to control capital expenditures. Those provisions also are responsible to several audit recommendations.

Capital construction spending will begin to correlate capital spending to program objectives and benefits for customers. Also, the company has committed to producing an electric long-range planning study.

The Joint Proposal contains provisions addressing management accountability, operation and project excellence. In furtherance of efforts to implement culture change to achieve the desired traits rates of business excellence, the company will employ assessment techniques, including individual and organizational performance targets. So, hopefully, through the use of those targets, true cultural change can be effected.

The Joint Proposal continues austerity measures introduced in the previous rate case. The austerity imputation is reduced over the three-year rate plan, anticipating the recovering economy.

The Joint Proposal establishes the means for
interested parties to explore several discrete aspects of the company's rates and services, including distributed generation, energy efficiency, retail choice, metering and billing, and planning.

This slide and the following slide identify collaborative studies that will be conducted pursuant to the terms of the Joint Proposal.

Many public comments have been received, over 600 comments. Most comments were in opposition to any rate increase and were relatively brief in length. Several comments support the standby rate collaborative to provide shore power for docked cruise ships.

In conclusion, it is my opinion and the consensus of senior staff that the Commission should adopt the terms and conditions of the Joint Proposal.

At this time, I'd invite questions from the Commission.

CHAIRMAN BROWN: Any comments or questions or do we want to go to Tom's presentation?

MR. MCGOWAN: Can I just recall that we are presenting this today for information purposes, to get concerns or any questions that may be on Commissioners' minds, and the idea is to not actually vote on the item today but to bring it back at the end of March.
CHAIRMAN BROWN: Right. That's why I think maybe we will just go right to 302B and then we can make general comments or questions.

So, Tom is on 302B, cases 07-E-0523 and cases 08-E-0539.

MR. DVORSKY: Good morning, Chairman and Commissioners. In 2005, the Commission approved the three-year rate plan for Con Edison that included reconciliation of carrying charges on capital investments between actual and allowed amounts.

This is an unusual provision that you would see what really precipitated what the issue was at that point in time in the case.

The '04 Con Edison filing included a significant amount of capital expenditures for each of the three years. Approximately, overall it was 3.2, approximately a little over a billion per year. Historical spending on CAPEX at that point was around 750 million. So, this, of course, was an issue in that particular case.

Staff's review of those projects felt that they were necessary. They were reasonable to implement. However, it felt that -- it questioned whether or not Con Edison can spend that amount of CAPEX since its
historical level was around 750, and there was a significant increase over a very short period of time.

So, that was the issue surrounding that case. The Commission acted accordingly. So, it's really the issue of whether Con Edison can spend that amount or not. Con Edison proved they could in 2008.

They filed a rate case, or the subsequent rate case. They asked for a reconciliation of approximately $1.4 billion over what was allowed in rates as per the provision of the '05 rate order.

Obviously, that became a major issue in the '08 case. To verify the reasonableness of that cost, plus the overruns at that point in time, would be a very significant undertaking in the context of a rate time frame.

So, what the Commission established in its '08 filing, it developed a revenue adjustment clause that put the overspend amount into a rate account that it felt that, after a thorough review, can be changed if the review felt that some of the costs were unreasonable.

It had also required in the '08 order for the company to file a capital expenditure report justifying the projects, the reasonableness, how they
controlled costs. And the company did do that and it filed 48 volumes of documents comprising about 30,000 pages of information, substantiating what it felt was justification for the projects and the levels of -- that they spent on those projects.

   The staff reviewed it. It was an extensive effort by staff. It not only reviewed the 30,000 pages of the filing; it also requested over 100 interrogatories requests that were multi-part interrogatory requests, and to verify and clarify the procedures, the budgeting process, and the cost control aspects of those projects.

   The assessment I will put in two categories. There were projects that the rate case covered. In other words, the '05 case covered certain projects for the three years. Those projects roughly had an overrun of over $500 million, $535 million, to be precise.

   The other category were projects that were not identified in the three-year rate filing. Those amounted to 175. Of the first category, out of the 535, about 80 percent overruns were due to commodity costs, equipment costs, due to the very extreme increase in copper and conduit and materials and associated equipment manufacturing that we saw in steel, and so on,
so forth.

The others were attributed out of overhead charges. Basically, this is more accounting, but there were pension costs and increases in OPEBs. Basically, overheads that you apply to the construction budget that didn't relate to the actual construction activities that were out in the field.

So, that left us with 173 out of approximately $175 million of overspend. A hundred of that were associated with interference work that the New York City mandated Con Edison to remove their facilities from construction work that the city was performing.

That left approximately $75 million left of projects staff believed were non-critical, in other words, that didn't have to be done during that time frame.

The review is coming to a conclusion at the same time as the current rate case. So, there was a discussion with the parties of whether -- with the Con Edison and parties could settle this overspend case.

So, they agreed. They went into settlement agreements, and in December they filed a Joint Proposal, indicating that the certain amount of carrying charges associated with $75 million of the capital projects
during that period would be borne by the stockholder. This amounted to approximately $37 million to date, and $54 million in future nominal dollars that the ratepayers would be saving, totalling about $91 million.

The Joint Proposal was signed by CPB, staff and the company. Nobody opposed it. CPB was active in this issue in the '08 case and throughout, and it felt that it participated as a signatory of this settlement.

I believe the settlement should be agreed upon. It does have some benefits of immediate revenue benefits that you could use to mitigate the current case, approximately $37 million, and then there's future reductions. That I indicated was $54 million.

Also included in the settlement was, if the Commission approves the JP, it's seven days, Con Ed would withdraw their petition for rehearing, which it filed on May 26, 2009 in case 08-E-0539. The company petition argued that the $523.4 million rate increase granted by the Commission was insufficient, and that some parts of the '09 rate order should be reversed, including those having to do with austerity, directors and officers' liability insurance, performance-based compensation for executives and managers, return on
equity, productivity, and certain energy efficiency-related costs.

So, besides the future immediate and future benefits to the ratepayer, in terms of dollars, it does, if you agree, remove the need for the Commission to adjudicate the petition and eliminate any risk of litigation, or legal challenge, associated with legal challenges of that order.

That basically -- also, there is another overview memo that I presented in 302 that puts things in context. Because if you do agree to this JP, there are other activities that were really in response mostly to your concern about CAPEX.

We increased our staff oversight and monitoring with the utility. We have at least quarterly meetings with the company, both from the transmission perspective and the distribution perspective. We have dialogue back and forth associated to our normal oversight responsibility.

Also, as Kate Tallmadge presented, management audit made 92 recommendations, the majority of which are associated with my shop's responsibility. That really goes into a lot of cost control, CAPEX and operations, so it's in sync with our oversight.
So, not only do we have our normal oversight responsibilities that we are conducting, we are also conducting a third-party limiting this case's viewpoints on what it sought, improvements that it recommended to be made in the Con Ed corporation.

And the same people will be following that activity. So we have the left hand and the right hand actually hopefully in sync here.

That ends my comments. And any questions I'll be...

MR. MCGOWAN: Can I just mention one thing that I'm sure Tom meant to mention.

This JP does not resolve any of the broader issues that continue to be investigated in the forensic audit. It simply is a resolution of the backwards-looking overspend and the amount of refund potential that has been established in rates by the Commission, I think, in '08 continues.

MR. DVORSKY: That's exactly right. The amount that was left in the RAC, the revenue adjustment clause, was for two purposes. This purpose of the overspend and what Peter's just indicated, the forensic.

If you accept this JP, it does not change the level of those amounts that are in the adjustment
clause, the revenue adjustment clause.

JUDGE CASUTTO: If I can just clarify, I believe it was in the '07 case that the rate adjustment clause was established.

CHAIRMAN BROWN: Okay. What we heard today is, I guess, describe it as a presentation and recommendation by the ALJ and senior staff regarding both the Joint Proposal that's on the table, and including in the Joint Proposal some outstanding CAPEX issues as part of overall settlement.

We will be taking action on these at our March 25th session. The purpose of today was to get the overview of the case so that Commissioners had an opportunity before that session to raise issues, address comments, questions, whatever we need to do, but that's kind of -- this has worked out well in the past by not trying to do this at the final session.

We get our questions answered in the interim period. So, I will open it up for comments or questions at this point in time.

Commissioner Curry.

COMMISSIONER CURRY: I think this is a question probably for both Tom and the Judge, but one of the things that we focused on intensely in the capital
expenditure arena is the amount of capital expenditure. In the rate case, capping that amount. And Tom, in the investigation that you supervised sort of how it was spent. So, having a better understanding right now of the total amount and the restrictions which are essentially innovative and quite imaginative in how we are trying to manage that going forward, could I ask for some comments on how that money has been spent in the past and how it's being spent going forward, from the construction management standpoint, because there was that East River repowering problem that excelled in giving us an example of how things can run over.

MR. DVORSKY: Yes. As you know, there is a lot of recommendations associated in improving the oversight role of Con Edison and the budgeting process of Con Edison as we go forward. I think it's a work in progress.

Our review of the historical numbers did indicate that the company didn't factor in the increases. I'll give you an example. They saw the increases of commodity going through -- going really up 100 percent, 140 percent, affected material cost.

They took -- my words or the staff's words, my interpretations of staff's analysis, was that they
took that as a given. They had the clause. It was what it was. They didn't factor in the rate implications of that, and they did what staff believes was some non-critical work, or they didn't reassess whether they should delay some of the projects, or what the consequence is.

You can see provisions in the rate case as we go forward where increasing -- and the company agreed to this. I haven't seen a provision in the rate cases that I have reviewed of such a CAPEX requirement, if you agree with the Joint Proposal, in place for any utility. Year one, basically they are saying is we forecast our budget in the first year. We are going to abide by it. So, there is plant in service targets associated with that amount.

And when it says, if we go over those targets for any reason, could be prudent, it could be whatever, they will forego, for the life of that plant or that overrun, the return on equity portion of that overexpenditure which is, as you know, the management is responsible to the stockholders. So, they are putting the stockholder at risk.

That's a commitment. For me, for them to agree on that provision is a first step in the right
direction because it's saying, all right, we hear you.
We are confident on the first year that we will abide by
the projects and the cost estimates that we filed to the
Commission, and all the stakeholders, that we are going
to perform under.

And they put a provision in there that says,
not only those are words; those are monetary
consequences.

And also in there, as the Judge articulated,
there is provisions in terms of information not only to
staff but the other parties, and so on, so forth. So
it's more transparent.

As year two and three goes, they committed,
of course, to if there are overruns to those targets, to
put in testimony justifying -- my interpretation of it
-- put in very detailed testimony justifying those
overruns in the next rate case from day one. They
wouldn't just assume that it's plant in service and you
start off with that.

So, those are good recognitions. Again, all
three years, they don't get the full carrying charges on
those overruns, so that's progress.

COMMISSIONER CURRY: Thanks, Tom. I guess
the reason why focus on this is so important is that
when you look at various other aspects of the rate rise, such as an increase, perhaps, in the billion dollars a year that Con Ed pays in real estate taxes, or in pension and other post-retirement benefits, and electricity charge, there isn't all that much that can be done, from our perspective, although I commend staff for having made significant steps in the right direction there. We do what we can but a lot of that is not close to our hands, nor is the interference work.

So, in the areas where we do have some ability to impact the process, it sounds like we're moving in the right direction.

Thank you.

CHAIRMAN BROWN: Any other comments or questions today?

Commissioner Larocca.

COMMISSIONER LAROCCA: I think I have said something like this before. In the last century, when I was in the other building, I was always in awe of what went on here, but never appreciated the extent of the professionalism and the depth with which you conduct business.

Watching the evolution of this case puts it in mind again. I just want to congratulate and thank
you all, particularly the briefings the last few weeks, to understand the level of work and thought and intelligence that's gone into what you brought forward or are bringing forward to us at the end of the month.

I am also thinking of these cases in tandem, as companions to one another. As I understand the evolution that's happened from the filing until now, there has, first of all, been a very significant modulation of the numbers from where the company began to what you have been able to achieve in the structure that you are bringing forward.

And secondly, after having achieved that, also moved it toward a levelized structure that is also, I think, very attentive to the needs of the communities that are served in these territories.

So I think those are already two very profound, very important measures, steps, that if we accept what we do at the end of the month, we will have already delivered to consumers a high benefit compared to where this started.

I think that's very important in the economy that we are in right now that at the end of the day that we can look at what we have done against the realities, some of which are brutal, of what it is we do here.
I, by the way, put in the category of some of those brutal realities the capacity of certain jurisdictions to tax the living daylights out of the customers of this company through the company. And that has a huge effect on the numbers that we see at the end of the process.

I did want to ask, and I have asked in the processes so far, in the briefings, to see if there is an extra mile that can be got anywhere in the numbers that you've achieved so far.

I think I am beginning to see that there is the possibility of trying to do something more in the first year that might be a further attempt to be responsive to the consumers, customers of this company, particularly in that the evidence that the worst may be beginning to be behind us, at least in New York City and suburban areas surrounding New York City, in terms of what the effect of the recession has been.

So that the ability to absorb additional increases might be a little stronger in out years than it is in the first year of this case.

So, what I have asked the staff to do is to examine, in combination with these two companion cases, if there is some way to deliver an additional bit of
relief or benefit to consumers in that first year.

I know Tom and others have, and certainly John, we have talked. I think a concept is emerging. I'd like to encourage that continue so that if we -- by the time we get here the end of the month perhaps we could do one more bit of good for consumers in that first year.

MR. DVORSKY: Yes, Commissioner Larocca.

The JP recommends, and only recommends, the Commission use the $37 million approximately to mitigate in a levelized fashion. I think it equates to about $6 and a half million each year.

Another way you can choose if the Commission --

COMMISSIONER LAROCCA: I should explain. The 37 million embedded in the CAPEX case, just describe that a little bit.

MR. DVORSKY: The 37 million is associated with the first three years or the rate case that is attributed to the '05 case.

Basically, the company foregone the total return on $75 million. 25 million, 50 million, and 75 million in the years of the rate plan, and the full carrying charges associated with those amounts during
that period of time.

Subsequent to that, they will forego the return on equity portion of the carrying charges from the end of that case to the present. That gives you about $26 million, I believe.

Then there is another ten million or so that's available to the customer during the rate plan that's before you now. So, that's roughly around $37 million. There's the $54 million subsequent to the end of the current rate case that will -- there is an attachment to the JP. It shows the credit associated with how the ratepayer gets the 54 million through time.

So that leaves you with $37 million approximately to mitigate and use for this current rate case, if you approve this JP and if you approve the JP in the rate case.

That could be done levelized in terms of six and a half, six and a half twice in the second year, and six and a half twice during the third year. Or three times.

Or you can say, let's do a one time bill credit in the first year because we feel that the economy is bad now. Hopefully it will improve the second and third year and you could utilize the amount,
37 and a half million, or 37 million, in the first year as a bill credit.

That would leave you nothing in the second and third, but it would alleviate what you feel would be the first year concern about the economy.

That would not --

COMMISSIONER LAROCCA: I think if you're able to do that you would have -- the 37 million is obviously a modest number but on a present value basis, it's worth more doing -- rather than levelizing it over three years, you get a little better bit from it by doing it in the first year, particularly if you are doing the form of a credit.

MR. DVORSKY: Since the parties made just a recommendation in the JP, that could be interpreted that it's up to the discretion of the Commission to feel comfortable either with their recommendation, or if you feel there is another method that you want to do in conjunction with the decision making of the JP in the rate case, it's -- would not override the JP in the overspend case.

COMMISSIONER LAROCCA: Mr. Chairman, I'd like to encourage that we pursue this and see what it shakes out and looks like.
CHAIRMAN BROWN: What I was going to suggest is obviously give you a week or so to run the numbers, to take a look and do a compare and contrast, provide it to the Commissioners obviously previous to the 25th so we could actually see the impact compared to, I guess, the levelized case.

And that way we would then have a series of options available to us. And I guess we will also find out if there is any strong objection to that approach, since we just publicly talked about it.

COMMISSIONER LAROCCA: I would encourage the company to try to look on it favorably. It's a relatively modest number, but an important gesture in this economy to try to find additional benefit for consumers.

CHAIRMAN BROWN: Peter, did you have a --

MR. MCGOWAN: I just wanted to say I think this is an excellent idea, but I think we do need to look at the numbers. There are different periods involved.

We just want to make sure that we have thought through how the 37 million, because it comes from three different periods, can be best used to provide a moderating effect, while not undermining
normal practices for accounting for this.

CHAIRMAN BROWN: That's why we try to do these things three weeks before we actually do the rate case.

MR. MCGOWAN: Excellent idea.

CHAIRMAN BROWN: So we have time to work through that.

Let's take a break until 12:30 and we will continue this and then we will go to the last case and see if we can get out of here.

(Recess taken.)

CHAIRMAN BROWN: I'd like to continue and reconvene the session here.

Commissioner Acampora, why don't you ask your questions.

COMMISSIONER ACAMPORA: I would just like to comment again on the 37 million. I hope that we can go through those numbers and I hope the company will consider that, as I feel, when Commissioner Larocca and I were meeting with staff.

Because of taxes and OPEBs and other areas that we have little control of, there aren't too many rabbits in the hat to be able to help the consumer. So, I think that this is something that is a reality, and
that we should move forward and utilize that money as a good faith effort to consumers in hard times.

Talking about consumers, I notice that in the JP that we thank CPB for their work on low income programs to aid the consumer, but I would like to say I think that our consumer department has worked with the companies over the past many years, and up until recently, to make sure that the low income consumer is taken care of.

So, I just want to mention that and make it part of the record, that we stand second to no one here in making sure that consumers, low income consumers, are taken care of.

Lastly, I'd like to go to the ROE and ask, in the JP how this ROE would be looked upon by the Street.

MS. STOUT: I believe that Wall Street is going to be fairly neutral with our ROE recommendation in the low ten range. Nationwide returns are averaging about 10.3 to 10.4 percent.

And though we have some differences between other jurisdictions and the New York jurisdiction in terms of risks, and our return is justified to be lower than the nationwide average, Wall Street has expressed
concerns about the level of New York returns being where they are.

When we had ROEs down in the low nines, both rating agencies and equity analysts reacted very poorly to our return allowances. Rating agencies actually downgraded Con Ed, in part, because of our ROE allowance, and they said that is one of the reasons to downgrade. Moody's downgraded them from A1 to A3 after the most recent rate order last year. And the year prior, S&P had downgraded Con Ed from "A" to "A-".

So, I think the best I could say right now is that the 10.15 percent ROE would be viewed neutrally. Also, right after the Joint Proposal was signed, Con Ed did go to market and issued $600 million in debt and got a pretty favorable pricing on that debt at only 128 basis points over Treasuries. So, I think it's a reasonable reception to that level of ROE.

COMMISSIONER ACAMPORA: How is their rating now as compared to others?

MS. STOUT: At an "A-" rating from S&P and an A3 rating from Moody's, they are still probably higher than the average utility company. In New York, we generally, our utilities are rated higher than most of the utilities nationwide. We are in the "A" to
"BBB+" range.

COMMISSIONER ACAMPORA: And their shareholders have made money in the past year?

MS. STOUT: I would say so, yes.

COMMISSIONER ACAMPORA: Thank you.

CHAIRMAN BROWN: Commissioner Harris.

COMMISSIONER HARRIS: I just want to first mention the $37 million that Commissioners Larocca and Acampora suggested we put up front into the Joint Proposal, if possible. I mean it has my support if it's workable within adjusting the time frames. I think it's a great idea. They should be commended, too, for coming up with the idea.

We are always trying to mitigate the rates of these consumers, and this one was definitely looking at the CAPEX structure and the settlement and the Joint Proposal and trying to merge the two. I just want to thank them for making the amendment and suggestion.

I just want to follow up on two other points, which is the property tax issue that all my colleagues here have voiced their frustration with our role in being a tax collector and these large taxes.

I just want to delve into it a little bit, if I could here on the percentage of property taxes over
the three year settlement and what portion this represents for the actual rate increase.

It looks like to me the information I was provided is that the property tax increase percentage for rate year one is 16 percent over the current rate year. That's an increase, correct?

MR. SCHERER: Yes. That's the component of the rate year one increase that's attributable to forecast increase in property taxes over the last time we set rates.

COMMISSIONER HARRIS: Which was a year ago, right?

MR. SCHERER: That is correct.

COMMISSIONER HARRIS: That's a 16 percent increase. If you jump to rate year three, it's a 38 percent increase for property taxes.

I mean it's just astounding to me that if you look at I believe it's $420 million is the levelized rate, and of that, is it right that it's 140 million is comprised of the taxes then? Is that?

I guess the point I am trying to make is that when we look at the bill impacts on the residents and the commercial classes, and what the bill impacts will be in rate year three, I just want to make it
unequivocally clear to the ratepayers that what we are actually responsible for is such a small portion of their rate increase, that we are frustrated and they should be frustrated with the size of the property tax increase in that, again, what we are approving here is apparently statutorily we have to approve these property tax increases, but I would strongly urge the company to look at every single possibility out there to challenge this, whether it be on a constitutional basis, that 80 percent of a class is comprised of one company.

I think that that can be called into question. And I would urge the company to challenge each and every assessment that they possibly can to give the ratepayers relief.

Our hands are tied on 38 percent of the third rate year increase. I mean this is -- it's astounding to me, so, saying it can't be done; it can be done. I mean it's just an outrage.

CHAIRMAN BROWN: Tell us how you really feel.

COMMISSIONER HARRIS: I think we all feel the frustration here. The City of New York is increasing these property taxes for this particular class at a rate that is far -- it's far greater than all
of the other classes, and it's an outrage.

Just getting to the low income portion of this Joint Proposal. In looking at what the other utilities provide for low income, and looking at the enrollment figures, please correct me if I am wrong, but it looks as though Con Ed's current enrollment for low income is at 240,000 customers. And that they currently provide about $23 million.

So, we are talking about an increase to low income customers of $15 million, which I don't know what the percentage would be, a third, or -- is the -- how much do we expect the enrollment to go up for low income customers?

MS. MILLER: The program has been funded for 245,000 participants, but it has been underserving -- it's been serving about 217,000. And the reason for that discrepancy is because in Con Edison territory they take not only HEAP-eligible customers, but customers that are also eligible because they are on food stamps or receive SSI or other kinds of programs.

There was an expectation that the matching was occurring every year, and it didn't happen. So now the process is in place to make sure that these customers that had not been receiving benefits from the
program are identified.

In fact, when they did that reconciliation, they found there were 153,000 customers that were newly identified that should be on that program.

COMMISSIONER HARRIS: Should it be our expectation, then, with this increase of $15 million to the low income program, up to $38 million or $60 million, up to $38 million, that we expect an increase in enrolled customers of 120,000?

MS. MILLER: We certainly expect that there are going to be more customers that will be put on the program because they have been newly identified and placed on the program.

COMMISSIONER HARRIS: I would ask for the following information, if possible. I mean I think Con Ed is very unique with this automatic enrollment for SSI, food stamps, safety net. I mean this is -- it's a broader eligibility for their low income participants than other utilities.

I guess I have a few concerns, which is, if a ratepayer in Con Edison receives food stamps, they are eligible for low income funding, if they are in Con Ed.

If they happen to live in another utility's area, they are not entitled to the same amount of low
income benefits. And I know it's utility-specific, but I'd like to put together some sort of best practices or look at the variations here by utility, because it looks like there is a lot of discretion and a lot of variation by utility.

And perhaps there is good reason and we can look into this, but to me, it looks like there is a significant funding for low income customers in Con Ed, if you look at it on a per-person basis and I'd like to see an analysis done of how much on a per-person basis these low-income customers are receiving in Con Ed versus some of the other utilities.

I mean, I just, I am looking for some sort of equity among ratepayers here.

MS. MILLER: Just to comment, KeySpan also is one of the utilities that offers benefits to non-HEAP recipient customers. And part of the rationale, I think, for the downstate programs being different is that many of those customers do not receive HEAP because heat is part of the rent they pay.

And they may still be in need of getting services from the utility, low income services. So, as a result, the downstate utilities have been more expansive in what they allow.
COMMISSIONER HARRIS: I see -- it's one of the explanations and I'd like a further analysis done to this, but Con Ed doesn't even go as far then as KEDNY or KEDLI in that they don't allow automatic enrollment for veterans pensions recipients, where KEDNY does.

I mean, I guess, where do you draw the line on who's eligible and who's not? And there's significant dollars involved here.

MS. MILLER: So, one of the things office of -- the new Office of Consumer Policy is going to look at is looking at best practices across the state. And low income is our bread and butter so we definitely will be taking a look at best practices.

COMMISSIONER HARRIS: I mean if we can get enrollment up in the Con Ed territory, it's at 240, if we can get it up another 100,000 with the dollar amount spent, I mean that's significant process.

And I commend everybody on this. It just bothers me when I see some of the other numbers and there's just not a lot of balance. So, thank you.

CHAIRMAN BROWN: Thank you.

Any other comments or questions on this? So, we will be coming back to this on March 25th. Thank everybody for their presentations today. I think we
have got some questions outstanding that you can start presenting to the Commissioners in the meantime and we will take action on this on the March 25th session.

The sixth item for discussion today is Item 301, case 08-E-0077, petition for a declaratory ruling regarding a corporate reorganization, or in the alternative, an order approving the transaction and order approving debt financing for Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Point 3, LLC, Entergy Corporations Nuclear Operations, Inc., NUCO, and Entergy Corporation. This will be presented by John Stewart, Director of Office of Rates and Services.

John?

MR. STEWART: Good afternoon, Chairman Brown. Good afternoon, Commissioners.

At the February 11th session, we explained why we thought that the proposed Entergy/Enexus transaction was not in the public interest and could be rejected. To provide you an alternative to rejecting the transaction, we also listed three principles which we believed could be employed to analyze the viability of any future proposal by petitioners.

Those principles addressed short-term
financial viability of Enexus, the long-term financial
viability of Enexus, and the need to provide benefits to
the public as a result of the deterioration and the
quality of financial support of New York's merchant
nuclear plants that would occur under either Entergy or
Enexus -- either Enexus' ownership or continued Entergy
ownership of those plants in the future.

On Tuesday, March 2nd, petitioners filed a
proposal which they believe is consistent with these
principles. During the period of time between the
Commission's February 11th session and the March 2nd
submittal from petitioners, senior staff urged
petitioners to respond to the principles discussed at
the February 11th session with its best offer.

In addition, senior staff made itself
available to answer questions from petitioners regarding
the meaning of the principles we outlined at the
session, and the areas of concern which those principles
were intended to address.

Providing petitioners this information was
intended to put them in a position to offer a more
informed response to the three principles, if they chose
to make a response at all. And all this was also
intended, and we noted this at the February session, to
lead to a more transparent approach, which enabled all interested parties to comment more meaningfully on the issues that are involved in this case.

As I said, the petitioners chose to make a filing on March 2nd. We have conducted a review of the key aspects of that filing at this point. And I can say that, while petitioners have modified their position to move towards the three principles we enunciated at the session in February, our conclusion is that the proposals do not satisfy the principles described in February.

As such, if we were to make a recommendation to you today it would be that the proposed transaction, as modified by March 2nd filing, is not in the public interest and would be rejected.

The basis for our determination is as follows: The first principle addressed at the February 11 session related to short-run financial integrity. We stated, at the session last month, that we believed an upfront debt reduction of about $550 million would adequately protect the merchant nuclear plants from possible short-run operational issues.

Petitioners, as part of their March 2nd filing, and also as part of an AK filed I believe last
Friday, modified certain provisions of the debt covenants which they believe fully address our short-run concerns.

While petitioners offered no upfront debt reduction to address this concern, as a background, they did offer a $500 million reduction in debt up front to address our second principle, which is long-term financial viability.

So, just back to the short-term financial viability issue, we have reviewed the covenant modifications that they proposed, and believe that an upfront debt reduction in the $300–to $400 million range is still necessary to avoid defaulting on the modified covenants in certain scenarios in the short run.

While the company did not offer any debt reduction specifically in relation to the short-term financial viability issue, it did offer the $500 million in relation to the longer term.

Because of that, it is our conclusion, because there is an upfront reduction, although they didn't package it as part of their proposal to address the issue, because there is an upfront reduction, it's our conclusion that the short-term financial integrity
issues are addressed adequately by the March 2nd filing.

The second principle relates to the long-term financial viability concerns. And the Company's position on the second principle may, in fact, reflect the business plan that cannot be reconciled with your, Commission -- the Commission's public service responsibilities.

More specifically, we identified the need for a BB+ bond rating, a 40 percent market-based debt ratio, and a restriction on Enexus's ability to buy back common stock or pay dividends until one of these two objectives, either the debt ratio objective or the bond rating objective, was achieved.

Those were the mechanisms we gave as an example of things that might satisfy a long-term financial viability goal. We would allow Enexus to buy back stock for employees' stock plans. We think that might be up to $50 million a year.

Petitioners responded to this principle in their March 2nd filing by agreeing to a market-based determination of the debt ratio of 50 percent, rather than the 40 percent which we recommended be targeted.

Moreover, petitioners agreed to reduce a pot of additional dollars -- and these dollars are not
related to net income -- they would agree to reduce this
pot of additional dollars available to fund payments of
dividends, or stock repurchases, from $500 million to
$250 million.

Further, they agreed not to pay more than 50
percent in dividends out of net income plus this $250
million amount.

The petitioners' response to this second
long-term financial viability principle is problematic
in that, in our view, it results in a target debt ratio
that equates to a weak "BB" bond rating at best, and
provides little or no prospect at building financial
parameters to a level that we believe would support what
is required for a BB+ target.

Let me just step back and give some
background on the BB+ target. We established that
target because that is where we think likely the
merchant nuclear plants would be under continued Entergy
ownership as a result of Entergy carrying forward on its
plans to ring fence regulated utility operations from
the subsidiaries in the south from the rest of the
merchant nuclear operations.

We think that action would probably result
in a slight downgrade in the credit quality of the
merchant nukes, and we think BB+ is where we might ultimately end up under continued Entergy ownership.

So, with that as a background, how do we get to our conclusion that the proposed transaction, as modified by the March 2nd filing, results in a weak credit quality, weaker than our target?

Enexus has a very risky business profile from a credit quality perspective. Reflecting a business with this profile, assuming current market prices for electricity, the debt ratio of 50 percent, which they proposed, and their plans to buy back common stock and dividends, we would end up with financial parameters that are consistent with a weak "BB" rating, and very possibly a "BB-" rating.

Thus, petitioners' long-term financial viability does not meet our target and, in fact, puts the company in jeopardy of an unacceptable decline in its bond rating to the "B" category, which we would view as very significant.

Now, we heard Ms. Stout talk today earlier about Con Edison having -- issuing stock -- issuing bonds at 128 basis points over Treasuries. A "BB" company might issue the same bonds at another 200 to 300 basis points above what Con Edison might.
A "B" company might issue those bonds at another 200 basis points over what a "BB" company would. By even targeting "BB" as where we might end up at, we are recognizing significant diminution in financial strength from an investment grade category. By putting the assets in a position where they could go to "B", we are looking at a potential cost of debt that could be much more expensive than even the "BB" category.

Another important thing to point out regarding the Company's proposal here is that if Enexus actually reaches the proposed debt ratio or their bond rating targets, the mechanisms would cease operations for all time. So, in other words, if they meet them tomorrow, and then three months from now they don't meet them, there is no mechanism in place because the fact is they met them once and the mechanisms cease.

By contrast, the mechanisms which we recommended to you back in February, as an example, would continue over the life of the plants.

Another important point that I would make is that the restrictions proposed by the company on dividends and equity buybacks will not produce any added debt reductions or any added retained cash for the company over those shown in its forecasts on the record.
This is because 50 percent of the net income dividend restriction is already in place as a result of bond covenants or financing agreements. Moreover, the company's ability to reduce the money basket, the pot of dollars I talked about earlier, the ability to reduce the availability of that to pay dividends or buy back stock eliminates funds that they had not counted on to buy back stock or pay dividends in the first place.

The amounts -- in other words, the amounts that they had in their forecast would never -- had eaten into the portion of the basket which they are giving up in their proposal. So that it would have no effect.

The provisions in the March 2nd proposal will not only allow Enexus to pay dividends, repurchase stock at a time when the company has not attained the appropriate bond rating, or a debt ratio target, they also prolong the period of time necessary to attain those targets.

Of equal concern, they may also -- and we have to look at this a little closer, but they may also create a situation in which the bond rating and market value objectives are unattainable over any reasonable time horizon.

Two other points. Based upon the evidence
on the record provided by petitioners regarding the likely range of market values for Enexus's common stock, our recommended 40 percent debt ratio requirement would produce situations across the wide variety of their suggested ranges from the record that would not -- that would cause them basically not to -- cause them to meet our requirements and be able to pay dividends.

So, in other words, under most of the record evidence they submitted, they would be able to pay dividends if it comes to fruition. The fact that petitioners are so reluctant to put forth the protective mechanism tied to the 40 percent debt ratio casts doubt in our minds about their level of confidence and about the level of confidence we should place on the record evidence. In fact, it emphasizes a need to focus on the importance of this particular protective mechanism.

The other point I want to make is petitioners state they would use a net debt calculation for their proposed debt ratio test. What they mean by this is that, for the purposes of determining a market-based debt ratio, they would reduce their outstanding debt by all but $200 million of cash.

Meanwhile, by contrast, the proposal which we made to the Commission would only allow petitioners
to net future cash produced by not paying dividends or buying back stock against outstanding debt.

Based on our review of how the rating agencies look at debt ratio calculations, we believe that the proposal we have put forth is closer to how the rating agencies look at it than the petitioners.

Third principle, which we enunciated at the February session, concerned the extent to which petitioners could provide added -- or other value to ratepayers. Petitioners propose a mechanism that has the potential, albeit unlikely, to disburse up to $300 million over the next 15 years to fund energy efficiency investments in New York.

We generally support the intent of this mechanism, but there are a number of reasons why this approach does not appear to offer much value for ratepayers at this point.

Among other things, these reasons include:

The existence of an annual cap on the amount flowing to ratepayers; the existence of an overall cap over the life of the mechanism on the amount flowing to ratepayers; the fact that if the same mechanism had been in place over the last ten years the total amount of value provided to ratepayers, depending on the
calculation employed, would be somewhere between $10- and $45 million, rather than the $300 million limit that they put forth; and finally, it's really unclear in their proposal how it fits with their use of purchase power contracts.

These are our preliminary findings thus far. While we have addressed the most significant shortfalls in the March 2nd proposal, we need more time to perform an analysis that looks into the entire thing.

I want to also just touch real quickly on kind of an emerging issue, and that is what's happening in Vermont. Since the February 11th session, the Vermont State Senate has voted not to permit the extension of the life of Vermont Yankee beyond 2012.

Given this fact -- we would require any recommendation going forward that Vermont Yankee not be included in the proposed transaction. I don't think it quite ends there, because it's also evident from watching what's happening in Vermont that there's issues going on concerning the conditions at the plant, as well as the ability of the petitioners of Entergy, actually, to respond effectively to questions from state and local officials.

At this point, it's hard for us to determine
what exactly that means for monitoring it, and we are
trying to determine how that might affect our
recommendations here.

So, just to bring us back, we described
three principles at the February session that we think
are required to support the proposed transaction. The
petitioners have responded to those principles on March
2nd. Our review, thus far, indicates that their
proposal falls short in two of the three areas.

We cannot recommend approval of the
transaction given the petitioners' formulation of
principles at this time. Thank you.

CHAIRMAN BROWN: Thank you.

Start with -- why don't I start with the
process first, and then we can go to comments or
questions. We have received various requests from
parties to not take action because the proposal just
came in on Tuesday, two days ago. And even I think you
said, John, you used word preliminarily more than once,
perhaps needed a little opportunity.

What I -- we also talked about in our
February session was kind of once a proposal came in
that we would have some sort of public process to
comment on that proposal. So, I'd like to honor both of
those requests, perhaps by suggesting today that we have a very expedited public process.

Be an opportunity for the company, Entergy, to address some of the concerns that Staff is raising and why they perhaps believe that they have met the principles. I think it's an opportunity to clarify the role of Vermont Yankee in this transaction.

I think -- John made a recommendation. I'd like to find out whether the proposal that's there, exactly where that stands. Provides an opportunity for other parties to fully understand the proposal and the principles that we have set forward, but I don't want to drag this out. We are where we are.

So, I would ask the Secretary to work with the judge to establish something maybe that could even get us a report, a chance for people to comment, have a meeting, and get a report by the end of March. That may not be physically possible, but that would be a goal if we could get there.

Because I am not sure how much more is left to be learned, but I know that with the new proposal on the table there's at least some dialogue that should take place in a very public process that can get all the parties in the room that understand what's going on.
So, that would be my recommendation today would be to move forward on that basis, but I don't mean to cut off any comments or questions at today's session and everybody doesn't have to agree with me.

So, Commissioner Curry.

COMMISSIONER CURRY: I do agree with Mr. Chairman, but that being said, I also share the concerns that John articulated from a financial standpoint.

But, as I noted in our February session, I have serious concerns about this transaction, but from the standpoint of the way Entergy management has dealt with safety issues at the Vermont Yankee facility.

In Vermont, as John mentioned, the question of plant safety is being addressed by the legislature in its capacity to approve a relicensing of the facility by the regulatory authorities there, and by the Nuclear Regulatory Commission itself.

In addition to the safety issues, these folks seem to be addressing -- this is only from what's in the public domain and not with any specific knowledge -- it seems to be sort of a question of what did you know and when did you know it? That's a question addressed to Entergy, what some people in the press are
calling a "management integrity issue."

So, as we look to analyze further, get beyond the preliminary stage in looking to the financial components, I agree strongly with John that we should carefully look at and investigate the management integrity issue as it's playing out in Vermont, and the extent to which it extends to the management cadre that deals with the much larger New York component of the fleet.

This issue really transcends the transaction being proposed and requires our strict attention as we go forward. So, I would thoroughly endorse that.

CHAIRMAN BROWN: Thank you, Commissioner Curry.

Other comments or questions? Any objection to moving forward in the direction that I been suggested?

Commissioner Larocca.

COMMISSIONER LAROCCA: I guess -- two things.

I honestly do not feel, to this point in the discussion, that I understand fully the business rationale for what is proposed. That's not a fault of anyone here, and may not be the fault of the company.
It may be the fault of my ability to comprehend, but I still don't understand the business case. And I think I need to do that.

Secondly, as I peruse all of the documents in the record, I do not see expressed in a form that I can fully understand, the public interest case for what is proposed. What is the public interest purpose, which is part of what we have to determine, for this transaction? How is the public interest served by this transaction? I think that's one of the questions we have to grapple with.

CHAIRMAN BROWN: Commissioner Acampora.

COMMISSIONER ACAMPORA: I agree with you, Mr. Chairman, and I always think that it is the Commission's responsibility to be fair. So, I think, in the interest of fairness, extra time would be proper.

But as I questioned at the last meeting, with regard to specific concerns of the Attorney General, I agree that I feel that a full SEQRA review should have taken place.

And, as Commissioner Larocca is saying, right now I see no appreciable benefit to any ratepayer because of this proposal. But I would like to recommend that in the future, when we have something like this,
before there is a filing that, particularly with our sister agencies, that we have some better communication.

Because of the filing, we can't speak to them because they are parties now. So I think that we need to reexamine that when something else comes up, but I do go along with your suggestion.

CHAIRMAN BROWN: Commissioner Harris.

COMMISSIONER HARRIS: Peter, we touched upon this at the last session where we talked about the standard. What is it that we need to be held to when we look at this reorganization transaction?

Is it that we have to find that it's in the public interest? Do we need to find that there -- if the reorganization and transaction is approved, that there is no harm, or is it that there has to be a positive benefit to ratepayers?

I just want to be very clear so when I look at this proposal and the comments I know -- I have the standard to which to apply this.

MR. MCGOWAN: The standard that the Commission -- the statutory standard is a public interest standard. In applying that standard in the competitive generation arena, and elsewhere, but in particular in the merchant generation space, the
Commission has applied a no net harm standard to ensure that ratepayers are not harmed in any way and to facilitate the competitive marketplace.

So, the standard that we are -- the application of the standard here is a no net harm standard.

COMMISSIONER HARRIS: With that, with a no net harm standard, I'm just -- again, I am just trying to make sure that I apply the proper standards to each part of this.

If there is a no net harm standard, and our concern is with the second principle, the long-term viability of the company, and the access to capital is more expensive, who -- that's one of the concerns is that the access to the capital of the lower-rated company will be more expensive.

Who pays the price? Who is ultimately responsible for that risk?

MR. MCGOWAN: It may be true that the cost of the particular debt issuance might be more expensive as you move down the credit rating scale, but I think it's also the case that you have to look at the overall cost of the company's capital. So, you have debt and you have equity.
So, the balance there is very important. I am not expert in that area, but I think the more important point here is the cost of that capital is, first and really almost entirely, borne by the company, not by ratepayers, because we are operating in a competitive marketplace where this plant is a price taker, primarily.

So, if the cost is -- if the cost of a particular debt issuance is higher, and that increases their cost, that, I think, is very tenuous, in my mind anyway, to link that to a harm to ratepayers, but it's a different concern that we are after, I think.

COMMISSIONER HARRIS: But is it, though, or should we be after it? I guess I am trying to -- if it's a no net harm, and the long-term viability of the company may have financial implications on the shareholders, where is the net harm to the ratepayers?

I mean we still have to find the public interest, I agree, I am just trying to understand this no net harm standard that, if the financial implications are borne by the company because it is -- the risk is borne on the merchant generators, which was always -- it's a positive thing that we shifted the risk there away from the ratepayers. I am just trying to
understand how it doesn't pass the no net harm.

MR. STEWART: I think you have the situation where the nuclear -- merchant nuclear plant under continued Entergy ownership, even with ring fencing, even with the BB+ rating, will probably be able to access the market most times but probably not be a situation where there is defaults. They could be in bankruptcy.

By contrast, under Enexus, there were scenarios we looked at where there could be covenant violations. There could be defaults. There could be interruptions in access to markets.

The more you go down the credit quality curve out of "BB" to "B", yes, the costs go up but, really, what the cost is indicative of is more risk, more likelihood that you get to the situation where you might be in bankruptcy or you won't have access to markets, or there will be ratepayers' harm.

And from a point of view of investments not being able to be made in a timely basis, higher wholesale prices to New Yorkers, higher -- more negative emissions, environmental emissions, for the public, as well.

MR. MCGOWAN: And so, what we were
understanding those as potential consequences, my
analysis, and I think our analysis, has been that these
plants are too important to New York. They are too big
to fail.

So, if we were in a situation where the risk
was too great, and the risk in -- it's difficult to
foresee now, but if the risk came to fruition, and the
plants were not able to access capital, there is a real
possibility that ratepayers would be asked in some
manner to support their ability to finance.

COMMISSIONER HARRIS: I guess I would just
respond by saying, if it's too big to fail, this is the
company's asset. It will be too big to fail. They will
all be out of a job.

I mean, the plant -- a lot of people will be
out of work, including all the top managers who would be
relying upon their paychecks. I guess that's one part.

The second part you mentioned, John, was
this -- the environmental consequence, which is an
environmental harm, and a potential for environmental
harm, which leads me to this, if there is a potential
financial harm, it may have potential environmental
harm, and how do you get around that in a SEQR analysis?

MR. STEWART: The conditions which we would
recommend put Enexus in the same position as the nuclear assets would be -- which we believe would be the nuclear assets under continued Entergy ownership.

COMMISSIONER HARRIS: Based on the fact that there could be environmental harm.

MR. MCGOWAN: No, no. Based on the fact that you have to -- if the conditions and the principles that John was articulating are met, then the question is: Will that give you a BB+?

Let's assume the answer is yes. Then the question is, all right, how does that compare -- and this is where it gets a little bit tricky -- but how does that compare to the enterprise, Entergy, how does it compare to the enterprise that we think we will be facing next year or in the future?

And we are thinking that the Entergy enterprise that we will be facing in the near future is also going to be a BB+.

COMMISSIONER HARRIS: Can I ask you --

MR. MCGOWAN: There is no net difference that results from the transaction.

COMMISSIONER HARRIS: Are we saying then that all merchant generators need to have a BB+ going forward?
MR. MCGOWAN: No.

COMMISSIONER HARRIS: Are we not, though?

MR. MCGOWAN: No. Remember that we are dealing here with a very unique set of assets for New York.

COMMISSIONER HARRIS: In that it's nuclear.

MR. MCGOWAN: Nuclear and huge quantities of megawatts.

COMMISSIONER HARRIS: So, if it's a large merchant generator, or a nuclear generator, we are now creating a new standard.

MR. MCGOWAN: I don't know if it's new.

COMMISSIONER HARRIS: Well, we are carving out a different -- you're creating a unique situation. With that unique situation, we are responding with unique conditions.

So, in essence, we are sort of creating new precedence for large merchant generators and nuclear generators in the State of New York. It may be an unintended consequence and precedent, but I think that will be the expectation.

MR. STEWART: I think -- somebody can help me out, but unlike most other merchant generators that bid into the -- most of them that bid into the market,
nuclears are price takers. And as long as they are available to run, they will sell into the market. And I don't think that's necessarily the model for most merchant plants.

CHAIRMAN BROWN: John, let me ask a question in a different way. When the original divestiture took place, did Staff put -- for the lack of a better term -- a higher standard on the ownership arrangements of the nuclear plants than they did for some of the other plants that were sold along the way? Did they take a look at the owner in a different light?

MR. STEWART: We took a very -- I can tell you exactly what we did for the nuclear plants because we had several owners come in that we had various doubts about their ability to finance on a going forward basis.

So, we wanted an investment grade -- we wanted investment grade owners with a proven track record of operating nuclear power plants, and also had the financial strength to make whatever capital investments were necessary to assure plants keep running.

CHAIRMAN BROWN: Were those same kind of standards on some of the other random plants, fossil fuel plants?
MR. STEWART: We were a little bit looser on the fossil plants than we were on the nuclear plants.

CHAIRMAN BROWN: So, I think I am just trying to suggest the precedent, I think, was set 10 years ago, that the nuclear plants are looked at -- the ownership arrangement of the nuclear plants are looked at a little bit differently than other merchant generating facilities.

MR. STEWART: The reality was we sold the fossil plants earlier, a year or two earlier than we sold the nuclear plants because we were so concerned that nuclear power was so special. We weren't certain how we could put it in the market, whether we really could sell them to qualified buyers.

COMMISSIONER HARRIS: When we looked at the EDF transaction, was it last year, did we have similar concerns and similar standards set forth? I mean I just don't recall the same...

MR. MCGOWAN: It's my memory that EDF was coming in with a much higher bond rating.

COMMISSIONER CURRY: Actually I think it was "A". Minimum.

MR. MCGOWAN: It was much higher than the one they were taking over.
MR. STEWART: If you recall Constellation, within two days in September of two years ago lost probably 60 percent of their market value of their stock price. Their bond ratings went down and they had huge issues about the relationship between the regulated operations and the unregulated operations.

It was a very difficult situation, and EDF coming in improved it tremendously.

COMMISSIONER HARRIS: So, we have precedence for -- I won't say precedent, but there is a standard which was higher than what we are asking for here even.

MR. MCGOWAN: Well, again, the way I would have thought about it is, does that transaction, EDF, pass our no harm standard? Well, yes, it improved the credit rating of the enterprise.

COMMISSIONER HARRIS: Can I get to the principles, too? Do we know how a credit rating agency would look at a hedging requirement, sort of when times are good and we would be asking to skim off the top? Is there a negative implication that the credit agencies would impute for that?

MR. STEWART: It depends on the details. It depends what probability the credit rating agencies assign to whatever the strike prices are. And it also
applies to the percentages that would be taken of the amounts that -- associated with the strike prices.

COMMISSIONER HARRIS: I guess in the process going forward, and I guess I would turn it over to the Chairman, are we putting forth all three of these principles as something the Commission is adopting? Or is this a recommendation from Staff, the principles that the company has responded to with their proposal?

We discussed these principles, but we never formally embraced them or anything formally. I am just curious about the next step with that.

CHAIRMAN BROWN: I think we certainly talked, and the Commission understood what the principles were at the February session, but you are absolutely right. We took no formal adoption.

And I think part of the process that we will open here is an opportunity for Staff to explain what they feel those principles are, and for other parties to say that one's not -- that one, you know, you shouldn't be concerned with that.

So the judge can hear the issues and the arguments, but in general I think we -- for lack of a better term -- endorsed the principles last time around, but we certainly didn't formally adopt them.
COMMISSIONER HARRIS: Right. I mean I just -- if we are going to allow the parties a comment -- an opportunity to comment on the proposal, I would like to hear from the parties as to the credibility of the principles.

And I think I had mentioned at the last session, I see the benefits of the first and second principle, and I don't see the necessity for the third, and I think it's a slippery slope, but my colleagues may disagree strongly and that's fair.

I just want an opportunity for the parties, to hear from them.

CHAIRMAN BROWN: That's fair.

So, any other comments or questions today?

So, I think we have got a process to move forward. Any concerns or questions you have?

MR. MCGOWAN: No. Just to clarify, I think what we are taking away from this is that we will issue a notice -- the Secretary will issue a notice. I would think that we would be inviting or establishing an opportunity for parties to sit down hopefully next week, work out the best schedule for that so they can exchange ideas, clarification, questions, etcetera.

And then have an opportunity for parties to
file comments on both the principles that have been discussed, and the company's reasoned response to that principle in two weeks' time subject to further adjustments, as the Secretary, for good cause shown, as we move through this process.

JUDGE PRESTAMON: Could I just comment. I want to make sure everybody is fully aware of what you are hoping is going to happen, what is going to happen by March 25.

First of all, the principles that have been enunciated by the advisory staff have all been developed since the last submission of comments. The parties had never seen them, have never had a chance to question or discuss the underlying basis for those principles, which is fairly complicated work -- or fairly complicated analysis done by the advisory staff.

They need to understand the principles and how they were derived before they can comment on them. Then, once they have done that, they need to determine for themselves whether or not the proposal made on March 2nd meets those principles. And, as advisory staff has indicated, the March 2nd proposal requires some analysis as well.

Certainly, I am expecting when this goes out
there is going to be a lot of requests for additional
time, more discovery, something to give the parties an
opportunity to get more information.

At the very least, we are going to have to
have a conference next week at which the parties can
question the company. I wonder whether they should be
able to question somebody from advisory staff if they
want to learn about the principles.

But, after that, if they have a week to
digest everything they learned at the conference, and
submit comments, we are already up to somewhere around
the 18th. And then all that is supposed to be assembled
by me, given to the financial analyst, because I can
only summarize the arguments for them, and produce a
report for you to consider on March 25.

So, as long as you are aware of what we are
trying to do.

CHAIRMAN BROWN: We understand. I called it
a goal or a target. A lot of these issues, if we end up
in a place where we say no to the transaction, a lot of
these issues go away.

So, why don't you have the meeting, the
in-person meeting, find out where everybody is at, see
if we do get these requests. I know you have to be
fair. I know you have to have a process. We want you
to be fair and have a process, but let's be a little
flexible until we find out exactly where all the parties
in the proceeding want us to get to.

I think it's in everybody's interest to
expedite this, including the company, including Entergy.
I know that they have got a desire to move this as
quickly as possible.

So, let's try, but we do understand if
fairness requires a longer period of time, then fairness
requires a longer period of time.

MR. MCGOWAN: Can I also mention that just
before we resumed this afternoon's meeting, I became
aware that the Attorney General filed a motion today,
which I have not been able to fully review, but it seems
like it's asking for the Commission not to act on the
response that came in just two days ago.

So, I think --

CHAIRMAN BROWN: We received similar letters
from other parties.

MR. MCGOWAN: Yes. I think what the
Commission is -- the manner in which the Commission is
proceeding with this case, I think, makes the relief
that was sought moot.
So, that's where I think we are leaving it. If parties want to respond in the ordinary course to this motion, they are free to do so and we can come back and address it later, but it does seem like the Commission's action today does make the relief sought there moot.

CHAIRMAN BROWN: Thank you.

Any other comments or questions? Hearing none, there is no other actions to be taken today.

Madam Secretary, is there anything further to come before us today?

SECRETARY BRILLING: No, there is nothing further today, Chairman Brown, but the next regularly scheduled session will be held March 25th, which is a Thursday, at the Commission's offices on 90 Church Street in New York City, beginning at 11:00 a.m.

This session will be a video conference from the Albany office and webcasting will be available.

CHAIRMAN BROWN: So, March 25th in New York City. Meeting adjourned. Thank you very much.

(Meeting adjourned.)
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