

1 STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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3 Regular Meeting of the Public Service Commission

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5

6 THURSDAY, MARCH 25, 2010  
11:00 a.m.

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8 90 Church Street  
4th Floor  
9 New York, New York

10 Agency Building 3  
11 19th Floor  
Albany, New York

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15 COMMISSIONERS:

16 GARRY A. BROWN, Chairman  
17 PATRICIA L. ACAMPORA  
18 ROBERT E. CURRY, JR.  
MAUREEN F. HARRIS  
19 JAMES J. LAROCCA

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D I S C L A I M E R

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1           CHAIRMAN BROWN: I would like to call the  
2 March 25, 2010 session of New York Public Service  
3 Commission to order. As you can see today we are doing  
4 something a little different. We are here --  
5 Commissioners Acampora, Curry, Larocca and I are in our  
6 New York City office. Commissioner Harris is in our  
7 Albany office for today's meeting. We'll be interacting  
8 and some of our staff is also in our Albany office, so,  
9 hopefully this will work.

10           If anyone is having trouble viewing the  
11 webcast live on the Internet, please be advised that the  
12 Commission meeting webcasts are archived and available  
13 on the department's website within a couple of days.  
14 So, if we have any live problems, it will be archived  
15 and put on the Web.

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

18           MADAM SECRETARY: Unfortunately, yes. Quite  
19 a few that I have to read, so bear with me.

20           Item number 262 is over, and that is case  
21 07-M-0906, Iberdrola, SA, Energy East Corporation, RGS  
22 Energy Group, Inc., Green Acquisition Capital, Inc.,  
23 NYSEG and RG&E joint petition for approval of the  
24 acquisition of Energy East Corporation by Iberdrola, SA.

1           And I will correct that. I believe I  
2           misstated the number. It's Item 265.

3           And also over is Item 368, and that's case  
4           10-E-0077, Bayonne Energy Center, LLC, petition for an  
5           original certificate of public convenience and necessity  
6           for permission and approval to operate as an electric  
7           corporation within the State of New York.

8           Now, within Item Number 164, one of the  
9           penalty matters has been removed, and that is case  
10          10-G-0011. And that's in the matter of enforcement  
11          proceedings for alleged violations of 16 NYCRR, part  
12          753, protection of underground facilities, Savage  
13          Equipment Company, Orange and Rockland Utilities, Inc.  
14          All other penalty actions remain in Item 164.

15          And then, finally, a clarification that Item  
16          301A, in addition to case 09-E-0428, this item also  
17          includes case 08-M-0152, comprehensive management audit  
18          of Consolidated Edison Company of New York, Inc.

19          Those are the changes.

20          CHAIRMAN BROWN: Thank you.

21          With those changes, let's move to the  
22          consent agenda. Before we take a vote, is there anyone  
23          abstaining or recusing from voting on any of the consent  
24          agenda items today?

1                   COMMISSIONER HARRIS: I am, Mr. Chairman. I  
2 am recusing from voting on Item 362 of the consent  
3 agenda.

4                   CHAIRMAN BROWN: Thank you. Commissioner  
5 Harris is recusing from 362.

6                   With that in mind, all those in favor of the  
7 recommendations in the consent agenda, please say aye.

8                   THE COMMISSION: Aye.

9                   Opposed? Hearing none, the recommendations  
10 are adopted with the recusal as noted.

11                   We'll move now to our regular agenda. For  
12 everybody's information, here's the order that we will  
13 be doing the agenda in today. We'll be starting with  
14 Staff on the -- a presentation by Staff on recent storm  
15 damage and its impact on customers.

16                   We will then be moving to 101, the item on  
17 the gas explosion. We'll be moving then to 303, the  
18 proposed Entergy transaction. We'll go then from Item  
19 302, the renewable portfolio standard items, and then to  
20 the 301 items related to Con Edison's rates. So that  
21 will be the order we're going today.

22                   So, with that, the first item for  
23 discussion, once again, I think this may be our third  
24 consecutive session where we've had a major storm in the

1 State of New York that we've had a report on. So, due  
2 to the severity of the last one, requested Staff to  
3 provide an overview of the storm, its impact on  
4 customers, which will be presented by Paul Eddy, Utility  
5 Supervisor in the Office of Electric, Gas & Water; Irene  
6 Luft, Call Center Supervisor in the Office of Consumer  
7 Services, and Alice Miller, Chief of Consumer Advocacy  
8 in the Office of Consumer Policy.

9 So let's see if our great technology works  
10 and we'll begin with Paul Eddy in Albany.

11 MR. EDDY: Good morning, Chairman Brown and  
12 Commissioners.

13 I will present an overview of the effects of  
14 the March 2010 storm on electric utility service in the  
15 greater New York City and Long Island areas. Irene Luft  
16 and Alice Miller, of the Office of Consumer Services,  
17 will then present an overview of their activities from  
18 the department's call center and the company's public  
19 communications, including municipal calls. After that,  
20 we'll be glad to answer any questions you may have.

21 First, we have a few photos to show some of  
22 the damage that has occurred. This is a car that's in  
23 the middle of that photo there.

24 Next photo, you see that the damage occurred

1 from across the road. It wasn't in the transmission,  
2 distribution right of way.

3           Next, we have a yard tree that -- across  
4 from a school. And then we have trees that came from  
5 the woods, again, taking down the lines. And here was a  
6 fortunate incident that did not hit this historic  
7 building. And finally, we see a photo here that was  
8 much less fortunate.

9           I think if you look at the first and the  
10 last photos, you'd see that the impacts on citizens,  
11 their lives, can be much more significant than just the  
12 loss of electricity. The complications of damage to  
13 their homes and possessions greatly increases the stress  
14 on their lives, including having to live without  
15 electricity for several days.

16           Beginning on Saturday, March 13, 2010, a  
17 coastal storm brought heavy rains and high winds to the  
18 lower Hudson Valley, New York City and Long Island  
19 areas. Very heavy rainfall saturated the ground.

20           Winds of up to 75 miles per hour then  
21 brought down trees, limbs and power lines. The storm  
22 continued through Saturday night, and into mid to late  
23 Sunday evening. Moderate winds and light rains  
24 continued through Monday, slowing initial restoration

1 activities.

2           The storm caused the most damage to the Long  
3 Island Power Authority area and Con Edison service  
4 territories, where customer outages extended to Thursday  
5 and Friday, respectively.

6           NYSEG and Orange & Rockland Utilities were  
7 also affected, but to a much lesser degree. NYSEG and  
8 O&R restored service to their customers by Tuesday and  
9 Wednesday.

10           Because of the extensive damage, the  
11 restoration work far exceeded the capabilities to local  
12 utilities, and calls for municipal aid support were  
13 made. The electric utilities expanded their workforces  
14 by shifting internal line crews from unaffected  
15 divisions, where possible, and using contractor line  
16 crews, mutual aid line crews from around New York State,  
17 and from utilities in other states including Georgia  
18 Michigan, Massachusetts, Ohio, Pennsylvania, North  
19 Carolina, Kentucky and Virginia.

20           The utilities also contracted with numerous  
21 tree services. Over 2,000 crews worked to restore power  
22 to customers. Additionally, numerous, numerous, repeat,  
23 other utility personnel supported the restoration  
24 activities.

1           I'd like to review a little bit of Staff's  
2 activities, as well. Staff began monitoring the storm  
3 prior to its occurrence by monitoring the National  
4 Weather Service conference calls and utilities'  
5 preparations.

6           During the event, Staff was at Con Edison's  
7 Westchester and Manhattan command centers monitoring  
8 restoration efforts. Staff also made field visits to  
9 various affected locations in order to assess damage and  
10 monitor utility restoration activities.

11           Throughout the event, status reports were  
12 issued four times per day regarding customers affected,  
13 crew response and restoration efforts. When  
14 appropriate, the reports included input from the Office  
15 of Telecommunications and maps produced by our  
16 department's GIS Staff showing power outages by  
17 locality.

18           One positive thing I can report is that Con  
19 Edison transmission line interruptions from tree  
20 contacts were not an issue during this event.

21           Finally, the State Emergency Management  
22 Office was not activated for our agency during this  
23 restoration period. We did, however, provide our  
24 reports and participate in conference calls with SEMO

1 and maintained regular communication with them as issues  
2 arose.

3           Due to the extended length of outages,  
4 Commission regulation 16 NYCRR Part 105, electric  
5 utility emergency plans, requires the utilities to  
6 perform an internal performance review and submit their  
7 findings to the Commission within 60 days following the  
8 completion of service restoration. We will be  
9 communicating with Con Edison to advise them of this  
10 requirement and will expect their report in late May.

11           Staff independently performs its own review  
12 to determine if the utilities responded appropriately.  
13 Staff's investigation will review how the utilities  
14 communicated, estimated restoration times to customers,  
15 and the utility's ability to provide timely, accurate  
16 restoration information to allow consumers to make  
17 informed decisions during such outages.

18           Staff will look to identify whether  
19 improvements can be made from the lessons learned during  
20 this event, as well as the effectiveness of the  
21 corrective actions taken in response to previous events'  
22 recommendations.

23           As we reported three weeks ago regarding the  
24 snow storm that severely affected the mid Hudson Valley,

1 one of the challenges involved in tree trimming is to  
2 strike a balance between the environmental and aesthetic  
3 benefits of trees in the community, and measures  
4 necessary to ensure electric reliability.

5 Like many other issues, this balance is  
6 difficult to perfect. We always look at an event like  
7 this as an opportunity to reexamine the current  
8 utility's specifications to determine if they are still  
9 appropriate.

10 That concludes my section of the report. I  
11 will now turn it over to Irene Luft in New York City.

12 CHAIRMAN BROWN: Paul, can I just ask you  
13 one question before we move on to the consumer part of  
14 this. You mentioned that there was no transmission line  
15 contacts. Maybe you can just explain for a second the  
16 difference between transmission and distribution system,  
17 and the importance -- what would happen if a couple of  
18 the major transmission lines did have contact and did go  
19 down during events like this, how much more widespread  
20 would the event likely have been, or how much more  
21 extended might it have been?

22 MR. EDDY: The potential exists when you  
23 lose a transmission line that you are going to be taking  
24 out the power supply obviously to thousands of customers

1 and to the distribution system.

2 Also, it becomes an issue during restoration  
3 because the restoration, the sequence begins with  
4 restoring the transmission system before you can get  
5 your power supply to your distribution system. So, it's  
6 critical that that system be protected and preserved.

7 In the previous storm, the snow storm, we  
8 saw very little impact. There was some minor impact in  
9 Central Hudson's territory where some distribution lines  
10 were taken out. However they were able to --

11 CHAIRMAN BROWN: Distribution or  
12 transmission?

13 MR. EDDY: Sorry, transmission.

14 The difference between transmission lines,  
15 but they were able to provide switching to redistribute  
16 their power.

17 CHAIRMAN BROWN: Thank you.

18 MR. DVORSKY: Mr. Chairman, just as a  
19 footnote, the last major blackout in the Northeast was  
20 caused by a tree in the transmission line in the  
21 Midwest. So, it could be a very severe event.

22 CHAIRMAN BROWN: That one took out millions.

23 MR. DVORSKY: Yes.

24 CHAIRMAN BROWN: Thank you.

1                   Are we going to Alice next? Irene.

2                   MS. LUFT: Good morning, Chairman Brown and  
3 Commissioners.

4                   Given the extreme nature of the past storm  
5 with heavy rains and gusty winds, the Office of Consumer  
6 Services immediately coordinated with Office of Gas,  
7 Electricity and Water, and Office of Consumer Policy,  
8 and we established channels of communication with the  
9 customer service organizations at each affected  
10 regulated utility companies.

11                   Our focus was to monitor the utility call  
12 center operations, customer service and life support,  
13 customer notifications.

14                   In addition, our own call center positioned  
15 itself to assist customers. These activities remained  
16 in place until all customers were returned to service on  
17 Friday, March 19.

18                   As severe weather conditions were forecasted  
19 on Friday, March 12, we were ready to assist customers  
20 when we opened for business on Monday, March 15. As  
21 expected during extended power outages, the OCS call  
22 center experienced additional activity as a result of  
23 this storm.

24                   On Monday morning, March 15, OCS Staff

1 reviewed the extent of the electrical outages due to the  
2 storm. Focusing on health and safety of the interrupted  
3 consumers, Staff immediately made arrangements to add  
4 additional personnel to the hotline to handle after-hour  
5 calls related to the storm.

6 OCS Staff contacted each of the companies  
7 regarding the information being provided to customers.  
8 The information included the locations of where  
9 customers could obtain dry ice.

10 Staff also monitored each company's contact  
11 with life support equipment customers throughout the  
12 storm. All companies provided call center with daily  
13 multiple updates regarding their customer service  
14 activity. Our call center staff had current information  
15 available from each affected utility to assist those  
16 customers who called us.

17 Our call center received over 161  
18 storm-related calls from customers who were requesting  
19 information on dry ice locations, or to report outages  
20 and situations of downed wires.

21 OCS staff will be participating in the  
22 department's investigation of this event once the  
23 utility storm assessments are received. We will review  
24 call center performance, including timeliness of call

1 response and information provided to customers. The  
2 scope and nature of consumer complaints for all  
3 companies will also be addressed in detail in Staff's  
4 final report to the Commission.

5 Finally, we will evaluate the implementation  
6 of recommendations from previous snow storm events -- I  
7 mean storm events.

8 This concludes my report. I would now like  
9 to introduce Alice Miller from the Office of Consumer  
10 Policy.

11 CHAIRMAN BROWN: Thank you, Irene.

12 MS. MILLER: Thank you.

13 Beginning on March 12, the Office of  
14 Consumer Policy worked closely with our colleagues in  
15 the Office of Electricity, Gas and Water, as well as the  
16 Office of Consumer Services, to monitor Con Edison's  
17 responses to the storm.

18 The Office of Consumer Policy focused on the  
19 information that utilities provided to their customers,  
20 elected officials and the public. We monitored the  
21 content of those communications, including information  
22 about estimated restoration times. Access to accurate  
23 estimated restoration times is extremely important to  
24 utility customers, to allow them to make informed

1 decisions about outages.

2 We also monitored how Con Edison delivered  
3 that information, including the communications vehicles  
4 used and the frequency of the updates. Communication  
5 with customers included press releases, outage maps and  
6 other information provided on Con Edison's website.

7 Our staff also monitored 13 conference calls  
8 convened by Con Edison with municipal officials,  
9 beginning on March 12 and continuing through March 19.  
10 The calls provided information to public officials in  
11 the affected areas and helped Con Edison obtain feedback  
12 and address concerns.

13 When Con Edison submits its storm report,  
14 the Office of Consumer Policy will review all aspects of  
15 utility communications with the public to identify  
16 lessons learned and best practices.

17 We're now available to answer any questions  
18 that you may have.

19 CHAIRMAN BROWN: Any questions?

20 Commissioner Curry.

21 COMMISSIONER CURRY: This is more by way of  
22 a comment. At the last session I noted in response to  
23 the presentation about storm-related damage then. My  
24 observations is that there has been significant

1 improvement in communication from the relevant  
2 utilities, that the management of customer expectation  
3 is key to customers being able to handle their life  
4 dislocation during the course of a storm.

5 I salute not only the Staff, who did a lot  
6 of work to bring this along, but the utilities  
7 themselves for doing a much better job of communicating  
8 than, say, occurred back in '06.

9 Perfection is the goal. It's not  
10 necessarily attainable, but we've made good progress in  
11 this direction, and I commend everyone involved.

12 CHAIRMAN BROWN: Thank you.

13 Commissioner Acampora.

14 COMMISSIONER ACAMPORA: I'd like to back up  
15 Commissioner Curry with regard to the information that  
16 was given to us. That communication was extremely  
17 outstanding and I want to thank the Staff and also the  
18 utilities.

19 I think that I agree with Commissioner Curry  
20 that the communication has gotten a lot better. I  
21 hadn't received any complaints from any elected  
22 officials. In the past we have.

23 I think, again, letting the consumer know  
24 when or about they will get their power back is

1 extremely important. And to all the people that were  
2 affected, yes, they did go through a long period, but as  
3 you look at how this storm covered such a huge range of  
4 New York, I don't think a lot of people really took into  
5 it the total magnitude of the damage of this storm.

6 As we talk about the tree trimming all the  
7 time, and how important it is, as trees get older they  
8 become more and more dangerous. That's something that  
9 the utilities and our own department -- who we do have  
10 an arborist -- I think we need to stay very focused on  
11 tree trimming and making sure that we do the best we  
12 can, but I do see a lot of improvement this time. And  
13 I'd like to thank everybody for a great job.

14 CHAIRMAN BROWN: Thank you.

15 I guess the other comment I would make is  
16 that since we have had three storms affecting probably  
17 five or six of our utilities, I know there is going to  
18 be a lot of work for Staff to go out and get the reports  
19 from the various utilities, but maybe it's an  
20 opportunity to really share some of the best practices  
21 that we've learned from each of them.

22 I imagine in each case we're going to see  
23 some things that were really good and maybe some things  
24 that weren't as positive, and take those lessons,

1 because I think the point that Commissioner Curry and  
2 Acampora was making was related to the fact that, due to  
3 past storms, we've learned a lot about communications,  
4 and informing municipalities and the like. That it made  
5 a big difference why it didn't seem, despite the  
6 seriousness of these storms, there was not the outcry  
7 that we have seen in others.

8           So, thank you to all the Staff that worked  
9 hard on this. Again, you have to thank the utility  
10 crews that they just worked tirelessly. Trucks coming  
11 up from Georgia and Alabama to help work on this. That  
12 mutual aid really makes a difference.

13           As Commissioner Acampora pointed out, these  
14 storms have been so widespread you can't just go to your  
15 neighboring utilities because they are dealing with the  
16 same problems that you are. So, you really have to go a  
17 long way.

18           So, thank you to everybody, and we'll be  
19 looking forward to the updates on the reports.

20           Thank you, Paul, Irene and Alice.

21           Second item for discussion today is Item  
22 101A, case 09-C-0380, natural gas explosion at 80-50  
23 260th Street, Queens, New York, in Consolidated Edison  
24 of New York's service territory on April 24, 2009.

1                   This will be presented by Gavin Nicoletta,  
2 Chief of Safety in the Office of Electric, Gas & Water.  
3                   Gavin.

4                   MR. NICOLETTA: Thank you. And good  
5 morning, Chairman Brown and Commissioners.

6                   At the Commission session on November 12th  
7 of 2009 I presented a detailed final report on our  
8 investigation into the natural gas explosion that  
9 occurred on April 24th of 2009 at 80-50 260th Street in  
10 the Floral Park area of Queens, in the territory of Con  
11 Edison.

12                   The explosion destroyed the house and  
13 resulted in the death of a resident, Ghanwatti Boodram,  
14 a wife, and mother of three young children. At the time  
15 of the explosion, Con Edison personnel were on site at  
16 260th Street, having responded to investigate a report  
17 of a gas odor in the area. The First responder had been  
18 on the site for approximately 45 minutes before the  
19 explosion occurred.

20                   Staff's report included a discussion of the  
21 causes of the explosion and timeliness of the response  
22 to the report of a gas odor on the block received prior  
23 to the explosion. Staff's report identified problems  
24 with Con Edison's internal processes.

1           Following the incident, Con Edison  
2 implemented several actions to improve its applicable  
3 procedures, to provide for identifying situations that  
4 require enhanced emergency response, getting more  
5 personnel to the scene quickly in such situations,  
6 venting gas from subsurface structures, and checking and  
7 evacuating buildings, if necessary.

8           In addition to those enhancements, Staff's  
9 report included several recommendations to further  
10 improve the safety of the company's gas operations  
11 related to receiving gas odor reports from the public,  
12 dispatching personnel, leak investigation and emergency  
13 response, equipment carried by emergency responders, and  
14 separation of electric and gas facilities.

15           The Commission issued a notice seeking  
16 comment on Staff's report. And on last January 7th, two  
17 public statement hearings, one in the afternoon and one  
18 in the evening, were held in Floral Park to receive  
19 comments from the public regarding Staff's report and  
20 recommendations.

21           So, today I am reporting to the Commission  
22 on the status of Con Edison's implementation of the  
23 recommendations contained in the report, and I'll also  
24 discuss some relevant comments from the public hearings.

1 I am happy to report at this time that Con  
2 Edison has embraced each of the recommendations and has  
3 implemented most, while full implementation of some will  
4 require additional time.

5 We believe that taken together, Con Edison's  
6 post-incident actions and Staff's recommendations  
7 improve public safety. We believe that a Commission  
8 order requiring that Con Edison implement the  
9 recommendations would serve to ensure that they are  
10 fully incorporated into the company's ongoing  
11 operations.

12 Some details on implementation of certain of  
13 the recommendations. Con Edison's revised procedure for  
14 investigating reports of gas leaks now includes  
15 requirements for enhanced response to significant  
16 events, known as code MuRRE, which means Multiple  
17 Resource Response Event.

18 These include combined gas and electric  
19 events, excavation damage to gas facilities, gas  
20 readings above the lower explosive concentration in  
21 manholes, multiple reports of gas odors from the same  
22 area, or reports of a strong gas odor from fire  
23 department, police department, school officials or  
24 company personnel.

1           A code MuRRE requires immediate notification  
2 to the fire department, which will respond immediately  
3 to assist in checking buildings for gas, and evacuating  
4 if necessary, as well as assisting with opening manholes  
5 to vent accumulated gas.

6           Recall this case, the gas leak which  
7 ultimately led to the explosion was caused by the  
8 failure of electric cable in close proximity to the gas  
9 main, and that a resident on the block had reported an  
10 electric service problem shortly before reporting the  
11 gas leak.

12           Con Edison has developed a computer  
13 application to monitor the location of customer calls  
14 and notified both the gas emergency response center and  
15 the electric control center of possibly related gas and  
16 electric service trouble reports.

17           Staff's report also identified issues with  
18 Con Edison's radio communications equipment. The  
19 company is in the process of field testing a new model  
20 radio that provides better coverage, signal strength,  
21 battery life and voice clarity.

22           However, there are technical issues that  
23 need to be resolved related to switching between Con  
24 Edison's radio network and the wireless provider

1 network, and coverage in commercial buildings and  
2 basements.

3 Con Edison expects to complete the field  
4 testing by June 1st of this year, and to complete the  
5 rollout to all operating areas by the end of 2011, with  
6 prioritization based on areas that have coverage issues.

7 While we acknowledge that there are  
8 technical issues to be resolved, we are concerned about  
9 the pace of implementation, but we will continue to  
10 monitor Con Edison's progress towards full  
11 implementation as soon as possible.

12 Staff's recommendation that Con Edison  
13 enhance its procedures for dispatching personnel to  
14 emphasize giving higher priority to the potential  
15 emergencies, rather than to routine matters, minimizing  
16 distractions due to unrelated calls, and balancing  
17 employee proximity to the emergency versus routine  
18 matters.

19 Con Edison has revised its operating  
20 procedures so that supervisors in the gas emergency  
21 response center control the field response for  
22 significant leak conditions or incidents, handling tasks  
23 like accessing maps and providing guidance to the first  
24 responder at the scene until a field supervisor arrives.

1           Con Edison is hiring additional clerical  
2 personnel to assist with routine tasks, such as  
3 transmitting forms to mechanics in the field, or  
4 verifying that permits have been obtained.

5           The company has also identified some routine  
6 tasks and communications that had previously involved  
7 dispatchers but can now be handled directly between the  
8 field personnel and other company personnel. All of  
9 these actions will reduce the distractions for  
10 dispatchers and allow them to concentrate on their  
11 dispatching duties.

12           Additionally, at the start of each shift,  
13 field supervisors for each operating area look at  
14 factors such as call volumes, weather, special events  
15 and road closings in deploying first responders  
16 geographically in order to optimize emergency response.

17           During the shift, the gas emergency response  
18 center strives to maintain its strategic and geographic  
19 spacing of its field personnel by assigning  
20 short-interval tasks to mechanics throughout the day so  
21 that, if necessary, they can easily and quickly be  
22 reassigned to respond to an emergency.

23           I'd like to discuss some of the issues that  
24 came up in the public statement hearings. A speaker at

1 one of the hearings noted that Staff did not emphasize  
2 training of Con Edison personnel in emergency response  
3 procedures. While it's true we made no explicit  
4 recommendation regarding training, our report did note  
5 that the operator qualification records of Con Edison  
6 personnel involved in the response to this event were  
7 reviewed and found in compliance with the Commission's  
8 safety regulations, which requires gas system operators  
9 like Con Edison to have operator qualification programs  
10 for employees that perform safety-related functions, to  
11 provide training for those employees and to ensure they  
12 are qualified to perform their assigned tasks.

13 Another speaker at the hearings noted that  
14 Con Edison provides gas service to part of Queens while  
15 National Grid New York City provides the remainder, and  
16 commented that any recommendations instituted to ensure  
17 a comprehensive emergency response must be required of  
18 other operators within New York City.

19 Staff discussed this incident directly with  
20 other New York State gas LDCs, and through the working  
21 committees of the Northeast Gas Association, and a  
22 committee was created, including Staff and National  
23 Grid, to review existing gas leak response procedures.  
24 And in view of the lessons learned from this incident,

1 identify actions that could be included in those  
2 procedures.

3           The committee is identifying the best  
4 practices, and although there may be some differences in  
5 response of procedures for urban versus rural  
6 territories, we expect that this process will result in  
7 Con Edison and National Grid New York having  
8 substantially similar procedures.

9           Since the root cause of this incident was  
10 the burnout of an electric cable, several speakers  
11 expressed concern about the age and condition of Con  
12 Edison's electric system. One person recommended that  
13 the company should gradually replace the most  
14 problematic facilities in an orderly fashion.

15           Con Edison's underground secondary cable  
16 replacement program for mains is designed to increase  
17 overall system performance reliability, and minimize  
18 public safety events, such as electric shocks, manhole  
19 fire and manhole explosion incidents.

20           The program targets secondary cable  
21 replacement based on past performance, age, conductor  
22 size, conductor type and cable loading. The company  
23 also gains information regarding the health of the  
24 secondary system from the five-year inspection program,

1 which requires opening and inspecting inside service  
2 boxes and manholes.

3           Service cables are replaced as a result of  
4 previous failures, discovery of stray voltage  
5 conditions, and problems discovered during manhole fire  
6 or explosion events. For the years 2007 through 2009,  
7 Con Edison replaced about 3700 miles of main service and  
8 streetlight cable throughout its system, including about  
9 900 miles in Queens.

10           So, we believe that Con Edison has taken  
11 appropriate actions to address Staff's recommendations.  
12 We will stay on them to make sure that all the  
13 recommendations are fully implemented. The result of  
14 this will be improved public safety.

15           Thank you. That concludes my statement at  
16 this time.

17           CHAIRMAN BROWN: Thank you, Gavin.

18           I mean, clearly, I am pleased that Con Ed is  
19 implementing the plan. That's good, but we just can't  
20 have tragic events happen before we get around to  
21 implementing plans. I mean we have to anticipate more.  
22 Utilities really need to anticipate potential problems  
23 and really look at their procedures before an event  
24 happens.

1                   And unfortunately, we've had quite a few  
2 events in the City over the last few years. So, it's  
3 just -- it's good news that they are going to try to fix  
4 the problem, but the event itself is a horrible thing.

5                   So, commissioner Curry.

6                   COMMISSIONER CURRY: I share the Chairman's  
7 regret at the loss of life in this incident, and having  
8 participated in one of the Floral Park hearings, and  
9 walked the property, and seen the proximity of house to  
10 house, and understanding what some of the best practices  
11 could be as a non-engineer, I think we are moving in the  
12 right direction.

13                   I think it is hard to encourage cultures  
14 that have grown up in their own way to look at best  
15 practices. I think Staff has done a commendable job in  
16 doing that. The more that best practices migrate to any  
17 part of the state where there are houses in with the  
18 same proximity one to another, it would be very helpful  
19 and useful, I think, to encourage everybody in the  
20 state, not just folks that are right next to each other  
21 like the old Brooklyn Union Gas and Con Ed, but also in  
22 other situations, to keep looking at what the best way  
23 of responding swiftly, completely and with safety is the  
24 utmost concern.

1                   So, thank you for what you have done, Gavin.

2                   MR. NICOLETTA: We are dealing with all the  
3 companies in the state on this to -- with the lessons  
4 learned and to identify some of the better procedures  
5 and better parts of the procedures to incorporate into  
6 their own.

7                   COMMISSIONER CURRY: Good.

8                   COMMISSIONER ACAMPORA: Gavin, I appreciate  
9 the fact that you mentioned that the companies are  
10 looking at their best practices to try and make sure  
11 that there is a communication, and it always boils down  
12 to communication. We just talked about communication  
13 before. We are talking about communication again.

14                   I was just wondering, I was at the public  
15 hearing when some of the residents had complained that  
16 they felt that they had similar problems as far as  
17 experiencing loss of electric service.

18                   And I was wondering if those areas, if the  
19 company had looked into those specific areas that are  
20 close to where the incident occurred.

21                   MR. NICOLETTA: I don't know the answer to  
22 that question specifically. I do know that they do  
23 prioritize their program for cable replacement based on  
24 past history. So, if there is a history, a significant

1 history in a certain area of outages due to cable  
2 failures, and things of that nature, those areas are  
3 higher on a priority list in terms of cable upgrade  
4 projects.

5 COMMISSIONER ACAMPORA: I think that those  
6 residents felt that they weren't a priority because they  
7 claim that they had complained for a very long time. I  
8 would hope that, because there is that close proximity,  
9 that maybe there would be an extra effort to deal with  
10 the community and look at other areas that there may be  
11 some problems there, and fix them, if they can.

12 CHAIRMAN BROWN: Commissioner Larocca.

13 COMMISSIONER LAROCCA: I see much of what we  
14 are doing today connected to one another, the different  
15 aspects of what we're looking at with this company. And  
16 that is that the best protocols, the best manual, best  
17 practices locked away in a binder are not enough.

18 And the deployment of people and machines  
19 always requires a direct form of management. And one of  
20 the baselines we have seen in the management audit, and  
21 troubling about aspects of this case, is where we  
22 recognize that procedures as described are adequate, but  
23 not as implemented.

24 I am very troubled by apparently some

1 knowledge that the radios aren't always carried into the  
2 premises because everybody knows they don't work from  
3 the premises. If everybody knows that, then whatever it  
4 says on paper that's not good enough.

5           So, as we go forward, I think part of the  
6 orientation and monitoring, the implementation plans as  
7 they come forward, is to watch for that critical gap  
8 between design. And implementation and management  
9 oversight, and enforcement of protocols and rules that  
10 are there, because I think one of the lessons we are  
11 drawing here is that some of the difficulty arose out of  
12 those gaps, or those potential gaps.

13           And as we look at the larger condition of  
14 the company, in implementing management audit practices  
15 overall, this is one element of that larger story, which  
16 is the distance from the high north of executive  
17 management to the people on the ground, and in this case  
18 in the homes, where critical actions have real  
19 consequences.

20           Very pleased with the job you have done on  
21 this, and I think it's very useful, as the Chairman has  
22 done, to remind us at the bottom of this is a terrible  
23 tragedy. And that should animate our continuing concern  
24 about this.

1 Thank you.

2 CHAIRMAN BROWN: Thank you.

3 Any other comments or questions?

4 Let's move to Item 101B, case 10-G-0100,  
5 proceeding on motion of the Commission to investigate  
6 whether a penalty should be imposed on Con Edison for  
7 violations of the Public Service Law, or an order or  
8 regulation adopted under the authority of the Public  
9 Service Law causing or contributing to the death of a  
10 Queens resident in the natural gas explosion that  
11 occurred on April 24, 2009 in Floral Park, New York.

12 This will be presented by Peter McGowan,  
13 General Counsel to the Commission.

14 Peter.

15 MR. MCGOWAN: Thank you and good morning.

16 In the wake of such an event, of course, one  
17 of the primary things that the Commission should be  
18 doing is looking at whether there are gaps, looking at  
19 whether improvements can be made to the procedures, to  
20 the execution of the procedures.

21 The Commission has -- and the department  
22 have already spent a lot of time over the last several  
23 months reviewing what happened, making improvements,  
24 making sure that the improvements are going to be put

1 into place by Con Edison.

2 And I would point out, kind of as a side  
3 note, that the Commission in this particular review  
4 process took the extra step of having a public process,  
5 to make sure that there was public input before the  
6 Staff completed its investigation and its report.

7 So all of that has been important and is a  
8 primary thing for the Commission and the department to  
9 do but it's not the only thing. The Commission does  
10 also have a power in the Public Service Law to bring a  
11 penalty action.

12 The point of that is to bring heightened  
13 attention, to make sure that the company is, in fact,  
14 following the requirements that the Public Service Law  
15 and the Commission imposes on them.

16 So, that's what this proceeding is about.  
17 And the essence of the recommendation is to institute a  
18 new proceeding to take the first steps in considering  
19 whether there is a basis to bring a civil penalty  
20 action, which would ultimately be executed through the  
21 court, but the first step is at the Commission.

22 So, the step today is to have the Commission  
23 direct the company, Con Edison, to show cause why the  
24 Commission should not determine that each of four

1 particular violations caused, or constituted, a  
2 contributing factor in bringing about the death of the  
3 resident at 80-50. And that's a specific requirement  
4 that is set forth in Public Service Law Section 25.

5           There are four -- the way this framework  
6 works here is there are commands in the Public Service  
7 Law. There is a regulation that carries out the  
8 commands concerning safety where utilities are required  
9 to have, to file with the Commission, and to fully  
10 conform with procedures that are specifically designed  
11 to ensure safety of gas operations.

12           In reviewing those procedures, we have  
13 determined that there are four instances where the  
14 company, it appears, have violated -- or individuals  
15 operating under the company's control have violated the  
16 procedure. And it appears that those violations have  
17 contributed to the incident and the death here.

18           So, those violations constitute a ground for  
19 bringing a penalty action. There are four. And let me  
20 quickly indicate that one is the failure to vent the  
21 manholes. Second is a failure to check all points of  
22 entry upon arriving and reviewing the first residence.

23           Third is the failure to check the buyer's  
24 manual, which helps the individual determine where else

1 the gas may likely be migrating. And fourth is the  
2 failure to take continuous action to eliminate the  
3 hazard that was identified or should have been  
4 identified.

5 If there is a determination ultimately by  
6 the Commission that these are violations, and that there  
7 is a causal link, the company would be exposed to  
8 \$250,000 for each violation. That's the maximum that  
9 the statute would enable you to do. And that would  
10 ultimately be determined in the Supreme Court of New  
11 York.

12 I also just wanted to note that we are not  
13 here questioning that the procedures were adequate,  
14 because I think the procedures that we are particularly  
15 focused on today, the procedures were not really  
16 inadequate. It was the failure to follow the  
17 procedures, the failure to execute the procedures, that  
18 was the problem.

19 And I think several commissioners have  
20 indicated the importance not only of having a good  
21 procedure but of carrying through and executing it  
22 properly.

23 So, that's the basic thrust behind this  
24 item.

1                   COMMISSIONER LAROCCA: Counsel, just a  
2 clarification. The potential penalty of \$250,000 is set  
3 in statute?

4                   MR. MCGOWAN: Yes.

5                   COMMISSIONER LAROCCA: Does that apply to  
6 each of the four?

7                   MR. MCGOWAN: Each of the four, up to a  
8 million. So, if each of the four were to be  
9 successfully prosecuted to the maximum, it would be a  
10 million.

11                  COMMISSIONER LAROCCA: I wanted to clarify  
12 that. Thank you.

13                  CHAIRMAN BROWN: Any other comments or  
14 questions for Peter?

15                  So the recommendation, as I understand, is  
16 to institute a new proceeding, direct Con Edison to show  
17 within 30 days of the date of our order as to why the  
18 Commission should not determine that each of the four  
19 safety violations caused or constituted a contributing  
20 factor in bringing about the death of a resident at  
21 80-50 260th Street in Queens, New York.

22                  So, that's the recommendation. So, I would  
23 like to take that to a vote. All those in favor of  
24 starting the new proceeding as described, please say

1 aye.

2 THE COMMISSION: Aye.

3 Opposed? Hearing no opposition, we will  
4 move ahead with that proceeding.

5 Thank you, Peter. And thank you, Gavin, for  
6 the report on that.

7 The fourth item for discussion today is Item  
8 303, case 08-E-0077. This is a declaratory ruling  
9 regarding a corporate reorganization, or in the  
10 alternative, an order approving the transaction, an  
11 order approving debt financing for Entergy -- a variety  
12 of Entergy Corporations.

13 This will be presented by Administrative Law  
14 Judges Jerry Lynch and Dave Prestemon of the Office of  
15 Hearings and Alternative Dispute Resolutions. So, I  
16 believe we are starting with Judge Prestemon.

17 And I think on March 4th, when we last met,  
18 we had some description of what transpired, but I think  
19 we'll kind of -- what's happened since that date is  
20 where we will begin.

21 Judge.

22 JUDGE PRESTEMON: Good morning, Chairman  
23 Brown, Commissioners.

24 As you recall, at that March 4th session the

1 Commission had just received two days earlier a proposal  
2 from the petitioners to make modifications to their  
3 petition, which were aimed at meeting certain principals  
4 that had been enunciated by the advisory staff as being  
5 necessary to bring the petition into conformity with the  
6 public interest.

7           In general, the three principals were that  
8 the new owners of the New York nuclear facilities should  
9 have the financial wherewithal in the short run to  
10 withstand severe financial stress, that in the long run  
11 they should develop a financial strength to maintain a  
12 credit rating at least as strong as what's expected of  
13 the previous owner, what would be the previous owner,  
14 Entergy, and also that there be some additional benefits  
15 provided to New York ratepayers to compensate for the  
16 fact that the overall finances of the owners of these  
17 plants was less than was expected at the time of the  
18 original transaction.

19           Mr. Stewart, for the advisory staff,  
20 reported to you at that time that they had only been  
21 able to do a preliminary analysis, but on the basis of  
22 that analysis they found that the proposals would  
23 satisfy the first principal, but not principals two and  
24 three, the long-term financial health and the benefits

1 to ratepayers, and that on that basis, that preliminary  
2 review, they would have to recommend that the petition  
3 be denied by the Commission.

4 The Commission, however, decided that, given  
5 the short amount of time, the fact that no other parties  
6 had had an opportunity to review adequately and comment  
7 on the petition, you would not vote then but instead  
8 would give the parties an opportunity to comment.

9 And to facilitate their comments, you  
10 directed that a technical conference be held at which  
11 advisory staff and petitioners could question each other  
12 and all of the other active parties could question both.

13 And I can say that, although I was concerned  
14 at that time that the schedule was tight, we had  
15 extremely good cooperation from all of the parties in  
16 this case.

17 The technical conference took place on March  
18 10th. Mr. Stewart was there to answer questions for the  
19 advisory staff. Petitioners provided a number of their  
20 top personnel to answer questions. Every one of the  
21 parties that had been active in this case was there in  
22 person or on the phone, mostly in person.

23 And there was active questioning at the  
24 conference, which went on for about four and a half

1 hours, from the Office of the Attorney General, Oswego  
2 County, Westchester County, and the department staff, as  
3 well as petitioners and advisory staff.

4           Following the conference, parties submitted  
5 their comments on March 18th. Again, we received  
6 comments from essentially all of the parties that have  
7 been active in this case, from the Attorney General, two  
8 locals of the International Brotherhood of Electrical  
9 Workers, the department staff, Westchester County,  
10 Riverkeeper, as well as petitioners.

11           A summary of those comments has been  
12 provided to you. And now, I think, unless there are any  
13 questions, we turn it to Mr. Stewart.

14           CHAIRMAN BROWN: John, do you want to add to  
15 your March 4th comments on the proposal?

16           MR. STEWART: Yes. We have completed our  
17 review of their proposed transaction as modified by the  
18 March filing. We have also considered the comments of  
19 the parties which were received last week.

20           Just going back and reminding everyone what  
21 happened. As you may recall, at the March 4th session,  
22 we considered preliminarily the details of the company's  
23 March 2nd filing. I will focus just on the highlights  
24 because I went into a lot of details at that session.

1           One thing they proposed was an immediate  
2 reduction of \$500 million in Enexus's outstanding debt.  
3 At the March 4th session, I explained how that really  
4 addressed the short-time financial viability of the  
5 company, but did not address long-term financial  
6 viability concerns.

7           Another thing they proposed was a 50 percent  
8 restriction in the payout of dividends, or the  
9 repurchase of common stock, which would be effective  
10 until such point in time that they received either a BB+  
11 bond rating or they had a market-based debt ratio  
12 calculation of 50 percent or below.

13           They also proposed that this feature would  
14 sunset upon satisfaction of either of those two trigger  
15 requirements.

16           CHAIRMAN BROWN: Just speak louder for the  
17 audience. You are being heard in Albany.  
18 Unfortunately, the speakers up here don't seem to be  
19 working very well.

20           MR. STEWART: The \$500 million debt  
21 reduction up front satisfied the short-term financial  
22 viability requirements, but I explained how it did not  
23 satisfy long-term financial viability requirements.

24           Another thing that petitioners proposed in

1 their March 2nd filing was a 50 percent reduction in the  
2 payments of dividends or stock repurchases that would be  
3 in effect until such time as petitioners achieved a BB+  
4 bond rating or a 50 percent or lower market-based debt  
5 ratio calculation.

6 This provision would sunset immediately upon  
7 achievement of either the bond rating or the debt ratio  
8 provision. I explained how the sunset provision was  
9 unacceptable, and that the company could immediately  
10 change its financial profile the day after satisfying  
11 these conditions.

12 I explained how a 50 percent dividend or  
13 stock repurchase restriction did not address the idea of  
14 building up the debt ratio, and actually building up  
15 equity and reducing the debt ratio. And I explained how  
16 the 50 percent debt ratio, market-based calculation was  
17 likely to produce a bond rating that was nowhere near  
18 BB+ and could, on the basis of other financial  
19 parameters provided on the record, produce financial  
20 parameters that could be even in the "B" category of  
21 ratings rather than "BB".

22 I further explained how much more that cost  
23 was likely to cause the company.

24 A third thing that the petitioners proposed

1 was a short-term reduction of \$250 million in the amount  
2 of funds available to pay dividends or to repurchase  
3 common stock. I explained how, on the basis of the  
4 projections we had before us on the record, that  
5 basically had no impact on the company's ability to  
6 repurchase stock or pay dividends.

7 Finally, the company proposed to provide up  
8 to \$300 million of benefits to New York State to fund  
9 energy efficiency and related initiatives through some  
10 type of revenue sharing arrangement. I explained how  
11 that really didn't deliver on the amount that they claim  
12 because the strike prices did not -- were quite high.

13 That's basically a summary of what I  
14 presented to the Commission, preliminarily, at the  
15 session on the 4th of March. At this point, we have  
16 completed our review of the petitioner's proposal, we've  
17 considered the comments, and the conclusions which we  
18 presented to the Commission on March 4th remain in  
19 effect. They are unchanged.

20 It's our position that Enexus is not a  
21 financially viable entity in the long run under their  
22 proposal, and as such, the proposed transaction is not  
23 in the public interest.

24 It's our recommendation, therefore, the

1 Commission deny the proposal by petitioners.

2 CHAIRMAN BROWN: We have done this I think  
3 at least at the three last sessions, but before we take  
4 any action I want to know if there is comments or  
5 questions.

6 COMMISSIONER LAROCCA: I guess by way of  
7 repetition a little bit, but this ultimately is a public  
8 interest test. And the business case, I presume, is  
9 there because the company wouldn't be here if it didn't  
10 believe it had a business case. Our measure is much  
11 broader, and that is the public interest. That test, to  
12 this point in the process, has not been met.

13 MR. STEWART: That's correct, although I  
14 would say that we have some questions about their  
15 business case, as well.

16 CHAIRMAN BROWN: Commissioner Curry.

17 COMMISSIONER CURRY: Again, by way of  
18 repetition of what I've said at the last two sessions  
19 that we have addressed this, I agree with the comments  
20 about the business case and whether that's viable, but  
21 even before addressing that my concern includes, in  
22 addition to the business case aspects, the safety issues  
23 that have appeared at the Vermont Yankee Nuclear Plant.

24 I just call staff's attention to focus on

1 the depth and the promptness of Entergy's communication  
2 about the integrity of their safety processes there, and  
3 their procedures there, as those are a source of concern  
4 to me over and above the financial issues that staff has  
5 labored long and hard to get a handle on, to address and  
6 to try to refine.

7 Thank you.

8 CHAIRMAN BROWN: Is that Commissioner  
9 Harris?

10 COMMISSIONER HARRIS: If Commissioner  
11 Acampora has a question I can wait.

12 COMMISSIONER ACAMPORA: Not so much as a  
13 question. Just a brief statement on being repetitious.

14 I think that, again, there is no appreciable  
15 benefit to New York ratepayers, which is important. The  
16 State of New York, we are not saying no to businesses,  
17 but we are saying New York ratepayers and taxpayers need  
18 to be treated fairly if something will move forward.

19 Also, I stated right from the beginning that  
20 I agreed with the Attorney General's office that a full  
21 SEQRA review was necessary, and that hasn't been met  
22 either.

23 CHAIRMAN BROWN: Commissioner Harris.

24 COMMISSIONER HARRIS: Thank you.

1           John Stewart, this is, I think, a question  
2 for you or for Doris. If we proceed with denying the  
3 petition, is it your opinion, or are you comfortable  
4 with the likelihood that Entergy's possible actions  
5 would still place the company in a better position for  
6 the ratepayers in New York than the alternative under  
7 Enexus?

8           MR. STEWART: You read the petitioner's  
9 comments, I think you would come away with the  
10 perspective that they are suggesting that the nuclear  
11 assets under Entergy, if the transaction is not  
12 approved, might be no better off than they would be  
13 under Enexus.

14           In other words, they are suggesting that the  
15 nuclear assets could have a bond rating, a credit  
16 quality profile of "BB-" or "BB".

17           On the basis of the information which we  
18 have seen on the record we think a likely scenario, if  
19 ring fencing were to occur at Entergy, would be a notch  
20 downgrade in the bond rating or credit quality  
21 associated with the nuclear power plants that are  
22 emerging plants in New York.

23           But I also want to note that there is  
24 information on the record, which I can't get into

1 details of, which indicates that there are ways that  
2 Enexus -- or that Entergy has in front of it, where they  
3 could restructure their regulated and merchant nuclear  
4 operations in a way that might not result in that  
5 occurring.

6 So, we are going to have to carefully  
7 monitor what their actions are. And at some point, we  
8 may have to consider additional reporting requirements.

9 MR. MCGOWAN: And if I could just say  
10 another thing, which is that the company, especially in  
11 this most recent round of comments, is also suggesting  
12 that they could take actions, certain actions, that  
13 would not involve the Commission's jurisdiction, namely  
14 issuing debt -- doing a ring fencing, issuing debt at  
15 the parent company level, perhaps even doing some other  
16 things that would not involve the Commission's  
17 jurisdiction.

18 I have a question. I do not agree with the  
19 Company's arguments. They do have arguments, but there  
20 are a number of answers to those arguments, not the  
21 least of which is it's not clear that FERC, if it was  
22 reviewing such a transaction, would want to approve it,  
23 but I also think that there are a number of arguments  
24 that the Commission could, and I think will, make to

1 prevent the company from doing indirectly what the  
2 Commission is not pleased with directly.

3 COMMISSIONER HARRIS: Peter, assuming,  
4 though, that the company is correct, and that they can  
5 take certain actions that are outside of the  
6 Commission's jurisdiction, would those actions, issuing  
7 debt from the parent company, and ring fencing, put the  
8 company in a less attractive position than it  
9 potentially could be under Enexus?

10 I mean that is my concern, which is, if we  
11 make a decision here today to deny the petition, could  
12 the company take action that's outside of our  
13 jurisdiction that, in the long run, places this future  
14 company or whatever actions the company might take in a  
15 less viable position?

16 MR. MCGOWAN: Yeah, I think they could try  
17 to, but it's also -- let me just think here -- I mean  
18 they could do that even if you approved Enexus, I would  
19 say.

20 So the challenge here is: Are we going to  
21 yield right from the get-go?

22 COMMISSIONER HARRIS: Would they need to  
23 take those actions if we approved the petition?

24 I guess I am just trying to look at the

1 options here, which is, we deny the petition and they go  
2 ahead and take actions that are outside of our  
3 jurisdiction that place the company in a less financial  
4 position that was our concern in denying the petition.

5 I am just trying to figure out if approving  
6 the petition and going forward with Enexus actually  
7 might put them in a better position, within our  
8 jurisdiction, than actions that they take outside of our  
9 jurisdiction. I am just trying to get comfortable with  
10 those alternatives.

11 CHAIRMAN BROWN: Commissioner Harris, as you  
12 know, this has been one of my biggest concerns from the  
13 beginning here has been where will they go next and what  
14 will that mean? And there is no way of absolutely  
15 assuring the prediction of the future.

16 I think the company has kind of described in  
17 the process where they would likely go. And it's  
18 counsel's office analysis that at this point he thinks  
19 we can maintain jurisdiction.

20 Could they come up with something creative  
21 that's different? That's part of my concern about this.  
22 It's always been. At least the Enexus filing was in our  
23 control. What may happen next potentially, potentially  
24 might not be, but I think the best evidence that we have

1 got from counsel's office at this point is that he  
2 believes we will have an ability to maintain some  
3 jurisdiction.

4 And I can't absolutely predict the future,  
5 but that's the best reasoning we've got going right now.

6 COMMISSIONER LAROCCA: Mr. Chairman.

7 CHAIRMAN BROWN: Commissioner Larocca.

8 COMMISSIONER LAROCCA: I would be, as a  
9 member of this Commission, deeply troubled by a scenario  
10 in which a company comes forward subject to our  
11 jurisdiction, submits to our jurisdiction, is  
12 disappointed in what it seeks, then decides that, well,  
13 our jurisdiction was not all that relevant after all,  
14 and it submits to our jurisdiction only when it gets the  
15 way -- gets what it wants in its filing.

16 I think that would be very disturbing in  
17 terms of its impact on regulatory process in the State  
18 of New York. We have such jurisdiction as we have  
19 conferred by the statute, legislature, and the case  
20 history, and all of the rest, and it applies on those  
21 occasions when companies are pleased with an outcome  
22 that may occur here, and not pleased with an outcome  
23 here.

24 And it doesn't -- it's not to be picked and

1 chosen only when the outcomes are the ones that the  
2 regulated entities seek. So, I would be deeply  
3 disturbed by a scenario that would now, as an attempt to  
4 reject our jurisdiction because of a failure to get what  
5 the company was seeking, particularly when the premises  
6 are related to the public interest.

7 CHAIRMAN BROWN: Commission Harris, I did  
8 not mean to cut you off. So if you want to add further  
9 comments or questions, please continue.

10 COMMISSIONER HARRIS: I am good.

11 CHAIRMAN BROWN: Just one other point I want  
12 to make on this is -- and I did check this with John  
13 Stewart and the like about is this like any other power  
14 plant that -- obviously, a lot of power plants have  
15 transferred ownership in our history since restructured  
16 electricity markets, but the nuclear assets, I think,  
17 are extremely unique, and were recognized as extremely  
18 unique from the initial divestiture days.

19 We did not -- we did check the, for example,  
20 it's my understanding -- John, you can expound on this  
21 -- we did check more extensively the creditworthiness of  
22 the companies, the purchasers, than we might have for an  
23 80 megawatt combined cycle gas plant, for example.

24 John, I don't know if you want to expand on

1 that at all, but I think it's an important point to make  
2 here.

3 MR. STEWART: I think if you look back on  
4 the Commission's orders when they approved the transfers  
5 of fossil plants, you'll see that even in those orders,  
6 the Commission, when they approved the transaction,  
7 referenced the bond rating of the entity acquiring them.  
8 In all cases, it was investment grade.

9 Nuclear plants, the Commission did not even  
10 consider selling them at that time, but it wanted to  
11 study it much closer. And when they eventually did sell  
12 the nuclear plants, the process was that in order to  
13 even qualify to be able to bid you had to be financially  
14 viable. And that was typically measured by at least a  
15 "BBB" bond rating.

16 I know specifically, although I can't  
17 divulge, I know specifically of instances where entities  
18 that were not investment grade were eliminated from  
19 consideration from bidding on nuclear power plants. So,  
20 it was definitely a different process.

21 CHAIRMAN BROWN: Thank you.

22 Are there any other comments or questions at  
23 this point?

24 COMMISSIONER HARRIS: Mr. Chairman, my only

1 question is procedurally what we would be voting on. If  
2 I could just get a synopsis or a summary. Are we voting  
3 on rejecting the petition? Are we voting on certain  
4 principals not being met?

5 If somebody -- or Peter McGowan, or somebody  
6 can just give me a quick little synopsis just so I am  
7 comfortable with what I am voting on.

8 Anybody?

9 MR. MCGOWAN: Yes. The essence of the  
10 recommendation today is to reject the transaction  
11 because it does not meet the test that the Commission  
12 has established, which is the public interest test and,  
13 more particularly, the no harm test.

14 The analysis that Staff has been providing  
15 to the Commission over the past several months indicates  
16 that the company does not have sufficient financial  
17 strength to pass that test.

18 CHAIRMAN BROWN: So, let me try framing it  
19 so that I think we will all understand. The vote will  
20 be for finding that the proposed transaction, as  
21 modified by the March 2nd filing, is not in the public  
22 interest and should be rejected.

23 So, that's what we would be voting on, that  
24 we do not believe that the filing and the modification

1 of the filing is in the public interest and should be  
2 rejected.

3 Are you comfortable with that, Commissioner?

4 JUDGE LYNCH: I would amend it and just say,  
5 when you say filing, I would refer to the August 2009  
6 amended petition, so as not to confuse anyone that we  
7 are going back to the original petition.

8 CHAIRMAN BROWN: Judge, that's a good  
9 clarification.

10 Okay, so, with that, let's try to take a  
11 vote here. Commissioners who find that the proposed  
12 transaction, as modified by the March 2nd filing, and as  
13 clarified by Judge Prestemon, is not in the public  
14 interest, should be rejected, should please say aye.

15 THE COMMISSION: Aye.

16 Opposed? Hearing no objection, the proposed  
17 transaction is denied.

18 Thank you for everybody and their hard work  
19 on this case.

20 The fifth item --

21 MADAM SECRETARY: Excuse me. Can we clarify  
22 that vote. I am sorry. I didn't look quick enough. I  
23 didn't see Commissioner Harris.

24 CHAIRMAN BROWN: Commissioner Harris, can

1 we...

2 COMMISSIONER HARRIS: Aye.

3 CHAIRMAN BROWN: Thank you.

4 So, it was a five nothing vote.

5 SECRETARY BRILLING: Thank you.

6 The fifth item for discussion, Item 302A,  
7 case 03-E-0188, proceeding on the motion of the  
8 Commission regarding the retail renewable portfolio  
9 standard, concerning main tier resources, which will be  
10 presented by Tina Palmero, Chief of Renewable Energy in  
11 the Office of Energy Efficiency and the Environment.

12 Good afternoon, Tina.

13 MS. PALMERO: Good afternoon, Chairman and  
14 good afternoon, all commissioners.

15 Item 302A addresses modifications to the  
16 rules for main tier procurements in the RPS program.  
17 First, it recommends that the originally established  
18 January 1, 2003 commercial operation date, known as the  
19 vintage date, remain in place at this time. This will  
20 be consistent with what was used for the first three  
21 main tier solicitations, as well as the fifth  
22 solicitation that was issued earlier this year.

23 However, we recommend that project  
24 developers be put on notice that changing circumstances

1 may warrant the Commission revising the vintage date in  
2 the future, based on facts and circumstances at the  
3 time, in order to best meet RPS objectives.

4 As you recall, this was the case in the  
5 fourth solicitation, when the Commission changed the  
6 date to leverage federal stimulus monies that would only  
7 be available to projects of more immediate vintage.

8 Second, the item recommends clarifying the  
9 contract length for projects that currently have shorter  
10 than ten-year contract terms with NYSERDA. In your  
11 January order, you stated your rationale for allowing a  
12 maximum of ten years for each contract and required all  
13 new contracts to be for a set term of ten years.

14 Therefore, it should be clarified that a  
15 project with one of these legacy contracts of less than  
16 ten years be permitted to bid into future solicitations  
17 with a term that would equal ten years.

18 So, for example, if the legacy contract was  
19 for four years, a project could bid into a new  
20 solicitation for a six-year contract, but only for a  
21 six-year contract term, nothing more, nothing less, to  
22 abide by this ten-year rule term.

23 Third, the item recommends providing an  
24 additional option for biomass facility owners, who may

1 have difficulty securing a long-term fuel supply for the  
2 duration of their contract with NYSERDA. The Commission  
3 already recognized this difficulty and its January order  
4 provided for an opt-out provision from its contract.

5 This was a two-and-a-half year period  
6 opt-out provision. So, if a facility could not secure a  
7 long-term fuel supply, it had an option to opt out of  
8 its contract and terminate it.

9 However, because we value these resources as  
10 contributing to the goal, we recommend that these  
11 facility owners be allowed to make a showing to the  
12 Commission that their contract with NYSERDA, along with  
13 other factors, will not produce revenues sufficient to  
14 secure continuous fuel supply and make a reasonable  
15 profit.

16 This is very similar to the maintenance tier  
17 of the main tier, where we tried to hold on to those  
18 baseline resources. It would then be up to the  
19 Commission to determine whether or not to adjust the  
20 contract price upward for a two-and-a-half year period,  
21 or allow a contract to terminate.

22 At this time, all other requests from  
23 parties and stakeholders for changes to the eligibility  
24 rules for the main tier are not recommended.

1           Finally, it is recommended that the use of  
2 contract for differences or other hedging mechanisms not  
3 be implemented at this time, primarily for lack of  
4 support by the stakeholders and the parties due to the  
5 complexities in implementing and administering these  
6 hedging mechanisms, and also for the fact that the  
7 current process appears to be working well, attracting a  
8 substantial amount of bidders at reasonable prices  
9 without offering developers any help in hedging the risk  
10 for future electricity prices.

11           So, right now it's tabled at this time or we  
12 recommend tabling the CFD mechanisms at this time, table  
13 it, but in the future, if circumstances warrant  
14 revisiting it, the Commission should opt to do that.

15           That concludes my discussion of Item 302A.

16           MR. STEWART: I just have one late-breaking  
17 piece of additional information here. It has to do with  
18 the scoring for economic development. And in light of  
19 results from the recent solicitation that is underway  
20 right now, we have concerns of whether or not we want to  
21 keep it exactly the way it is.

22           And what we are proposing is that it be put  
23 out for review by NYSERDA, Staff and interested parties  
24 and then get back to you in a certain amount of time

1 with their findings.

2 MR. MCGOWAN: Separate from this I think we  
3 will craft a notice.

4 MR. STEWART: Yes.

5 CHAIRMAN BROWN: So, that's going to be  
6 coming but at this time the economic development scoring  
7 is remaining as it was, unless -- but there may be a  
8 need for a change and at some point we may be coming  
9 forward with that is what you are suggesting.

10 MR. STEWART: Yes.

11 CHAIRMAN BROWN: But no action today.

12 MR. STEWART: No.

13 CHAIRMAN BROWN: Thank you.

14 I did want to comment on the contract for  
15 differences, and thank Staff and NYSERDA for doing a lot  
16 of work on that. It was important to do, because there  
17 was at least an indication from some developers that  
18 they may not be able to participate in the way New York  
19 does things, which is a little bit different than most  
20 of the other states in the renewable portfolio standard  
21 with the central procurement, because of the lack of  
22 hedges, or other instruments where they might be able to  
23 protect themselves and might prevent them from bidding.

24 At that point in time, that was almost

1 before two auctions ago, that's what we had heard. And  
2 so we asked Staff to say -- go back, what if that starts  
3 to happen. Maybe we need a back-up mechanism to make it  
4 work -- go forward.

5 And a lot of hard work happened, but lo and  
6 behold, we've held two auctions since then, one  
7 finalized and the one still in the midst of, but all  
8 indications are we are getting very vibrant results,  
9 diverse results, and active participation, which kind of  
10 says that problem maybe doesn't really exist.

11 Since a lot of our participants then said,  
12 boy, that's complicated, it seems like the logical thing  
13 to do is take this good information, put it aside for  
14 the moment, and if things change and we do need to move  
15 forward with it, we've got a lot of good work done. But  
16 at this point, there seems to be no indication we need  
17 to take any separation actions on this.

18 Are there any other comments or questions on  
19 the main tier, either changes or non-changes?

20 COMMISSIONER HARRIS: I have some questions  
21 and comments, Mr. Chairman.

22 Regarding the electronic automated REC  
23 tracking system, it's my understanding that our current  
24 system is outdated, it's not automated, and given the

1 number of transactions it might be inadequate to handle  
2 that.

3           And if you go onto the USEPA website, New  
4 York is the only state, I believe -- maybe I am  
5 misspeaking here -- to not have a sophisticated  
6 automated electronic REC tracking system.

7           In 2004, the only thing all the parties  
8 agreed upon was a REC tracking system. I don't believe  
9 we've implemented it to date. I would make a motion to  
10 immediately to have a REC automatic electronic tracking  
11 system put in place, run by a third party with ISO data,  
12 and have it immediately implemented.

13           I think we are sorely behind the eight ball  
14 on this and in order to track our progress on the RPS  
15 goals I think it's an essential component that's  
16 missing.

17           CHAIRMAN BROWN: Could I make an alternative  
18 suggestion? We have been talking with the New York  
19 Independent System Operator not only to use their data,  
20 but potentially have them run the system. And they have  
21 been amenable to that suggestion. Thus far, in my mind,  
22 it's been a matter of priorities of different things  
23 that they need to do.

24           What I would like to do is more formally, as

1 a result of the session, request them to move forward  
2 expeditiously with the development of that project,  
3 because I think we have a place to go. We have a place  
4 to implement it. And what we probably haven't had is  
5 the strong push from the Commission. And maybe we could  
6 provide that push here today.

7 COMMISSIONER HARRIS: Consider this a big  
8 push, from me at least. And I think that's a great  
9 alternative, as long as it's done expeditiously.

10 CHAIRMAN BROWN: I will convey that, unless  
11 anybody has any objection here today, including Staff.

12 COMMISSIONER CURRY: I'd just be happy to  
13 know more about it before putting it away, because I  
14 think reps are less a component of our program here than  
15 they are in many other states.

16 CHAIRMAN BROWN: That's true.

17 Any comments on that? Tina, are you okay?

18 MS. PALMERO: Just that we will work with  
19 the ISO on the Staff level, at least, to help automate  
20 the tracking system, which we do a tracking system.  
21 It's not a REC based, because we don't really recognize  
22 RECs at this time.

23 But for our environmental disclosure program  
24 we do have to track the energy and the attributes in

1 that fashion. We do it -- we don't do it -- it's not  
2 automated. So we are working towards automating that  
3 system.

4 CHAIRMAN BROWN: Thanks.

5 No other comments or questions here, all  
6 those in favor of the recommendations presented by Tina  
7 regarding the issues for main tier resources for the RPS  
8 program, please say aye.

9 THE COMMISSION: Aye.

10 CHAIRMAN BROWN: Opposed? Hearing none, the  
11 recommendations are adopted.

12 MS. LYNCH: Mr. Chairman, excuse me. The  
13 stenographer is requesting a break at this time.

14 CHAIRMAN BROWN: Absolutely. Why don't we  
15 go to 20 of 1:00 and then we can get going again. So,  
16 we will take a 20 minute break here.

17 (Break taken.)

18 CHAIRMAN BROWN: Let's reconvene the meeting  
19 of the Public Service Commission.

20 Next up is Item 302B, case 03-E-0188,  
21 proceeding on motion of the Commission regarding the  
22 customer-sited tier of the renewable portfolio standard,  
23 which will also be presented by Tina Palmero in the  
24 Office of Energy and Environment.

1 Tina.

2 MS. PALMERO: Thank you, Chairman.

3 Item 302B addresses the future of the  
4 customer-sited tier of the RPS program by establishing a  
5 six-year budget of 279 million through the year 2015 for  
6 solar PV, small wind, anaerobic digesters, fuel cells  
7 and solar thermal systems, and additional technology  
8 recommended for eligibility.

9 As an adjunct to the customer-sited tier, it  
10 is recommended that the Commission approve a budget of  
11 30 million per year, also through 2015, for a new  
12 initiative to encourage larger-scale customer-sited  
13 solar PV fuel cells, and anaerobic digesters in the  
14 downstate area, to help address overall geographic  
15 balance in the RPS program.

16 Together, these two programs are projected  
17 to contribute about 600,000 megawatt hours to the RPS  
18 goal, adding about 265 megawatts of new renewable energy  
19 capacity.

20 These programs will also continue to play a  
21 role in helping to diversify the state's energy mix,  
22 improve the environment, reduce demand during peak load  
23 periods, and stimulate economic development  
24 opportunities.

1           This item also addresses the scope and cost  
2 of administration of the entire RPS program, including  
3 program evaluation activities. And finally, it  
4 establishes a recommended schedule of collection of  
5 costs from utility customers. These collections are  
6 anticipated to cover all current and future costs of the  
7 entire RPS program, through 2024.

8           This concludes my presentation of Item 302B.  
9 Thank you.

10           CHAIRMAN BROWN: Thank you.

11           I will start with a comment and question, I  
12 guess. One area that -- the customer-sited tier  
13 photovoltaics program, there had been issues in the past  
14 about overrunnings of budgets, and along the way, I  
15 think at the bridge order, for the lack of a better  
16 term, at the beginning of the year, we suggested kind of  
17 a self-correcting mechanism, I think at that point, on a  
18 monthly basis.

19           My understanding is we are maintaining that  
20 correction mechanism, but it's going to be on a 60-day  
21 rolling basis now?

22           MS. PALMERO: That's correct. We are giving  
23 NYSERDA a little more flexibility within that two-month  
24 period of when and if it should change the incentive

1 level based on demand.

2 CHAIRMAN BROWN: I guess I just would ask --  
3 my concern about it -- and I really like it for its  
4 self-correcting mechanism and ability to kind of  
5 hopefully maintain the budget a lot clearer.

6 My concern is at every 60 days potentially  
7 the incentive changing, it might be a little difficult  
8 for installers trying to do business. If I am installer  
9 and I am working with Commissioner Curry, and finally  
10 get him to agree to buy my system, but then when I find  
11 out shortly thereafter, oops, the incentive changed, it  
12 may ruin my economics, his economics, the project,  
13 etcetera. Potentially, every 60 days that incentive  
14 changing could be disruptive.

15 But, on balance, because of what happened  
16 last year, I think it's an appropriate mechanism to have  
17 in place. I am just putting up a little flag here, and  
18 invite NYSERDA, as they get experience with this  
19 program, if they see that that frequency adjustment is  
20 either taking place or tends to be a bit disruptive,  
21 personally I would welcome alternative suggestions that  
22 would also maintain the other half of our goal, which is  
23 to kind of keep the budget in place.

24 So I am going to support what we are doing

1 here today, but I would certainly invite NYSERDA, if  
2 they can come up with alternative ways of achieving both  
3 our objectives, of having stability in the program and  
4 maintaining the budget of the program, to come to us, if  
5 they can find better ways, or if we see that this  
6 adjustment mechanism is not nearly as necessary as we  
7 might have thought, because it's a good protection, but  
8 it's potentially disruptive is the way I would describe  
9 it.

10 So, it's my one comment on the  
11 customer-sited tier today.

12 Are there any other comments or questions?

13 Hearing none, I would like therefore --

14 COMMISSIONER HARRIS: Mr. Chairman, I will  
15 be recusing myself from voting on this item.

16 CHAIRMAN BROWN: That's right. Thank you,  
17 Commissioner.

18 So, all those, based on the discussion  
19 today, all those in favor of the recommendations as more  
20 fully presented by Tina for the customer-sited tier of  
21 the RPS, please say aye.

22 THE COMMISSION (excluding Commissioner  
23 Harris): Aye.

24 CHAIRMAN BROWN: Opposed? And we have got

1 one recusal. Therefore, the recommendations are  
2 adopted.

3 Thank you, and, again, and all the hard  
4 work, and thank NYSERDA for the cooperation. I think  
5 it's been a very positive approach in getting to this  
6 next step of RPS. I do want to say I am very proud of  
7 where I think this has taken New York as a real leader,  
8 and this is a commitment to renewables now that we  
9 should be able to achieve our goals that we set forward.

10 And it's historic in the sense that we're  
11 really -- I describe it as we are starting to control  
12 our energy future, rather than just watching the world  
13 around us change, and hope that it all changes to the  
14 better.

15 So, thank you for the hard work and  
16 congratulations on the program.

17 Next item for discussion is -- we will be  
18 doing a couple of Consolidated Edison cases. I forgot  
19 to talk to you about this. I think we are going to  
20 start with 301B and then do 301B; is that the approach  
21 we are going to take here, Tom?

22 MR. DVORSKY: Yes.

23 CHAIRMAN BROWN: So that's 301B, proceeding  
24 on motion of the Commission on Consolidated Edison's

1 electric service. This will be presented by Tom  
2 Dvorsky, Director of the Office of Electric, Gas and  
3 Water.

4 Tom, please begin.

5 MR. DVORSKY: Good afternoon, Chairman and  
6 Commissioners.

7 On February 8, 2010 Con Edison, Staff and  
8 the Consumer Protection Board filed a Joint Proposal,  
9 which if adopted by the Commission, will result -- would  
10 resolve the issues raised by Staff's review of the  
11 company's electric capital expenditures during the  
12 period of April 1, 2005 to March 31, 2008.

13 The Joint Proposal addresses the revenue  
14 requirement consequences related to a total of \$75  
15 million of above market capital expenditures for a  
16 series of retrospective and prospective rate periods.

17 As we previously reported to you, Commission  
18 adoption of the Joint Proposal would result in direct  
19 customer benefits totaling approximately \$91 million.  
20 Of this total, 26 million is immediately available, and  
21 an additional 10.4 million of benefits will accrue to  
22 the customers during the three-year rate plan being  
23 considered by you today.

24 The remaining 54.7 million in nominal

1 benefits will flow back to customers over the remaining  
2 book life of the investments. At the March 4th session,  
3 you requested that we evaluate an alternative  
4 application of the customer benefits available over the  
5 three-year rate plan to provide more immediate rate  
6 relief to the customers.

7 We have done so, and recommend to pass back  
8 of the full \$36.4 million customer benefit as a one-time  
9 bill credit in rate year one. This approach, I believe,  
10 is consistent with your expressed objective.

11 Con Edison has indicated that it will accept  
12 the pass back of the full \$36.4 million customer benefit  
13 in rate year one without objection.

14 In summary, we recommend that the \$36.4  
15 million of customer benefits resulting from the Joint  
16 Proposal be allocated to the appropriate service classes  
17 in the same manner as the rate increases granted and be  
18 passed back to the customers as a one-time bill credit.

19 To be most effective, this one time credit  
20 should be applied during a single month of the upcoming  
21 summer period when customer bills are typically the  
22 highest.

23 Each customer's bill that contains the  
24 one-time credit should include a bill message that

1 states the total amount of the credit being reflected  
2 and that the credit is being provided in compliance of  
3 the Commission order.

4 That concludes my presentation. Be glad to  
5 answer any questions.

6 CHAIRMAN BROWN: Commissioner Larocca.

7 COMMISSIONER LAROCCA: Mr. Chairman, thank  
8 you. I just thank the Staff for this and the company.

9 It's an opportunity to make a small but, I  
10 think, meaningful gesture for consumers. And a credit  
11 is always better than its opposite number.

12 So, while it may not change very much in the  
13 lives of our New Yorkers, I think it's an important  
14 step, and I think that particularly as we get into the  
15 rest of our business today, we are dealing with a huge  
16 matter of what electric energy costs look like in the  
17 next couple of years, and I think this is a good and  
18 responsible move to make, and I commend you for it.

19 CHAIRMAN BROWN: Commissioner Curry.

20 COMMISSIONER CURRY: I guess I would echo  
21 that. The subject matter that you got into and examined  
22 carefully was a very significant amount of spend.  
23 Getting a result like this cooperatively with the  
24 Consumer Protection Board and the company was a very

1 good result. Thank you for the effort.

2 CHAIRMAN BROWN: Any other comments or  
3 questions?

4 We have got the recommendations as outlined  
5 by Tom. All those in favor of the recommendations we  
6 just heard, please say aye.

7 THE COMMISSION: Aye.

8 CHAIRMAN BROWN: Opposed? Hearing none, the  
9 recommendations are adopted.

10 So with that as the prologue, now let's go  
11 into 301A, proceeding on the motion of the Commission of  
12 the rates, charges, rules and regulations for  
13 Consolidated Edison in case 08-M-0152, comprehensive  
14 management audit of Consolidated Edison. This will be  
15 presented today by Administrative Law Judge Kevin  
16 Casutto, of the Office of Hearing and Alternative  
17 Dispute Resolution, and Wayne Brindley, Deputy Director  
18 in the Office of Accounting and Finance.

19 So, let's begin with Judge Casutto.

20 JUDGE CASUTTO: Good afternoon, Chairman  
21 Brown and Commissioners.

22 As you know, we discussed this case during  
23 the March 4th session. I went into a detailed  
24 presentation regarding the procedural history and the

1 provisions of the Joint Proposal. So today, I would  
2 like to provide you with a brief, very brief, procedural  
3 history and, again, remind you of some of the provisions  
4 of the Joint Proposal, and then discuss briefly the  
5 passback that you just voted on, and another item that  
6 has developed going forward.

7           The company made its filing in this matter  
8 on May 8, 2009. Staff and the parties, other parties,  
9 filed their testimony in August of 2009. In September,  
10 the company filed a notice of commencement of settlement  
11 negotiations, which negotiations occurred under the  
12 auspices of two settlement judges. And also during  
13 September the company filed its rebuttal and update  
14 case.

15           As you know, the settlement negotiations  
16 were fruitful, and on November 24, 2009 the Joint  
17 Proposal was filed. The Joint Proposal was signed by 11  
18 active parties and receives no opposition from the other  
19 active parties.

20           The Joint Proposal creates a three-year rate  
21 plan with a rate increase of \$420.4 million per year,  
22 which amounts to a return on equity for the company of  
23 10.15 percent.

24           As you know, the Joint Proposal also

1 represents the company's response, in part, to the  
2 Liberty Management audit, which is a separate case. And  
3 the provisions of the Joint Proposal include unique  
4 provisions to control capital expenditures going  
5 forward.

6 In view of your vote moments ago in the B  
7 Item, \$36.4 million will be available as a passback to  
8 be applied in rate year one, as Tom described.

9 Another matter that is of concern to the  
10 Commission and to advisory staff is monitoring and  
11 reporting of the barrier issues identified by Liberty.

12 And so, at this time, Wayne Brindley is  
13 going to make a presentation describing provisions that  
14 will apply -- or are proposed to apply regarding  
15 monitoring and reporting on barrier items.

16 MR. BRINDLEY: Good afternoon, Mr. Chairman,  
17 Commissioners.

18 The purpose of my presentation today is to  
19 discuss the relationship between the management audit of  
20 Con Edison through the JP before you. I would like to  
21 do so from two distinct perspectives.

22 First, are the management audit  
23 recommendations adequately reflected in the JP? And the  
24 second perspective is, how do we better ensure that

1 during the three-year term of the JP that Con Ed is  
2 adequately implementing the management audit  
3 recommendations?

4           These are two distinct questions. The first  
5 one is really more short-term, and it's have we got the  
6 benefits of the management audit in the plan?

7           The second one is more long-term, that's  
8 ensuring that because Con Ed will not be back for rates  
9 for at least two years, that we are able to continue to  
10 put a spotlight on the management audit recommendations  
11 and ensure that they continue to be interested. If they  
12 are not interested, we will bring it to your attention  
13 for remedy.

14           Touching on the first perspective, the  
15 timing of the Con Ed audit report in the rate case  
16 really didn't allow for detailed inclusion of all the 92  
17 recommendations in the rate case. The judge just went  
18 through some of the dates, but I'll run through them  
19 real quick.

20           The company filed its case in May of 2009,  
21 which was even before Liberty issued its report in  
22 August of 2009. Staff filed its case only three weeks  
23 after Liberty released the report. Company filed an  
24 implementation plan in October, and the JP was filed in

1 November.

2           However, even with this tight time frame, as  
3 I will elaborate on, there was significant consideration  
4 of the management audit recommendations in the Joint  
5 Proposal.

6           Just as a little aside, before I get to  
7 that, we are looking at the timing of the management  
8 audits relative to rate cases. That was raised at the  
9 last session by Commissioner Acampora. It will be a  
10 challenge, but I heard you. I am looking at it.

11           COMMISSIONER ACAMPORA: You can do it. You  
12 will do it.

13           MR. BRINDLEY: Okay, but back to the subject  
14 matter at hand, are the contents of the JP consistent  
15 with the spirit, if not the words, of the Liberty audit  
16 report? And my answer would be, yes, it is.

17           First, it's a three-year settlement. This  
18 breaks the cycle of annual stop gap rate cases and gives  
19 the company the ability to look a little longer term,  
20 and perhaps more actively assume leadership for its own  
21 fate as opposed to relying on regulators to set its  
22 annual budget and establish priorities.

23           Second, when I briefed you last year on Con  
24 Ed's last rate case, I emphasized the importance of big

1 ticket cost drivers as underlying Con Ed's real need for  
2 rate relief. And unless those are dealt with, the  
3 upward pressure on rates would continue.

4           Among the drivers I discussed last year were  
5 large infrastructure expenditures and property taxes.  
6 The JP is responsive to addressing these big ticket  
7 items and it's also consistent with the recommendations  
8 that you find in the Liberty audit report.

9           First, the JP contains a significant level  
10 of capital expenditure controls which Mr. Dvorsky  
11 described at the last session. And I will just go  
12 through these real quick in shorthand, but the point is  
13 I am trying to make is that the recommendations in the  
14 report are embodied in the JP.

15           Some of the ones that Tom mentioned last  
16 time, issue directives to management to consider  
17 customer impacts when advancing budget requests;  
18 annually report and meet with parties on capital plans;  
19 return carrying costs of any capital underspending to  
20 customers; justify any investment above target levels  
21 during the term of the rate plan in the next rate case.  
22 And they have no upside protection during the term of  
23 the rate plan.

24           In fact, the JP limits Con Ed's ability to

1 earn its full return, that is both the debt and equity  
2 return, on any over target construction expenditures in  
3 rate year one.

4           And basically what will happen is it will be  
5 assumed that this excess plant was financed solely by  
6 debt for its entire book life. I think that's a great  
7 idea. I wish I thought of it, but whoever thought of it  
8 I give him credit.

9           Second, the JP contains a proposal that if  
10 actual property tax expense in any year varies from the  
11 projected expense, 80 percent of the variation will be  
12 deferred and either recovered from or credited to  
13 customers. Likewise, the mirror effect would happen  
14 with the company.

15           What this does is it places risk and  
16 provides incentive to Con Ed to deal with what  
17 heretofore was considered outside of its control and  
18 fully recoverable from customers. So, again, that's  
19 putting the company aware that they have some  
20 responsibility to deal with some of these heretofore  
21 uncontrollable expenses.

22           That's part of the message that you are  
23 getting that what we see in the Liberty audit report.  
24 One of the barriers, environmental, understanding you're

1 operating primarily in New York City. Big property  
2 taxes.

3           These points are responsive to not only Con  
4 Ed's major cost drivers but some of the more global  
5 themes in the Con Ed audit report, that Con Ed improve  
6 its planning process, better monitor its progress, to  
7 look internally for solutions rather than relying on  
8 regulators, and to be more sensitive to upward rate  
9 pressures on customers.

10           Also, the earnings sharing cap is adjusted  
11 in the second and third years of the plan to reflect the  
12 potential benefits from the implementation of the  
13 Liberty audit report recommendations.

14           So, to the extent that the implementation of  
15 the Liberty audit report recommendations produce  
16 additional savings that contribute to the company  
17 exceeding the earnings cap, the customers will share in  
18 those savings.

19           The JP also reflects two large efforts that  
20 were topics of the Liberty audit report. First, the  
21 company has committed in the JP to produce an electric  
22 long-range planning study. And second, the joint  
23 proposal provides capital spending targets for the  
24 enterprise resource projects.

1           So, that's the first perspective, did we get  
2 enough of the management audit into this three-year  
3 deal? I think my bottom line would be that, while all  
4 92 of the management audit recommendations are not  
5 specifically recognized in the JP, that overall, the JP  
6 reflects, in many ways, the recommendations embodied in  
7 the management audit report. Emphasis on planning,  
8 emphasis on monitoring, accountability and sensitivity,  
9 and it does so for some of the big ticket items.

10           Moving on to the second perspective. How do  
11 we ensure that Con Ed's continued interest, while they  
12 are not going to be in to see us for rates for at least  
13 two more years. Separate question.

14           I would like to emphasize the words when I  
15 say "better ensure", because I really think that the  
16 management audit implementation monitoring process that  
17 we have currently in place is pretty good. Kate  
18 Tallmadge described this at the last session whereby we  
19 receive an update from Con Ed every four months as to  
20 its status in implementing the management audit  
21 recommendations.

22           Roughly two to three months after that, we  
23 provide an informational item back to the Commission  
24 summarizing progress. And, if necessary, we will

1 request Commission intervention if we see problems.

2 I think that's a good control, but like any  
3 internal control, they can be strengthened and  
4 complemented. And the draft order does exactly that.

5 Public Service Law 6619 only requires the  
6 Commission's compliance with the management audit  
7 recommendations to be reviewed in the subsequent rate  
8 filings. So this Joint Proposal would result in Con Ed  
9 not filing a major rate filing for at least two more  
10 years, the draft order strengthens the typical Public  
11 Service Law requirement by directing the company to  
12 submit to all rate case parties on an annual basis until  
13 it filed its next case a report sponsored by the  
14 company's executive management explaining the progress  
15 the company has made in implementing the Liberty  
16 recommendations.

17 This is not limited to the 92  
18 recommendations, but the company will also be reporting  
19 back on the more subjective, cultural, environmental,  
20 financial and regulatory barrier issues.

21 Furthermore, the report is expected to  
22 explain how the company's efforts at addressing these  
23 recommendations is integrated into its day-to-day  
24 operations and corporate culture and will result in cost

1 reductions and/or reliability improvements for  
2 customers.

3           Also, following the submission of the  
4 company's annual report, the department will convene a  
5 meeting where interested parties can receive a  
6 presentation by the company on its progress, raise  
7 questions as to the content of the annual report, and  
8 identify opportunities for modifications or  
9 improvements.

10           And finally, the draft order authorizes  
11 Liberty to be reengaged under the existing contract with  
12 Con Ed's department to independently review some or all  
13 of the company's annual progress as deemed necessary.

14           I believe the things that I have just  
15 mentioned under the second perspective is responsive to  
16 any potential concern that Con Ed may lose interest in  
17 implementing the management audit recommendations  
18 because it has a three-year rate plan.

19           It increases the visibility of Con Ed's  
20 effort in these regards by requiring additional  
21 information to be filed and discussed in a public forum.  
22 It also provides staff with additional resources in the  
23 form of reengaging Liberty to evaluate Con Ed's progress  
24 or lack thereof.

1           In conclusion, I believe the rate terms of  
2 the Joint Proposal before you, while not explicitly  
3 recognizing all 92 recommendations, do implicitly  
4 recognize some of the most important elements of the  
5 recommendations.

6           And the added public visibility and  
7 additional resources that may be employed will allow the  
8 Commission to adequately monitor Con Ed's performance in  
9 implementing the management audit recommendations during  
10 the term of the rate plan.

11           That concludes my prepared remarks.

12           JUDGE CASUTTO: Thank you, Wayne.

13           That concludes our formal remarks. We  
14 remain available to respond to questions.

15           And advisory staff and I recommend that the  
16 Commission adopt the terms and conditions of the Joint  
17 Proposal and the provisions regarding barrier issues  
18 that Wayne described.

19           CHAIRMAN BROWN: Commissioner Curry, you  
20 want to start?

21           COMMISSIONER CURRY: This is sort of by way  
22 of historical comment. I am the city kid on the  
23 Commission. I have been in Con Ed's service territory  
24 for more than 55 years since.

1           Since I arrived at the Commission, which  
2 seems longer but it was only about three and a half  
3 years ago, I have consistently expressed concern about  
4 how to encourage Con Ed to look at its management  
5 practices and its culture.

6           A positive development was starting up  
7 again, the process of doing management audits by  
8 independent third parties of each of the utilities that  
9 we regulate and, of course, we started with Con Ed.

10           After more than 18 months of effort, the  
11 auditors submitted over 90 specific recommendations that  
12 Wayne just alluded to and also noted culture barriers  
13 that Con Ed has to overcome to have a sustainable  
14 business model to take it into the next several decades.

15           The recommendation of the management audit  
16 is directly linked to the rate case here. That has not  
17 been the case in the past. When we did management  
18 audits -- I say we -- when you did management audits in  
19 the past there was not the effort to staple the  
20 recommendations of the rate case -- excuse me, the  
21 recommendations of the management audit to the rate  
22 case. So they were sort of running on parallel, not  
23 necessarily intersecting, tracks.

24           Here today, after a lot of effort by a lot

1 of people, we are getting the two together. The benefit  
2 of the audit and the continued engagement of Liberty,  
3 the actual party that conducted the audit, to assist  
4 staff in regular reporting to the Commission is a  
5 significant step forward. It's clear and it's  
6 unequivocal.

7 In addressing the Joint Proposal for a  
8 three-year rate case, without that, I would have had  
9 difficulty supporting such a long period of time between  
10 accountability moments for Con Ed -- as between Con Ed  
11 and the Commission.

12 I see a process whereby monitoring by staff,  
13 assisted by Liberty as needed, will be persistent and  
14 pervasive, which is the only way to keep everyone's  
15 attention on where we hope things can come out.

16 Supplementing Mr. Brindley's view that staff  
17 sees no conflict between the rate case and the  
18 management audit, I took testimony from Con Ed in the  
19 rate case who -- wherein a senior officer said the same  
20 thing, they saw the two as complementary and not in any  
21 way contradictory.

22 So, from that standpoint, from the cultural  
23 management issues that we occasionally see before us,  
24 but here we have a systemic way of addressing them on a

1 regular basis.

2           This Joint Proposal also addresses another  
3 one of my concerns, capital expenditures. Con Ed has to  
4 maintain and upgrade its systems, requiring vast amounts  
5 of ratepayer dollars. As Wayne indicated in his  
6 presentation, and in other presentations, there are just  
7 very limited areas where the Commission can have a  
8 significant effect on those -- on expenditures  
9 throughout, because we have things like pension payments  
10 and tax payments that are pretty much entitlements, if  
11 you view that in a federal budgetary speak.

12           Here we have got some innovation on the part  
13 of staff and other participants in the Joint Proposal of  
14 having different accountability points for the  
15 expenditures, and having remedies for variants that seem  
16 to be reasonable from a distance and look like they  
17 ought to work.

18           Since the Commission has little choice about  
19 passing through the ratepayers, these real estate taxes,  
20 etcetera, this is a good way to go.

21           We then look at how the Joint Proposal  
22 treats both CAPEX and how CAPEX dollars are spent. So,  
23 there are two separate issues. One is the total amount  
24 CAPEX and the other is how it's spent. I think the JP

1 handles these issues satisfactorily, with innovation,  
2 and hopefully that accountability, because at the end of  
3 the day accountability to the ratepayers for these  
4 dramatic dollars is our task, our task being both the  
5 Commission's and the staff's.

6 The Joint Proposal, coupled with the  
7 implementation of the management audit recommendations,  
8 appears to be a good and satisfactory approach to this  
9 concern.

10 So, thank everyone for their efforts in  
11 putting this together.

12 CHAIRMAN BROWN: Commissioner Larocca.

13 COMMISSIONER LAROCCA: I would second the  
14 remarks by Commissioner Curry.

15 I do have, I guess, two specific language  
16 reference items, if you will. It seems to me in the  
17 same season during which this rate proceeding has gone  
18 forward there really have been two matters that have  
19 come directly to our attention.

20 The one, of course, was the contract  
21 management operation that is now safely in the criminal  
22 justice system, where a dozen or so people are working  
23 their way.

24 And the other, of course, was the tragedy

1 that we examined a little bit again this morning.

2 In the portions of the order that speak to  
3 the implementation of the findings of the audit process,  
4 and in this broad sense, the findings there have to do  
5 with the efficiency of management in managing the  
6 business of the company.

7 We don't, however, make specific reference  
8 to these two quite explicit failures that came in the  
9 same season.

10 So when I look on -- in the revised draft,  
11 which I guess I saw yesterday, on page 15, provisions of  
12 the audit addressed by the proposal now says include  
13 capital construction planning, and including the  
14 development of second and third year construction  
15 programs, planning and budgeting processes, capital  
16 planning and budget advising, and so forth.

17 We don't make specific reference to  
18 management of the capital and construction programs.  
19 And I would just ask you all, for a moment, to consider,  
20 whether given the parallel history the same season, that  
21 the references be more specific, because it is one of  
22 the areas to which we will be looking in this three-year  
23 plan.

24 We know of this failure in construction

1 management that resulted in this problem, and we know of  
2 the failure, based on the earlier report today, of the  
3 management under the emergency response and code MuRRE,  
4 and so forth, whether this is broad -- is broader than  
5 it needs to be.

6 We are not just looking at construction and  
7 capital planning. We are looking at the management and  
8 implementation of the capital program, and the integrity  
9 of those programs as they are conducted by the company,  
10 because we did see these failures.

11 So, I don't know if raising the language  
12 issue at this late date, or simply the fact we make a  
13 record. In my mind, it's sort of like a legislative  
14 history in the transcript here that, certainly on the  
15 part of this commissioner, I will be looking in this  
16 three-year period to come, as we continuously look at  
17 the relationship between our management audit work and  
18 the conduct of the company under this plan, that we are  
19 seeing specific improvement in how they manage the  
20 capital and construction programs, to correct the  
21 integrity issues that we now have explicitly shown to  
22 us, and too, that in its management of service issues,  
23 emergency issues, code MuRRE issues, that all of the  
24 things we have learned from the tragedy are specifically

1 addressed as we go forward.

2 So, that is really a comment, and to the  
3 extent it's possible to fiddle with language at this  
4 late date that would be nice, but it's not essential, so  
5 long as the spirit of these connections are part of how  
6 we go forward.

7 Thank you, Mr. Chairman.

8 CHAIRMAN BROWN: Thank you.

9 I know Staff knows that commissioners have  
10 long memories of what they say here at session.

11 Are there any other comments or questions?

12 Commission Harris, do you have anything?

13 Not being able to see you, I can't read your body  
14 language.

15 COMMISSIONER HARRIS: No. We were just  
16 dancing here, but no, we are all set. Thank you.

17 CHAIRMAN BROWN: Commissioner Acampora.

18 COMMISSIONER ACAMPORA: I just, before we  
19 wrap this up, I'd like to do a little background and  
20 history again for people who are listening and make sure  
21 that it also is on the record of the numbers that  
22 actually started the request from the company and what  
23 we -- the JP has whittled that down to.

24 Could we talk about that? Who wants to

1 answer?

2 JUDGE CASUTTO: I believe on a levelized  
3 basis, the company's initial proposal was \$540 million  
4 per year. So, it's approximately 120 million less on an  
5 annualized basis.

6 And then for rate year one, it would be  
7 further reduced -- or further mitigated -- by the 36.4  
8 million of the CAPEX overspend money.

9 COMMISSIONER ACAMPORA: Since we are doing  
10 this in New York, I think we have some also more  
11 interested parties that might not want to go through  
12 that again, just to show that it has been whittled down.

13 I really want to thank all the interested  
14 parties who participated in this, along with our staff  
15 and the company, for the ability to move the numbers  
16 around, and particularly for the \$36.4 million return to  
17 ratepayers. As Commissioner Larocca said, it's a small  
18 gesture, but it's a good gesture, none the same of being  
19 an increase.

20 Also --

21 COMMISSIONER LAROCCA: Can I just comment on  
22 your question to Kevin.

23 It might be worth taking just a moment.  
24 Take us through the very first numbers when it was a

1 front-ended proposal, because I think the first serious  
2 work that you all accomplished here, I think with great  
3 success, was taking out that front ending and levelizing  
4 it; and, two, bringing the levelization down to the  
5 number that Pat has just mentioned. I think you have a  
6 two-step process and it's been very much in the consumer  
7 interest.

8 MR. SCHERER: Commissioners, if I might just  
9 clarify what Judge Casutto made reference.

10 Was a levelization impact of the three cost  
11 of service increases; 540 million in the first year, 306  
12 in the second year and 280 million in the third year.  
13 On a levelized basis, that's \$420 million. That was  
14 done to ameliorate the rate impacts.

15 I think your question originally was, how  
16 did that result compare to what the company's original  
17 request was?

18 COMMISSIONER ACAMPORA: Right.

19 MR. SCHERER: The company's original request  
20 for the first rate year was \$840 million as updated, so  
21 there was roughly \$300 million reduction as a result of  
22 this process, with first rate year increase.

23 The second and third years there were  
24 comparable reductions. The company's request was in the

1 order of magnitude of \$400 million per year, and they  
2 compared to the 306 and 280 reductions, so there were  
3 reductions in the out years, as well.

4 COMMISSIONER ACAMPORA: Thank you.

5 Again, I really want to applaud the use of  
6 the management audit. And thank you, Wayne, and I hope  
7 I am going to continue to thank you, for getting the  
8 process parallel to one another, which I think is really  
9 important if this tool is going to be as useful as I  
10 think it can be. I think that's really important.

11 We have a culture, again, we talk about  
12 communications and it's the communications with the  
13 utilities. And this was a utility that I think for a  
14 long time the culture said that we are number one and  
15 nobody else is like us, but after that management audit  
16 I think it's brought people to the reality that  
17 improvement can occur to anyone who even thinks that  
18 they are the best. You can always get better.

19 So, I think that it's really important to  
20 have some of that culture, which I think is changing,  
21 and the ability of our people to work with Liberty and  
22 Con Ed, to make sure continuing improvements occur, and  
23 in the area of capital expenditures that there is a  
24 plan, and that it's a prudent plan.

1                   So, I thank you all very much for your work.

2                   COMMISSIONER HARRIS: Mr. Chairman, I do  
3 have a follow-up comment now, if that's okay, just to  
4 follow up on what all the commissioners have said.

5                   I do want to commend the company, staff and  
6 all the interested parties on this Joint Proposal. I  
7 think enormous concessions were made on behalf of all  
8 the parties, all to the benefit of the ratepayers.

9                   I mean there is a significant amount of  
10 low-income program, there's a reasonable austerity  
11 adjustment for all three years, the productivity level  
12 -- I mean, there's just some great concessions, CAPEX  
13 control.

14                  So, I think this will be very helpful for  
15 the company and some financial stability, and a resource  
16 issue for our staff here. So, I just think going  
17 forward this is a great proposal.

18                  I just want to point out, though, as the  
19 other commissioners have mentioned about the real estate  
20 taxes and some of the other fixed costs that we actually  
21 aren't able to control.

22                  So when Commissioners Acampora and Larocca  
23 had mentioned about the original number, and what we  
24 were able to reduce it to, I want the ratepayers in New

1 York City to keep in mind how much the percentage of  
2 what we weren't able to adjust and whittle away is --  
3 comprises the \$420 million a year.

4 John Scherer, if you can just give me those  
5 numbers or give us those numbers about how many dollars  
6 we aren't able to adjust through property taxes and  
7 pensions and OPEBs, I think it will give the ratepayers  
8 a perspective of just how much of an increase we  
9 actually gave on infrastructure improvements.

10 CHAIRMAN BROWN: They are scurrying, looking  
11 for the appropriate piece of paper.

12 MS. STOUT: John, if you don't have it, I  
13 have it with me here.

14 MS. STOUT: John, if you don't have it, I  
15 have it with me here.

16 CHAIRMAN BROWN: Doris is ready.

17 MS. STOUT: I have it. I don't have it on  
18 the \$420 million basis, but of the \$540 million  
19 non-levelized number, 87 million of that is related to  
20 property taxes. So, that's 16 percent.

21 And then in the subsequent years, it's  
22 roughly 80 million each year so that percentage is 27  
23 percent and 38 percent of the rate increases in years  
24 two and three. So, it looks like about an average of

1 about 25 percent of the rate increase is coming from  
2 property taxes.

3 Just as an overall global perspective, Con  
4 Ed's electric deliveries revenues are almost \$5 billion.  
5 Of that, a billion is related to property tax expenses,  
6 so, about 22 percent.

7 COMMISSIONER HARRIS: Thank you. I find  
8 that very helpful to give a perspective, if we were to  
9 go forward and approve this Joint Proposal, just how  
10 much of it is sort of outside our control and the  
11 company's control to that extent.

12 Thank you.

13 CHAIRMAN BROWN: Before we go to a vote, I  
14 just want to kind of circle the day. This morning we  
15 had a discussion of the tragic accident that was the  
16 result, amongst other things, of infrastructure failure.  
17 And the need that, Commissioner Acampora, the  
18 neighborhood was concerned about outages and how the  
19 company prioritizes.

20 The underground system is so expensive to  
21 work on, number one. New York City is such an expensive  
22 place to work, number two. And the infrastructure is  
23 aging, number three. That it is our responsibility to  
24 make sure that Con Ed has the adequate resources to keep

1 the system safe and reliable.

2           What I want to thank you folks for doing is  
3 trying to balance that against the other concern that we  
4 all have, that a record number of New Yorkers can't pay  
5 their electricity bills as it is today, much less with  
6 an increase in it.

7           That is our constant dilemma, is trying to  
8 make sure that the system maintains that safe and  
9 reliability, while the prices, rates remain just and  
10 reasonable.

11           And I think what you guys have done is  
12 achieved a good balance. Hopefully, Con Ed can continue  
13 the upgrades in their system that are absolutely so  
14 essential to be made to keep the system safe and  
15 reliable, but at the same time, doing our best, as  
16 Commissioner Harris pointed out, with some additional  
17 low-income protections, to try to maintain that people  
18 can afford their electricity.

19           With that, I think going to the three-year  
20 program offers a lot of advantages from a lot of  
21 different perspectives, with all the protections that  
22 the other commissioners have pushed very hard for, and  
23 which you have managed to implement of tying the audit  
24 to the rate case.

1                   So, with that, unless there is any other  
2 comments or questions, I would like to go to vote.

3                   So, we have got a recommendation as fully  
4 described by Judge Casutto and staff. All those in  
5 favor, please say aye.

6                   THE COMMISSION: Aye.

7                   CHAIRMAN BROWN: Opposed? Hearing no  
8 opposition, the recommendations are adopted.

9                   Madam Secretary, is there anything else to  
10 come before us today?

11                   SECRETARY BRILLING: There are no additional  
12 matters for today. The next regularly scheduled session  
13 will be April 15th and that will be held in Albany at  
14 10:30 a.m. Thank you.

15                   CHAIRMAN BROWN: Thank you very much. The  
16 meeting is adjourned. Thank you.

17                   (Meeting adjourned.)

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