

1 STATE OF NEW YORK
2 PUBLIC SERVICE COMMISSION

3 REGULAR MEETING OF THE PUBLIC SERVICE COMMISSION

4
5 Thursday, February 20, 2014
6 10:35 a.m.
7 Three Empire State Plaza
8 Agency Building 3, 19th Floor
9 Albany, New York

10 COMMISSIONERS:

11 AUDREY ZIBELMAN, Chair
12 DIANE X. BURMAN
13 GREGG C. SAYRE
14 PATRICIA L. ACAMPORA
15 GARRY BROWN

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1 (The meeting commenced at 10:35
2 a.m.)

3 CHAIR ZIBELMAN: So good morning.
4 I'd like to call the session to order. Secretary
5 Burgess, are there any items to be added to the
6 agenda?

7 MS. BURGESS: There are two
8 changes to the agenda today. One item is added,
9 case 14-G-0058 and case 14-G-0060, natural gas
10 incidents at 43 4th Street, Brentwood and 65 Feller
11 Drive, Central Islip and the service territory of
12 KeySpan Gas East Corporation d/b/a National Grid.
13 This has been added to the agenda and numbered item
14 102.

15 CHAIR ZIBELMAN: Okay.

16 MS. BURGESS: And there is a
17 clarification in addition to the cases listed for
18 item 202, to have the record clear, the other cases
19 are 98-M-1343, which is the Retail Access Business
20 Rules, 06-M-0647, which is the Energy Service
21 Company Price Reporting Requirements, and case
22 98-M-0667, Electronic Data Interchange.

23 CHAIR ZIBELMAN: I was going to
24 -- I picked that up, too.

25 MS. BURGESS: I'm sure you did.

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CHAIR ZIBELMAN: Thank you.

So the first item today then is item 101, which concerns the natural gas incident at 198 Joseph Street in Horseheads. And Mr. Speicher, are you going to be presenting that for Staff?

MR. SPEICHER: Yes, I am.

CHAIR ZIBELMAN: Okay. Thank you. Please go ahead.

MR. SPEICHER: Thank you, Chair. Thank you, Commissioners. I'm here today to talk about Staff's investigation of a natural gas explosion that occurred at 198 Joseph Street in Horseheads, on January 26th, 2001. Today's presentation will touch on -- on the following topics, first an incident overview, a summary of the testing and analysis of the services to 198 Joseph Street, actions taken by NYSEG after the explosion, and recommendations for NYSEG and other L.D.C.s based on the findings of this investigation.

This is an overhead of the incident site and the middle left is where the 198 Joseph Street was. It exploded at approximately nine fifteen on the 26th. There was a fatality of

1 a fifteen-month-old boy and there were injuries to
2 his mother and the boy's great grandfather.

3 This is a quick sketch of the
4 incident site. Right in the blue circle the -- the
5 red area, we found a fractured service and that was
6 -- it had evidence of previous damage to it. And
7 that was located right above the green and blue
8 lines there. They're -- they're the water and
9 sewer mains. It had evidence of -- of previous
10 damage, but we did not find any records of a
11 previous repair.

12 This is the -- the fracture of
13 the service. It's evident with the backfill
14 material on it. It's right at the tip of the arrow
15 and it's fractured in the three o'clock to nine
16 o'clock position.

17 The service was sent to the
18 F.B.I.'s labs in Virginia for testing, including
19 metallurgical testing. The results came back that
20 the fracture was caused by S.C.C., which is stress
21 corrosion cracking. S.C.C. needs three elements to
22 occur. One is stress, a corrosive environment, and
23 time. In this slide, the S.C.C., the crack is seen
24 -- is the black part of the pipe there. That was
25 the existing crack. The reddish color would be the

1 intact material prior to the explosion. That
2 fractured sometime prior to the incident.

3 The service at 198 Joseph Street
4 had all the elements for S.C.C. to occur. The
5 stress was provided by the backfill and poor
6 support. The corrosive environment was provided by
7 the improperly applied coating to the service. And
8 it had plenty of time. We believe it was damaged
9 sometime in the '60s to '70s.

10 Shortly after the explosion,
11 NYSEG excavated services on Joseph Street. They
12 found evidence of other damages and replaced the
13 services. Because of this, they performed
14 investigatory excavations in the subdivision around
15 Joseph Street known as the Mayfair Plot. They
16 ended up replacing all the services in the Mayfair
17 Plot.

18 NYSEG started performing
19 increased leakage surveys in Horseheads. They now
20 perform these surveys on the entire -- on the
21 entire NYSEG system at intervals far exceeding our
22 current requirements. And they are continuing
23 leakage surveys in Horseheads. So as soon as they
24 finish in Horseheads, they're starting another one.
25 So it's just a cycle that is continuous.

1 NYSEG also hired a metallurgical
2 expert, Lucius Pitkin, to analyze the Horseheads
3 system and have begun to implement recommendations
4 made by Lucius Pitkin. In addition, L.P.I. is
5 studying other areas of the NYSEG system. Based on
6 its analysis, L.P.I. has recommended that all
7 one-inch and one-and-a-quarter-inch services
8 adjacent to sewer and water in Horseheads be
9 replaced. NYSEG has begun these replacements
10 during 2013 and is scheduled to have it completed
11 by August of 2014.

12 Staff has a series of
13 recommendations for NYSEG and for all L.D.C.s.
14 First, we recommend that NYSEG replace all of the
15 services remaining -- all of the one-inch and
16 one-and-a-quarter-inch services in Horseheads that
17 are remaining that were recommended to be replaced
18 by L.P.I. This should be completed by August of
19 this year.

20 We also recommend that NYSEG
21 develop and submit a written action plan for
22 replacing all remaining gas services in Horseheads.
23 And they should provide monthly progress reports to
24 Staff until this work is completed.

25 In addition, NYSEG should

1 continue to perform leakage surveys in the town and
2 village of Horseheads until the work is completed.
3 In addition to the recommendations for NYSEG, Staff
4 is recommending that other L.D.C.s take certain
5 actions. These recommendations deal with
6 performing system wide risk assessments,
7 improvements to the public education programs, and
8 recording of leak and odor calls made to the
9 utilities.

10 Staff recommends that all L.D.C.s
11 perform system-wide risk -- a system-wide risk
12 assessment of their distribution systems to
13 determine if conditions similar to those in
14 Horseheads exist. These assessments should be
15 completed in six months. In addition, if -- if
16 these risk assessments indicate conditions similar
17 to those found in Horseheads do exist, the L.D.C.s
18 will be required to submit, within thirty days, an
19 action plan to address the increased risk.

20 In addition, if a risk mitigation
21 plan is needed, the L.D.C. needs to follow the plan
22 and provide monthly reports until the risk is
23 mitigated.

24 Finally, Staff recommends that
25 all L.D.C.s take steps to enhance public education.

1 Staff recommends that the L.D.C.s collaborate and
2 develop best practices for improving public
3 education on the reporting of natural gas odors.
4 These best practices should also address steps to
5 take to reach more local government entities to
6 educate them on potential hazards of excavations
7 near gas facilities.

8 The L.D.C. shall report the
9 results of the public and local government outreach
10 collaborative, including concrete improvements each
11 utility will make to increase customer
12 understanding of the need to report gas odors and
13 the new steps each utility will take to educate
14 local governments about excavation practices within
15 ninety days.

16 This concludes my presentation.
17 I'm available to address any questions you have.
18 And also with me is Assistant Counsel Diane Dean.
19 She could address questions as well.

20 CHAIR ZIBELMAN: Thank you,
21 Kevin. And welcome, Diane.

22 Let me just start with, you know,
23 I -- I think that all of us at the Commission and
24 certainly the Staff and the Agency were struck by
25 this case. It's a -- it's a sad reminder of the

1 business we're in and the dangers that can be posed
2 to the public and to workers if things are not done
3 precisely and we're not aggressive about protecting
4 the safety and recognizing the -- the fact that we
5 are dealing with both in terms of electricity and
6 gas, the potential for -- for affecting public
7 safety.

8 So I appreciate the scope of the
9 Staff's investigation, the details that you went
10 into, and the thoughtfulness of what you're -- what
11 you're recommending that we do.

12 It's -- it's clearly a
13 comprehensive approach. Certainly, the first step
14 we have to do is -- is do these risk -- risk
15 assessments, understand where in fact we're
16 vulnerable, and make certain that we're taking the
17 right steps to address that. And -- you know, and
18 that certainly it's -- well, this happened with one
19 utility, I think the fact is -- is that we need to
20 make sure that all utilities are looking at this in
21 the appropriate way and we're using best practices
22 and sharing them with each other.

23 The other piece I think is
24 critically important and as we continue to look at
25 natural gas, both as -- as a heating fuel is under

1 -- is making sure that the public and local
2 communities are aware of these issues and that
3 again we're doing everything we can to provide that
4 awareness and allow people to be in a position to
5 protect themselves. So I think -- you know, from
6 that perspective, I think that the Staff has done a
7 good job -- an excellent job of trying to scope out
8 the issues and setting processes in place that --
9 that we can make certain that this never happens
10 again and to any New Yorker.

11 With that, I would ask -- and I
12 noted that you have a number of dates, but I think
13 it's going to be important that we continue to
14 highlight the activity that is going on here for
15 the Commission. And I would ask that Staff, in
16 addition to establishing the collaborators and
17 getting the reports from the utilities, come back
18 to the Commission periodically. And I would -- I
19 would say at least in six months and, if needed,
20 quarterly, but certainly to identify what progress
21 has been made, where you might be having issues,
22 where you have concerns, so that we continue to be
23 aggressive in addressing them.

24 And with that, let me turn this
25 to my fellow commissioners. Commissioner Brown?

1 COMMISSIONER BROWN: Yeah, Kevin,
2 I just want to clarify one thing just to be sure.
3 The way I understand this, this tragedy happened
4 because of some excavation work that was done after
5 the natural gas line was installed that compromised
6 the -- the gas line that caused the stress, that
7 caused -- caused the break, which had caused the
8 leak, which caused the explosion, which just leads
9 to if that's -- which I believe is the case?

10 MR. SPEICHER: That is -- that is
11 correct.

12 COMMISSIONER BROWN: Which leads
13 to, I think, two things that you've touched on, but
14 I really want to highlight here one is the
15 excavation call number. I believe it's --

16 MR. SPEICHER: Eight one one.

17 COMMISSIONER BROWN: -- eight one
18 one. Thank you. I'm not an excavator, but there
19 is a number and all excavators need to know that
20 before they do any excavation. There's a number to
21 be called and you can find out where all the lines
22 are. And if you don't do that and you excavate,
23 there's potential penalties in place.

24 And number two, that if people
25 smell gas, they need to report it to their utility.

1 And this was a huge tragedy that can be avoided if
2 those simple steps are taken. And I know that's
3 exactly what we're telling the utilities to go out
4 and do and that's why I think this recommendation
5 is so important. It, unfortunately, sometimes,
6 takes a tragedy like this to get people to do the
7 reminders again. Here comes a line now, excavation
8 now.

9 So anyway, thank you for your
10 hard work on this and I just wanted to remind
11 everybody of those two important elements of this
12 recommendation.

13 MR. SPEICHER: Thank you very
14 much.

15 COMMISSIONER SAYRE: This really
16 was a horrible situation and I'd like to stress
17 again one of the points that Commissioner Brown
18 just made, which is the public really is our second
19 line of defense. The first line of defense is the
20 utilities, but the public smelling gas is our
21 second line of defense. And it's just critically
22 important that the public understand and that the
23 utilities help the public understand that they need
24 to report gas odors. A hundred false alarms are
25 better than one tragedy like this by -- and it just

1 can't be stated how important it is.

2 COMMISSIONER BURMAN: I -- I
3 agree with all of my fellow commissioners. I just
4 want to state that I also am very sympathetic and
5 thinking about the family that's still dealing with
6 the tragedy that has struck them and that's why we
7 take our role so seriously, so thank you.

8 COMMISSIONER ACAMPORA: Kevin,
9 I'd like to thank, you know, you and the Staff for
10 the intense work that you put into this order.
11 I've been sitting here now for nine years and it
12 seems as though our work in this area is never
13 complete. There's always something more to be
14 done. And protection of lives is first and
15 foremost.

16 And I think that New York has
17 been a leader when it has come to the odorization.
18 We had a case not long ago where we asked a company
19 to odorize their gas. And the education process, I
20 know, is going to be a difficult one. I mean the
21 question we all asked when we were briefed on this
22 case is why wasn't anybody making any calls. And
23 so I think that part, we're going to need to
24 partner with so many groups out there to educate
25 people.

1 And also for the first time in
2 many years, Commissioner Burman has taken on the
3 role of our gas lady, NARUC, National Association
4 for Regulators. And I think that her work -- she
5 has a lot to do, because I think it's something
6 that the rest of the country, while we lead, we can
7 still work with the rest of the states and make
8 sure that not only people in New York are
9 protected, but people throughout the country are
10 protected. And there are ways to protect them.

11 So we thank you for your work and
12 we look forward to hear from you so that if you do
13 need the Commission to make any steps to assist
14 that we will be there to do that. So thank you
15 very much.

16 MR. SPEICHER: Thank you. And I
17 do have to give a lot of thanks to our Staff. Our
18 Staff put a lot of work into this and did great
19 work and -- and counsel's office helped out a lot
20 with this also.

21 CHAIR ZIBELMAN: Thank you,
22 everybody. And I do want to echo for us this is a
23 docket number, but we do know for the family this
24 is a life-long tragedy and all our prayers and
25 wishes do stay with them.

1 With respect to that then, I'd
2 like to take a vote. Any -- everybody in favor of
3 the recommendations to require the risk assessments
4 and other remediation and activities that Staff has
5 recommended with respect to New York Gas utilities,
6 please say aye.

7 FROM THE COMMISSIONER: Aye.

8 CHAIR ZIBELMAN: Hearing no
9 opposition, the recommendations are adopted.

10 With respect to items 102, is
11 that going to be -- whom? Okay. Mr. Stolicky,
12 thank you. Welcome.

13 MR. STOLICKY: Good morning,
14 Chair, Commissioners, and Justice.

15 Item 102 is going to be presented
16 in two parts. First, I'm going to run through
17 Staff's investigation into both the Brentwood
18 incident and the Central Islip incidents. Then I'm
19 going to hand it over to Robyn Adair from the
20 Office of General Counsel, who's going to talk --
21 walk us through the Commission's enforcement
22 authority.

23 First, the -- the Brentwood
24 incident occurred on April 24th, 2011, Easter
25 Sunday, on 43 4th Street in Brentwood. Safety

1 Staff responded that day. When we arrived on
2 scene, Number 43 was completely destroyed and
3 Number 41 and 45 were condemned due to structural
4 damage. The total estimated property damage was
5 approximately one point three million dollars.
6 There were twenty-one minor injuries to people in
7 the surrounding area, but no fatalities.

8 Staff performed a record search
9 and witnessed a lease survey of the area and
10 pressure tested the service line to Number 43. It
11 was determined that National Grid's outside
12 facilities were not a contributing factor to the
13 incident. Both Staff and the fire marshal's
14 investigating determined that the inside gas pipe
15 work -- I'm sorry -- there was recent inside gas
16 pipe work that was carried out and a gas shut-off
17 valve was left in the open position.

18 Staff's investigation did find
19 that a National Grid employee was at Number 43 4th
20 -- 4th Street on April 13th due to a gas leak odor
21 call and, during that visit, failed to follow
22 company procedures and other safety code
23 requirements. Staff determined that the primary
24 contributing factor to the incident was that the
25 National Grid employee left the site with the gas

1 service valve closed, but not locked to prevent
2 unauthorized personnel from introducing gas into
3 the house piping.

4 In addition, Staff determined
5 that the National Grid employee did not inspect and
6 then test the service regulator -- service
7 regulator that he replaced and that he incorrectly
8 followed warning tag requirements.

9 I'll now give an overview of the
10 Central Islip incident. On July 10th, 2012 at
11 Number 5 -- 65 Feller Drive, Central Islip, there
12 was a large structure fire. Number 65 Feller Drive
13 was one unit of a larger structure containing ten
14 condominiums. All ten units suffered extensive
15 damage exceeding over three million dollars. There
16 were no injuries or fatalities due to this
17 incident, but it did displace twenty people.

18 During the investigation, Staff
19 determined that the same National Grid employee who
20 failed to follow procedures in the Brentwood
21 incident also failed to follow procedures during
22 his visit to Number 65 Feller Drive that day.
23 Approximately fourteen minutes after the National
24 Grid employee's departure, the structure was on
25 fire. Staff's investigation agreed with the

1 Suffolk County Police and fire investigation that
2 the source of the natural gas leak was an
3 open-ended pipe in a closet where an appliance
4 would be located, but was not present.

5 The National Grid employee
6 responded to the location on July 10th to
7 reactivate the gas service to Number 65 Feller
8 Drive which was issued a warning tag for a water
9 heater that was improperly venting carbon monoxide.
10 During this visit, Staff determined that the
11 National Grid employee failed to follow six
12 separate procedure requirements, including a check
13 of inside valves and pipe connections for leakage,
14 verifying proper appliance operation, purging gas
15 through the farthest appliance, a meter dial test
16 for leakage, a meter dial test -- I'm sorry --
17 meter dial accuracy test, and verifying the
18 identity of the gas meter before initiating work.

19 Staff's investigation further
20 discovered that National Grid failed to perform
21 either a post-accident drug test or a post-accident
22 alcohol test on the employee who performed work at
23 this location, both of which are required under our
24 safety regulations.

25 Before I hand this to Robyn, I --

1 I want to mention that Suresh Thomas, from our New
2 York City Office, led these investigations, along
3 with a lot of leg work from Jonathan Mercurio and
4 Sergey Peschanyy. I'll now turn it over to Robyn,
5 who will walk us through the enforcement portion of
6 this item.

7 MS. ADAIR: Thank you, Chris.

8 Good morning, Chair,
9 Commissioners. Mr. Stolicky has outlined the
10 support that Staff believe we have to bring a case
11 pursuant to the Public Service Law Section 25.
12 Specifically, Public Service Law Section 25, Sub 1,
13 has a general requirement that every public utility
14 and its employees comply with the Public Service
15 Law, our regulations, and Commission orders.

16 Additionally, under Public
17 Service Law, Section 25, Sub 2 every public utility
18 and their employees can be held accountable where
19 they knowingly fail, neglect to obey or comply with
20 our law, the Public Service Law, or Commission
21 orders. This statutory provision fixes the maximum
22 penalty at a hundred thousand dollars per day per
23 violation. In the alternative Public Service Law,
24 Section 25, Sub 3 requires every public utility and
25 their employees can be held accountable where they

1 knowingly fail, neglect to obey or comply with our
2 law, the Public Service Law, the associated
3 regulations, and Commission orders. This provision
4 affixes the maximum statutory penalty at two
5 hundred fifty thousand dollars per violation.

6 Notably, Public Service Law,
7 Section 25, Sub 7, talks about how the actions of
8 an employee of a utility, when they're functioning
9 within the official scope of their employment and
10 performing their official job duties, can be
11 imputed to the utility.

12 Now, Mr. Stolicky outlined the
13 facts that Staff believes support violations of our
14 gas safety regulations found in Part 255 of the
15 Code. Under Public Service Law, Section 65, Sub 1,
16 Staff contend that violations of these regulations
17 illustrate the failure of KeySpan National Grid to
18 furnish and provide safe and adequate service,
19 instrumentalities, and facilities.

20 Accordingly, Staff is here today
21 to ask the Commission to institute a proceeding and
22 require KeySpan National Grid to demonstrate why a
23 penalty action should not be commenced for
24 violations of the Public Service Law and our
25 regulations. Staff will engage in settlement

1 discussions with the utility. If settlement cannot
2 be reached, Staff will ask the Commission to issue
3 an order authorizing commencement of a penalty
4 action and enforcement proceeding in court. Thank
5 you.

6 CHAIR ZIBELMAN: Thank you both,
7 Mr. Stolicky and Ms. Adair, for the briefing.

8 First of all, let me echo I do
9 appreciate the -- the work of Staff, including
10 Staff in New York City in investigating -- and I
11 don't have my mic on. Thank you. So let me again
12 thank you and again my appreciation to Staff.

13 A couple of questions. You're --
14 you're bringing this under Statute 25 and not
15 Statute 25A. Did you want -- and my understanding
16 is it's with respect to the timing of the incident?

17 MS. ADAIR: Yes, Chair Zibelman.
18 These incidents occurred, as Mr. Stolicky
19 described, in April of 2011 and July 2012, which
20 pre-dates the enactment of Public Service Law
21 Section 25A. So we need to rely on 25.

22 CHAIR ZIBELMAN: And by issuing
23 the show cause order and -- and asking Staff to
24 engage in discussions with the parties, with --
25 with the utility, does that stay the running of the

1 statute of limitations?

2 MS. ADAIR: It does not.

3 CHAIR ZIBELMAN: So what will
4 stay the statute of limitations?

5 MS. ADAIR: A filing in court.

6 CHAIR ZIBELMAN: So when would
7 that be done?

8 MS. ADAIR: Honestly, it depends
9 how settlement negotiations proceed. Staff could
10 appear before the Commission in either March or
11 April.

12 CHAIR ZIBELMAN: But it would
13 have to be done by that time?

14 MS. ADAIR: It would have to be
15 done prior to April 24th.

16 CHAIR ZIBELMAN: Okay. So by
17 issuing the order today, we're giving Staff and the
18 Company an opportunity to look for an opportunity
19 for settlement before proceeding with litigation,
20 hence the timing --

21 MS. ADAIR: Yes.

22 CHAIR ZIBELMAN: -- and the need
23 to act today? Okay. Thank you. I have no further
24 questions on this.

25 Any other questions from other

1 commissioners?

2 COMMISSIONER BURMAN: Thank you.
3 Robyn, I think this is your first time appearing
4 before us. Is that correct?

5 MS. ADAIR: Yes.

6 COMMISSIONER BURMAN: Thank you.
7 Just back to the Public Service Law 25 and the
8 statute of limitations, is that -- for April -- you
9 said April 24th, 2014. Is that for the first
10 incident that the statute of limitations, but the
11 second incident would be the following year, or is
12 it both together?

13 MS. ADAIR: No, Commissioner
14 Burman, the statute of limitations with respect to
15 Brentwood is three years and that would be April
16 24th of 2014. With regard to Central Islip, that
17 would be July of next year.

18 COMMISSIONER BURMAN: Okay. But
19 we would handle them both together?

20 MS. ADAIR: Yes. Staff are
21 looking to package the incidents.

22 COMMISSIONER BURMAN: Okay.
23 Great. I think it's very important and the -- the
24 item 101 spoke to an incident that, you know,
25 really called for making sure that we did as much

1 public education as possible. And I think these
2 two incidents in -- in this item show the need for
3 looking at the culture of safety and making sure
4 that -- you know, that the education is also done
5 internally in -- in the company, as well. And I
6 know item 101 is going to be looking at those
7 issues as well, but I think that both speak to the
8 continuing need and vigilance of -- of all of us on
9 these issues. Thank you.

10 CHAIR ZIBELMAN: Okay.

11 Commissioner Acampora?

12 COMMISSIONER ACAMPORA: In the
13 previous 101, we saw a picture of the devastation.
14 As someone who lives on Long Island and pays
15 attention to the news and the newspapers, I can
16 tell you if we had pictures here today to show you
17 that house was left to nothing. And the people who
18 lived in that complex, as you said, many of them
19 were dispersed and lost their home, had no place to
20 go. It's really very jarring when -- when you see
21 that on T.V.

22 And again, to back up what
23 Commissioner Burman said, education, when people
24 smell something, they need to make that call and
25 the employees, they actually have people's lives in

1 their hands to make sure that they're doing their
2 job correctly. So thank you for your work on this
3 one.

4 CHAIR ZIBELMAN: Commissioner
5 Sayre?

6 COMMISSIONER SAYRE: I'd just
7 echo the comments of my fellow commissioners and
8 make it clear that -- that our view is that there
9 is no acceptable level of gas explosions in New
10 York State and the utilities must adopt a culture
11 that ensures that safety is a top priority.

12 CHAIR ZIBELMAN: Thank you. So
13 this is all quite sobering and you know,
14 unfortunately, our -- we don't get to hear from --
15 or fortunately, we don't hear from them very much,
16 but the gas safety Staff at the Agency does an
17 incredible job. Clearly, whatever we are doing,
18 it's never enough and -- and it's something we will
19 continue to focus on and -- and continue to work on
20 and continue to improve. Having seen -- being part
21 of a process myself in my career where there were
22 burns from gas, it's -- it's an awful, awful thing.

23 With that, I would ask for a vote
24 on item 102 for Staff's recommendations to go
25 forward with the show cause order and -- and

1 commence the proceedings. All those in favor?

2 FROM THE COMMISSIONER: Aye.

3 CHAIR ZIBELMAN: Hearing none --
4 no dissents, the recommendations are carried, and
5 thank you.

6 MR. STOLICKY: Thank you, Chair
7 and Commissioners.

8 CHAIR ZIBELMAN: And welcome, Ms.
9 Adair. You did a wonderful job.

10 MS. ADAIR: Thank you.

11 CHAIR ZIBELMAN: So next item
12 before us is item number 201. These are the major
13 rate filings of Con Edison. And they are going to
14 be presented by our Administrative Law Judges
15 Bielawski and Stein. And A.L.J. Paul Agresta, who
16 also presided in this case, I believe, is
17 available. So let me start with Julia and Eleanor.
18 Which -- who is beginning?

19 Julia, welcome.

20 A.L.J. BIELAWSKI: Thank you.

21 Good morning, Chair,
22 Commissioners. Judge Agresta, Judge Stein, and I
23 are here to present an order which will -- proposes
24 a resolution of the three pending Con Edison rate
25 cases for their electric, gas, and steam

1 businesses. These rate filings were filed over a
2 year ago after an initial delay while Con Edison
3 was focusing on the aftermath of Super Storm Sandy.
4 There were also two extensions of the suspension
5 period, the latest one which will expire at the end
6 of this month, so the Commission does need to act
7 soon in these proceedings.

8 Last May, Judge Agresta gave you
9 a presentation outlining Con Edison's rate filings.
10 The company was seeking approximately
11 four-hundred-and-eighteen-million-dollar increase
12 in revenue requirement in the electric business,
13 twenty-seven-million-dollar increase in the gas
14 business, and an eight-million-dollar increase in
15 the steam business. Litigation ensued. Twenty
16 parties were involved. We had two full weeks of
17 evidentiary hearings and two rounds of
18 negotiations, the second of which was headed as --
19 by Kim Harriman, acting as settlement judge.

20 As a result of a tremendous
21 effort by all the parties, on the final day of
22 2013, a joint proposal was filed. It was executed
23 by twelve parties and opposed by only two. To give
24 you a sense of the scope of the enormity of the
25 amount of work that was put in this proceeding and

1 the litigation, when the joint proposal was filed
2 it was marked on this record as Exhibit One
3 Thousand.

4 We propose an order that adopts
5 the terms of the joint proposal with very minor
6 modifications, which I will highlight. We believe
7 the joint proposal to be not only a fair compromise
8 between the parties, but to carry with it extensive
9 benefits for customers.

10 The electric plan is a two-year
11 rate plan. The steam and gas plans are three-year
12 rate plans. Each of these rate plans have a
13 revenue requirement decrease in year one, followed
14 by increase in -- increases in successive years,
15 but by levelizing those components the joint
16 proposal would avoid any increase to what customers
17 are paying for the duration of the late rate plans.

18 However, although customers will
19 not see the impact of any increases during the rate
20 plans, there are revenue requirement increases
21 inherent in these plans. As such, in the proposed
22 order, we do recommend one change to the terms of
23 the joint proposal. And that is to utilize
24 customer credits that will be created during the
25 terms of these rate plans. We propose to utilize

1 these to mitigate the impacts of those revenue
2 requirement increases. So that won't happen until
3 the end of the rate plans and only in the event
4 that the company does not come back in and file for
5 new rates in that first year following each rate
6 plan.

7 On the electric side, the revenue
8 requirement increase would be a
9 forty-eight-million-dollar increase and it could be
10 mitigated by a thirty-million-dollar credit. Gas
11 is a forty-million-dollar increase that could be
12 mitigated by a thirty-two-million-dollar credit.
13 And on steam, it's an eighteen-million-dollar
14 increase that has a potential mitigation with a
15 credit of eight million dollars.

16 These -- the electric rate plan
17 carries with it a return on equity of nine point
18 two percent. In recognition of the longer term
19 plans, steam and gas have a
20 nine-point-three-percent return on equity. And
21 each plan has a forty-eight percent equity ratio.

22 One of the clear benefits that we
23 see to these multi-year plans is it allows the
24 Commission in this instance to be responsive to the
25 huge public outcry we have heard from Con Edison's

1 customers that they do not want to see their bills
2 increase, at least in the near future. Except for
3 a few customers that may experience some changes
4 due to revenue allocation and rate design changes,
5 the average bills that customers are paying for
6 delivery service will not change during the course
7 of these rate plans.

8 In addition to these rate
9 proceedings -- these rate details, the joint
10 proposal resolves a multitude of other issues,
11 which I can't resolve -- I can't discuss them all
12 here. We'd be here all day. It really was a
13 tremendous effort by the parties. But I will
14 detail a few.

15 There are earnings sharing
16 mechanisms that have been restructured to capture
17 the greater customer -- customer benefits while
18 still incenting the -- the company to make cost
19 savings. In particular, fifty percent of the
20 company's share of those shared earnings will be
21 applied to reduce deferred site investigation and
22 remediation costs. There is a new business
23 incentive rate program to assist small businesses
24 struggling from recovery after Super Storm Sandy.
25 There are substantial increases to the low-income

1 programs on the electric and gas sides. In
2 electric, it's an annual increase for the overall
3 funding of twenty-four percent. And in addition
4 the -- the customer credit will increase from eight
5 dollars and fifty cents to nine dollars and fifty
6 cents per customer for electric. In gas, it's an
7 annual budget increase of seventy percent.

8 Now, the Public Utility Law
9 Project is one of the two parties that oppose the
10 joint proposal and they recommended a number of
11 changes which we addressed in detail in the order.
12 But the overall message we got from PULP was that
13 low-income customers are struggling -- increasingly
14 struggling to pay their bills. In response to
15 that, we propose one additional change to the joint
16 proposal and that is to remove from the joint
17 proposal an adjustment mechanism that would have
18 allowed Con Edison to reduce the electric
19 low-income discount by fifty cents should the pool
20 of eligible customers reach a certain size. And
21 this way the Commission can guarantee that all
22 electric low-income customers will have the full
23 benefit of the nine-dollar-and-fifty-cent credit.

24 In addition, the order also
25 responds to PULP's suggestion that Medicaid

1 eligibility be used as an additional threshold for
2 participation in the low-income electric program,
3 as it is done on the gas side. This record did not
4 provide us with sufficient details to evaluate what
5 impact that would have on these programs.

6 Accordingly, the order proposes that Con Edison
7 work with the City of New York and with Westchester
8 County to obtain numbers and return them to the
9 Commission for your consideration.

10 The order memorializes a
11 commitment by Con Edison to attempt same-day
12 reconnections for those customers who have been
13 disconnected and are eligible again for service.
14 In addition to all these economic benefits, there
15 are significant environmental benefits that the
16 parties agreed to in the joint proposal. There's
17 an aggressive plan for the replacement of
18 leak-prone gas pipes. There's more support for
19 oil-to-gas conversions. There are provisions
20 encouraging the development of distributed --
21 distributed generation, including a micro-grid
22 pilot project and a commitment by Con Edison to
23 explore alternatives to traditional infrastructure
24 when meeting the significant load growth in the
25 Brownsville section of Brooklyn.

1 There is a new voluntary
2 time-of-use rates program in the rate plans, which
3 will enable customers to more effectively manage
4 their energy costs by switching their time of use.
5 These rates are particularly designed for the
6 owners of electric vehicles. It is on this topic
7 of the voluntary time-of-use rates that the other
8 party who opposed the joint proposal submitted
9 comments. The Retail Energy Supply Association did
10 not attack any particular term of the voluntary
11 time-of-use program, but identified certain
12 barriers in the market that they perceived to
13 interfere with ESCO's full participation in that
14 market. Those issues will be considered in the
15 generic proceeding considering residential and --
16 and small commercial retail -- the retail energy
17 market.

18 This order also proposes stronger
19 performance metrics, addresses the treatment of
20 past and future storm costs, and provides for
21 substantial investment in capital projects. In
22 addition to everything that was brought up in these
23 proceedings that the parties resolved, they also
24 reached out and resolved some issues in other
25 pending proceedings, including the apportionment of

1 a property tax refund, the disposition of proceeds
2 of the sale of the John Street property, and a
3 pending rehearing petition concerning the
4 allocation of P.T.M.O. costs.

5 Finally, the parties also
6 included many initiatives that are very
7 forward-looking for future studies to enable you,
8 the Commission, to make more informed decisions on
9 certain critical topics. Just for example, there
10 is a staffing study that Con-Ed will undertake to
11 examine the use of contract labor and there will be
12 a study to best determine what the appropriate
13 future treatment of Con Edison's Hudson Avenue
14 facility will be.

15 We thank the parties for their
16 enormous amount of work and see this resolution as
17 not only fair, but very much in the public
18 interest. And unless you have any particular
19 questions on those issues, I'll turn the program
20 over to Judge Stein.

21 CHAIR ZIBELMAN: Thank you. Why
22 don't we proceed with Judge Stein and then we'll
23 come back, I'm sure?

24 A.L.J. STEIN: Thank you.

25 As Julia alluded, this case was

1 litigated in the shadow of Super Storm Sandy, which
2 struck New York in late October of 2012 with
3 historic flooding, unprecedented winds which caused
4 the death of over fifty New Yorkers, resulted in
5 billions of dollars in property loss and damage to
6 energy systems such that electric service outages
7 hit more than two million people in New York.

8 So this raised not only the
9 urgency of ensuring our emergency preparedness, but
10 of long-term advance planning for the impact on New
11 York utilities of extreme weather events
12 exacerbated by a changing climate.

13 In Con Edison's initial filing,
14 it requested approximately one billion dollars in
15 capital investment for what the utility termed
16 storm hardening of the utility infrastructure. And
17 parties' testimony filed thereafter really brought
18 in an inquiry beyond simply storm hardening of
19 utility property to a more holistic view of
20 resilience or flexibility, generally. And this
21 testimony included that filed by the City of New
22 York, the Attorney General, the Columbia Law School
23 Center for Climate Change, who produced expert
24 scientific testimony detailing anticipated climate
25 change impacts to the region over the next years

1 and over the next decades.

2 And when we're looking at
3 investments in infrastructure that may be in use
4 for thirty, forty, fifty years, or more, this
5 long-term look clearly emerged as something that
6 was critical to do.

7 And staff proposed at this point
8 the convening of a collaborative to look at these
9 longer-term issues in particular. And the
10 collaborative began in June of 2013 and we were
11 very fortunate to have the dedicated participation
12 of roughly twenty parties and to harness a
13 tremendous amount of expertise and experience on
14 these matters on the part of Staff, New York City,
15 which was in the process of its own resiliency
16 initiatives, environmental, and other
17 non-governmental organizations.

18 This phase of the collaborative
19 ended in December of 2013 with the filing by Con
20 Edison of its resiliency report. And in the
21 report, Con-Ed recognizes the necessity and agrees
22 to develop certain new tools in conjunction with
23 the participation of the collaborative. Some
24 examples of these most prominent, one was a new
25 design standard that would underpin all of its 2014

1 construction projects, which would entail the use
2 of the most current FEMA, the Federal Emergency
3 Management Agency, floodplain maps to be able to
4 identify most accurately the areas that were at
5 risk of flooding and to add three feet in
6 additional protection anticipating future sea level
7 rise and other events. And this design standard
8 became called FEMA Plus Three.

9 A second example of a new tool
10 that was developed in the course of the
11 collaborative for Con Edison and by Con Edison was
12 an effort with leadership of New York City
13 designing a new risk assessment model that would
14 gauge the value of investment in specific storm
15 hardening measures in reducing storm and flood
16 risks to various groups of customers.

17 These tools identified and shaped
18 Con Edison's storm hardening projects for 2014 that
19 included things such as raising barriers around
20 substations, installing submersible transformers in
21 flood prone areas, or elevating electric substation
22 controls, increasing the ability of the -- to
23 isolate damaged parts of the electric system.

24 These projects -- the cost of
25 these projects are included in the revenue

1 requirement in the case as a whole and they were
2 built on these new tools and new standards. But
3 also emerging, not only these tools and -- and
4 approaches to looking at storm hardening for the
5 utilities, but the understanding that investment in
6 other approaches such as the development of
7 distributed generation or micro-grids could also
8 contribute importantly to the resiliency of the
9 system as a whole.

10 So this collaborative process ran
11 parallel to the litigation and then to the
12 settlement negotiations. And the joint proposal
13 itself includes numerous recommendations that stem
14 from the collaborative. Certain other
15 recommendations with regard to the collaborative
16 have their origins in the Con-Ed resiliency report
17 and parties' comments on it.

18 So before you for approval are
19 these recommendations that are either contained in
20 the joint proposal or in the Con-Ed report. The
21 first is the general recommendation that the
22 collaborative continue into a phase two going
23 through this year, the end of 2014. The proposed
24 order suggests approval of this recommendation with
25 specifics as to its scope to avoid duplication of

1 effort or overlap in work of the collaborative with
2 work in other existing proceedings or proceedings
3 that are anticipated to be commenced in the near
4 future.

5 And just briefly, to tell you
6 what that scope is -- looks like, the first thing
7 is that Con Edison will, of course, be proposing
8 new storm hardening projects for rate years two and
9 three under the joint proposal. And as with those
10 that are embodied in the rate plan before you
11 today, those will be brought to you in September of
12 2014 and those new projects will be vetted by the
13 collaborative as the ones for this year were
14 vetted. And they also will be based on similar
15 design standards and similar tools.

16 The second is Con Edison has
17 agreed to undertake a comprehensive 2014 study of
18 the utility's vulnerability to the full range of
19 climate change effects, not only storms and floods,
20 but also effects such as increased heat and heat
21 waves. We're proposing three specific alternative
22 resilient strategies to be looked at in the
23 collaborative setting. These all stem from the
24 joint proposal. One are solutions for the network
25 growth in Brownsville Brooklyn, which Julia also

1 alluded to.

2 A second is to consider the
3 elimination of the single customer limitation in
4 the Con Edison offset tariff, to expand the
5 availability of micro-grids, and to be informed by
6 the study that's now underway by D.P.S., NYSERDA
7 and Homeland Security of micro-grid feasibility.

8 And the third is a time-of-use
9 rate pilot, time for -- to study time-sensitive
10 rates.

11 The fourth issue for the
12 collaborative for phase two concerns an
13 investigation into additional reduction in natural
14 -- natural gas leaks, which not only propose the
15 safety concerns that have been addressed at length
16 today, but also result in greenhouse gas emissions
17 into the atmosphere.

18 Finally, the collaborative, in
19 phase two, would continue the development of Con
20 Edison's risk assessment model and also perform
21 some cost benefit studies to apply these tools
22 equally to utility infrastructure improvements and
23 also other resilience approaches.

24 So, in conclusion, I would just
25 suggest that this was really a unique process

1 involving stakeholders hard at work and a valuable
2 outcome that's already being studied in other
3 regions. And at the heart of it the outcome is the
4 successful integration of resiliency considerations
5 into Con Edison's own planning process. So if you
6 have questions for either of us, we're available.
7 Thank you.

8 CHAIR ZIBELMAN: Thank you.
9 First, let me just start off with, you know, one of
10 the great advantages of the digitalized economy is
11 the fact that what we've learned is crowd thinking,
12 crowd sourcing. Crowd involvement, engagement
13 often ends up with solutions that individual
14 companies may not do on their own. And one thing
15 that it strikes me that this case exemplifies as
16 having more than -- having interested parties in
17 the room, multiple viewpoints of view.

18 Recognizing the complexity of the
19 issues that we have to deal with in this industry,
20 in all our industries with respect to the provision
21 of utility services has ended up with, I believe, a
22 much stronger result than anyone could have done
23 alone or we could have achieved in litigation. So
24 I -- I congratulate the Staff, the Company, and all
25 the parties who -- who worked with us to both

1 identify the issues, synthesize the problems, and
2 find a solution that I believe, while I'm sure
3 anyone would say not perfect, but clearly addresses
4 the most salient, the most challenging issues we
5 have in front of us, and does it in a way, I
6 believe, that provides the greatest amount of
7 benefit for the consumers.

8 So I congratulate you for that
9 effort. And I know that while there's only two
10 people at this table, there are hundreds of people
11 who were involved in this. And I personally know
12 that many people spent their holidays working,
13 working, working to -- to get this resolved. And I
14 -- and I truly appreciate that.

15 With regard to that, I think that
16 the -- the key elements of this plan certainly
17 recognize the -- the critical issues that are in
18 front of us. We -- this is certainly a sobering
19 day and -- and it's hard to say anything without
20 feeling trivial, based on what we've been talking
21 about, both in terms of gas safety and Super Storm
22 Sandy and the effect it had on the city on top of
23 economic struggles that people are already
24 experiencing.

25 With that, there's no question

1 and this winter has certainly been another reminder
2 that we are seeing extreme weather conditions.
3 Whether caused by global warming or any other
4 element, we are seeing extreme weather conditions.
5 And we have to begin addressing them and that our
6 utility infrastructure absolutely needs to be
7 looked at and thought through in terms of not what
8 happened in the past, but what we're confronting in
9 the future, what technology allows us to do, and
10 what we need to do to protect consumers.

11 So I think the -- the efforts of
12 the collaborative, of what they've been able to
13 produce, the standards, risk assessment, I believe,
14 Judge Stein, you're right, that we're setting new
15 standards, we're -- we're helping lead the way, but
16 more importantly, we're being thoughtful in
17 thinking in terms of the future and not the past in
18 how we need to design and operate our systems.

19 So, I think that this is a great
20 start. And I agree that the work that the
21 collaborative has done will certainly be built upon
22 and added to, as we think about where are we --
23 where do we need to move to make sure that the --
24 essentially our -- our infrastructure is future
25 proofed and is meeting the needs of consumers for

1 low-cost electricity. So thank you for that.

2 With regard to the other issues,
3 bill affordability, electric affordability, gas
4 affordability, steam affordability, these are basic
5 needs. And while we've restructured parts of this
6 industry, they continue to be essential services.
7 And we need to do everything we can to help
8 maintain affordability, particularly recognizing we
9 have vulnerable communities that -- that need the
10 extra help to make sure that they -- they are able
11 to protect themselves and have access to these
12 services.

13 So I think, clearly, the efforts
14 that have been made in this -- in this case to
15 think about not only how we keep -- make this our
16 grid, our systems the best in class, but how we
17 keep it affordable for everybody are -- are a great
18 accommodation and I appreciate the thoughtfulness.
19 Again, these are challenging issues. We have to
20 build -- we have to main affordability. So one of
21 the things we continue to look at is not only what
22 we -- what we need to do to make the grid
23 resilient, but also what we can do in the long-term
24 to make it more efficient. So I think that the
25 work that has been identified around looking at

1 micro-grids, looking at alternatives so that we can
2 manage demand become a critical element of what we
3 can do to help maintain affordability.

4 Certainly the extra effort that's
5 going on in terms of gas conversions and looking at
6 gas leaks address our twin concerns of safety, with
7 the environment, and allows consumers to save on
8 heating costs, which is also very critical. The --
9 the breadth and weight -- in fact, it went over my
10 weight limit that the doctor told me I can carry --
11 of the proposals is incredible. And I thank Judge
12 Bielawski is correct is it's hard to do justice to
13 the amount of issues that were resolved in the path
14 that this sets us on, which I think is a very
15 strong path for the company and certainly for
16 consumers because it provides rate stability, price
17 stability that we require.

18 So I am hugely appreciative of
19 the -- of the work that's gone on. I congratulate
20 everybody who was engaged and I appreciate,
21 particularly, your willingness to stay engaged so
22 that we could get this to an appropriate
23 conclusion.

24 And with that, I will turn it
25 over to my fellow commissioners for any additional

1 comments.

2 Commissioner Burman?

3 COMMISSIONER BURMAN: Thank you.

4 First of all, job well done. I
5 -- I have often described myself as a cynical
6 optimist. In this case, beforehand I think I was
7 an optimistic cynic and was pleasantly surprised to
8 see how much this was able to really come together
9 and the breadth of issues that had to be dealt with
10 and really the care from Staff, Con Edison, and all
11 the stakeholders, including A.A.R.P., was really
12 quite wonderful to watch and then to see this come
13 to fruition today.

14 Price pressures on ratepayers is
15 a significant issue and I'm glad to see how this is
16 being dealt with. I am in very support of -- of
17 this item and will be voting yes. I will be
18 submitting a small concurrence. And part of the
19 focus for me is on the collaborative process. And
20 it's important for me to make sure that, you know,
21 I -- I look at sort of the whole picture and
22 holistically I think it's wonderful that in this
23 case Con-Ed voluntarily stepped up and asked to
24 address some of these issues sort of outside of the
25 norm. It worked for them, it worked for Staff, and

1 I think it worked for the stakeholders. It's not a
2 one size fit all -- fits all and I think in this
3 case it was very helpful.

4 And in looking at sort of phase
5 two, that, too, needs to be looked at and see what
6 works, rather than sort of trying to fit it into --
7 into what we think it should fit because, really,
8 the end game is that we are doing what we need to
9 do to have a resilient and reliable system. I
10 think threats to the critical utility system are
11 there from all extraordinary events, whether
12 natural or manmade, whether weather related or
13 other. And they have the potential to interrupt
14 reliable utility service.

15 Extended interruption to a
16 reliable utility service has far-reaching serious
17 secondary impacts and are necessary for us to make
18 sure that we are doing all we can to make sure that
19 there are -- is no harm to public health, public
20 safety, and frankly, the economy as well, which is
21 significant.

22 I -- I think that utilities need
23 and I believe that they embrace this, that they --
24 they want to ensure resiliency. It's one of the
25 highest priorities for all utilities, Con-Ed in

1 this case. And if -- if they look and are
2 consistently monitoring, evaluating, analyzing, and
3 taking into consideration what the events are that
4 they need to do to continue to have a reliable and
5 resilient system. I've seen firsthand the folks on
6 the ground, not only at Con-Ed, but at other
7 utilities, showing just how much they care, that
8 they're prepared, and they -- they want to be
9 prepared. And it's -- it's for me very comforting
10 to know that this is, from the top down and from
11 the bottom up, a highest priority.

12 Utilities can't do it alone. And
13 that's sort of why the collaborative process was
14 one that worked and -- and will continue to work.
15 We do need to be concerned about not duplicating
16 efforts, not only of Staff efforts, but of all
17 stakeholders and utilities and looking -- we've
18 done many, many things on storm hardening, storm
19 resiliency, and reliability. There are many
20 different proceedings that are going on, addressing
21 a number of these different factors. So we really
22 need to be mindful that we need to take a step back
23 and make sure that we are looking holistically and
24 making sure that we are doing things for the short-
25 and the long-term. And the -- the utilities, the

1 Staff, and all stakeholders have my support. Thank
2 you.

3 CHAIR ZIBELMAN: Thank you.

4 Commissioner Sayre, any comment?

5 COMMISSIONER SAYRE: I would also
6 like to commend the judges, the Staff, and all
7 parties for the tremendous amount of work that
8 they've put into this settlement. With a few
9 tweaks that we're making, it is in the public
10 interest.

11 I'd like to focus, though, on one
12 particular element of the settlement and the
13 ongoing collaborations. And that's the time
14 sensitive rate pilot. I think that's an extremely
15 exciting concept and I wanted to stress that it's
16 voluntary for any ratepayer to enter into it or not
17 enter into it. But I read in the Trade Press this
18 morning that ratepayers in Chicago who have used
19 the time sensitive pilot that they -- that they
20 have out there have saved tremendous amounts of
21 money on average, compared to the default utility
22 rate because they were able and willing to match
23 their electric use so that it was as efficient as
24 possible and -- and matched what was available in
25 the system.

1 If we give customers the right
2 incentives and they follow those incentives, then
3 that reduces the need for additional generation
4 transmission distribution, which translates to
5 lower rates for everybody. And in terms of the
6 environmental benefit, a megawatt bid of
7 electricity that's never used at all is the
8 cleanest possible use or -- or non-use of
9 electricity that you can have. Far better than any
10 environmental control is simply non-use.

11 So I, again, commend the parties,
12 the Staff, and the judge -- and the judges for a
13 tremendous effort.

14 CHAIR ZIBELMAN: Commissioner
15 Sayre, you're singing my song.

16 Commissioner Brown?

17 COMMISSIONER BROWN: Hopefully,
18 everybody's a little unhappy with the settlement.
19 That means we've probably done it correctly. Early
20 on in my tenure, we -- we approved a rate case and
21 I got a call from the company saying how can you
22 expect us to go on and do business with what you
23 just did to us. And I got a call from a legislator
24 asking us how we could give away the store. And I
25 realized we had probably done our job correctly

1 that day. This is a balancing of all the interests
2 which you articulated, all of which are extremely
3 valid, making sure it's affordable, making sure
4 it's reliable, making sure we make the incremental
5 investments that we need. All of those things are
6 part of this case.

7 And I'm thrilled, frankly. This
8 beats the heck out of rate increases, which we've,
9 unfortunately, had to do plenty of. And it again
10 is a balancing. We could have done a couple of
11 different ways. We could have had a rate decrease
12 for a year, followed by a rate increase the next
13 year, which can be confusing to consumers. The
14 fact we managed to get a long-term delivery rate
15 freeze, I think is a positive. I think what we're
16 doing with the credits that are accrued to
17 preclude, perhaps, some rate increases that would
18 be automatic if they didn't come in otherwise is
19 extremely important.

20 I want to thank you for the
21 recommended decision that sits in the ether
22 somewhere that we'll never see, but I know how much
23 work was put in by the judges on that and the Staff
24 that worked so hard and, of course, the parties in
25 this proceeding. I -- you know, I'm -- I'm

1 supportive of this process. I'm glad we could get
2 to where we are. And again, hopefully everybody's
3 a little unhappy with where we ended up because
4 then we probably did it correctly.

5 CHAIR ZIBELMAN: Commissioner
6 Acampora?

7 COMMISSIONER ACAMPORA: Well,
8 again, it's groundbreaking, I think, work that the
9 public is hearing about today. And of course, I
10 agree with all my fellow commissioners and the
11 chair with regard to the effort put forth by the
12 judges, the Staff, and all the interested parties.
13 And I would be remiss if I did not make Doris work
14 today.

15 In -- in talking about all of
16 this, Doris, you know, I'm interested to know your
17 feelings on how the Street will view this.

18 MS. STOUT: I have a couple
19 thoughts on that.

20 COMMISSIONER BROWN: What Street
21 is that?

22 COMMISSIONER ACAMPORA: The only
23 Street, Garry.

24 MS. STOUT: I can say that
25 generally the Street views our multi-year

1 settlements favorable. They eliminate a lot of
2 uncertainty by setting a revenue requirement for a
3 number of years and they provide a lot of
4 risk-reducing cost recovery elements.

5 But in the same regard, going to
6 Commissioner Brown's comments, I could say that
7 some of the equity analysts were probably hoping
8 for more on return on equity. So they weren't
9 overly happy with the result, but in the end, they
10 recognized that the way we set return on equity in
11 this state is transparent and predictable and
12 consistent with the interest rate environment. So
13 they also recognized that Con-Ed has a long history
14 of earning its return on equity under these rate
15 plans, so I think in that regard the equity
16 analysts are okay with the joint proposal.

17 The other point I want to raise,
18 too, is on the other side of the street we have our
19 bond rating analysts and only Moody's has actually
20 made statements about the settlement. They
21 recently came out with an analysis that upgraded
22 Con-Ed, and O and R, and a few other companies in
23 the state. And they recognized that the regulatory
24 environment in the U.S. and in New York, in
25 particular, is appropriate and that we recognize

1 the importance of our utilities in this state and
2 that we won't do anything to harm their bond
3 ratings intentionally.

4 So they upgraded Con-Ed and they
5 actually specifically noted that rate -- the rate
6 making mechanisms that we provide in these
7 multi-year settlements are part of the
8 contributions to that positive assessment. So I
9 think, overall, the street probably is happy with
10 this multi-year rate plan.

11 COMMISSIONER ACAMPORA: Thank
12 you. We always like to have something positive
13 from the Street on what we do, which we don't
14 usually get. And -- and I'd also like to commend,
15 again, the judges and all the interested parties on
16 your work with the low-income issues. That was
17 really important to get some kind of a consensus.

18 And again, you know, we've
19 learned through this, because it's been a long,
20 arduous trip, that there can be respectful
21 disagreement with a positive outcome. So I really
22 am very much in favor and proud to vote for this
23 particular matter. Thank you.

24 CHAIR ZIBELMAN: Thank you,
25 Commissioners, for -- for your comments. I -- I do

1 note that we have Mr. Whitley from the I.S.O. And
2 in a previous life, we used to talk about the
3 arrows in the front have to equal the arrows in the
4 back to know you've done a good job. And I think
5 that that's pretty out.

6 Clearly, the importance of the
7 fact of -- of price stability, both from the
8 standpoint of consumers, as well as the utility and
9 the reason why that's important is -- is that in
10 the end, the utilities have to raise money. And
11 investors who see this as a good investment that
12 the cost of that money stays at a reasonable level
13 which, in turn, helps us keep prices reasonable.
14 So it is an important matter that people have
15 confidence in our companies and that consumers have
16 confidence that they're getting value for their
17 energy dollars. And I believe that we've looked to
18 accomplish both and accomplished them quite well in
19 this particular proceeding.

20 So, with that, all those in favor
21 of the recommendation to approve the electric, gas,
22 and steam rate plan for Con Edison, as recommended
23 with the modifications to ratepayer credits and the
24 low-income program, as well as the additional
25 efforts to be taken by the resiliency

1 collaborative, as described by Judges Bielawski and
2 Judge Stein, please say aye.

3 FROM THE COMMISSIONER: Aye.

4 CHAIR ZIBELMAN: Hearing no
5 opposition and there being no opposition, the
6 recommendation is adopted.

7 And again, congratulations to all
8 for your -- your particular efforts.

9 A.L.J. BIELAWSKI: Thank you very
10 much.

11 CHAIR ZIBELMAN: Okay. Our --
12 the fourth item we're going to be taking up today
13 is item 202, which is case M-0476, et al, as noted
14 by Ms. Burgess. And this is addressing certain
15 aspects of the residential and small
16 non-residential retail market. And Doug Elfner,
17 who's Director of the Consumer Policy, and LuAnn
18 Scherer, Chief of Consumer Advocacy, and Brendon
19 Goodrich, Assistant Counsel, welcome, will be here
20 for the presentation in question.

21 So Doug, will you be beginning?

22 MR. ELFNER: Yes.

23 CHAIR ZIBELMAN: Okay. Thank
24 you.

25 MR. ELFNER: Good morning, Chair

1 Zibelman and good morning Commissioners. The
2 Commission began this case to assess certain
3 aspects of the retail energy markets for small
4 customers, residential customers and small
5 non-residential customers in New York. Currently,
6 more than two hundred ESCOs, Energy Service
7 Companies, are authorized to provide electric
8 service in New York. And a similar number are
9 authorized to provide natural gas service in New
10 York.

11 Between twenty and twenty-five
12 percent of residential customers now obtain
13 commodity from an ESCO. And approximately a third
14 of small commercial customers purchase energy from
15 an ESCO.

16 Staff conducted a thorough
17 review, including numerous meetings with ESCOs,
18 ESCO trade associations, utilities, consumers,
19 representatives of consumers, low-income advocates.
20 We developed an online survey to assess the -- how
21 customers -- to determine a customer's assessment
22 of their experience with ESCOs. We conducted an
23 extensive review of ESCO-related consumer
24 complaints that the Department has received,
25 collected and analyzed data regarding the prices

1 that ESCOs charge, and we identified the types and
2 the frequency of value added services that ESCOs
3 are providing to residential and small commercial
4 customers.

5 In addition, we thoroughly
6 reviewed comments from the parties on a series of
7 questions that the Commission posed regarding these
8 markets and how these markets might be improved.
9 Active parties included four ESCO trade
10 associations, approximately seven individual ESCOs,
11 every major utility, and five groups representing
12 these small customers.

13 I want to emphasize that our
14 review focused on markets for residential and small
15 non-residential customers. Regarding large
16 commercial and industrial customers, retail energy
17 competition appears to be working very well. The
18 vast majority of these relatively sophisticated
19 customers obtained their energy from ESCOs. They
20 report savings and/or benefits from services that
21 the ESCOs provide.

22 For residential and small
23 non-residential customers there are several main
24 areas which we believe enhancements can be made and
25 should be made so that these markets provide

1 similar benefits to those obtained by large
2 customers.

3 The first area is price
4 transparency. For markets to work effectively,
5 consumers must have ready access to information
6 regarding which firms provide the best value.
7 Currently, there's a very wide variation in the
8 price charged by ESCOs. And some residential
9 customers pay -- some residential ESCO customers
10 pay considerably more than they would have with
11 another ESCO or with the utility. However, it's
12 very difficult for small customers to obtain
13 relevant comparative pricing information. The
14 absence of that information is an impediment to a
15 well-functioning competitive market.

16 So the draft order contains
17 several recommendations regarding price
18 transparency, including requiring utilities to
19 implement online bill calculators for ESCO
20 customers so that they can compare historically
21 what they were charged by their ESCO as compared to
22 what they would have paid if they purchased
23 commodity service from the utility; require ESCOs
24 to file with the Department historic pricing
25 information for certain products, which the

1 Department will then compile and publish; and
2 modify the Power to Choose website, which is now
3 designed just for residential ESCO products so that
4 it also covers ESCO services for small commercial
5 customers as well.

6 The second main area where
7 enhancement should be made concerns benefits for
8 customers participating in utility low-income
9 assistance programs. The Commission has
10 established policies to protect and assist
11 low-income customers. And we talked about them in
12 the very last item. Over the -- over recent years,
13 the Commission has more than doubled funding for
14 low-income assistance programs as just one example.
15 Consistent with those policies, the recommendation
16 is that ESCOs only be allowed to enroll customers
17 who participate in utility low-income assistance
18 programs in ESCO services that guarantee savings
19 over what the customer would have been charged by
20 the utility or that provide energy related services
21 designed to reduce the customer's overall energy
22 bill, for example, home energy management services.
23 And I'll talk more about that in a minute.

24 The third main area where
25 enhancements should be made is in the rules and

1 procedures applicable to ESCO marketing practices.
2 The Department continues to receive a large number
3 of complaints regarding inappropriate marketing
4 practices, particularly regarding door-to-door and
5 telephonic marketing. The main recommendation is
6 to require that all enrollments made through these
7 means be verified by an independent third party.
8 This is an approach now used successfully by
9 several ESCOs and it's also been used successfully
10 in the telecommunications industry.

11 The draft order also recommends
12 that the process for enforcing Commission rules
13 regarding ESCO marketing practices be streamlined
14 to help facilitate prompt enforcement action where
15 it's appropriate.

16 The final area concerns value
17 added services provided by ESCOs to small
18 residential and commercial customers. Staff's
19 review finds that ESCOs are offering some value
20 added products to these customers, specifically
21 fixed prices and energy from renewable sources.
22 However, there are very few products available from
23 ESCOs for residential or small commercial customers
24 that are designed to assist customers in managing
25 their energy use, such as energy management

1 services, demand response programs and tools, and
2 energy efficiency measures.

3 The recommendation is to
4 immediately commence another phase of the
5 proceeding which will investigate ways to
6 facilitate the development of innovative new energy
7 related value added products and services. Among
8 other things, this phase will investigate ways to
9 reduce the costs to ESCOs of acquiring customers
10 who purchase these energy related value added
11 services, remove barriers that now impede ESCOs'
12 ability to market the availability of these
13 services using consolidated utility bills, modify
14 utility billing systems to facilitate the ability
15 of ESCOs to offer time-of-use products. This was
16 an issue that the judges raised in the Con Edison
17 case just a few minutes ago. The proposal is to
18 treat that generically here. Identify what
19 additional data might be available to assist ESCOs
20 in developing these services, including customer
21 specific usage data and information about network
22 constraints, and streamline processing of ESCO
23 enrollment requests.

24 So to begin this next phase, a
25 notice will be issued, inviting comments on these

1 and other issues. And we'll come back to you with
2 specific recommendations on actions that the
3 Commission should take.

4 So overall, retail energy markets
5 continue to be an integral part of the Commission's
6 overall regulatory framework. And development of a
7 competitive market structure which leads to
8 innovation and consumer and societal benefits is an
9 ongoing process. We believe that the
10 recommendations outlined here will help achieve
11 that goal.

12 Thank you and we're available for
13 questions.

14 CHAIR ZIBELMAN: Thank you, Doug.
15 I'm going to defer my comments for right now. I'm
16 going to turn it over to Commissioner Sayre. When
17 I joined the Commission, this was one of the first
18 proceedings I was alerted to that we were going on
19 and were engaged in. And I know that Commissioner
20 Sayre's been working, particularly, as all the
21 commissioners have, but has been focused and been
22 thoughtful about this issue. And -- and Gregg,
23 let's -- I'd love to hear your thoughts.

24 COMMISSIONER SAYRE: Well, Staff
25 has found that for -- for the residential and small

1 business markets, the energy marketing really
2 hasn't worked in a competitive way as the
3 Commission originally envisioned would happen in
4 terms of savings over the default rates or savings
5 vis-à-vis each other and -- and new innovative
6 services offered by the ESCOs that the utilities
7 don't offer.

8 What we're doing here to address
9 that is primarily to increase the information
10 available to residential and small business
11 consumers so that they can make informed choices.
12 And I -- I want to stress that what we're doing
13 here is something that we think will make the
14 market work better. We're not trying to regulate
15 competition. We're trying to create a structure so
16 that competition can thrive and work a little
17 better than it appears to be working now.

18 And as Mr. Elfner said, we are
19 also addressing some marketing problems,
20 particularly in the door-to-door and telemarketing
21 areas and -- and marketing and -- and services
22 provided to low-income customers. With my
23 experience in the telecommunications field, I want
24 to assure the ESCOs that -- that the third party
25 verification rules that we're putting in place for

1 door-to-door and telemarketing acquisition of
2 customers are not particularly onerous. The
3 telephone industry has been living with those for a
4 very long period of time and there are plenty of
5 vendors out there who are ready, willing, and able
6 to conduct third party verification on your behalf.
7 So I think that we are nudging the market with a
8 relatively light hand to a place where it will work
9 better.

10 CHAIR ZIBELMAN: Thank you.

11 Commissioner Brown?

12 COMMISSIONER BROWN: I just have
13 one question, Doug. One thing we've talked about
14 in the past is the entry requirements to become an
15 ESCO. Is this further proceeding going to address
16 that at all? And just for people to know, I think
17 it's a little too simple right now, the reason
18 we've got a couple hundred ESCOs, and I'm concerned
19 about for the lack of a better term fly-by-night
20 companies in the business, as opposed to more
21 responsible adults.

22 MR. ELFNER: Yes, Commissioner,
23 that -- that is an issue to be addressed in the
24 next phase. We don't have a record on the pros and
25 cons of that yet, so we can't bring that to you for

1 a recommendation now. We'll come back shortly with
2 a recommendation there.

3 CHAIR ZIBELMAN: Commissioner
4 Acampora?

5 COMMISSIONER ACAMPORA: I'm glad
6 that Commissioner Brown asked that question because
7 you know that's near and dear to my heart to make
8 sure that the people who are out there who are
9 looking for other services that aren't provided by
10 their utility do not get taken advantage of. And
11 when I talk about, you know, the low-income people
12 and the elderly, to make sure that we don't have
13 companies -- we have very -- some very good
14 companies, but we've had some others that, you
15 know, have caused us to pull our hair out in some
16 of these instances.

17 So I think that we're headed in
18 the right direction. And I'm always concerned
19 about, again, how to educate the consumer to make
20 sure that they do have all the tools needed to make
21 that intelligent decision because it's a big
22 decision and it's kind of intimidating to people,
23 no matter what age they are, who don't have the
24 information at hand. So, you know, could you kind
25 of like walk me through some of the ideas of how

1 you're going to make sure that the consumer is
2 educated?

3 MR. ELFNER: Sure. In the draft
4 order would establish several new tools. One of
5 the tools is an online historic bill calculator.
6 So one of the informational devices that we're
7 using -- we would propose to be used for consumers
8 is to require, on utility bills, not necessarily
9 that provision of information, but simply a notice
10 that says here's where you can go to get that
11 information. So one is use of utility bills for --
12 for particular bill messages for ESCO customers.

13 Two is expanded notice
14 requirements for contract renewals that's also a
15 recommendation in here.

16 COMMISSIONER ACAMPORA: Uh-huh.

17 MR. ELFNER: Right now we see
18 that many consumers are paying prices that you
19 don't know how they got to that point. Why would a
20 customer knowingly pay that price? So receiving
21 additional notices on contract renewal time with
22 specific messages, the intent is they are, again,
23 to help the consumer be more attuned to their --
24 their options and their ability to -- to have -- to
25 make -- to make different decisions. So it's, I

1 think Commissioner Sayre used the words, it's --
2 it's mostly information through a variety of
3 sources, including our websites. Power to Choose
4 website will be enhanced and promoted after it's
5 enhanced --

6 COMMISSIONER ACAMPORA: Right.

7 MR. ELFNER: -- to facilitate all
8 the objectives that we've been talking about.

9 COMMISSIONER ACAMPORA: I might
10 like to add that I think it would be important
11 again where people who may go to their libraries,
12 who may deal with senior citizen -- local senior
13 citizen organizations, and elected officials at
14 different levels, that we could share this
15 information with so that they can share it with
16 their constituency because, you know, the more we
17 get the word out, again, more education to the
18 consumer.

19 MR. ELFNER: Very good. Good
20 idea.

21 COMMISSIONER ACAMPORA: Thank
22 you.

23 CHAIR ZIBELMAN: Thank you.

24 Commissioner Burman?

25 COMMISSIONER BURMAN: Thank you.

1 When I look at this, I, as you know, have struggled
2 with a lot of the different issues on what's
3 happening in the ESCO world. And I'm very thankful
4 that Staff has indulged me with going through a lot
5 of the ins and outs that you've been experiencing
6 and working with the different companies and
7 hearing from them. And -- and I was glad to hear,
8 you know, Commissioner Sayre has been a strong
9 leader in this issue and really helping to set a
10 good course. And I think that was very
11 complimented by the Chair in her looking to the
12 future of utility service and what ESCOs can do to
13 help facilitate more value added services.

14 So when Commissioner Sayre spoke
15 about, you know, don't worry about the fact that
16 some of these requirements will not be onerous, I
17 was very happy to hear that from his experience in
18 the -- in the telco world.

19 And what -- what I'd like to make
20 sure is that, you know, there are -- there is a
21 need for us as we evaluate this and this new
22 process that really is going to have to be worked
23 through and that we do it, not in a vacuum, but
24 with the utilities, the ESCOs and the customers,
25 those potential and those current customers in both

1 the utility service and the ESCO service, so that
2 we really make sure that we're not causing anything
3 that is unnecessarily burdensome or onerous. And I
4 know you share my sympathies with that.

5 So what I'd like also is to see
6 that we keep sort of the goal really is -- is for
7 ensuring proper competition, ensuring proper
8 education to the customers, and allowing them the
9 choice, and working through so that we get to a
10 much better service and products that -- that can
11 help all of us. And if there are things the -- the
12 -- the next phase for value added services is
13 really facilitating ESCOs' ability to provide these
14 value added services, but it's really facilitating
15 all sectors in their ability and what we can do,
16 you know, as a -- as a Commission to help in that.
17 So if there are things that we, ourselves, are
18 finding from, either continuing ongoing regulation,
19 or this new -- this new process that is becoming
20 onerous or is causing some issues, that we make
21 sure that in that collaborative process that we
22 revisit it and be open to making whatever changes
23 are necessary to -- to ensure that what our goal is
24 for competition is -- is -- is -- is done. Thanks.

25 CHAIR ZIBELMAN: Thank you.

1 Let me just, in avoidance of
2 trying to repeat things, but provide sort of my --
3 my perspective and my support for the draft order.
4 I think that one of the things of lessons learned
5 that we've gotten from the wholesale power market
6 is that information is the tool. And the reason
7 why the wholesale markets have worked so well is
8 because we've moved to locational marginal pricing
9 and have price transparency that everybody in the
10 market can see and then they can make their
11 economic decisions based on the fact that everybody
12 has the same level of knowledge.

13 The problem is as we, as Staff,
14 perceived it and I think has grappled with in this
15 order is that no retail market can work if
16 customers are uninformed. And the major difference
17 between large industrial and commercial customers
18 and the mass market is the mass market just didn't
19 have the tools to make informed decisions. And
20 what we're trying to do is not become paternalistic
21 or maternalistic about -- about retail customers,
22 but to provide them the tools so that they can
23 exercise their individual sagacity and make the
24 decisions that are best for them.

25 The other piece is -- is that a

1 well-functioning retail market does allow people to
2 respond to price. And the fact of the matter is if
3 we have time-of-use pricing, but no tools available
4 to consumers to manage their consumption, they'll
5 get to see the price, but they won't be able to
6 control their bills. And that's what this is all
7 about, retail competition.

8 When we talk about value added
9 services, ought to be putting consumers in the
10 driver's seat so they can manage their electric
11 bill and take the type of services, the type of
12 value that they want to achieve in order to make
13 the market truly dynamic.

14 And the issue that, as we saw it
15 here, is one, is because the market was not really
16 quite effective yet, because customers didn't have
17 the information they needed and they didn't have
18 the ability to make selections and they were
19 encumbered sometimes by actions that --
20 particularly vulnerable customers, it put them in a
21 bad position relative to making decisions. It is
22 important that the government step in and provide
23 those tools so we can get on the path.

24 But that is not to say that we
25 don't believe that competition and innovation is

1 the right thing for the mass market, which is why I
2 think it's just as important in this docket that,
3 not only are we grappling with what do we need to
4 do to make sure that customers can get as much
5 information as necessary so they can make
6 decisions, but really, what are the barriers so
7 that we can create effective competition, but also
8 innovation so that we could provide real value to
9 customers.

10 And you know, for me, the real
11 value will be that when all the customers get to
12 make choices around, not just what commodity
13 supplier, but how do they want to control the bills
14 and what services are available to them so that in
15 the end of the month or the end of the day, they're
16 satisfied that they're just not a take of services,
17 but they're actually engaged and able to manage
18 their -- their energy services, both gas and --
19 heating and electric.

20 So I think that this docket is an
21 important step forward in that direction. Clearly,
22 it needs to be combined with -- and again, as
23 Commissioner Burman has said, we need to avoid
24 duplication of services. We're already looking at,
25 in terms of the energy efficiency two docket, how

1 do we need to manage, how do we drive these
2 services forward, how do we inform customers
3 effectively.

4 We will also be looking at, as we
5 think about the utilities of the future, what do we
6 need to do on regulation, how do we make these
7 retail markets work. So part of, I think, the
8 challenge for all of us, as we think about this, is
9 how do we do this in an effective way with the --
10 with the recognition the ultimate goal here is not
11 necessarily the ESCOs. The ultimate goal here is
12 the consumer. We want to drive value to consumers.
13 We believe innovation and competition is the way
14 forward, but to make a competitive market work it
15 has to work for the consumer.

16 So with that, I think we're on
17 the right path. I clearly think there's work to be
18 done. I think Commissioner Brown is correct; we
19 need to think about the market, what's the right
20 size, what -- what kind of real value we have --
21 can bring and -- and what are -- and again, because
22 in the end we're talking about consumers and an
23 essential service, what protections need to remain
24 in place while this market continues to transition.

25 So, with that, I also endorse the

1 recommendations of Staff and would like to take a
2 vote. So, all those in favor of the
3 recommendations, say aye.

4 FROM THE COMMISSIONER: Aye.

5 CHAIR ZIBELMAN: And hearing none
6 -- dissension, the recommendations are adopted.
7 Thank you, Mr. Sayre.

8 And we're going to take a
9 ten-minute break.

10 (Off the record)

11 CHAIR ZIBELMAN: Okay. Our next
12 item on the agenda is item 301, which is -- which
13 reflects to case 12-T-0502, et al. And it's the
14 examination of altering current -- alternative
15 current transmission upgrades. And Administrative
16 Law Judge Prestemon and Administrative Law Judge
17 Phillips, who is presiding with -- with Judge
18 Prestemon, are here to present the item and also
19 answer any questions.

20 So, Judge Prestemon?

21 A.L.J. PRESTEMON: Thank you,
22 Chair Zibelman and Commissioners. Good afternoon.
23 It's lunchtime, so I will be brief.

24 The draft order you have before
25 you is the product of a process that was initiated

1 by a notice issued by the secretary on January
2 17th. The notice announced the Commission's
3 intention to review the process in this case in
4 light of policy concerns about environmental and
5 landowner impacts.

6 It should be noted that this
7 draft order is somewhat different from those we
8 normally present as judges in that it is not the
9 result of a process initiated by the parties or
10 advisory staff. Rather, the draft order reflects
11 our efforts to express what we understand to be the
12 conclusions you have reached as a result of the
13 announced review.

14 The draft order makes four
15 principal points. First, it reaffirms the
16 Commission's original goal of relieving congestion
17 by increasing the power transfer capability across
18 the electrical interface between Upstate New York
19 and Southeastern New York by at least one thousand
20 megawatts.

21 Second, it invites the developers
22 who have submitted Part A applications in this case
23 to offer alternative proposals that would require
24 no or minimal expansion of existing rights-of-way
25 so that to the maximum -- to the maximum extent

1 possible, projects can be contained within the
2 bounds of existing rights-of-way.

3 Third, the draft order removes
4 the requirement that was specified in your original
5 September 2013 order that each project proposal
6 submitted must, by itself, provide a minimum of one
7 thousand megawatts in increased transfer
8 capability. The purpose of this change is to allow
9 for consideration of smaller projects that may
10 efficiently and cost effectively contribute to
11 meeting the overall goal of a one thousand megawatt
12 increase in transfer capability.

13 Fourth, the draft order directs
14 the presiding judges to work with the parties to
15 establish a process for the receipt and
16 consideration of these alternative proposals in a
17 reasonably expeditious manner so as to not
18 significantly impact the timetable for having these
19 alternating current transmission upgrades in
20 service.

21 The order concludes by expressing
22 the Commission's intention to select the project or
23 projects the best balance, the objectives of
24 reducing congestion and minimizing costs and risk
25 to ratepayers, and avoiding negative impacts on

1 communities, property owners, and the environment.

2 That's my presentation.

3 CHAIR ZIBELMAN: Thank you, Judge
4 Prestemon and thank you for your brevity, as well.

5 A.L.J. PRESTEMON: You're
6 welcome. I'm hungry.

7 CHAIR ZIBELMAN: So first of all,
8 I -- this process did initiate, actually, with my
9 request that we take a look at this issue. And we
10 have another item, item 369 in the consent agenda,
11 in which we are -- which proposes that we -- that
12 we commence a proceeding to take a look at how we
13 can modify Article 7 to address the request by
14 Governor Cuomo in his State of the State that we
15 look for an expedited proceeding when, in fact,
16 we're able to develop transmission within existing
17 right-of-ways including state-owned right of ways.

18 The recognition there, and I
19 think is very important, is that the state is in
20 sorely need of developing transmission. We have
21 under-utilized assets. We have congestion on the
22 system that's costing consumers lots of money. And
23 we need to do everything we can to make certain
24 that we're maximizing the value of instate assets,
25 including renewable assets, and that we're doing so

1 in a way that's cost effective, and also thinking
2 and being considerate about land use, which is also
3 an extremely precious resource.

4 So the State of the State and --
5 and this related item really is addressing how do
6 we provide incentives for all developers, not just
7 incumbents, to think about how do we develop
8 transmission, including new technologies that allow
9 us to increase the transfer capability of the
10 system, to reduce congestion, and minimize the land
11 use effects, and provide that right incentive by
12 having an expedited process which is less costly
13 for everyone and ends up in less cost to consumers,
14 but takes advantage of competition.

15 While we recognized that while
16 this is a great value, we could not obviously
17 include that in the existing proceeding wherein
18 we're looking again, and I want to stress this, the
19 importance of developing transfer capability in
20 this case, one thousand megawatts south to north
21 and east to west, so that we can take value --
22 value out of existing resources in the state and as
23 well as elsewhere, but primarily looking at the
24 state resources.

25 What -- what we recognized is

1 that in looking at transmission, there's always a
2 multitude of issues. One, of course, is the
3 transmission capability, system capability to
4 provide reliability which is foremost, as well as
5 cost effective through congestion relief, and to do
6 so, though, in a way that is also cost effective
7 for consumers and is minimizing land use. And by
8 that, in our case here, while we continue to look
9 at and are focused on achieving we would like to
10 get to that one thousand is that by coming up with
11 a minimum threshold for each project to hit that
12 one thousand, we might have unduly tied our own
13 hands to look at alternatives that allow for
14 maximum use of existing right-of-way, in other
15 words can be built within existing right-of-way and
16 give the capability of the parties, along with the
17 judge, to think about how we can look at these on
18 both an individual and a comprehensive scale to get
19 that level of transfer capability, but do so in a
20 way so it's an end solution that minimizes land
21 impacts.

22 What we wanted to do then from --
23 what this order proposes is -- and what I endorse
24 is we give all parties now an opportunity, because
25 this, again -- we're pretty early on in this case.

1 We're talking about assets that are going to be
2 around for sixty, seventy, eighty years. Let's
3 take the time and make sure that the developers,
4 who I believe will be able to do so in a way that's
5 efficient and in the end will either keep us on
6 track or maybe even faster, get this transmission
7 built. Let's look at what we can do in existing
8 right-of-way and make sure that we don't unduly
9 constrain ourselves to not look at innovative
10 solutions and make it open to all developers, again
11 on a voluntary basis, to say well, with that in
12 mind, I'll provide this alternative so that it
13 could be considered as part of the record.

14 So that's the point of this
15 proceeding and I think the major takeaways. One is
16 we're not walking away from the desire to get
17 transmission built. We do need it in the state.
18 And secondly, we also need other sources --
19 resources. As -- as everyone, I think, should well
20 know, I am absolutely committed to looking at
21 demand, resources, efficiency, anything we can do
22 to reduce congestion. But that doesn't necessarily
23 mean there's a single resource. And transmission
24 is -- is also quite important.

25 Secondly, we want this done

1 efficiently. I am confident that the judges and
2 the parties are going to be able to say let's
3 interpose this alternative without delaying the
4 process.

5 And third is we want to make
6 certain that we truly have a record that looks at
7 what can we do using existing right-of-way, using
8 ingenuity, and -- and being basically free to think
9 about what's that individual or combination of
10 projects that allows us to meet all of our goals,
11 transmission capability, reliability, congestion
12 relief, cost effectiveness, and minimal land use.

13 So that's -- that's what this is
14 about. I appreciate that -- that any change brings
15 questions, which is why I'm certain that Judge
16 Prestemon and Judge Phillips are going to be able
17 to design a process that gets us there effectively
18 and gets us, really, the best record so we can make
19 the best decision for the state. So, thank you for
20 that. And I'm open to any other questions or
21 comments.

22 Commissioner Burman?

23 COMMISSIONER BURMAN: Thank you.
24 I do know it's lunchtime, but I'm not going to be
25 -- I'm sorry.

1 So I -- I first want to thank
2 Chair Zibelman and Staff for being very kind during
3 this process and listening to, you know, me and
4 talking about what the goal was today and being
5 clear, because I think that the -- the A.C.
6 transmission proceeding is really a first of its
7 kind. And it's required us to really think in a
8 deliberative way with -- with every step of the way
9 are we doing the right thing, what impact this is
10 having, and what changes in the process we may need
11 to make midstream, not wholesale changes, keeping
12 with the overall goal.

13 And I looked back and I spent a
14 considerable amount of time reviewing all of the
15 different documents, not only comments from parties
16 and the public, but also all of the documents that
17 the Commission and the A.L.J.s have issued.

18 And what struck me is that
19 especially -- this proceeding was started in 2012.
20 And we then had a series of collaboratives and
21 discussions and comments. And then in April of
22 2013, the Commission instituted an order sort of
23 setting in motion. And then September 19th, 2013,
24 we really then handed it over to the A.L.J.s to
25 start the Part A application. And what struck me,

1 when I looked at the -- the orders, is that a lot
2 of the wording has remained the same. And that, to
3 me, is an indication that the path is still the
4 same. And it follows really the leadership of
5 Governor Cuomo in looking at what we can do as a
6 state in upgrading our transmission system.

7 And -- and some of the -- the
8 takeaway for me is this is an energy highway
9 initiative of the Commission, trying to be focused
10 on ensuring that New York's electric system is the
11 best in the country and really will meet the
12 demands for secure, cost effective, clean energy.
13 And we have -- really following in the footsteps of
14 the blueprint and the task force, we now have sort
15 of one of the first proceedings to really address
16 this.

17 With that, it is different from
18 what we've normally done with Article 7 processes.
19 Here, we're looking at a very competitive process.
20 I know the question has been put do we really want
21 a competitive process. And -- and I think,
22 clearly, that we do. It is helpful to us to have
23 all folks looking at this and from the get-go, not
24 only in the energy highway blueprint, but in all of
25 the documents we've talked about the need for folks

1 to weigh in and to work together. And I think that
2 that has been very helpful.

3 It's not an easy road to try to
4 build transmission for addressing different issues
5 and it takes time and it also takes us needing to
6 be open to making sure that all of the different
7 avenues to get to where we need to be are there.
8 And -- and I think that this really, today, is to
9 try, in my mind, to clarify that we are on that
10 same pathway and it's very important for us, as we
11 go through this Part A process, which will lead
12 into a Part B process, that we -- we listen to all
13 stakeholders and we give an opportunity for the
14 developers to let us know, you know, what they've
15 heard, what some of their takeaway is on their
16 current proposals, as well as if there are any --
17 and you know, some of the proposals laid out other
18 alternative proposals. And during some of the
19 stakeholder process that the A.L.J.s were engaged
20 in, they also heard that there might be some
21 alternatives.

22 Normally, when you deal with an
23 Article 7 process and you're looking at one
24 project, that negotiation and that discussion can
25 happen on an individual project basis so that any

1 modifications to the original project are made with
2 sort of a give and take and working to get to the
3 goal that's -- that's helpful for -- for all New
4 Yorkers. So when I look at this, I see, clearly,
5 that we're also trying to fit within that mold, but
6 we need to be flexible. We need to understand that
7 there are -- there are competitors in this process
8 and they need to know if they should continue. And
9 I think that it's really helpful to us to hear and
10 to really put a huge burden on the A.L.J.s because
11 what I really want to make clear is the job needs
12 to be done in a deliberative, but a fast-paced
13 process.

14 And so one of the things, looking
15 at the different things and -- and the A.L.J.s were
16 very kind to let me sit in on the first scoping
17 conference, which was helpful to me. But what I
18 realized is that there are still lingering issues
19 that are out there. And the A.L.J.s -- in I think
20 it was October 25th, 2013 you issued -- it's not a
21 trick question -- you issued -- you issued a ruling
22 that sort of tried to detail some of the scoping
23 that had happened at the first conference. And
24 also in that, and you know, I would really turn to
25 that document where it did talk in there about the

1 need to examine, possibly after the Part A
2 applications and the I.S.O. study, looking at some
3 early screening, looking at possibly some cost
4 recovery or -- or -- and so those issues, I think,
5 I was glad to see were in your lap and will
6 continue to be something that we will need to look
7 at.

8 I'm sure there are many other
9 issues and I think I'd want to encourage the
10 parties in -- and all the stakeholders in their
11 deliberative process that is really on a fast track
12 to lay out what issues may still be lingering and
13 see what we may need to do in this process. I
14 think it will be very helpful to us.

15 For me, the -- the transmission
16 development is a huge priority. And getting there,
17 we need to be transparent. We need to have
18 certainty and we also need to have flexibility in
19 our process. Economic development is something
20 that we need to be ever mindful of and we need to
21 address the customer and the community impacts and
22 we need to look at the cost and who bears that
23 cost.

24 And the Article 7 process, you
25 know, I know there's a consent agenda item that

1 also talks about, more directly, future processes
2 with expedited rights-of-ways, but they all need to
3 be evaluated holistically. And we need to really
4 make sure that when we look at what we're doing
5 that we look at what is the overall goal, and how
6 are we going to get there, and what are some of the
7 pros and what are some of the cons, and really have
8 that open dialogue.

9 So when I look to the item 369,
10 which is the -- the -- the future, I do think,
11 though, that we need to be mindful that it does
12 have an effect on or can have an effect on the A.C.
13 transmission process and things that don't fit
14 within just that expedited process, and look -- you
15 know, we have, right now, really no legislative
16 barrier to expediting transmission development.
17 The barriers are we need to address all of the
18 different impacts. And -- and frankly, in the --
19 in the order, which was the 2012 order, which I --
20 I was not at the Commission at that time, it
21 addressed the issues that really are sort of at the
22 crux of Article 7. And of course, I can't find it
23 right now, but that's just me. So I'll read the
24 next one.

25 It says upgrading this section of

1 the state's transmission system has the potential
2 to bring a number of benefits to New York
3 ratepayers. These include the near term benefits
4 of enhanced system reliability, flexibility, and
5 efficiency, reduced environmental and health
6 impacts through reduced downstate emissions, and
7 increase diversity and supply, as well as long-term
8 benefits in terms of job growth, development of
9 efficient new generating resources at lower costs
10 in upstate areas, and mitigation of reliability
11 problems that may arise with expected generator
12 retirements.

13 And that was the theme
14 throughout. And so I think here we really need to
15 just make sure that the goal is the development of
16 New York's transmission system, which really can
17 make more effective use of statewide generating
18 resources, including renewable resources being
19 planned and developed throughout New York and, in
20 particular, the effect on upstate New York.

21 So I'm very encouraged that this
22 process today and this order will help the A.L.J.s
23 in their focused process that they're already doing
24 and make sure that we really drill down, invite all
25 stakeholders to be a part of the process and work

1 through a lot of the kinks with the end goal that
2 it's helpful to making sure that we are benefiting
3 all New Yorkers.

4 CHAIR ZIBELMAN: Thank you. Any
5 further comments?

6 COMMISSIONER SAYRE: I have a
7 brief comment.

8 CHAIR ZIBELMAN: Commissioner
9 Sayre?

10 COMMISSIONER SAYRE: This item
11 does two things that I'm very pleased about.
12 Hopefully, without slowing the process down, at
13 least not more than a little, it focuses more
14 closely on the issues of minimizing the impact on
15 communities of any new capacity that we decide is
16 -- is necessary to serve the public interest. And
17 secondly, it gives the judges more flexibility and
18 also lets the parties understand more clearly that
19 we may mix and match the pieces of the various
20 proposals to get the best result. I'm, therefore,
21 very pleased with this item.

22 CHAIR ZIBELMAN: Thank you. Any
23 further questions? Thank you very much.

24 And -- and you know, this is our
25 first foray into looking at a competitive process

1 for transmission. I think we all endorse the view
2 that competition is healthy, it's good, it's to the
3 benefit of consumers. And as we think through our
4 processes, which were, after all, designed around
5 incumbent utilities and how they need to be
6 modified, it's a complex issue, but I do join
7 Commissioner Burman in saying that, to the extent
8 the judges do identify issues that they think would
9 be helpful for earlier Commission action, we would
10 fully expect they would bring them to our
11 attention.

12 So, with that, let me take a vote
13 on all this. All those in favor of the
14 recommendations to invite developers who have
15 applications pending to file an alternative with
16 the A.L.J.s, as recommended in this order, notify
17 by saying aye.

18 FROM THE COMMISSIONER: Aye.

19 CHAIR ZIBELMAN: Hearing no
20 opposition, and there being no opposition, the
21 recommendation is adopted.

22 We're going to move now to the
23 consent agenda. And I -- I just -- there's one
24 item on the consent agenda. It's our national --
25 we -- it's a single Commission order and we're

1 recommending confirmation of this order with
2 respect to National Grid's request that there be a
3 waiver of tariff rule forty-six point three point
4 two with respect to it allowed them to modify
5 prices -- electric prices that they were going to
6 see in February on top of increases that consumers
7 were experiencing, particularly in the Capital
8 Region in January as a result of vast increases in
9 natural gas prices.

10 And I'm going to vote to confirm
11 that order, but I want to note that, clearly, our
12 experiences this winter with respect to the -- the
13 -- the storms and particularly with the polar -- I
14 can't remember how it was -- polar vortex, our
15 science fiction polar vortex, really was something
16 to take note of. And we all recognize that with
17 increase in demand, we're going to see increase in
18 prices. But -- but we clearly saw increases well
19 above that we had experienced historically.

20 And not only that, it's -- it's
21 clearly strained the grid. We don't live in a
22 vacuum. Not only were -- and although I, you know,
23 congratulate all the operators because the New York
24 grid worked extremely well, in fact was exporting
25 during periods of time where it was cold here, to

1 support its neighbors, but -- but it affected not
2 just our region, but the New England region, and
3 all of the P.J.M. region, as well as the mid-west.
4 And all of that creates strain both on electric
5 supplies and gas supplies.

6 So it's extremely important to me
7 that we understand the fundamentals of what
8 happened with a full expectation that these type of
9 weather conditions may not be isolated events and
10 that we both examined in terms of the individual
11 utilities, the procurement practices, how they
12 worked, were they effective, should they be
13 changed.

14 We also take a look at fuel
15 practices at generating plants. We had problems
16 with fuel access. We take a look at our gas
17 infrastructure. Is it adequate? What do we need
18 to be doing? And we also take a look at market
19 behaviors, both alone and in conjunction with the
20 New York I.S.O., to make certain that the markets
21 were -- and market players were behaving as we
22 would expect them to do in these circumstances.

23 I think that we need a fuller
24 understanding of the fundamentals. We need to
25 understand what happened on the system and what

1 could be changed. And we need to be thinking,
2 going forward, what can be affected. I have asked
3 Commissioner Brown, who's been involved extensively
4 with the Department of Energy, looking at both
5 electric and gas infrastructure adequacy, to take a
6 lead on any of these issues with the Staff.
7 Clearly, Commissioner Burman is very interested in
8 -- in the gas pipeline issues. And Peter, I would
9 ask that you work with Staff and get back to us
10 with a full report and some directions of actions
11 to be taken as soon as possible, but certainly in
12 sufficient time that we could start taking whatever
13 actions we need to by the summer.

14 So, with that, I have no further
15 comment on the consent agenda. But I do want to
16 note that we all, I know, in talking to individual
17 commissioners, everyone is aware and alert and
18 concerned about these issues and it's important
19 that we tackle them head on.

20 But any other comments on the
21 consent agenda?

22 Hearing none, let me take a vote
23 to move on the consent agenda. All those in favor
24 say aye.

25 FROM THE COMMISSIONER: Aye.

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CHAIR ZIBELMAN: Hearing no
opposition, the consent agenda is approved.

Secretary Burgess, are there any
other items in front of us today?

MS. BURGESS: There are no other
items today and the next Commission session is on
March 13th. At that time, the Commission will be
taking up primarily water, telephone, and cable
matters.

CHAIR ZIBELMAN: Thank you very
much. And we stand adjourned. Thank you all for
your resiliency in sticking with us.

(The meeting adjourned at 12:45
p.m.)

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STATE OF NEW YORK

I, Kirsten Lemire, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 95, is a true record of all proceedings had at the session.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 26th day of February, 2014.

Kirsten Lemire, Reporter