

Public Service Commission meeting - 10-19-2017

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, October 19, 2017  
12:35 p.m.

Three Empire State Plaza

Agency Building 3, 19th Floor  
Albany, New York

COMMISSIONERS

JOHN RHODES, Chair  
GREGG C. SAYRE

DIANE X. BURMAN  
JAMES ALESI

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2 CHAIRMAN RHODES: Good morning.

3 I would like to call this session of the  
4 Public Service Commission to order.

5 Secretary Burgess, are there any changes to  
6 the final agenda?

7 SECRETARY BURGESS: Good morning, Chair and  
8 Commissioners. There is one change to the agenda. Item  
9 209, which is case 12-M-0476, et al, which is a  
10 petition by Utility Expense Reduction, for a waiver to  
11 serve low-income customers. That item has been pulled.

12 CHAIRMAN RHODES: Thank you.

13 So, let's proceed to the regular agenda and  
14 go to the first item for discussion. Item 101, case 17-G-  
15 0424, which is the proceeding on motion of the Commission  
16 to review operating procedures of natural-gas gathering  
17 lines presented by Cindy McCarran, Deputy Director of Gas  
18 and Water. Cindy, please begin.

19 MS. MCCARRAN: Thank you.

20 Good morning, Chair Rhodes and  
21 Commissioners.

22 In item 101, Staff is recommending that the  
23 Commission institute a proceeding to convene a  
24 collaborative that will include gathering-line operators  
25 and local-distribution companies. The purpose of the

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2   collaborative will be to determine what information should  
3   be gathered, so that Staff can report to the Commission in  
4   six months' time about the natural-gas-gathering system in  
5   New York. The goal is the development of best practices  
6   in the gathering-line industry and to ensure New York's  
7   role as a national leader in natural-gas safety.

8           Staff will report to the Commission in six  
9   months, on progress made in developing oversight  
10  protocols, identifying gathering lines, subject to New  
11  York State gas-safety regulations and any other issues  
12  raised in the collaborative.

13           I would be happy to take any questions you  
14  may have.

15           CHAIRMAN RHODES: Thank you, Cindy.

16           Speaking for myself, I find this is an  
17  important topic, overdue for attention, highly relevant to  
18  the safety of -- of New Yorkers and I find this a very  
19  useful collaborative approach, that's -- that's been  
20  developed.

21           Are there any comments or questions from my  
22  fellow Commissioners?

23           Commissioner Sayre?

24           COMMISSIONER SAYRE: Lack of odorization on  
25  a natural-gas line is a serious safety concern. If you

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2    can't smell it, you don't know that your life may be in  
3    danger.

4                    At this point, it appears that we don't  
5    know where all the gathering lines are, especially those  
6    that were constructed before our initial safety  
7    regulations in 1982. It's also not clear that the owners  
8    and operators all understand our regulations and where  
9    odorization is required.

10                   It's not uncommon for a well owner to walk  
11   away from an unproductive or uneconomic well and the same  
12   can hold true for gathering lines. This order will give  
13   us the data that we need to enforce our regulations.

14                   Once we get the data, I expect that we may  
15   have a lot of work to do. I'm confident that Staff is up  
16   to the job.

17                   CHAIRMAN RHODES: Thank you.

18                   Commissioner Burman?

19                   COMMISSIONER BURMAN: Thank you.

20                   The integrity and reliability of the gas  
21   system is paramount and in New York, we're focused on  
22   ensuring we have a safe, reliable and clean, natural-gas  
23   system. Today's action by this Commission represents  
24   another step in the continuum undertaken, to ensure the  
25   transportation and delivery of natural gas with the utmost

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2    care and safety.

3           In the recent past, we've either required  
4    or encouraged the odorization of gas and gathering lines,  
5    increased research development and deployment of methane  
6    emission-detection strategies, posting the locations of  
7    leaky pipes, gas-worker training-compliance review,  
8    expanded utility-system inspections at the customer  
9    interface, where meters are locate -- located inside  
10   buildings and accelerated replacement rates for leak-prone  
11   pipe.

12           As the demand for natural gas continues to  
13   grow, due to economic and environmental factors, we must  
14   continue to seek common-sense methods, to ensure its safe  
15   delivery, while minimizing unintended environmental  
16   impacts. Continuous improvement should be the goal of any  
17   pipeline regulator, or pipeline operator. We should  
18   strive to do so, with proper communication and  
19   collaboration, to help with overall planning and  
20   coordination and address issues.

21           We have an opportunity to engage at the  
22   federal level. I sit as the Vice Chair on the Gas  
23   Pipeline Advisory Committee, for PHMSA and it's vital that  
24   we do so, looking at this effort and how it may be done in  
25   a way that is helpful at the federal level, not

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2    overstepping our jurisdiction. Here, we're limited to our  
3    jurisdictional gas-gathering lines, but working together  
4    to again focus on how we can best improve continuously,  
5    for the safety, integrity and reliability of the gas  
6    system.

7           Such opportunities are truly desired and  
8    appreciated. I look forward to working together on this  
9    issue, not only in this collaborative, but at the federal  
10   level.

11           Thank you so much.

12           CHAIRMAN RHODES: Thank you.

13           Commissioner Alesi?

14           COMMISSIONER ALESI: Yes.

15           Thank you very much.

16           I was talking about this very issue with  
17   the Commissioner from Montana, where a while back, they  
18   had a devastating explosion because they had no idea there  
19   were lines underground that had been abandoned.

20           The only question I would have as you go  
21   along, that maybe you could provide answers to, in  
22   general, when there's a -- an agreement between the  
23   private landowner and the utility, they generally grant  
24   rights-of-way and I would suspect that as we go through  
25   our own history here in New York, that not every one of

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2 these lines would have a right-of-way.

3 But in the process of setting up this  
4 collaborative effort, would that be a good assumption,  
5 that we'd be looking at rights-of-way, to try to find  
6 where these lines are and aren't -- and are not?

7 MS. MCCARRAN: Yeah.

8 That -- Commissioner Alesi, you -- you've  
9 highlighted a very important issue and, you know, we know  
10 for a matter of fact that there are hundreds if not  
11 thousands of property owners that have gas wells on their  
12 property and a lot of them get free gas in exchange for  
13 allowing, you know, the producer to use their property.  
14 So, it's definitely an issue that we're going to be  
15 spending some time on.

16 CHAIRMAN RHODES: Thank you.

17 So, we'll now proceed to call for a vote on  
18 item 101. My vote is in favor of the recommendation to  
19 institute the proceeding and commence a collaborative as  
20 described. Commissioner Sayre, how do you vote?

21 COMMISSIONER SAYRE: Aye.

22 CHAIRMAN RHODES: Commissioner Burman?

23 COMMISSIONER BURMAN: Aye.

24 CHAIRMAN RHODES: Commissioner Alesi?

25 COMMISSIONER ALESI: Aye.

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

4 Let's move to the second item for  
5 discussion. Item 201, case 15-M-0180, which is in the  
6 matter of regulation and oversight of distributed energy-  
7 resource providers, presented by Ted Kelly, Assistant  
8 Counsel.

9 John Garvey, Utility Supervisor and Luann  
10 Scherer, Director, Office of Consumer Services are  
11 available for questions.

12 Ted, please begin.

13 MR. KELLY: Thank you.

14 Good morning, Chair Rhodes and  
15 Commissioners.

16 Item 201 is a draft order, establishing an  
17 oversight framework and uniform business practices, for  
18 distributed energy-resource suppliers.

19 Through the Reforming the Energy Vision  
20 initiative, the Commission has set the stage for increased  
21 deployment and integration of these D.E.R.s for the  
22 benefit of the energy system, the environment, and  
23 customers. D.E.R.s take a broad range of forms, from  
24 rooftop solar panels, to smart thermostats, to energy  
25 efficient and demand-responsive industrial equipment, to



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2 biodigesters making energy from farm waste, to community-  
3 scale distributed-generation projects.

4 The Commission recognized in the REV Track  
5 One Order that as D.E.R.s become increasingly -- an  
6 increasingly common and significant part of electric and  
7 gas service to customers, it has both the authority and  
8 the responsibility to ensure the customers participating  
9 in D.E.R. markets and programs understand the costs and  
10 benefits of their investments and are protected from  
11 confusion, fraud and abusive marketing.

12 Furthermore, clear and robust guidance on  
13 appropriate marketing and contracting practices, will  
14 create a level playing field for D.E.R. suppliers and  
15 support fair competition between suppliers and between  
16 various D.E.R. options.

17 In response to the direction in that order  
18 and subsequent orders, including the March 2017 value of  
19 D.E.R. order, Staff conducted a robust stakeholder  
20 process, including multiple proposals for comment and a  
21 number of public meetings. The culmination of that  
22 process is the order before you today, which includes the  
23 Uniform Business Practices for Distributed Energy Resource  
24 Suppliers or U.B.P.D.E.R.S., which represents a rule book  
25 for D.E.R. -- for the D.E.R. market.

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2                   The order and the U.B.P.D.E.R.S. reflect  
3 both the need for clear and robust guidance in this  
4 growing market, particularly with regard to transactions  
5 with residential customers and small businesses and the  
6 need to avoid unnecessary -- unnecessary, or overly-  
7 burdensome obligations, particularly with respect to small  
8 D.E.R. suppliers and with innovative individuals and  
9 businesses, exploring and deploying new products and  
10 services.

11                   For those reasons, oversight is carefully  
12 tailored to the characteristics of different market  
13 sectors. Specifically, as compared with the Staff  
14 proposals, it limits oversight of transactions with large  
15 industrial, or commercial customers, to prohibitions on  
16 fraud and requirements regarding customer consent. It  
17 applies a limited passive set of regulations to most  
18 D.E.R. suppliers, while more comprehensively regulating  
19 providers of community-distributed generation and onsite  
20 mass-market distributed generation, such as rooftop solar  
21 panels. And it eliminates certain proposed requirements  
22 that were identified as particularly burdensome and not  
23 sufficiently justified by an urgent need, including  
24 proposed bonding requirements.

25                   I will briefly summarize the provisions

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2    adopted, first describing the provisions that are broadly  
3    applicable to all D.E.R. suppliers, followed by the  
4    provisions that are specific to community distributed  
5    generation and onsite mass-market distributed generation  
6    providers.

7           D.E.R. suppliers are required to obtain  
8    clear and explicit consent from customers, before billing  
9    or enrolling them in programs and for large, or ongoing  
10   transactions, to retain that consent for at least two  
11   years, or the life of the contract. D.E.R. suppliers are  
12   required to conduct their marketing in an honest,  
13   forthright and clear manner. They're responsible for  
14   ensuring that the actions of their contractors and other  
15   agents comply with the relevant laws and regulations.  
16   They're required to cooperate with Department and  
17   Commission efforts to resolve customer inquiries and  
18   complaints and to do any investigation of markets or  
19   programs.

20           The order also creates a process for D.E.R.  
21   suppliers to access customer information, with the consent  
22   of the customer, through the electronic data interchange  
23   process currently used to exchange information between  
24   utilities and ESCOs.

25           For violations of these rules, the order

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2       puts into place the same enforcement process that  
3       currently applies to ESCOs, based on the severity of a  
4       violation and other factors. It may result in informal  
5       Staff contact, formal Staff contact, or a Commission issue  
6       order to show cause, with an opportunity to respond by the  
7       provider and with potential consequences ranging from a  
8       warning, to a requirement to cure the violation and notify  
9       customers, to a requirement that customers be refunded or  
10      offered corrective pricing. Or at the most extreme end,  
11      to a complete ban from Commission-authorized programs and  
12      markets.

13                   The additional requirements that apply only  
14      to C.D.G. and onsite mass-market D.G. providers include a  
15      requirement that a brief registration form and sample  
16      contracts and bills be submitted to the Department. More  
17      specific marketing requirements, including a requirement  
18      that for savings forecasts, a standard baseline, based on  
19      actual historical utility prices be used, the inclusion of  
20      key minimum terms and contracts including a three day, no  
21      penalty rescission period, information on customers'  
22      rights and compliance with further standards, based on the  
23      New York SUN requirements for onsite systems and -- and  
24      the requirement that a standard disclosure form be  
25      provided to all mass-market customers.

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2                   These providers are also required to have a  
3 local or toll-free telephone number and have specified  
4 providers for quickly handling and resolving customer  
5 complaints and they must file annual reports on the number  
6 of customers served and services provided, as well as --  
7 as already required by last month's value of D.E.R.  
8 implementation order, send annual reports to each  
9 individual customer on that customer's savings and costs.

10                   The order also includes several additional  
11 appendices. Appendix B, provides summary table of the  
12 order's requirements for quick reference. Appendix C,  
13 lists provisions of the Home Energy Fair Practices Act or  
14 HEFPA, that apply to D.E.R. suppliers. And Appendix D,  
15 contains questions or comments regarding potential  
16 additional provisions to be considered on an expedited  
17 basis, including limits on termination fees, annual  
18 escalation percentages and requirements for production  
19 guarantees.

20                   The requirements established here, are part  
21 of a framework of regulation and contractual agreements,  
22 including interconnection agreements and tariffs, which  
23 will govern the interconnection of D.E.R.s into New York's  
24 electric and gas system, as well as the rights and  
25 responsibility of D.E.R. suppliers. As markets continue

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2   to evolve, these requirements will receive -- will require  
3   and will receive ongoing review from Staff and from the  
4   Commission and modifications will be made to ensure that  
5   customers are appropriately protected and that D.E.R.  
6   markets are able to thrive.

7           We're available for questions.

8           Thank you.

9           CHAIRMAN RHODES: Thank you very much, Ted.

10          I find that this item strikes a thoughtful  
11   and protective balance for New Yorkers and the timing is  
12   right. We have -- we're facing important and welcomed  
13   growth in these resources and we need to be in a position  
14   to provide protection for customers against untoward  
15   practices, while pragmatically not burdening developers.

16          And I also find that the focus -- initial  
17   focus on C.D.G. and mass market, makes all the sense in  
18   the world. So, thank you.

19          Commissioner Sayre?

20          COMMISSIONER SAYRE: This item was a  
21   tremendous amount of work and I commend Staff for your  
22   efforts. It's very difficult to tell in advance of robust  
23   markets developing, how much consumer protection is  
24   required for distributed-energy services, versus what is  
25   unduly burdensome and would discourage the development of

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2 the markets.

3 Our experience with energy choice, leads me  
4 to conclude that the public interest will be better served  
5 by starting with a lot of protections, rather than too  
6 little. So, where -- when in doubt, I'm in favor of  
7 beginning on the -- on the high side, I'm certainly  
8 willing to consider relaxation of regulations that turn  
9 out to be unduly burdensome and unnecessary for consumer  
10 protection. But it depends on how the market develops and  
11 we need to get some experience first, before we relax any  
12 regulations with what complaints may come up, or -- or  
13 what problems may develop in the markets.

14 And if things go badly, I would not  
15 hesitate to consider more strict requirements as they may  
16 be necessary.

17 So, my advice to market players in this  
18 space, treat your customers well and we'll all be happy.

19 CHAIRMAN RHODES: Commissioner Burman?

20 COMMISSIONER BURMAN: Thank you.

21 First, I do want to thank Staff for the  
22 time that you've spent on this and also to the parties.

23 We've received a lot of comments. We have  
24 had several layers of process in this, in the desire to  
25 try to get it right. I do recognize that it is a process

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2   and that we will continue to evolve to meet the challenges  
3   and the opportunities. And it's important for us to be  
4   mindful of trying to facilitate collaboration to get to  
5   appropriate solutions.

6           There are things that I'm unsettled about.  
7   I am mindful in this order, that we are not touching upon  
8   a great deal of the comments, to address this across the  
9   board, whether it's to say don't have anyone under -- any  
10   D.E.R. providers under a U.B.P., or to have all of them  
11   under it, in some fashion.

12           I do believe that the order is going to be  
13   challenging to get through and there's going to be a lot  
14   of questions, in terms of what does that actually mean in  
15   real life and how does it work, not only for the D.E.R.  
16   provider, but for the utility and for the Staff, the  
17   Consumer Services Staff in particular and most importantly  
18   for the customers.

19           So, I am hesitantly supportive and I will  
20   caution that we need to be very mindful, that while it  
21   sounds, in many ways, like we got it on paper, I don't  
22   know that the reality is going to be as easy in the  
23   implementation. Doesn't mean that it won't be done. It  
24   just means that like the history we've had in the  
25   implementation of our first U.B.P., which I believe took



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2       several technical conferences over a long period, not just  
3       two months, not three months, not six months, but two  
4       years to maybe even longer than that and it was not a  
5       delay. It was working through definite challenges and  
6       implementation and making sure that we were doing things  
7       that would have a positive impact and that we were -- that  
8       everyone was prepared to handle that.

9           Same thing with the submetering  
10      regulations, when we made changes to that, that required a  
11      lot of careful, careful deliberation and analysis and  
12      rethinking and frustration among people.

13           So, I need to emphasize the need for us to  
14      be flexible and open to working with all of the parties,  
15      with the ultimate goal of getting to what we need, for the  
16      benefit of the customers and for the benefit of what the  
17      goals of REV are, with the inclusion of D.E.R.

18           There are going to be jurisdictional  
19      challenges. I'm mindful, that we're going to need to get  
20      through those. There's also a fundamental unfairness to  
21      ESCOs.

22           Here, we are very reflective and we are  
23      very thoughtful in understanding that there may be some  
24      bad players in the D.E.R.-provider market and we don't  
25      paint with a broad brush all D.E.R. providers. And yet on

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2     the other side, we seem to be quicker to paint with a  
3     broad brush. I have no tolerance for bad players at all  
4     and we need to address that in enforcement perspective,  
5     head on.

6                     However, I just want to be very careful  
7     that we are not having an unfairness, or an unlevel  
8     playing field and seeming, you know, to pay lip service on  
9     one end and -- and different degrees of what we allow, or  
10    what we don't allow.

11                    There is an issue, from my perspective, in  
12    what does it mean in terms of figuring out. Here we have  
13    carved out who has more active regulatory oversight, if  
14    you fall under community D.G. or you're a mass-market  
15    D.E.R. provider.

16                    It's -- there's -- there's ongoing  
17    petitions, on asking for clarification on what exactly is  
18    a mass-market customer. We do have some orders that  
19    identify that. However, we do have some upcoming -- I --  
20    I think there's at least one on the gas side, in terms of  
21    changes to that.

22                    And we need to be mindful, that a customer  
23    name may not be clear, on exactly what they -- who they  
24    have and so, I'm concerned that we're going to create more  
25    barriers, but also a lot more work for the Staff, that has

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2   to quickly try to resolve this and fit it into the  
3   appropriate bucket and that if you don't fit into that  
4   bucket, it may be very frustrating.

5           I'm concerned that we have had -- we have  
6   seen that there has been a significant amount of barriers,  
7   regulatory barriers as well as others, to community D.G.  
8   and that we need to monitor, whether or not we are  
9   creating another barrier because some D.E.R. providers may  
10   say we're going to stay away from community D.G. and the  
11   mass market because there's more-active regulation. And  
12   therefore, our space is going to be smaller, but better  
13   because we don't have to worry about the bureaucrats in  
14   Albany.

15           I am wanting to make sure that we have  
16   immediately an opportunity for parties to work together  
17   and go through and understand exactly what this order is  
18   and -- and work through what I think are going to be  
19   definite implementation issues. From my perspective, I'm  
20   not going to focus on a lot of the details that are in  
21   there, that I think may be concerning, or have to have  
22   more clarification. I -- I do expect that -- or I do ask  
23   that Staff be very, very engaging on this front.

24           And to the extent that literally making  
25   sure that we walk through all of the different scenarios

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2   and keeping in mind that we are not the experts in a lot  
3   of these areas and calling upon those who can help,  
4   especially U.I.U., as to the customer aspects, I think are  
5   very, very important.

6           And I won't belabor this anymore, except  
7   that I hesitantly will be voting for this item,  
8   understanding that I do think that it is not a perfect  
9   solution, but again, I come back to -- I recognize this is  
10   a process. At some points, it may be very painful, but I  
11   hope that ultimately we are going to be working through  
12   and continuing to evolve, to meet and exceed these --  
13   these challenges for the opportunities that are there.

14           So thank you.

15           CHAIRMAN RHODES: Thank you.

16           Commissioner Alesi?

17           COMMISSIONER ALESI: Thank you, Mr.  
18   Chairman. Philosophically, I kind of lean towards  
19   applying regulations and growing regulations, as we see  
20   the need, but I also recognize the hard work and expertise  
21   that has gone into your presentation, both last week in  
22   greater detail and today. And so, I believe it's always  
23   easier to add some regulations than it is to take them  
24   away, once they're in place. But again, based on what  
25   I've come to learn from your efforts and the hard work of

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2 Staff in general, I believe I can embrace this  
3 recommendation and I'll be voting yes for it.

4 CHAIRMAN RHODES: Thank you very much.

5 So with that, let's move to a vote on item  
6 201.

7 My vote -- my vote is in favor of the  
8 recommendation to adopt the oversight framework and  
9 uniform business practices for distributed-energy resource  
10 suppliers, as described.

11 Commissioner Sayre, how do you vote?

12 COMMISSIONER SAYRE: Aye.

13 CHAIRMAN RHODES: Commissioner Burman, how  
14 do you vote?

15 COMMISSIONER BURMAN: Aye.

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

18 COMMISSIONER ALESI: I vote yes.

19 CHAIRMAN RHODES: The item is approved and  
20 the recommendation is adopted.

21 We now move to item 202, cases 16-M-0015,  
22 et al, which is the petition of the Municipal Electric and  
23 Gas Alliance, to create a community-choice aggregation  
24 pilot program presented by Kelly Connell, Utility Analyst  
25 Three, Peter McGowan, Chief Policy Advisory. Ted Kelly

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2 and Luann Scherer are available for questions.

3 Kelly, please begin.

4 MS. CONNELL: Good morning, Chair Rhodes  
5 and Commissioners. Item 202 addresses a series of filings  
6 made by the Municipal Electric and Gas Alliance, also  
7 known as MEGA. MEGA seeks to serve as a community-choice  
8 aggregation administrator, for several municipalities in  
9 New York State.

10 The filings by MEGA include a master-  
11 implementation plan, a general data-protection plan and  
12 certifications of municipal authorizations, to form a  
13 C.C.A. program.

14 Concurrent with these filings, in response  
15 to a Commission directive, the joint utilities filed a  
16 data-security agreement for Commission consideration.  
17 Staff is recommending Commission approval of these  
18 filings, with some modifications.

19 By way of background, on April 21st, 2016,  
20 the Commission established the framework for the  
21 development of C.C.A. programs, which aims to increase  
22 consumer choice and participation, while also supporting  
23 local-energy planning and deployment of distributed-energy  
24 resources, or D.E.R.s.

25 In a C.C.A. program, one or more

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2   municipalities aggregate the load of its residents and  
3   small businesses, on an opt-out basis and procures energy  
4   and potentially D.E.R. services, on their behalf. The  
5   C.C.A. framework order authorized interested  
6   municipalities on their own, or through their selected  
7   C.C.A. administrator, to make a series of filings for  
8   Commission consideration to initiate a C.C.A. program.

9           The C.C.A. framework order requires that  
10   the implementation plan include a description of the  
11   program and its goals, including plans for value-added  
12   services, a public-outreach plan including multiple forms  
13   of outreach and engagement, over a period of no less than  
14   two months. Drafts over in communication with its  
15   residents including opt-out letters, contact information  
16   for a C.C.A. liaison to respond to questions, or concerns  
17   and identification of at least one local official or  
18   agency, in each municipality, for residents to contact  
19   with questions, or comments. The C.C.A. administrator's  
20   also required to file updates and supplements to the  
21   implementation plan, as appropriate, including final  
22   versions of customer opt-out letters that provide details  
23   of program contracts.

24           The C.C.A. framework order also required  
25   the joint utilities to file a proposed standardized data-

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2   security agreement, that would be entered into by the  
3   municipality, or its C.C.A. administrator and the  
4   appropriate utility. The data-security agreement  
5   obligates the C.C.A. administrator and its residents, to  
6   protect data from -- from disclosure and limit its use.

7           Based on Staff review, including lessons  
8   learned from the Sustainable Westchester C.C.A. pilot,  
9   Staff finds that MEGA's proposed C.C.A. program meets the  
10   general requirements laid out in the Commission's  
11   framework order, but recommends some additional outreach  
12   and necessary revisions to their data-protection plan.  
13   These revisions can be provided in a compliance filing.

14           Specifically, Staff recommends that once an  
15   ESCO is selected and before the opt-out period ends, MEGA  
16   continues their outreach and education to ensure that  
17   residents are informed of the commodity prices and  
18   services being offered by the contracted ESCO. Staff also  
19   recommends that MEGA revise its data-protection pan --  
20   plan to effectively protect the data obtained from the  
21   utility, to allow for the sharing of an anonymized  
22   aggregated usage data, with qualifying ESCOs and to  
23   conform with the joint utilities' final data-security  
24   agreement.

25           The draft order also clarifies the



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2    guaranteed savings requirement intended for C.C.A.  
3    customers, who are participating in utility low-income  
4    assistant programs.

5                   Staff is also proposing several  
6    modifications to the joint-utilities data-security  
7    agreement. While customer account numbers were originally  
8    envisioned as useful information in the framework order to  
9    clearly identify customers and conduct the opt-out phase,  
10   Staff now recommends that account numbers are not shared  
11   with the C.C.A. administrator. In the unlikely event of a  
12   security breach, account numbers could be misused for  
13   slamming.

14                   By allowing utilities to withhold account  
15   numbers and use an alternate method to identify customers,  
16   the risk of slamming, due to a breach, will be eliminated.  
17   By removing a customer's account number, the utility  
18   information transferred to a C.C.A. administrator will not  
19   be highly sensitive.

20                   Therefore, the following modifications are  
21   recommended. The joint utilities should remove the  
22   requirement for a C.C.A. administrator to procure cyber  
23   insurance. At a -- as described in the draft order, the  
24   data security-agreement language will also need to change  
25   to allow for a more -- greater degree of flexibility

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2    regarding data-access controls and security.

3                    This concludes my presentation. I am  
4    available to respond to questions.

5                    Thank you.

6                    CHAIRMAN RHODES: Thank you, Kelly.

7                    I find that this work establishes a  
8    sensible -- establishes a sensible and useful parameters  
9    for our next step, which is another pilot, as we march in  
10   the direction of C.C.A., which is an important opportunity  
11   to bring New Yorkers into our clean-energy future.

12                   Commissioner Sayre?

13                   COMMISSIONER SAYRE: I'm a fan of  
14   community-choice aggregation, as long as it either  
15   provides customers with savings, or provides them with  
16   benefits or services that they would not otherwise  
17   receive. And in the absence of -- of one of those things,  
18   I presume that a C.C.A. isn't going to get off the ground  
19   in the first place. I have hopes that in the future they  
20   will evolve into even stronger models, like storm-  
21   resilient microgrids.

22                   I think we can count on the municipalities  
23   to make good contracts with energy providers, which is why  
24   I'm okay with their residents being included, unless they  
25   opt-out. However, I urge all participants in these new

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2 programs to keep a close eye on how they're working and  
3 hold their municipality leader's feet to the fire, if the  
4 promises are not being kept.

5           I do support this item.

6           CHAIRMAN RHODES: Commissioner Burman.

7           COMMISSIONER BURMAN: It may come as no  
8 surprise, but when I was in school and the teacher would  
9 say we can leave class now, unless anyone has any  
10 questions, I was the one that would raise my hand to the  
11 groans of everyone else and ask a bunch of questions. So,  
12 I have a couple questions. I'm sorry. I just really -- I  
13 just want to understand a couple things and just pull it  
14 out.

15           Is C.C.A. subject to D.E.R.?

16           MR. KELLY: So, to the extent that it  
17 includes a -- a -- a distributed -- a D.E.R. component,  
18 for example, if it includes the community-solar component,  
19 it would be subject to all the relevant rules that the  
20 U.B.P.D.E.R., as just discussed.

21           If it doesn't, if it's really just focused  
22 on procurement of a particular ESCO, in that case, it  
23 would still be subject to the -- the ESCO U.B.P., but not  
24 specifically to the D.E.R. specific rules.

25           COMMISSIONER BURMAN: Okay. And can you

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2    explain to me, in this item, there is a focus now, on a --  
3    a -- it -- it -- it -- it's stated as a clarification.  
4    I'm not sure if it's a clarification or a change. I would  
5    argue it's a change, but for purposes of this we'll say  
6    clarification. Clarification that the C.C.A.s are now  
7    held to the guaranteed-savings plan, for low-income  
8    customers.

9                    Can you explain that and exactly what that  
10   means?

11                   MR. KELLY: Sure.

12                   So, the original C.C.A. implementation  
13   order had said that low-income customer -- the -- that  
14   service of low-income customers would be subject to any  
15   requirements subsequently adopted by the Commission. This  
16   was -- that was put out before the guaranteed savings was  
17   adopted as a requirement for low-income customers.

18                   So, that's kind of why we see it as a  
19   clarification, to just explain that while the low-income  
20   order did exempt C.C.A.s from the prohibition on service,  
21   it did not exempt them from the general requirement that  
22   guaranteed savings be provided.

23                   So, what that means in this context, is  
24   that the C.C.A., when they're soliciting an ESCO, if they  
25   wish to include low-income customers, which specifically

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2    in this case means participants in utility low-income  
3    assistance programs, if they wish to include those  
4    customers, they must get from the ESCO, a guaranteed-  
5    savings product and include those -- give those customers  
6    the guaranteed-savings product, which would generally mean  
7    that in any calendar year, or over the contract term, if  
8    the contract expires before the end of the calendar year,  
9    the customer must save money, compared to what they would  
10   have paid, if they had been on just standard-utility  
11   service. And if the customer hasn't saved money, there  
12   then has to be essentially a -- a true up-payment, to  
13   ensure that the customer paid no more than they would have  
14   as a utility customer.

15                   COMMISSIONER BURMAN: Okay. So, it does  
16   sound to me like -- because I had raised concerns about  
17   the exceptions to this, as well as other exceptions, under  
18   the -- the -- the ESCO orders --

19                   MR. KELLY: Uh-huh.

20                   COMMISSIONER BURMAN: -- where it was  
21   carving out the foot note, the C.C.A.s. So, I am now  
22   concerned about the change and what that means for the  
23   existing C.C.A.s, that are out there in Sustainable  
24   Westchester. The -- the two -- the two, that I know of  
25   and -- which -- how many municipalities does that affect

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2           and what does that mean? Are we going -- are we going  
3           retroactively and looking at that, or are we going  
4           prospectively?

5                       MR. KELLY: So, it would be prospective, in  
6           the sense that in Sustainable Westchester, the initial  
7           contract was entered into before the low-income order came  
8           out. And therefore, it's essentially treated the same as  
9           other long-term ESCO contracts, in that the rule doesn't  
10          apply, until the contract expires.

11                      So, at the point where Sustainable  
12          Westchester, or Westchester Power is what they have  
13          specifically designated their C.C.A. as now, when they are  
14          getting towards renewing their contract, or looking for a  
15          new contract, which is going to be about next year,  
16          they'll have to -- they're already required to make a  
17          filing with the Commission, for the Commission to review  
18          and -- and approve explaining whether they'll be renewing  
19          and what -- on what terms they'll be doing so. And part  
20          of that will require that as of the new contract, they'll  
21          have to start complying with that guaranteed-savings  
22          requirement.

23                      COMMISSIONER BURMAN: Okay. I guess we're  
24          -- we're -- I guess my focus is I -- I'm -- I'm glad to  
25          see we're being thoughtful now in this. You know, these

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2    are issues that I had raised originally and had raised  
3    concerns, in why we're taking this sort of statewide  
4    without looking at these issues and further reflecting.

5                    But I'm also now seeing that we seem to be  
6    doing it differently and obviously, that's from lessons  
7    learned from the pilot. But I'm just wondering, it kind  
8    of gets to the bigger issue, which we'll get to in the  
9    other items in the low-income, so I'll put aside, where I  
10   -- where I'm at on the low-income stuff, except to the  
11   extent that I'm glad to see we're trying to address the  
12   low-income issues, that are critically important. But I  
13   do think that there's still going to be confusion around  
14   what is a guaranteed-savings plan. What does that mean  
15   under the C.C.A.s? You're looking at it from the -- the -  
16   - the rate that you set at the date of. On Sustainable  
17   Westchester, I think it was from the 2014 was your  
18   guaranteed savings, not month to month, correct?

19                   MR. KELLY: So, I could speak to that.  
20   Yeah.

21                    What Sustainable Westchester looked for was  
22   not guaranteed savings in the way we generally speak of  
23   it, in the low-income sense. But instead, they looked at  
24   making sure that the rate that they got would have caused  
25   savings, if it had been applied in the past year.

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2 COMMISSIONER BURMAN: Okay.

3 MR. KELLY: So, they -- they -- their  
4 initial program did not guarantee savings, although the  
5 first annual report, which they filed this year and Staff  
6 analysis of their first year of billing, does show that  
7 all -- that the customers did overall save money. But  
8 they did not provide guaranteed savings, in that if an  
9 individual customer hadn't saved money, they wouldn't have  
10 been required by contract to true-up that customer.

11 Whereas in going forward, including for  
12 MEGA and for Sustainable Westchester, if and when they --  
13 they renew their contract, there will be the requirement  
14 that at least for low-income customers, they do a true-up  
15 anytime the customer didn't actually save money.

16 COMMISSIONER BURMAN: Okay. Thank you.  
17 That's helpful. What are the next steps? This -- we're --  
18 -- we're approving this today, or assuming we approve this  
19 today, the Chair used the term that this was our next  
20 pilot.

21 What else is on the horizon for -- for  
22 this?

23 MR. KELLY: For C.C.A. in general or for --

24 COMMISSIONER BURMAN: Uh-huh.

25 MR. KELLY: -- MEGA?



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2 COMMISSIONER BURMAN: C.C.A. in general.

3 MR. KELLY: So, there's another C.C.A.  
4 aggregator, Good Energy, which has also filed an  
5 implementation plan, that's currently under Staff and  
6 Commission consideration and which we expect to come to  
7 session at some time in the relatively near future.

8 COMMISSIONER BURMAN: Uh-huh.

9 MR. KELLY: There are also several other  
10 potential C.C.A. aggregators who have been in contact with  
11 us, with Staff to try, you know, to kind of give us  
12 updates on their progress and to ask questions. And  
13 they're also being supported by NYSERDA, which pursuant to  
14 the C.C.A. implementation order and also the Clean Energy  
15 Fund has a program, to support communities including on --  
16 on developing C.C.A.

17 COMMISSIONER BURMAN: Uh-huh.

18 MR. KELLY: So, we expect that there will  
19 be, you know, probably several more in the next year or  
20 so, that are also ready to -- to get started.

21 COMMISSIONER BURMAN: Okay. So, one of my  
22 -- as -- as -- as I believe you know, I -- I voted no, on  
23 all of the C.C.A. items to date, primarily because I  
24 believed that we were not looking -- we were not  
25 holistically looking overall and taking time to

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2   incorporate what it would mean from an implementation  
3   perspective. What it means in terms of doing this, how it  
4   affects the load, how it affects customers, how it affects  
5   the market.

6           And all the other states that have done  
7   this, have done this through legislation. And we did it  
8   really only after a very quick survey of the other states  
9   and there have been challenges in many of those states in  
10   C.C.A.s. C.C.A.s done well, can be very good. C.C.A.s  
11   done poorly, is a disaster.

12           And so from my perspective, one of the  
13   things that I was concerned with, was that we had embraced  
14   a pilot, after the -- the bill seeking to do a pilot in  
15   that very area had been vetoed. And then we -- after  
16   doing the pilot and -- and not having it up and running,  
17   then the Commission voted to adopt it statewide, without  
18   the information on it.

19           So, I am glad to see that in MEGA, there's  
20   been some thought into some lessons learned from the  
21   Sustainable Westchester model. Does seem like there's  
22   been some successes. Obviously, some issues, as well,  
23   working through that and there will continue to be.

24           I do want to see that we are engaging  
25   overall, not just in, you know, silos, these issues, so

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2           that all folks who are interested in participating and can  
3           -- can benefit from that discussion and we can benefit  
4           from their information, as -- to help us in adopting, or  
5           approving those that will be successful.

6                       I am cognizant of the fact that in MEGA,  
7           MEGA has a long, very good history in New York. So that  
8           gives me great confidence in MEGA. If it was someone  
9           else, some other entity, I may have a different feeling,  
10          but I -- I am very comfortable with them. However, I'm  
11          not picking winners or losers. I'm just looking at it  
12          from the perspective of do they have the expertise to do  
13          this.

14                      I do bristle at any notion that we are  
15          going to call to task municipalities because they are not  
16          necessarily the experts in a lot of these issues. So, we  
17          need to be very mindful that it is incumbent upon us to  
18          work through a lot of these challenges and implementations  
19          that will definitely trip them up, especially as it goes  
20          to D.E.R.

21                      We're going to need to work through that.  
22          And what that means, we're going to need to not just rely  
23          on the aggregators to say whether they are under  
24          U.B.P.D.E.R., or, you know, U.B.P. regular and that maybe  
25          it needs to be incorporated up front and clearly defined.

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2 And some of that will come after we clearly figure it out  
3 and define it a little better ourselves, from working  
4 through the challenges with the parties.

5 So, I thank you.

6 I think my mantra for today is I recognize  
7 this is a process. At times it's very painful, but it --  
8 I think it is a necessary process and at the end of the  
9 day, we need to be looking to evolve, to work to meet our  
10 challenges and our opportunities, in a way that's  
11 successful for all New Yorkers. So, thank you.

12 CHAIRMAN RHODES: Thank you, Commissioner  
13 Burman. Commissioner Alesi?

14 COMMISSIONER ALESI: No.

15 CHAIRMAN RHODES: We will now proceed to a  
16 vote on item 16-M-15 --.

17 I vote in favor.

18 Commissioner Sayre, how do you?

19 COMMISSIONER SAYRE: Aye.

20 CHAIRMAN RHODES: Commissioner Burman?

21 COMMISSIONER BURMAN: Aye.

22 CHAIRMAN RHODES: Commissioner Alesi?

23 COMMISSIONER ALESI: I vote yes.

24 CHAIRMAN RHODES: Thank you very much.

25 We now move to the fourth item, item two --

1           Public Service Commission meeting - 10-19-2017  
2   for discussion.  Item 203, case 17-M-0280, which is  
3   Staff's report on the New York State Electric and Gas  
4   Supply readiness for the 2017-18 winter, presented by  
5   Cindy McCarren, Deputy Director Gas and Water.  Vijay  
6   Puran, Utility Supervisor of Bulk Electric Systems, Paul  
7   Darmetko, Utility Engineering Specialist Three, Electric  
8   Rates and Tariff Section and Andrew Bisnett, Utility  
9   Consumer Program Specialist, are available to answer  
10  questions.

11                   Cindy, please begin.

12                   MS. MCCARRAN:  Good morning again and thank  
13  you.

14                   So, Staff would like to take this  
15  opportunity this morning to brief you on the results of  
16  our investigation into the readiness of the state's  
17  natural gas and electric utilities, for the coming winter.  
18  Although each of us will give more detail, I just want to  
19  kick things off by saying overall the electric and gas  
20  utilities are well-prepared for the coming winter.

21                   First, I will brief you on the readiness of  
22  the state's natural-gas utilities and a projection of  
23  average natural-gas bills for the coming winter.  Vijay  
24  Puran will update you on the readiness of the bulk-  
25  electric system and Paul Darmetko will discuss the

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2    projections for electricity prices, for the coming winter.  
3    And then Andrew Bisnett will conclude the panel, with a  
4    discussion of the outreach efforts, related to winter  
5    bills and safety.

6           The state's gas utilities are also called  
7    local-distribution companies or L.D.C.s. Based upon our  
8    review and representations by the L.D.C.s, regarding  
9    natural-gas supply readiness for the upcoming winter  
10   season, Staff concludes that the L.D.C.s serving New York  
11   State have adequate natural-gas supply-delivery capacity  
12   and storage inventory to satisfy current firm customer  
13   demands, under designed winter conditions for this winter.

14           Staff continues to coordinate with the oil  
15   industry representatives and the New York State Energy  
16   Research and Development Authority or NYSERDA, to ensure  
17   that customers have access to adequate supplies of winter-  
18   heating fuels.

19           Next slide.

20           Each utility has a unique mix of assets  
21   used to serve a unique mix of customers. Some of the  
22   state's utilities are experiencing growth in natural-gas  
23   demand, as local government seek to phase out dirtier  
24   heating fuels, such as fuel oil and propane.

25           Especially in the downstate areas of New

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2    York City and Long Island, interruptible customers are an  
3    important piece of the puzzle and their ability to get off  
4    the natural-gas system during periods of high demand,  
5    reduces the amount of pipeline capacity needed to serve  
6    winter load. This is a type of demand response program,  
7    that is decades old.

8           Recently, however, many communities have  
9    expressed an interest in meeting growing demand, through a  
10   greater use of demand-response programs, including more  
11   efficiency, combined with what is being called non-pipes  
12   alternatives. Recent filings made by Consolidated Edison  
13   and the New York State Electric and Gas Company will focus  
14   on the use of demand response and non-pipes alternatives,  
15   to meet growing space and water-heating needs.

16           We continue to monitor some areas of the  
17   state, where demand is growing at a faster pace and where  
18   the existing distribution system is becoming constrained,  
19   including New York City and the Capital District. Staff  
20   will continue the traditional monitoring of weather  
21   pipeline and storage assets and interruptible-customer  
22   compliance, but also work with the utilities and  
23   communities, to find innovative solutions that increase  
24   environmental benefits, while meeting customer  
25   expectations for economic solutions.

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2 Next, please.

3 This slide illustrates some info --  
4 interesting information related to weather and climate.  
5 So, it's probably a little difficult to see, but there are  
6 thirty years of history here. Each yellow bar shows the  
7 number of heating-degree days for each of the last thirty  
8 winters. We calculate the number of heating-degree days  
9 by determining the average of the high and low  
10 temperatures for the -- each day of the winter,  
11 subtracting that from sixty-five, with the assumption that  
12 at sixty-five degrees you're neither heating nor cooling  
13 your home. The taller, the yellow bar on the slide the  
14 colder the winter was.

15 As can be seen, last winter was one of the  
16 warmer winters in recent history although it was slightly  
17 colder than the previous winter, 2015-16. The polar  
18 vortex winter was the winter of 2013-14.

19 The blue diamond on each yellow bar,  
20 indicates how many heating-degree days were measured on  
21 the peak day, or the coldest day of that particular winter  
22 and what this slide illustrates that even though you have  
23 a generally-mild winter, it's still possible to have, you  
24 know, one or even a few very cold days and that is what  
25 our L.D.C.s plan for.



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2 Next slide.

3 The L.D.C.s purchase gas to supply their  
4 customers' winter needs in three ways and that is  
5 represented by the par -- pie chart to the right. The  
6 first way is by filling their natural-gas storage  
7 facilities during the summer when heating demand is low.  
8 The second way is by hedging, which acts like an insurance  
9 policy to guarantee the purchase price of the gas will not  
10 go too high. The third way is by purchasing at the  
11 prevailing-market price, which fluctuates with market  
12 forces, such as demand and weather and is called flowing  
13 gas.

14 Each of these components has increased in  
15 price, compared to last year. Last year at this time, the  
16 cost of natural gas in storage was the lowest seen in  
17 about twenty years and that was due in large part to the  
18 very mild winter of 2015-16 which, you know, we just  
19 discussed. That also caused the price -- that very-mild  
20 winter also caused the price of flowing gas to drop  
21 through that winter because there was very low demand.

22 The price of natural gas is influenced by  
23 many factors. Weather is chief among these, but demand  
24 for natural gas continues to grow which exerts upward  
25 pressure on prices.

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2 That being said, natural-gas commodity  
3 prices are significantly lower now than they were in the  
4 recent past. As recently as the winter of 2009-2010,  
5 natural-gas commodity prices averaged over six dollars per  
6 dekatherm delivered into New York City and you can see for  
7 this coming winter, it's below three dollars.

8 Given our proximity to the northeastern  
9 natural-gas production areas, we have access to plentiful  
10 supplies and even with colder than normal weather, prices  
11 to firm natural-gas customers should be stable.

12 Next slide.

13 We expect the average residential  
14 customer's winter-heating bill to be less than eight  
15 hundred dollars for this winter, assuming normal weather,  
16 but this does vary by utility. This is an increase from  
17 last winter, but that is mostly due to last winter's mild  
18 temperatures, which kept bills lower.

19 Next slide.

20 In conclusion, our review indicates that  
21 the L.D.C.s serving New York has secured adequate supplies  
22 of natural gas to meet expected customer requirements this  
23 winter. Staff will continue to monitor supply prices and  
24 interruptible-customer compliance throughout the winter  
25 and report any situations that require Commission

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2 attention.

3 Staff will also work with the utilities and  
4 interested communities, to find innovative solutions to  
5 the challenges represented by increased demand for natural  
6 gas.

7 This concludes my portion of the  
8 presentation. I would be happy to take any questions you  
9 have now, or we can wait till the end of the panel.

10 If you don't have any questions, Vijay  
11 would be next.

12 CHAIRMAN RHODES: I think please continue,  
13 Vijay.

14 MR. PURAN: Thank you, Cindy.

15 Good morning, Chair Rhodes and  
16 Commissioners.

17 My name is Vijay Puran and I'm a Utility  
18 Supervisor in the Department's bulk-electric system  
19 section. As Cindy mentioned, I'm here today to brief you  
20 on Staff's review of the bulk-electric systems  
21 preparedness for the upcoming 2017-2018 winter. At the  
22 outset, I would like to say that based upon our review, we  
23 conclude that a bulk-electric system is prepared to  
24 reliably meet the state's upcoming winter-electric  
25 demands.

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2 Next slide, please.

3 This chart shows the summer and winter  
4 historic coincident peak, since year 2000. It also shows  
5 that New York State is a summer-peaking state and  
6 therefore has to have sufficient available capability, to  
7 meet loads well-above those typically experienced during  
8 the winter.

9 Last winter's actual electric-peak load was  
10 twenty-four thousand one hundred and sixty-four megawatt.  
11 This was one thousand five hundred and seventy-four  
12 megawatts lower than the 2013-2014 polar -- polar-vortex  
13 winter record of twenty-five thousand seven hundred  
14 thirty-eight megawatts. The New York I.S.O. electric-peak  
15 forecast for the upcoming winter period is twenty-four  
16 thousand three hundred and sixty-five megawatts.

17 Next slide please.

18 This slide summarizes the resources  
19 expected to be available to New York, during the winter.  
20 The New York I.S.O. expects to have thirty-nine thousand  
21 seven hundred and eighty-five megawatts in net-capacity  
22 resources available during the winter to serve the  
23 forecasted winter-peak load of, as I mentioned, twenty-  
24 four thousand three hundred and sixty-five megawatts.

25 Once operating reserves, which are

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2   resources available to meet sudden system contingencies  
3   are accounted for, there remains a capacity margin of  
4   twelve thousand eight hundred megawatts. So, in short, we  
5   have sufficient capability to serve the forecasted load,  
6   during the upcoming winter.

7           Next slide, please.

8           As part of Staff's winter assessment, we  
9   reached out to major generating-facility owners in  
10   southeast New York, who own about twelve thousand  
11   megawatts of dual-fuel generation capability. We found  
12   that these owners are continuing to implement lessons  
13   learned from the polar-vortex winter of 2013-2014,  
14   including having increased pre-winter onsite fuel  
15   reserves, having formed contracts with fuel-oil suppliers,  
16   conducting more-aggressive replenishment plans, and having  
17   more proactive pre-winter maintenance and facilities prep  
18   -- preparations.

19           Also, a winter-coordination protocol is in  
20   place to facilitate communications between state agencies  
21   and the New York I.S.O. in circumstances where fuel supply  
22   for generating facilities may be at risk, or if a  
23   generator owner needs a fuel-specification waiver from the  
24   D.E.C., to maintain reliability. The state agencies  
25   involved are the D.P.S., D.E.C., NYSERDA and D.O.T.

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2 Next slide, please.

3 Staff also met with the New York I.S.O. and  
4 discussed its procedures and protocols for the winter  
5 period. In recent year -- years, the New York I.S.O. had  
6 instituted various changes to help ensure electric  
7 reliability during periods of tight natural-gas supply,  
8 especially closely monitoring generator fuel levels and  
9 replenishments.

10 In addition, the New York State I.S.O. has  
11 improved communications with interstate pipelines, local-  
12 gas distribution companies and neighboring I.S.O.s, during  
13 period of tight electric operating conditions. Our  
14 neighboring R.T.O. and I.S.O., also have winter-  
15 reliability programs and expect to have adequate supply  
16 for this winter.

17 This concludes my presentation.

18 Thank you. I'll be happy to answer any  
19 questions you may have.

20 If not, Paul Darmetko would be presenting  
21 next.

22 CHAIRMAN RHODES: I think over to you,  
23 Paul.

24 MR. DARMETKO: So, good morning, Chairman  
25 Rhodes. Good morning, Commissioners.

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2                   I'll be providing you with a summary of how  
3 the electric utilities have performed at reducing the  
4 electric-supply price volatility for their full-service  
5 residential customers, compare this winter's forecasted  
6 electric market prices to last winter's forecasts and  
7 actual prices. And finally, I'll provide you with an  
8 estimate of how we expect full service, residential-  
9 customer supply rates to compare to the last few years.

10                   Next slide.

11                   This graph shows the results of the  
12 utilities electric-supply price volatility-mitigation  
13 efforts, since December of 2008. It compares the average  
14 New York I.S.O. day-ahead market price volatility, the red  
15 line, with the volatility of the utilities electric-supply  
16 portfolios, the blue line. Each point represents the  
17 volatility over a twelve-month period, as measured by the  
18 coefficient variation.

19                   That large spike that you see there, is the  
20 2014 polar vortex and this resulted in an increased market  
21 prices and increased-price volatility. And even though  
22 customers benefited from the hedges that utilities had in  
23 place, the bill impacts that customers experienced were  
24 very high and as a result of lessons learned, the  
25 utilities modified certain aspects of their hedging

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2 programs.

3 These changes included increasing the  
4 fixed-price hedge level of the residential supply  
5 customers during the winter months from about fifty-five  
6 percent to seventy percent, on a statewide average basis,  
7 as well as certain utilities maintaining multiple  
8 portfolios, to better hedge their customers located in  
9 different regions in their service territories. As you  
10 can see, the utilities have continued to perform well at  
11 reducing their portfolio-price volatility, compared to  
12 market.

13 This chart shows how the New York I.S.O.  
14 day-ahead around-the-clock market prices have varied over  
15 the last few years. The solid lines represent the actual  
16 average-monthly market prices for three New York I.S.O.  
17 zones, west, Hudson and New York City. The dashed lines,  
18 that are the same color, show what the NYMEX futures were,  
19 just prior to the winter season. In the winter months,  
20 market prices can be significantly affected by gas-market  
21 price, as well as the weather.

22 In the last two winters there was  
23 significantly warmer-than-normal weather, whereas the two  
24 winters prior to the last two were significantly colder  
25 than normal. Last winter's warmer-than-normal weather



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2    allowed gas prices and therefore electric-market prices to  
3    remain significantly lower than what we experienced the  
4    year of the polar vortex and the year immediately  
5    following. But this variability is precisely why the  
6    utilities hedge for their full-service mass-market  
7    customers, to protect them against wide-market swings and  
8    spot-market prices.

9                        Next slide.

10                   This next chart shows this winter's  
11    expected average-energy prices based on NYMEX futures and  
12    how they compare to last winter's forecasts and actual  
13    prices for New York City, Hudson Valley and Western New  
14    York. Last winter's expected energy-market prices that we  
15    reported to you last October, are in green. Last winter's  
16    actual-market prices are in blue and this winter's  
17    expected-market prices are in red.

18                   As shown, last winter's actual-market  
19    prices were significantly lower than what was forecast  
20    going into the winter, about thirty-three percent less,  
21    which again reflects last winter's unusually-warm weather.  
22    And although this year's market prices are expected to be  
23    higher than last year's actuals, on a forecast basis,  
24    they're between one to twenty-two percent lower, than the  
25    prior year's futures. However, as always, these actual

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2   prices will vary, based on the weather and other  
3   conditions in the system.

4           Next.

5           With respect to customers' supply prices  
6   this winter, if we experience normal weather, we expect  
7   that on a statewide average basis, that full-service  
8   residential customers will spend about five-percent more  
9   this winter than they did last winter, but approximately  
10   sixteen-percent less than over the last five years on  
11   average. And -- which is good news for consumers. Prices  
12   are still low.

13           So, that concludes my portion of the  
14   presentation. I'd be happy to answer any questions.

15           CHAIRMAN RHODES: Thank you.

16           Andrew?

17           MR. BISNETT: Good morning, Chairman Rhodes  
18   and Commissioners.

19           As the winter season approaches and with  
20   the rise of energy pricing, many New Yorkers are again  
21   facing the difficulty of managing winter-heating costs.  
22   The situation will be particularly hard on the elderly and  
23   on people on fixed or low incomes.

24           This report will describe the work that  
25   Department Staff and New York State Energy Utilities are

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2    doing to provide customers with information, to help  
3    prepare for the 2017-2018 winter season.

4           To help consumers manage their energy  
5    bills, we are carrying out a statewide consumer-awareness  
6    campaign, to educate consumers about expected pricing and  
7    the resources available to assist consumers. Key program  
8    messages will focus on how customers can manage winter  
9    bills through bill-payment options, such as budget billing  
10   and deferred-payment agreements and with financial  
11   assistance programs, which are available through the  
12   government, such as the Home Energy Assistance Program or  
13   HEAP, through community-based organizations and through  
14   utility-sponsored programs.

15           Customers are also provided information  
16    about controlling their heating costs, by taking simple  
17    and affordable measures to in -- to reduce energy use and  
18    become more energy efficient. Customers are also reminded  
19    that there are special customer protections in place  
20    during the cold weather period of November 1st to April  
21    15th and that there are resources available to assist  
22    consumers facing heating-related energy emergencies.

23           Lastly, in addition to information about  
24    winter bills, our winter messaging will include safety  
25    information, regarding natural gas, electricity, carbon

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2   monoxide and service interruptions.

3           The Department's winter-outreach program  
4   uses a variety of methods to get messages to consumers,  
5   such as developing and distributing publications in  
6   English and Spanish, that focus on winter preparedness and  
7   managing bills. We also have several of the publications  
8   used in our winter programs, available in Chinese, Haitian  
9   Creole, Italian, Korean and Russian.

10           To help us in our efforts to reach as many  
11   New Yorkers as possible, we provide copies of our outreach  
12   materials to our statewide network of community leaders,  
13   free of charge and invite them to work with us, in  
14   educating consumers this winter. The list includes over  
15   six thousand representatives of social-service agencies,  
16   community organizations and local governments.

17           To further increase the reach of our  
18   message, Staff engages in grass-roots outreach, including  
19   presentations to community groups and exhibits at public  
20   events, such as home shows. We also use the Department's  
21   websites and our call-center staff to get our messages out  
22   to utility customers.

23           Next.

24           In addition to the Department's outreach  
25   program, we are working with the utility companies to

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2   encourage them, to maintain strong, customer education and  
3   assistance programs. Each utility has developed outreach  
4   plans to alert customers about price estimates and  
5   mitigating-price volatility, suggest ways to conserve  
6   energy and reduce heating bills, to provide advice about  
7   payment plans and financial-assistance programs and offer  
8   storm preparation measures and safety information.

9           The companies are using a variety of tools  
10   to reach customers, including news releases and paid media  
11   ads, bill inserts and bill-envelope messages, newsletters,  
12   on-hold telephone messages, website features and social-  
13   media platforms such as Facebook, Twitter and Instagram.  
14   The utilities also work with municipal and elected  
15   officials and partner with human-service organizations and  
16   community groups.

17           Finally, the companies provide training to  
18   their consumer advocates and call-center staff on winter  
19   messaging and customer service.

20           In conclusion, the Office of Consumer  
21   Services winter any -- energy outreach and education  
22   program is designed to ensure that New York utility  
23   customers have access to information and programs they  
24   need to manage their winter-energy bills and use energy  
25   efficiently. Staff will continue to monitor -- excuse me,

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2   Staff will continue to monitor the need for additional  
3   outreach and education efforts and will work with the  
4   utilities, to make modifications as needed, throughout the  
5   heating season.

6           We will also continue to work with the  
7   state's utility companies to find ways to assist their  
8   customers and to keep the heat on and stay warm this  
9   winter.

10           Thank you.

11           CHAIRMAN RHODES: Thank you, Andrew, also  
12   Paul, Vijay and Cindy.

13           Thank you all for the work and for the  
14   forward look. I certainly like the fact that the work  
15   shows that we've got adequate capacity and supply, we've  
16   got reasonable price outlooks, and that our utilities are  
17   ready.

18           And I also recommend -- also welcome the  
19   reminder on this part of the Commission's and the  
20   Department's role, we oversee and we pay attention to new  
21   kinds of energy models and we also pay attention and  
22   oversee consumer-protection issues, safety, reliability  
23   and now supply and also making sure that the outreach  
24   that's needed to get through winter in good shape is  
25   happening, happening here and with our consumer-outreach

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2 partners. So thank you very much.

3 Are there any comments or questions from my  
4 fellow Commissioners?

5 Commissioner Sayre?

6 COMMISSIONER SAYRE: No.

7 CHAIRMAN RHODES: Commissioner Burman?

8 COMMISSIONER BURMAN: Thank you.

9 First, I want to take a moment of personal  
10 privilege.

11 I don't know, I started getting choked up,  
12 Andrew, I know this is your first time presenting and  
13 we've been partners together at a number of the public-  
14 statement hearings. So, I was happy to see you  
15 presenting. So thank you. You did a good job.

16 Couple of things. I just want to -- and --  
17 and please, I think primarily, Cindy and Vijay, please  
18 correct me if I'm wrong, I just want to make sure that I  
19 am sort of capturing what I'm hearing.

20 I'm hearing that we are projecting adequate  
21 resources to meet demand for the winter 2017-2018. We are  
22 well-prepared to handle the winter-operational challenges,  
23 due in part to lessons that we learned from the 2014 polar  
24 vortex.

25 And that -- some of that deals with sort of

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2     the gas-electric coordination issues. You know, we have  
3     enhanced operational tools. We have a gas-electric market  
4     alignment fuel situation -- situational-assurance  
5     measures. The I.S.O. has wonderful winter --  
6     winterization guidelines and protocols that they've  
7     enhanced, that we, collaboratively, with the state  
8     agencies work on.

9           And then on the generation side there are a  
10    number of different enhancements that have been made,  
11    including onsite -- onsite fuel reserves, as well as  
12    further planning and collaboration. And that -- really,  
13    the key seems to be the planning and the collaboration.

14           Industries made improvements in their  
15    winter preparation activities and this has helped to  
16    improve New York's overall preparedness for the winter  
17    2017-2018. However, we do expect it to be much colder, or  
18    at least forecasting to be much colder this winter than it  
19    was last winter.

20           I'm not sure that -- Mike, you want to --?

21           MR. WORDEN: No, go ahead.

22           I'm just getting ready.

23           COMMISSIONER BURMAN: Well, if you want to  
24    respond to that now, you --.

25           MR. WORDEN: Well, you know, I wouldn't say



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2 much colder. I would say colder.

3 We expect it to be more normal. It's not  
4 like we're projecting a polar vortex for this winter. I  
5 don't think we have a good handle on that.

6 Prior to that, I -- I would say yes to all  
7 of the things you said, both on the gas and electric side,  
8 that we are prepared and we have done all the things that  
9 you walked through.

10 COMMISSIONER BURMAN: Okay. How much  
11 colder do we -- has it been forecast? One percent,  
12 thirteen percent?

13 I think I saw a figure from the Natural Gas  
14 Supply Association of thirteen-percent colder than last  
15 year.

16 MR. WORDEN: That sounds -- I was going to  
17 say ten percent --

18 COMMISSIONER BURMAN: Okay.

19 MR. WORDEN: -- but on that --

20 COMMISSIONER BURMAN: All right.

21 MR. WORDEN: -- order. Yes.

22 COMMISSIONER BURMAN: Okay. So, colder. I  
23 won't say much colder.

24 And then it is also expected to be an  
25 increased demand with both the colder-expected winter, as

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2 well as increased demand, that is going to put some price  
3 pressure on -- on the -- on the bills.

4 Really, we always have to look at sort of  
5 the market-pressure points. And so for winter 2017-2018  
6 some of those market-pressure points are traditionally  
7 weather economy, demand, storage, production, obviously  
8 wild-card factors and expectations for the winter.

9 Really, some of the critical issues that we  
10 need to address, are looking at the natural-gas  
11 capabilities. First, the electric-system capabilities and  
12 what about that? How does that affect things? As well as  
13 what about the natural-gas system congestion and how does  
14 that impact the electric-system prices? Those are the  
15 things that we need to be really laser-focused on. All of  
16 those different critical issues really do put upward  
17 pressure on our system and while we are projecting  
18 adequate resources to meet demand for the current winter,  
19 we do need to recognize that we need to look at some of  
20 those pressures and what that may mean, you know, not only  
21 this winter, but down the road.

22 So, I am cognizant of that. Really, for  
23 me, a lot of this also comes back to Andrew's  
24 presentation, in just how critically important it is on  
25 the consumer-services end, the outreach and the education.

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2 We have had a good-working relationship with the  
3 utilities, not only under the regulations and the  
4 different moratoriums that are in place for the cold-  
5 weather period, but also the voluntary enhancements that  
6 utilities historically always step-up and step-up very  
7 well to do. That comes through the active efforts of the  
8 consumer-services folks, who are not waiting until after  
9 an issue, but really there beforehand, coordinating  
10 through the various means. And I'm -- I'm sure that's  
11 going to continue and I look forward to working through  
12 that.

13 And, again, as much as we can get out the  
14 information, especially as we know it on HEAP and  
15 emergency HEAP availability and getting it out to the  
16 relevant organizations, that can help us with that, is  
17 critically important.

18 So, thank you.

19 CHAIRMAN RHODES: Commissioner Alesi?

20 COMMISSIONER ALESI: Thank you.

21 This is a great presentation all the way  
22 across the board. And I appreciate the hard work and  
23 effort that has gone into it. I just had one quick  
24 question on the effectiveness of the outreach and it's  
25 obviously something you want to continue to do. But I'm

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2   wondering also, is there an established method for  
3   actually measuring the results of -- of the outreach  
4   efforts? And I know you have on the other end, such  
5   fluctuations with the -- the cost of energy and the use of  
6   energy, but is there -- is there a way to establish a  
7   control group, or measure the effectiveness of all these  
8   various methods of outreach?

9           MS. SCHERER: I think that's a good point.

10           I think we don't have an established  
11   mechanism, but what I will say is we -- as Andrew  
12   mentioned, we have a C.V.O. municipal database of about  
13   six thousand -- six-thousand contacts and generally,  
14   hundreds of those contacts request the outreach materials,  
15   year after year.

16           So, I would say from the municipal and the  
17   C.V.O. perspective, the information is -- is useful to  
18   them.

19           COMMISSIONER ALESI: Okay. Thank you.

20           COMMISSIONER BURMAN: I also just want to  
21   recognize that we do, when we look at -- annually the  
22   utilities performance, look at the customer satisfaction  
23   and factor in a lot of these different issues as well.  
24   So, we -- and, you know, if there is a complaint we look  
25   at that, as well.

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2                       So there are different pressure points that  
3 help us to know if things are going well and how to in --  
4 in -- increase the outreach, not only at our end, but also  
5 at the utility end, if it's necessary. And that is part  
6 of what we do when we're approving the budgets, too.

7                       CHAIRMAN RHODES: Thank you, very much.

8                       This is not a voting item. It is for  
9 information only. That doesn't sound quite right. It's  
10 very informative, but it is not a voting item.

11                      Let's move on to the fifth item for  
12 discussion. Items 204 through 211, cases 12-M-0476, et  
13 al, as they relate to seven petitions for waiver to serve  
14 low-income customers, presented by Christine Bosy, Utility  
15 Consumer Program Specialist, Luann Scherer, Director of  
16 Office of Consumer Services and Tom Dwyer, Assistant  
17 Counsel -- I'm sorry, Luann and Tom are available for  
18 questions.

19                      Christine, when you're ready, please begin.

20                      MS. BOSY: Good morning, Chairman Rhodes  
21 and Commissioners. Today, I'm presenting on seven  
22 petitions for waiver of the Commission's December 2016  
23 order on low-income ESCO customers. Item 204 through 211  
24 relate to the waiver petitions, filed by Agway Energy  
25 Services, New Wave Energy Corporation, South Bay Energy

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2   Corporation, Stream Energy New York, L.L.C., National Fuel  
3   Resources, Zone One Energy, L.L.C. and Just Energy New  
4   York Corporation.

5           As background, in the order adopting a  
6   prohibition on service to low-income customers by energy-  
7   service companies, issued on December 16, 2016, the  
8   Commission directed a prohibition on ESCO enrollments and  
9   renewals of customers, who are participants in utility,  
10   low-income assistance programs, customers we refer to as  
11   assistant program participants or A.P.P.s.

12           The December order provided that any ESCO  
13   that believes they are able to provide guaranteed savings  
14   to A.P.P.s, could petition the Commission for a waiver of  
15   the December order, within thirty days of the order, by  
16   demonstrating an ability to calculate what the customer  
17   would have paid to the utility, a willingness and ability  
18   to assure that the customer will be paying no more than  
19   what they would have paid to the utility and the  
20   appropriate reporting to verify and demonstrate compliance  
21   with these assurances.

22           Petitioners -- I'm sorry. Petitions were  
23   received from three ESCOs prior to the January 16th  
24   deadline established in the order. An extension of  
25   fourteen days was granted to January 30th, 2017, in

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2     response to an extension requested by the impacted ESCO  
3     coalition. Subsequently, nine additional petitions were  
4     filed.

5           Each of the petitions were SAPA'd, comments  
6     were received from the Utility Intervention Unit or U.I. -  
7     - U.I.U., of the New York State Department of State's  
8     Division of Consumer Protection, the city of New York, the  
9     Public Utility Law Project of New York or PULP and the New  
10    York Attorney General's Office, or the A.G.'s Office.

11           U.I.E.U. -- U.I.U. requested that among  
12    other things, a uniform methodology for the ESCO utility  
13    price comparison be adopted, to assure that all customers  
14    have adequate protection from potential overcharges and  
15    that a condition be imposed, that any waiver is effective  
16    for one year and renewable upon proof of compliance. In  
17    addition, U.I.U. requested that if ESCOs failed to meet  
18    these guaranteed-savings program requirements, the waivers  
19    would be revoked.

20           Finally, U.I.U. suggested that the  
21    Commission should impose certain reporting requirements,  
22    on ESCOs who are granted a waiver. PULP, the A.G.'s  
23    Office and the city concur with U.I.U.'s comments.

24           Each of the seven petitions before you  
25    today, were deficient in some respect, or required

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2           additional clarification. Staff therefore requests --  
3           requested additional information from each of these ESCOs  
4           and had discussions with each, during its review of the  
5           petitions and supporting materials.

6           Today we are recommending that the  
7           Commission issue a waiver to Zone One Energy, National  
8           Fuel Resources and Just Energy, to allow these ESCOs to  
9           serve low-income customers.

10           Zone One and National Fuel Resources  
11           currently offer products that result in savings to all of  
12           their residential customers and they have been providing a  
13           savings to the customers for years. Zone One currently  
14           provides that a saving to electric customers in the Con  
15           Edison territory and National Fuel Resources currently  
16           provides a saving to its gas customers in National Fuel  
17           Gas distributions territory.

18           Just Energy created a new product  
19           specifically for this low-income -- for their low-income  
20           customers that will provide a one percent savings from  
21           what the low-income customer would have paid to the  
22           utility. And in support of their petitions, Zone -- Zone  
23           One, National Fuel Resources and Just Energy provided bill  
24           methodologies, with the supporting calculations, which  
25           replicate -- replicate the utility tariffs. These



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2   calculations will enable each of these ESCOs, on a monthly  
3   basis, to closely bill the low-income customer what the  
4   utility would have billed the customer.

5           In response to Staff's multiple -- multiple  
6   requests for additional information, these three ESCOs  
7   provided clarifications and very-detailed information,  
8   along with calculations used to determine what the  
9   customers' monthly bill for bundled utility service would  
10   be, to determine what the customer should be billed for  
11   their ESCO service, to achieve those guaranteed savings.  
12   Moreover, Zone One and National Fuel Resources, provided  
13   sample reports demonstrating the actual refunds and  
14   savings that their customers have received over the past  
15   year.

16           Just Energy indicated in its supplemental  
17   response, that if guaranteed a waiver and with proper  
18   notice, it would enroll all of its existing low-income  
19   customers into its new guaranteed savings program, to  
20   provide their A.P.P. customers immediate savings. Just  
21   Energy also clarified that if a low-income customer  
22   cancels before the twelve-month term expires, that A.P.P.  
23   customer will pay no more for service, than they would  
24   have paid as a full-service customer of the -- their  
25   utility for that same period.

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2 In the event a credit is due to a low-  
3 income customer, all three ESCOs will provide a credit on  
4 the customer's bill, to ensure the low-income customer's  
5 savings is credited to their utility account. For Just  
6 Energy the true-ups are calculated on a monthly basis,  
7 with the credit refunded, annually. For Zone One and  
8 National Fuel Resources, the true-up will be calculated  
9 monthly and the credit will be provided on the following  
10 month's utility bill.

11 The draft orders before you today require  
12 that Just Energy, National Fuel Resources and Zone One  
13 report semiannually on the status of their guaranteed  
14 savings product as it pertains to their low-income  
15 customers. The report should in -- also include the  
16 number of customers served, the monthly-calculated billed  
17 amounts, the alternative amounts that the utility would  
18 have charged and the amount of any refunds or credit  
19 issued to the customer, to meet the savings guaranteed.

20 Finally, while the draft orders grant Just  
21 Energy, National Fuel Resources and Zone One a petition  
22 for waiver, we believe it's appropriate for the Commission  
23 to place a time limit on the waivers. We recommend that  
24 the waivers expire twenty-four months from the date of  
25 this order.

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2                   During that time period, Staff will review  
3 Just Energy, National Fuel Resources and Zone One's  
4 compliance with these -- the December 2016 order. These  
5 three ESCOs will also, at that time, have the opportunity  
6 to petition for an extension of their waiver.

7                   After careful review of the information  
8 filed for the remaining four ESCO waivers, Staff  
9 recommends denying the petitions by Agway Energy Services,  
10 New Wave Energy Corporation, South Bay Energy Corporation  
11 and Stream Energy New York, L.L.C. We determined that the  
12 -- these ESCOs have not complied with the Commission  
13 order, which required them to demonstrate that they can  
14 provide a guaranteed savings, compared to what the  
15 customer would have paid to the utility and to provide  
16 appropriate reporting, to verify their compliance with  
17 these assurances.

18                   Agway's Energy petition described the  
19 benefits of its energy-guard service, that ensures  
20 continued safe operation of its customers heating and  
21 cooling systems. Agway's petition, however, failed to  
22 provide any details on Agway's ability to provide a  
23 guaranteed savings, over what the low-income customer  
24 would have paid as a full-service utility customer.  
25 Further, Agway did not respond to any of Staff's --

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2 Staff's additional requests for information.

3 New Wave Energy's petition described  
4 offering three guaranteed savings plans, such as free  
5 nights and weekends, flat peak hours and a six-month plan  
6 that guarantees a savings of one percent. In response to  
7 additional information requested by Staff, New Wave filed  
8 an amended petition that offered a variable-rate month-to-  
9 month guaranteed-savings plan instead of the three  
10 products proposed in its -- in its original petition.

11 Although New Wave's amended petition provided a  
12 description of the tools it would use to calculate the  
13 utility pricing, it failed to -- to provide the details,  
14 specifically the supporting calculations to allow Staff to  
15 verify its monthly price and how New Wave calculated the  
16 true-up to guarantee the savings. In addition, New Wave's  
17 sales agreement continued inconsistencies, such as a  
18 fixed-rate offer with early termination fees, which  
19 directly conflicts with New Wave's amended petition,  
20 stating that it would only offer -- offer a variable rate  
21 month-to-month guaranteed savings plan.

22 New Wave also provided a proposed-  
23 compliance reporting format, that did not include New  
24 Wave's charges, or what the utility would have charged the  
25 customer for the full service for that amount of time.

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2 New Wave provided no supporting calculations to validate  
3 its proposed guaranteed-savings product.

4 South Bay's waiver request described their  
5 guaranteed-savings plan, as a monthly savings with a  
6 variable price that would be one-percent less than the  
7 approximated utility price. South Bay's petition also  
8 explained generally, how it would track and report its  
9 guaranteed-savings plan. South -- South Bay's petition  
10 failed to provide details of the actual-rate calculations  
11 and methodologies that would be used to determine its  
12 monthly rate.

13 Staff requested from South Bay, its  
14 proposed low-income customer contracts, spreadsheet  
15 analysis, with detailed supporting calculations, for  
16 determining its monthly price, detailed calculations,  
17 verifying the customer did not pay more to South Bay than  
18 it would have paid to the utility for the same period and  
19 a sample of its proposed tracking and reporting of such  
20 savings, to verify compliance. South Bay did not respond  
21 to either of Staff's requests for additional information.

22 Stream Energy's waiver request, describes  
23 their current guaranteed-savings plan, as one that  
24 attempts to match the utility pricing, to calculate its  
25 monthly variable rate along with providing a cash-back re

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2       -- rewards program that would typically result in the low-  
3       income customer paying no more than what the customer  
4       would have paid as a full-service utility customer. The  
5       low-income customer, however, is required to stay with  
6       Stream for twelve-consecutive months to qualify for the  
7       cash-back reward.

8           Stream's petition indicated that an annual  
9       true-up would be performed and if warranted, a refund  
10      would be -- be provided to the customer. Stream will  
11      refund the difference between the rate paid to Stream and  
12      the rate that the low-income customer would have paid to  
13      the utility for full-utility service. For the cash-back  
14      reward the amount of the refund would be subtracted from  
15      the customer's cash back reward, to -- to determine the  
16      final savings. If the refund equals or exceeds the reward  
17      no reward would be given. If refund is warranted at  
18      Stream's sole discretion, the refund would be provided to  
19      the low-income customer by a check, debit card, preloaded  
20      credit, or any other mechanism Stream may provide.

21           Stream provided a spreadsheet that  
22      indicated a cash-back credit amount its customers  
23      received. However, failed to include what the utility  
24      charges would have been for the same period. It also  
25      failed to provide the calculations to verify Stream's

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2   monthly charges and how the utility rates were calculated.  
3   Moreover, Stream did not provide the calculations  
4   necessary for Staff to validate that the cash-back reward  
5   makes up the difference between what the low-income paid  
6   -- customer paid to Stream and what it would have paid to  
7   the utility as a full-service customer.

8           Stream's proposed reporting mechanisms  
9   failed to provide all the information necessary to  
10   validate the low-income customer actually -- actually paid  
11   less to Stream, than what they would have paid for full  
12   utility service.

13           That concludes my summary. If you have any  
14   questions, we'd be happy to answer them.

15           CHAIRMAN RHODES: Thank you, Christine.

16           MS. BOSY: You're welcome.

17           CHAIRMAN RHODES: My own view is that it's  
18   important to reaffirm the standard that we're applying,  
19   that we require a demonstrated methodology for  
20   guaranteeing savings. I appreciate the Staff -- very  
21   much, the work that the Staff has done in assessing these  
22   seven petitions and agree with the recommendations by the  
23   Staff, as to which meet that standard and which do not  
24   meet that standard.

25           So, thank you very much.

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2 Any comments, Commissioner Sayre?

3 COMMISSIONER SAYRE: I agree with the Chair  
4 and I also commend the Staff for a very thorough analysis.

5 We've made it clear that energy-service  
6 companies can serve low-income customers in this state, if  
7 they guarantee savings to our satisfaction. We've said  
8 both yes and no to requests previously and these items  
9 continue our careful analysis of every such request on a  
10 case-by-case basis.

11 I think we've had enough yeses at this  
12 point, to -- to make it clear that there is more than one  
13 path to yes and to suggest to ESCOs, who either want to  
14 come in initially, or want to come again to serve this  
15 market, they're welcome to do so, but they need to follow  
16 the rules and meet the requirements and answer Staff's  
17 data requests.

18 CHAIRMAN RHODES: Commissioner Burman?

19 COMMISSIONER BURMAN: Thank you.

20 So, while my mantra is it is a process and  
21 we continue to need to evolve, to meet challenges and  
22 opportunities, I'm concerned about this process.

23 I think Staff and Christine, you have  
24 always done complete due diligence and hard work, and you  
25 are a -- a -- a exemplary professional. So, this is not a



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2 criticism of any of your fine work. In fact, I do  
3 recognize how dedicated all of the Staff is on these  
4 issues.

5           My concern is this. I -- I -- I feel like  
6 we're doing these in a silo and while there seems to be  
7 and I guess we can take from the different orders from  
8 last session and this session, some takeaways on what  
9 would fall into the yes category and what would fall into  
10 the no category, it's kind of a secret society, right?  
11 You don't really know from the outside, what it is because  
12 you're not able to look at the information that the --  
13 that we're reviewing. And so we're kind of asking people  
14 to tell -- to meet the -- the test, on what the guaranteed  
15 savings is, but we really haven't laid out to them what we  
16 are expecting as a guaranteed-savings plan, in a way that  
17 for me gives me comfort.

18           I would -- I feel like at the end of the  
19 day, it's better if we look at this from a more holistic  
20 perspective, where we have one clear guidepost, guidance  
21 order, that says this is what it is, here it is and we  
22 will work with you. We seem to be able to do that in --  
23 in other areas and we have -- in the past, we've been able  
24 to do that.

25           In the C.C.A.s, we are not telling them

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2 that they have to come and get approval via petition, to  
3 meet their guaranteed-savings plan, to be able to serve  
4 low-income customers. They are allowed to, they continue  
5 to do so and they're -- they can adopt it going forward.

6 But there's no -- so, it seems to me, that  
7 it's sort of a fundamental unfairness, that we've only  
8 allowed now a certain sector. Now, some would say, well,  
9 we told them that they could petition and -- and ask for  
10 the ability to do this and we would grant them the waiver.

11 I'm troubled that Agway hasn't responded.  
12 I wonder why. I wonder, you know, for me, you know, Agway  
13 to me, I'm just curious, you know, did they not respond  
14 because they're giving up in this area? Did they think it  
15 was futile?

16 Like I just -- that's really just from my  
17 perspective, wanting to know what it is because we, as  
18 regulators, should be evolving to produce the best  
19 opportunities and choices for all customers. And so, we  
20 should be helping to look at what the barriers may be.

21 Now, I do understand from the process, that  
22 we are trying to get there. We are trying to find that  
23 pathway. I just don't know that we've done a good-enough  
24 job, at this point. The -- the -- sort of the overhanging  
25 issue or the elephant in the room, is the ongoing ESCO

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2   administrative hearing, that has really sucked the life  
3   out of all of us, in a way that is not allowing us to get  
4   to the sweet spot of collaboration and coming to the  
5   table, all of us and throwing away the blame game, of  
6   who's at fault and figuring out a solution that might  
7   work. And we need to really kind of work and think about  
8   how do we work together to find the solutions that are  
9   appropriate for us.

10                   And, you know, again, I go back to the  
11   history of where, you know, the ESCO-collaborative process  
12   used to work really well, you know, for those who were in  
13   it. They were in it, you know, down in the weeds in a way  
14   that produced real, thoughtful, helpful, appropriate  
15   solutions. I get that not everybody is coming to the  
16   table with that same mindset, but we've got to figure it  
17   out because it is not helpful.

18                   And so, I really hope that the sweet spot  
19   is there and that we can unblock the issues and maybe  
20   figure out what works. Bad actors, we don't want. Good  
21   actors, those that need to have thoughtful regulators  
22   working with them to overcome some of the challenges for  
23   the opportunities that are presented for the good of  
24   consumers, is what we want to get to.

25                   So, for me I'm not going to vote on -- I'm

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2   going to vote no on these items because it is in -- where  
3   I come from, in -- in my process review, I don't think  
4   that it is appropriate right now to do picking one over  
5   another, without sort of a more holistic approach. We  
6   have pending petitions for rehearing on some of the items  
7   from last month, that may be food for thought on the ones  
8   we're denying now, that I'm concerned about. I think we  
9   have one further petition for low income.

10                   Maybe this is helpful, that we'll get more  
11   petitions for low income. I doubt it, until we figure out  
12   the sweet spot for coming together and collaborating and I  
13   really would challenge everyone, everyone, that includes  
14   us as regulators, to really try to put aside our  
15   differences and work together and -- and try to figure out  
16   solutions and craft together some things, so that we can  
17   get back to the business that we all want to do, which is,  
18   you know, our bread and butter.

19                   And so, that's really -- that's it. That's  
20   where I come from. I feel passionate that we can get  
21   there, if we try to do that.

22                   So, thanks.

23                   CHAIRMAN RHODES: Thank you, Commissioner  
24   Burman. Commissioner Alesi?

25                   With that we will proceed to vote, item by

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2 item.

3 So, I will call for a vote on Item 204.

4 My vote is in favor of the recommendation  
5 to the -- to deny the petition by Agway Energy Services,  
6 L.L.C., for waiver to serve low-income customers as  
7 described.

8 Commissioner Sayre, how do you vote?

9 COMMISSIONER SAYRE: Aye.

10 CHAIRMAN RHODES: Commissioner Burman?

11 COMMISSIONER BURMAN: No.

12 CHAIRMAN RHODES: Commissioner Alesi?

13 COMMISSIONER ALESI: Yes.

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

16 Calling for a vote on item 205.

17 My vote is in favor of the recommendation  
18 to approve the petition by National Fuel Resources, Inc.,  
19 for waiver to serve low-income customers as described.

20 Commissioner Sayre, how do you vote?

21 COMMISSIONER SAYRE: Aye.

22 CHAIRMAN RHODES: Commissioner Burman?

23 COMMISSIONER BURMAN: No.

24 CHAIRMAN RHODES: Commissioner Alesi?

25 COMMISSIONER ALESI: Yes.

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

4 Item 206, my vote is in favor of the  
5 recommendation to deny the petition by New Wave Energy  
6 Corporation for waiver to serve low-income customers as  
7 described.

8 Commissioner Sayre, how do you vote?

9 COMMISSIONER SAYRE: Aye.

10 CHAIRMAN RHODES: Commissioner Burman?

11 COMMISSIONER BURMAN: No.

12 CHAIRMAN RHODES: Commissioner Alesi?

13 COMMISSIONER ALESI: Yes.

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

16 Item 207, my vote is in favor of the  
17 recommendation to deny the petition by South Bay Energy  
18 Corp., for a waiver to serve low income customers as  
19 described.

20 Commissioner Sayre, how do you vote?

21 COMMISSIONER SAYRE: Aye.

22 CHAIRMAN RHODES: Commissioner Burman?

23 COMMISSIONER BURMAN: No.

24 CHAIRMAN RHODES: Commissioner Alesi?

25 COMMISSIONER ALESI: Yes.

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

4 Item 208, my vote is in favor of the  
5 recommendation to deny the petition by Stream Energy New  
6 York, L.L.C., for a waiver to serve low-income customers  
7 as described.

8 Commissioner Sayre, how do you vote?

9 COMMISSIONER SAYRE: Aye.

10 CHAIRMAN RHODES: Commissioner Burman?

11 COMMISSIONER BURMAN: No.

12 CHAIRMAN RHODES: Commissioner Alesi?

13 COMMISSIONER ALESI: Yes.

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

16 Item 210, my vote is in favor of the  
17 recommendation to approve the petition by Zone One Energy,  
18 L.L.C., for a waiver to serve low-income customers as  
19 described.

20 Commissioner Sayre, how do you vote?

21 COMMISSIONER SAYRE: Aye.

22 CHAIRMAN RHODES: Commissioner Burman?

23 COMMISSIONER BURMAN: No.

24 CHAIRMAN RHODES: Commissioner Alesi?

25 COMMISSIONER ALESI: Yes.

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

4 Item 211, my vote is in favor of the  
5 recommendation to approve the petition by Just Energy New  
6 York Corporation, for a waiver to serve low-income  
7 customers as described. Commissioner Sayre?

8 COMMISSIONER SAYRE: Aye.

9 CHAIRMAN RHODES: Commissioner Burman?

10 COMMISSIONER BURMAN: No.

11 CHAIRMAN RHODES: Commissioner Alesi?

12 COMMISSIONER ALESI: Yes.

13 CHAIRMAN RHODES: The item is approved and  
14 the recommendation is adopted.

15 We will now move to the consent agenda.

16 Do any of my fellow Commissioners wish to  
17 recuse from voting on, or do they wish to comment on any  
18 items on the consent agenda?

19 COMMISSIONER SAYRE: No.

20 COMMISSIONER ALESI: No.

21 CHAIRMAN RHODES: Okay.

22 Seeing none, let's move to a call for a  
23 vote.

24 My vote is in favor of the recommendations  
25 on the consent agenda.



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2 Commissioner Sayre?

3 COMMISSIONER SAYRE: Aye.

4 CHAIRMAN RHODES: Commissioner Burman?

5 COMMISSIONER BURMAN: Aye.

6 CHAIRMAN RHODES: Commissioner Alesi?

7 COMMISSIONER ALESI: Yes.

8 CHAIRMAN RHODES: The items are approved

9 and recommendations are adopted.

10 Secretary Burgess, is there anything

11 further to come before us today?

12 SECRETARY BURGESS: There are no further

13 matters to come before you today.

14 The next Commission session is November

15 16th and I'll just note, the start time is at two p.m.

16 CHAIRMAN RHODES: Thank you very much.

17 We are adjourned.

18 (The meeting adjourned.)

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2 STATE OF NEW YORK

3 I, HOWARD HUBBARD, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place,  
5 as stated in the caption hereto, at Page 1 hereof; that  
6 the foregoing typewritten transcription consisting of  
7 pages 1 through 81, is a true record of all proceedings  
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 26<sup>th</sup> day of October, 2017.

11

12

13 HOWARD HUBBARD, Reporter

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