

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Regular Meeting of the Public Service Commission

Thursday, August 14, 2014
10:30 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS:

AUDREY ZIBELMAN, Chair
DIANE X. BURMAN
GREGG C. SAYRE
PARTICIA L. ACAMPORA
GARRY BROWN

CHAIR ZIBELMAN: Good morning everyone. I hope everyone's summer is going well. I think it's probably going too fast, as they always do. We'll call the meeting of the Public Service Commission to order.

Secretary Burgess, was there any other things to add to the agenda today?

SECRETARY BURGESS: There are two changes to the agenda this morning.

CHAIR ZIBELMAN: Okay.

SECRETARY BURGESS: Item 169, which is case 14-G-0058 and 14-G-0060, a proceeding to investigate Keyspan Gas East Corporation, d/b/a National Grid, for violations of certain pipeline safety requirements in Brentwood and Central Islip is over.

And the other is item 361, case 12-E-0201, Niagara Mohawk tariff amendments to establish residential voluntary time of use rates is also over.

CHAIR ZIBELMAN: Okay. Thank you.

The -- we're going to proceed then first to the regular agenda. And our first item is item 301, which is case 14-E-0068. And that's regarding the proceeding to establish policies and procedures concerning transmission policy for public -- transmission planning for public policy purposes. That's a lot of P.s.

And David Drexler, as assistant counsel, I think, is going to be presenting to us.

Welcome David.

MR. DREXLER: Thank you. Thank you. Good morning Chair and Commissioners. I will try not to get tongue twisted as I go through all the Ps.

As background the Federal Energy Regulatory Commission issued Order 1000 in July of 2011 which required the ISO to establish a public policy

planning process to consider transmission needs that may be driven by public policy requirements.

On March 28th, 2014, of this year, our Commission issued a -- initiated a proceeding to develop policies and procedures that it would use to coordinate with the New York ISO and to carry out its role and responsibilities as part of the planning process.

As part of the initiating order, the Commission proposed a set of policies and procedures, which I will go over, and solicited comments on those procedures. A number of comments were received by parties and are explained and discussed in the order before you.

On August 1st of this month, the New York ISO has commenced the public policy planning process by soliciting proposed public policy requirements from stakeholders. The procedures before you would coordinate between the New York ISO and our Commission in -- in carrying out this proceeding and -- and these procedures.

The six steps that are part of the planning process would first start with the Commission posting on its website any public policy requirements that are proposed to the New York Independent System Operator or that the New York Independent System Operator proposes itself.

The Commission would then issue a notice soliciting comments on those proposals in a -- in a notice that would be published in the State Register.

The public would be afforded at least forty-five days to comment on any sort of proposals that are -- that are made.

After the comments are received, a third step could include an optional Staff report providing preliminary feedback on why Staff believes that any public policy requirements should be identified by this Commission and as being appropriate to be referred to the New York ISO for the ISO to then solicit projects for evaluation.

The fourth step in the process includes the first of two key decisions that the Commission would be called upon to make. After considering any comments that are received in response to that first State Register notice, the Commission would issue an order explaining whether any proposed public policy requirements indeed warrant being referred to the NYISO so that the NYISO would then solicit solutions and evaluate those solutions.

In the event the Commission does not identify any public policy requirements that should be referred to the ISO, the process would be completed.

Assuming that the Commission does identify a public policy requirement that should be referred for further evaluation, the Commission could identify specific analyses and criteria that the NYISO should apply.

The fifth step would -- would be a pretty simple step in that the Commission would just post its order on its website and refer that order -- provide that order to the ISO. As part of the ISO's process, the ISO would then solicit projects within sixty days to address those -- any identified needs.

Following that submission, the NYISO would plan to undertake an initial analysis of the sufficiency and viability of any solutions to meet the identified needs.

After -- the sixth and final step that is part of these procedures would involve the Commission considering the results of any analyses that the ISO prepares in determining whether or not a non-transmission or transmission alternative should be pursued further.

Part of the process which I didn't explicitly mention earlier is that in response to the ISO's solicitation for projects, the ISO would also solicit transmission or non-transmission alternatives such as generation or demand response.

As part of the sixth and final step, the Commission would be able to consider whether or not a non-transmission alternative should be pursued in lieu of a transmission alternative.

In the event the Commission makes that determination, the process -- the public policy planning process of the ISO would effectively be completed.

In the event the Commission does decide that transmission should be pursued further, the ISO would continue to undertake its full evaluation of any solutions and to prepare a report for review by stakeholders and ultimately the NYISO board.

In the event the ISO determines that a -- that a transmission solution is the more efficient or cost-effective solution to meet the identified transmission need, the ISO could select that project as part of the -- its report. The ISO's selection would -- would ensure that that project would be able to recover its costs through a FERC approved tariff.

Notwithstanding the ISO's selection, any developer would still need to obtain any necessary siting approvals, such as a certificate of environmental compatibility and public need pursuant to Article 7 of the Public Service Law.

That would essentially conclude this process and that is the end of my presentation. If you have any questions, we're here to answer any -- any questions you may have.

Thank you.

CHAIR ZIBELMAN: Thank you, David. And I notice that both Paul Agresta and Raj Addepalli are here, as well, and -- and I imagine can answer questions.

First of all, let me -- let me just start. I know when we -- when we initiated these comments, we talked about the fact that this is a complicated -- somewhat of a Rube Goldberg contraption of trying to figure out how to address issues where you've got overlapping jurisdictions, state and federal jurisdictions.

And I, again, applaud the work of Staff and the parties to help us sort through how best to do this in a way that respects the -- the jurisdictions of both FERC and the states, but also gives us an opportunity to get transmission built and meet the needs of the states in a really effective way and provide, under Order 1000, cost recovery not only for projects done by regulated utilities, but by third parties as well.

So, while we talk about these in terms of transmission, I -- I recognize that this also allows for non-transmission transmission alternatives, such as technology on a transmission system that can increase the capacity of a system and is theoretically transmission, but is not -- doesn't even require potentially an Article 7 because you're -- you're doing nothing more but adding information devices on a transmission line that actually improves the system. So -- as well as other alternatives like energy efficiency DR, things like that.

And just so I have this right, I just want to make sure that we're talking about -- this in a context of how this could work in practicality. So, let's say, you know, our favorite hypothetical, we have a situation where, because of the transmission constraint, we're unable to get all the power we want out of hydro in Western New York and so we're finding ourselves having to run fossil plants out of economic dispatch order because we have a transmission constraint, and that one of the alternatives that the Commission wants doesn't -- it's not really a reliability issue, it's both an economic and environmental issue, is to select a transmission line.

So, we could go through a process and determine, as a public policy, that transmission seems a viable alternative. And under your step four, as I understand it, if we go through this process and then do our own analysis

and make a determination well, maybe it's not transmission at all, it could be DR, that would just end it at that point, right?

MR. DREXLER: Yeah, that's correct.

CHAIR ZIBELMAN: Okay. And then if we do go through the process and conclude that it is a transmission alternative, which would then subsequently at some point require an Article 7, we would go through that, hand it off to ISO. They would do their own analysis.

And if they came back and said seems like this could be done through DR or generation, not necessarily transmission, and we say seems like that looks better, that would also end the process, right?

MR. DREXLER: Correct. If there's an alternative that's preferable.

CHAIR ZIBELMAN: But if we -- if we agree and ISO agree that transmission is the best alternative, regardless of who builds the transmission system, under Order 1000, once that gets done and we proceed with our Article 7 certification, the recovery of those costs then are allocated through the ISO tariff?

MR. DREXLER: That's correct. And right now -- just one note on that point is that there is a default cost-allocation method in the ISO tariff, which is a load ratio share. But the other alternatives to the method could be proposed and submitted to FERC for consideration.

CHAIR ZIBELMAN: Okay. So just because I -- I think it's important that we -- that we understand, as a Commission, what we're doing and what -- what we're not doing.

What we're doing is we're providing ourselves a vehicle for transmission to get built that we decide is necessary for public policy reasons, but we are not eliminating any -- any of our jurisdiction to make a determination, one, whether transmission is needed in the first instance.

And second, and this is the other question because I know that there's a FERC proceeding on this. If we determine that there is transmission required and the ISO subsequently concludes that they don't want to have transmission, not because of reliability, but because they're worried about a market power effect, that doesn't eliminate our opportunity, under our state jurisdiction, to subsequently determine we still want to proceed with the transmission, right?

MR. DREXLER: Yeah, that is correct.

CHAIR ZIBELMAN: Okay. So because I'm -- I'm comforted by that because, quite frankly, you know, we -- we do know that in -- in New York, one of the things we want to do is make sure that we're building transmission as necessary to help both in economics and reliability.

And, I -- I definitely don't -- even -- even though I think that this kind of process could be very helpful for us, I also think that it's important as a Commission we recognize we don't want it to constrain our ability to get transmission built when we think it's necessary and appropriate for our customers.

And I -- I think that -- that this exercise is helpful because it makes me more comfortable, knowing that we're not -- we're preserving our jurisdiction and making sure that -- that consumer needs are always foremost of what we're looking at in making -- in looking at what, when, and where we put infrastructures. So --

MR. ADDEPALLI: Again --.

CHAIR ZIBELMAN: -- with that, I think the process is okay.

Mr. Addepalli?

MR. ADDEPALLI: Yeah, Commissioner, I think what you said is exactly right in that there are no individual actors or players in this example that you gave, whether it's the renewable generator or existing transmission owners who have an interest in making this happen.

So effectively, there's a market failure and there's a public interest from a consumer viewpoint that this transmission should be augmented or upgraded to accommodate the renewables for cleaner air, for relieving congestion, for reliability, but the market is not supporting it because the market construct is not effective. So in that case, we have a public interest role and we have to promote such investments in transmission.

CHAIR ZIBELMAN: Right. Great. And that's -- and that's what I appreciate. And that is our role. To the extent that we have comity with the -- an agreement with the ISO on the solution, that's great. If we don't, then we will still fulfill our obligation and it doesn't take it away.

With that, I'm -- I'm comfortable with the direction this is going and I would intend to support it.

Any other questions, comments?

COMMISSIONER BROWN: Just one comment. Proper public policy planning properly pursues private projects pending procedures prepared promptly. Paul?

CHAIR ZIBELMAN: Very, very good. Are we --?

MR. AGRESTA: That sounds like a question for Kim Harriman.

COMMISSIONER BROWN: No other comments.

CHAIR ZIBELMAN: Thank you.

Commissioner Burman?

I'll let you duke it out.

COMMISSIONER SAYRE: I'd support the item. I'm hoping that it will be very rarely used. It is best, in my view, if the market can take care of the situation and serve the consumers' needs, but we need to have a backstop if it doesn't work.

CHAIR ZIBELMAN: Commissioner Burman?

COMMISSIONER BURMAN: I'd just like to ask you to comment briefly on how this ties in with the recent notice that went out on the proceeding on the motion of the Commission to examine alternating current transmission upgrades.

MR. AGRESTA: If you approve this procedure today, you will put the Commission in a position where the -- the two processes can be put on a comparable time footing, which is one of the goals of what we're trying to do.

The ISO has already commenced its public policy requirements process. By your approving your end of the process today, you're -- you're then going to be putting your consideration of public policy requirements on a track that can be matched with the track proposed in the AC notice that you mentioned.

COMMISSIONER BURMAN: Okay. Thank you. And I'm going to reserve my comments to item 303.

And I'd just like to recognize David Drexler also for -- is this your first time speaking?

MR. DREXLER: Yes, before the Commission.

COMMISSIONER BURMAN: Yes. Thank you, David. And I had also --.

MR. DREXLER: Not the siting board -- not the siting board.

CHAIR ZIBELMAN: We've let him talk before.

COMMISSIONER BURMAN: David and I had been colleagues prior and it's nice to see you speaking, so --.

MR. DREXLER: Likewise. Thank you.

COMMISSIONER BURMAN: And I saved you. I had about thirty questions for you, but they were all joke questions, so --.

MR. DREXLER: Thank you.

CHAIR ZIBELMAN: Well, let's see if -- how well he did. So is there any other comments? Are we okay?

So all those in favor of the recommendations to adopt a policy statement to guide a transmission planning process for public policy purposes, please say aye.

COMMISSIONERS: Aye.

CHAIR ZIBELMAN: Opposed? Hearing no opposition, there being none, the recommendation is adopted.

Well, congratulations.

MR. DREXLER: Thank you very much, Chair.

CHAIR ZIBELMAN: All right. Our next item is item 302, which is a petition by Niagara Mohawk to amend its certificate of environmental compatibility and public need for the Homer City to Stolle Road 345 kV transmission facility. And it's to -- it's the proposal to construct a substation.

Chief Administrative Judge Elizabeth Liebschutz. Libby, thank you and please begin.

A.L.J. LIEBSCHUTZ: Thank you. Good morning, Chair and Commissioners. I am here in the stead of A.L.J. Michelle Phillips, who could not be here today, but she was the presiding judge in this case, which was fully litigated.

She produced a recommended decision for your consideration, which was issued on April 30th for exceptions by the parties. And so we're here today to present you with a draft order, which would largely approve the recommendation that was made by Judge Phillips with some minor changes.

The primary issue in this case was the exact location of the proposed substation. There was no controversy that the station is needed for reliability purposes in the southwest part of the state. But the -- the primary issue in the case came down to whether the substation should be located at the Five Mile Road site, as proposed by National Grid in its application, or at an alternative site known as the Ischua site.

The Ischua site was preferred by trial Staff of the Department, as well as the Department of Agriculture and Markets.

In the recommended decision, Judge Phillips recommended the choice of the Five Mile Road site proposed by National Grid and the draft order before you similarly recommends selection of the Five Mile Road site.

This was based on extensive analysis of the record on the visual impacts of the -- from the two locations, the impacts of noise, the impacts on land use, including agriculture or wetlands or recreational areas, the risk of flooding at the two sites, the topography, the ease of construction on either site, and the ability to access them from public roads, the availability of the sites, and how that might impact the timing of construction and when this station can be put into service, as well as some issues as to whether there were meaningful differences in reliability benefits from the two sites.

Based on all that analysis, including, as well, comments from the public, there was extensive local support for the Five Mile Road site from town officials, from the County Agriculture and Farmland Protection Board, and from the adjacent residents and landowners. Those factors were considered among all the others. And based on analysis of the record and all those factors, we recommend that the construction go forward at the Five Mile Road site.

The other primary contentious issue in the case was the steps that National Grid should take to mitigate noise and whether the company had done an adequate assessment of the noise impacts of the site.

The order before you would require the company to conduct a new noise assessment along the lines of the protocol proposed by Staff, but it does not impose specific noise mitigation measures at this time. Rather, as expressed in the order, the idea is that the company should first conduct this

assessment as part of its environmental management and construction plan process, or EM and CP process.

And, that once you have the results of the noise assessment, at that time you can consider appropriate mitigation measures. You'll have that opportunity when the EM and CP comes back before you for your approval. And the order requires National Grid to propose mitigation consistent with the revised assessment as part of that EM and CP process.

Some minor subsidiary issues that are addressed in the order that were also in dispute are that the order allows for construction between seven a.m. and seven p.m. It requires that the plans for the substation be submitted at a scale of one inch to fifty feet, requires that the plans for both the substation and the transmission lines be stamped by a professional engineer and adopt -- well, and proposed and requires, as well, that when the EM and CP plan is proposed by National Grid that all parties will have thirty days to comment on it.

That concludes my prepared presentation, but I'm available for any questions you may have.

CHAIR ZIBELMAN: Thank you. I have no questions. I think that the -- as I reviewed both the, you know, the orders, the recommendations, et cetera, the proposed order, I think that this clearly was litigated. I think that in terms of the record with respect to the issues of reliability and then land use and it -- I think that the judge made an appropriate decision, in my mind, in terms of choosing the site.

While a local opposition or -- or preference for a site is -- is clearly not necessarily determinative, because we also need to consider other -- other factors such as reliability, easiness to build, cost, et cetera, in this circumstance it's certainly the fact that the site was both a -- met the needs in terms of the requirements to get a substation built and other considerations such as topology and accessibility, as well as land use, as well as the fact that it was the preferred site of people in the area, certainly, I think is something that we need to take into consideration. So I -- I recommend that the -- I would support the decision.

I'm also appreciative of the fact that on the noise issue that I think that's a very pragmatic solution. Rather than us making a decision on a priori basis of what's the best resolution, let's do the work, let's understand the actual noise impacts, and then do develop a solution that is actually an effective solution for the situation that we're going to be under. So I appreciate that -- that change.

With that, you know, I would certainly support the order and take any other comments.

Commissioner Burman?

COMMISSIONER BURMAN: I think it also is very nice to see how much staff drilled down in this, and in particular on the noise issue as well that we have on staff someone who is well rounded and has a background on noise. I don't know exactly what the title is, but --.

CHAIR ZIBELMAN: It's sound engineer -- noise engineer.

COMMISSIONER BURMAN: Right. And that, you know, we take that seriously and how important it is to have experts on particular issues of importance in the communities and -- and the different issues that come up and that is one that is of particular importance. So on this issue, it was very helpful on this case and it was very important to have that. So, I appreciate that that person was on staff and able to be a vital asset in this case, so thank you.

CHAIR ZIBELMAN: Any other comments?

Raj, what is the -- the engineer that you have on staff who does this analysis?

MR. ADDEPALLI: Actually it's Colleen Shaw (phonetic spelling)

CHAIR ZIBELMAN: Colleen Shaw, yeah.

MR. AUSTIN: Because --.

COMMISSIONER BURMAN: Jim, I'm sorry. Yes.

MR. AUSTIN: His name is Miguel -- I want to get his last name right -- Moreno.

CHAIR ZIBELMAN: Moreno, right.

MR. AUSTIN: And he's a noise engineer. And we very much appreciate the -- the support in getting that expertise. So he's proven to be incredibly helpful and useful and continues to be so.

CHAIR ZIBELMAN: Great. Thank you. And --.

COMMISSIONER ACAMPORA: I just want to add to that because a lot of people don't realize that many of our small municipalities do not have noise ordinances. So if it wasn't that we had an expert on our staff to help out with this situation would have made things, I think, a lot more sticky in the end.

CHAIR ZIBELMAN: Great. Well, thank you. So having no further comments, let's take a vote.

And Commissioner Burman, thank you for -- for recognizing staff. It's important to note.

So, for all those in favor of the recommendation to grant Niagara Mohawk Power Corporation an amendment to its certificate of environmental compatibility and public need, please indicate by saying aye.

COMMISSIONERS: Aye.

CHAIR ZIBELMAN: Opposed? Hearing no opposition, the recommendation is adopted.

So, thank you Judge Liebschutz, for pitching in so ably.

A.L.J. LIEBSCHUTZ: Thank you.

CHAIR ZIBELMAN: The next item for discussion is 303. And that's our proceeding to develop an expedited process for siting transmission on existing rights-of-way. And Paul Agresta, our deputy general counsel, will be presenting this today with all his Ps.

Paul, thank you.

MR. AGRESTA: Thank you. If I can just give one aside, we once had a staff expert who was asked on the stand what makes you an expert about noise. And his answer had to be because my supervisor told me I'm the expert.

Okay. Today's proposal to --.

CHAIR ZIBELMAN: I suppose you didn't get him prepared before you asked that question.

MR. AGRESTA: It wasn't my case.

CHAIR ZIBELMAN: Okay.

MR. AGRESTA: Today's proposal comes about, just like the one that Dave described, as a result of our Commission instituting order.

This one was adopted in February of 2014. And the Commission directed staff to examine how the existing Article 7 siting process treats electric major transmission projects that are proposed for locations within existing rights-of-way. The key idea behind the proposal is that using existing rights-of-way in most cases is less likely to have significant environmental impacts than the alternative which to -- is to introduce new transmission rights-of-way into the landscape.

There is a need to build new transmission facilities in the state, both to replace aging infrastructure and to accommodate new technologies. So any idea that is going to make it easier to site the new transmission lines is something that I hope will be welcomed by the Commission.

In terms of process, staff drafted an initial policy proposal and that was circulated to stakeholders. And then a technical conference was held, where twenty-eight parties appeared and it was discussed at length. Staff

then circulated a revised policy proposal which was put out for public comment. And the comments that we received are addressed in detail in the written session item before you.

It is proposed that the Commission adopt a statement of policy offering a ten-month, expedited review process for major electric transmission line proposals where they are located within existing transmission right-of-way and/or buried within existing state-owned rights-of-way where no structures are taller than those presently located on the existing right-of-way, where there's no expansion of the width of the existing right-of-way, and where there's no need for waivers of any application filing requirements.

We believe that this policy will give developers an incentive to minimize the impacts of the proposed facilities so as to be able to take advantage of expedited treatment.

In response to issues that were raised by the stakeholders, primarily that they be given some flexibility in the eligibility requirements, staff recommends that de minimis exceptions be allowed in -- in the requirements on a case-by-case basis.

So what does that mean? One of the requirements is that the structure should be no taller than those presently on the existing right-of-way. So if someone came in and had a project with a hundred new structures and three of them had to be taller, for some particular reason, depending on the circumstance of the case, the Commission might find that that's a de minimis difference and would still give expedited treatment. So it gives an element of flexibility.

A lot of the parties asked to get more clarity as to what is de minimis and what isn't de minimis. And we tried to give some clarity, but what we didn't want to do was to fix numbers.

So, for instance, if you were to say that as long as the structures are within ten feet of the existing structures, that's generally de minimis. What if you had some -- so then what you'll end up with is you might end up with one project where all the structures come in nine feet higher than the existing structures, whereas you would have to reject the project where every structure is the same height as the others except there's one that's thirteen feet higher. So -- so you don't want that kind of -- of a shackle on the process. You want some flexibility. And we think that our proposal gives the most flexibility.

We also, in applying the de minimis exception, included in the policy that one of the factors the Commission would consider as to whether something is de minimis or not is whether the change is necessary to accommodate advanced technologies that will increase the throughput of the electric facility, thereby avoiding the need for an additional transmission line somewhere else.

So, if someone was to invent some kind of a magic box that they could put up on a pole that might make the pole twenty feet higher, but that one little magic box would so increase the capacity that you wouldn't have to build a whole other power line somewhere else in the future, you would want to be able to consider whether that one change in the requirement is de minimis or not, given that -- the huge impact it would have on the other location.

Finally, because most of our existing rights-of-way use AC technology, alternating current technology, which has been around for a long time, and there are some instances where we want to encourage different technology such as high-voltage, direct-current technologies, they have different needs for converter stations that do not currently exist in any rights-of-way.

And so there is an exception in the proposed policy that if they can acquire the land for the converter station in advance and if they can have a lead that goes from the AC system into the DC converter station that is

less than a mile long, they also would be eligible for the expedited treatment. So it's -- it's a way to keep the policy from favoring one technology over another, basically.

And so that's -- that's my description and I'm available for any questions that you have.

CHAIR ZIBELMAN: All right.

Well, thank you.

Let me lead off, as I personally think this is a -- is a great rule making and I'm -- I'm really proud of the fact that we're doing it. As I -- you know, we sort of consider the electric system, where we want to change the structure relative to types of sources of supply, the system itself is going to have to be more nimble, flexible, particularly if we look at higher penetrations of renewable facilities. That's going to require some level of intelligence on the grid, potentially, that we haven't had before. And having a process that allows us to expedite those types of -- of projects, I think, will be really critical.

Clearly, anytime we're looking at transmission or any type of infrastructure build-out, issues such as land use and the needs of individuals and the rights-of-way are always a matter of concern. And so I -- I like, you know, the idea of being able to sit to put really our process behind our policy, which is that we do actually favor people who have minimized new land use and we will demonstrate that by effectively allowing for a much more expedited, less costly process, I think is very helpful.

And I know from the development side, anything that makes -- provides clarity and certainty has the advantage of allowing developers to come in with a good deal of confidence that if they use innovation, they stay in the right-of-way, they look at burial, they look at alternatives like DC that might have less land impact, but increase the capability of the system, all of those will be valued, not only in terms of us appreciative of helping make the system that much better, but also in terms of reducing the costs, which ultimately, of course, becomes a benefit to ratepayers or consumers because it reduces the cost of the system, as well as financing costs by providing those levels of certainty.

So, I think for all of these reasons, providing clarity up front and giving people a pathway to a quick solution is -- is a good thing for us to do. So I -- I certainly intend to support this and appreciate the work of staff in terms of working with the parties, understanding concerns and your willingness to look at changes that will make the -- I think the rule making that much stronger, so thank you.

Any further comments?

Commissioner Burman, I know you had some questions.

COMMISSIONER BURMAN: Thank you.

Paul, I know that I had given you some tasks before session the past few days, so I apologize for that, but I know that you are kind enough to indulge me in that.

Can you explain -- I had asked about an analysis that you might have done on looking at all of the different cases that might apply if this policy had been in effect that -- that might have been able to be on an expedited track process. Can you elaborate a little bit about your findings?

MR. AGRESTA: Sure. And there's no need to apologize for giving us tasks.

CHAIR ZIBELMAN: They would be bored if we didn't do that.

COMMISSIONER BURMAN: I have a lot more if you want them.

MR. AGRESTA: I did an analysis of the existing open cases that we have for major electric transmission lines and I found that there's twenty-three open cases. Five of them are amendment cases where none of this is

really relevant because they're just changing one little piece of equipment somewhere.

And there are another five that are in the AC transmission cases, which are in a different category because of the comparative evaluation that's going on there and you wouldn't be able to expedite those cases under this policy and the Commission's already said that in an order.

So that leaves thirteen cases. And out of the thirteen cases, five of them would have been eligible for the expedited treatment. Most of the ones that are not eligible are because they're using new right-of-way.

But, I noticed that there are a couple of projects where they're using existing right-of-way, but they're coming in with towers that are -- that are higher than the existing structures in the -- in the area.

So, one of the things this policy might have accomplished, if it was in place when those projects were filed, was they might have redesigned their project a little bit to keep the towers at a de minimis level, which I think would have been a good thing. It probably would have made it a lot easier to process their projects.

Other -- also, there are some cases where there's just a little tiny bit of right-of-way being acquired. It's possible some of them could have even been slightly redesigned or they could have asked for relief under the de minimis standard to come in. But I -- but I think the -- my analysis shows me anyway that there would be room for the policy to actually have an impact on some of the projects that would be beneficial towards having a better project and, at the same time, would result in perhaps a little quicker process on -- particularly on the rebuilds where we have some very aging infrastructure where there's really a lot of work that needs to be done quickly.

COMMISSIONER BURMAN: Uh-huh. So it wouldn't apply to the current ones. So it's a going-forward process then?

MR. AGRESTA: The -- all of the -- of the five projects that I found that it probably would apply to, four of them are already so far along, some of them are under construction, that it's not -- it's an economic question at this point.

There is one pending project where they're on existing right-of-way, but the towers are -- on average, are slightly -- are more than ten feet higher than the existing towers.

It's possible in that instance there -- I don't want to go too far into it because it's a case that's going to be before you eventually, but the existing towers are on wooden H-frames which is a horizontal configuration, which keeps the towers low. And the applicant is proposing to put the new towers on monopoles, where the wires are in a vertical configuration so the towers have to be higher to get the clearances.

In that instance, it may have been possible to put them on metal H-frames if they didn't want to continue with wood H-frames. There may have been other options they -- they could have reviewed or you could have looked at their facts in the case and maybe determined whether or not they were de minimis. But that case is far enough along now that I wouldn't suggest that we interrupt the process.

The way we've written the policy, you have to give notice that you want expedited treatment when you make your application and when you make your notice to the community. And then there's a -- there's a quick process with a hearing to determine whether you're eligible or not. And all of that is to preserve the due-process rights of the people who are affected by the line.

So it doesn't lend itself to coming in the middle of a case and -- and suddenly implementing this new policy.

COMMISSIONER BURMAN: Okay. Thank you. I appreciate that. I'm going to reserve my right after other folks.

CHAIR ZIBELMAN: Okay. Any further comments?

COMMISSIONER ACAMPORA: I just think that this is a good innovative policy as we march forward into the 21st Century. And we all know that a lot of times when a builder wants to come in and build transmission in a community, that the communities really take objection.

So this, in many ways, solves that problem and does not put a burden on the communities because you have existing state-owned right-of-way that communities somehow get used to that and don't seem to have a problem with it. So I think that this is a good policy as we move forward.

CHAIR ZIBELMAN: Thank you.

Commissioner Sayre, do you --?

COMMISSIONER SAYRE: No.

CHAIR ZIBELMAN: Okay. That's what happens when you sit between two women who keep looking at you. What are you going to do?

COMMISSIONER SAYRE: No comment.

CHAIR ZIBELMAN: So the -- the other thing that I want to observe, actually, triggered a thought, one of the things -- comments that we've received from some of our transmission proceedings is that property owners who are -- are near, adjacent, or in -- in a community when we have elongated proceedings it actually doesn't help them either because until we make a decision, the issues around whether we'll build, where we'll build, et cetera, so anything we can do to avoid -- provide clarity and incentive and get people to use existing rights-of-way so we don't have an impact on -- on property values or have these elongated proceedings which not only affects the transmission developer, but the people whose -- whose property may be either affected directly or -- or adjacent to is -- I think is very helpful.

So hopefully the message will get out and be creative, use existing right-of-way, don't take property, and -- and you'll see that our interest is to helping you get things done, always obviously concerning about when we have other public-interest requirements such as reliability or economic benefit.

So I think this, you know, we're not saying anything about that these will always be needed because the issue is how best to get the needs met. So I think it's a good result.

Commissioner Burman?

COMMISSIONER BURMAN: Thank you. And there are times, though, when using solely existing right-of-ways is not necessarily going to be appropriate or the sole thing that's available. So that you're going to have to -- I mean there are other projects that may be a -- a significant largest -- you know, a statewide economic development project that is beneficial not only to the community, but to New York as a whole, and maybe environmentally sound as well as appropriate. So we do have to look at that as well.

This is -- this particular expedited proceeding and policy is -- is for a very specific initiative that we're looking at. So, we do have to keep that in mind that it is limited.

I -- I -- I am supportive and concur in this. I -- I do want to say that I'd like to see real movement in the area of sound energy transmission projects that work for the communities where they would be built for developers and for all New Yorkers. These projects, as a whole, and I'm not speaking specifically to expedited ones, but as a whole, transmission projects, if done right, would help us smartly invest in updating and addressing New York's antiquated and inefficient electrical transmission systems.

These projects can be done, can be good for the economy by bringing needed jobs to the state. They can be great for the environment and they can possibly bring necessary positive long-term energy rates and tax savings to New Yorkers. I'm very encouraged by the steps taken today, not only in 301, but in 303, to move the ball forward in the common sense proposals to

see these projects, in general, prevail. And my hope is that these will help us move forward ASAP

So that's -- that's really why I'm voting yes on this, because it is a positive step forward, but that I will be pushing to do it and have real successes. You know, my son is going off to college next week and I don't want to be here when he graduates, saying we're still waiting for real successes. So thank you.

CHAIR ZIBELMAN: I thought you were going to say you didn't want him to be in the dark while he was at school.

Thank you for those comments. I think -- I think all -- all of us, in -- in that respect, recognize that getting transmission built when it's required for reliability, congestion reduction, all the benefits, integration of new resources are -- are critical and that moving forward, as you have seen today, you know, we're going to have a commission that's going to be aggressively making sure that we're doing everything we can to get this infrastructure built when it's necessary for the State, but to always do it in the best and smartest way. And I appreciate that, you know, I think everyone sees it -- understands the complexity of these issues.

So with that, I think we need to take a vote. Right? Or have we? I've lost sight. It's been a while.

Okay. All those in favor then of the recommendation to establish a policy statement on expedited process for siting transmission, please indicate by saying aye.

COMMISSIONERS: Aye.

CHAIR ZIBELMAN: Opposed? There being no opposition, the recommendation is adopted.

We have a fourth item for discussion. This is item 601, case 14-V-0089. And we are being graced by Peter McGowan presenting this petition to us. This is regarding the petition for Verizon for a certificate of confirmation for its franchise with the City of Glen Cove.

I think this is -- Peter is the last man standing because everyone else is on vacation or something.

MR. MCGOWAN: Pretty much.

CHAIR ZIBELMAN: Yeah.

MR. MCGOWAN: And I'll start tomorrow.

So thank you and good morning. This is a request by Verizon for a certificate of confirmation for a cable television franchise that was awarded by the City of Glen Cove in Nassau County.

COMMISSIONER SAYRE: Can you just move closer to the microphone?

MR. MCGOWAN: Sure. Because this case involves competitive entry based on a geographically limited franchise, it raises novel and fascinating issues concerning the application of the conditions rule, calling for the maintenance of a level playing field. The level playing field rule states that no municipality may award a franchise that contains economic or regulatory burdens, which, when taken as a whole, are greater or less than those placed on a competing provider in the same franchise area.

Having reviewed the pleadings that were filed in this case by Cablevision and Verizon, staff recommends that the Commission in -- that the Commission's application of a level playing-field rule proceed from the basic premise that competitive entry is good for consumers and that the review balance the desire for effective -- for effective competition that provides choice to all consumers with the benefits of partial entry that provides some level of market entry.

We would acknowledge that in some -- at some point, the disparity of build-out obligations may be great enough to create deleterious

economic impacts on incumbents with more extensive obligations, which carries a risk of damaging, rather than enhancing competition.

In this case Verizon's cable network will extend to over ninety percent of the households in Glen Cove. So given this relatively small disparity, the absence of any evidence of red-lining, and the existence of a so-called claw-back provision in Cablevision's existing franchise, staff recommends that the Commission find the disparity in build-out does not violate the level playing-field rule.

However, in this case as disparate build-out requirements exist, staff closely examined the financial obligations that were imposed by the respective franchises. And in reviewing the relative financial burdens in this case, Staff assessed the annualized payments or obligations that included upfront payments, installment payments over the term of both franchises, and discounted services that were part of the franchise obligation. So we looked at those obligations over the term of both the cable franchise -- I'm sorry -- both the Cablevision franchise and Verizon franchise.

We looked at annualized payments because the franchises had different lengths. In this case, Verizon's annualized payments are a thousand seven hundred and fifty, while Cablevision's annualized payments are approximately eleven thousand two hundred.

Given that, staff recommends that the Commission approve Verizon's franchise subject to a modification to the franchise that would produce annualized financial payments of roughly six thousand five hundred or roughly fifty-seven thousand more than the proposed franchise over the eleven-year period of the Verizon franchise.

We would also expect that the City of Glen Cove will work with Cablevision to modify Cablevision's financial payments to resolve the concerns that we identify concerning the level playing-field rule, and that they would do so for a comparable overall amount, that is fifty-seven thousand less than the existing obligations for the remaining term of Cablevision's franchise.

So the draft order before the Commission addresses several other points, but this was the key issue that was presented in this case. So Staff agrees with the city of Glen Cove that consumers benefit from competitive entry and that partial build-out to approximately -- to -- to more than ninety percent of the households in the city promotes the public interest, and that the franchise should be approved, but a fair allocation of the respective franchise financial obligations to the city between Cablevision and Verizon can and must be fashioned to promote a level playing-field.

So staff recommends that the Commission approve Verizon's certificate of confirmation, subject to, among other conditions, the condition that the franchise be modified to increase the financial obligations as I described.

And we would also expect the city to work with Cablevision to modify its franchise to reduce its financial obligations a commensurate amount.

Thank you.

CHAIR ZIBELMAN: To begin with, I think, Peter, your -- your characterization of this -- of this case is -- is accurate. It's a -- it's a very difficult case because we have, in my mind, before us, some competing public policy concerns, and the need to think about not only just this -- resolving this case, but frankly as we move forward, how best to meet the telecommunication needs in New York, particularly as these needs are changing and broadband and other things are -- are becoming more critical.

And I recognize that as we're dealing with these cases, we are also undergoing a telecom study and I anticipate that a lot of these issues that we're starting to see develop, we'll also be addressing as we think about our policy moving forward with telecommunications. So I -- and I think it's -- the time is right and critical that we get our arms around it.

With that, I think, personally, this is a challenging case from the perspective of the fact that, on one hand, we do have, and I agree, we're talking about competitive markets and having the ability for -- for competitors to come in and make economic decisions in order to increase competition that they believe that they can -- in a way that meets their interests, economic interests, but also serves the public is -- is a good idea.

But, at the same time, we're talking -- we remain to be talking about essential services where there's not really true competition and where we have franchises so that there is government involvement, we can have a concern about equity. I also think that there's -- as a degree and part of the concern I have with this case is well, this may be just a small percentage of the city that is -- Verizon is proposing not to serve, this becomes a what happens if it's thirty percent, what happens if it's forty percent, what happens if it's only -- even without red-lining, it appears to be only in neighborhoods that are in lower incomes than other neighborhoods.

And, so, I don't think that we -- we should -- anyone should read this case as any determination by the part of the -- this -- at least from my perspective, on my part, that -- that having unequal treatment in cities is a good thing. I don't think it's a good thing. I think competition's a good thing.

I think -- and so with that, I believe in this case it's particularly important that the City of Glen Cove, when they awarded the franchise to Cablevision, was smart enough to realize that things can change and included and accepted the claw-back provision which now allows them to go back and modify the franchise for Cablevision, so that there isn't unequal treatment.

And I -- and I would have to say it's both the staff's fashioning of a remedy on the economic side, the fact that this is a small piece of the community and, most importantly, for me the presence of the claw-back that allows me to get comfortable that we can -- even if there is not a level playing-field going into today, we can create a level playing-field coming out of today.

And -- and with that, I would propose to support the -- the staff's recommendation, but -- and I -- but I do think that it's really important that -- that unless we -- as the proposed order does -- stresses that this is very fact specific and it's all these facts that allow us to arrive at -- at least for me, to arrive at this conclusion. So, with that, I intend to -- to support it.

Commissioner Acampora?

COMMISSIONER ACAMPORA: Peter, I wonder if you could just briefly explain for those who might be out there who don't know what a claw-back provision is?

MR. MCGOWAN: Yes. That's probably sort of a colloquial term. But it is essentially a term in the underlying franchise that would give Cablevision a right to go back to the franchising authority and essentially level -- rebalance the financial obligation to match or mirror the obligations that exist in their competitor's franchise.

COMMISSIONER ACAMPORA: And I'm noticing here that we talked about when the franchise agreements terminate. And I think that they're not terminating at the same time, based upon the order. The fact that we're going to be looking into more of these coming along, because we do encourage competition, would it be better that the agreements end at the same time?

MR. MCGOWAN: Well, actually, in this case, interestingly, one -- one franchise extends for fifteen years and the other one extends for twelve years. So they're -- not only do they end at a different time, but they started at different times.

COMMISSIONER ACAMPORA: Yeah.

MR. MCGOWAN: So it might be easier, but I think we were able to -- we were able to deal with that difference. And there is -- you know, who knows what particular facts will be important to the city when they're reviewing and awarding a franchise.

COMMISSIONER ACAMPORA: Right. Might this be something, though, that the cities, the municipalities, themselves, should be a little bit more aware of, now that there, hopefully, will be more competition in certain areas, particularly on Long Island?

MR. MCGOWAN: Well, certainly, they're going to be aware of the length of -- of the term and they're going to want to probably make those comparable. But I think making them exactly co-terminus is probably challenging because you have all different sort of timeframes that are being presented to a particular municipality.

COMMISSIONER ACAMPORA: And you know, I -- I agree with what the Chair has said. We certainly don't want to stand in the way of people having choice.

And Long Island, for a long time, most people have not been able to have that choice. But there again, the concern and what makes me more comfortable with this is that the Commission continued to have -- and the word's been used here a lot and it is my favorite word -- flexibility on individual cases. So that, as the Chair had stated, when we're not talking about ten percent, and we're talking about thirty and forty percent and possibly a no claw-back provision, that the Commission have the ability and not be put in a corner on this so that companies are aware that we will make determinations based upon what we feel is in the best public interest.

MR. MCGOWAN: Absolutely. And I think, as the Chair indicated, this -- you know, the -- the essence of this rule is -- is equity. And when dealing with questions of equity, it's always very factually intensive. So we looked at the circumstances that were presented in this case and came to the determination. The next case will present different facts.

COMMISSIONER ACAMPORA: All right. And I'm sorry that everyone is on vacation and you got stuck doing this.

MR. MCGOWAN: It's always a pleasure. Always a pleasure to be before the Commission.

COMMISSIONER ACAMPORA: You did a wonderful job as usual, so thank you.

CHAIR ZIBELMAN: Commissioner Brown?

COMMISSIONER BROWN: Peter, it's my understanding, and I know some people aren't here that might be able to verify this, that often cable television companies offer different prices for services in areas where they are the sole provider, versus where they are the -- where there are other alternatives to them. Is that -- is that at all factual or is it --?

MR. MCGOWAN: I guess the point I would -- would make is that cable companies have the ability to price in a manner that, you know, meets their interest. So they may have different prices for different areas and they may respond to competitive pressures with different prices.

COMMISSIONER BROWN: You know, as we move forward with this, that's one of the things maybe we'd want to take a look at, because if there -- the benefit to the community is such that by bringing competition in, that prices dramatically change from when you had an incumbent monopoly serving the area. I think that's got to be a consideration for us as we take a look at these particular circumstances in the future.

If the prices really don't change and you're just offering an alternative supplier, that's good too. That has some value, but I'm not sure it has the value of dramatic changes in prices.

MR. MCGOWAN: One of the other things that's difficult about this situation is that there are more competitors than just Verizon.

COMMISSIONER BROWN: I understand.

MR. MCGOWAN: There are satellite providers. So the extent to which a price, you know, change will occur will have this other dynamic of they're faced -- they're facing not only competition from Verizon, the incumbent, but they also face potential challenges from satellite companies.

CHAIR ZIBELMAN: But I -- I think, Commissioner Brown, and this is sort of part of these things that makes for me these -- these kind of issues difficult. I mean I'm kind of thinking in terms of just reality. You're in a community and everyone in one neighborhood gets -- gets a choice and the folks sitting in the next neighborhood sit there and they say how come we can't get that choice.

And people are confounded as to why one and not the other. And unlike a regulated entity, we -- we don't have the obligation to serve and so if there's no franchise, you have the haves and have-nots. And so that's why I think, as we move forward, it's going to be a very fact specific, but we do need to get our arms around how -- how this is really suggesting as how effective competition actually is in this industry.

So, Commissioner Sayre and Commissioner Burman?

COMMISSIONER SAYRE: Well, I'll add to the confusion in this item because there's some -- some other factors, a little bit of regulatory irony that swirl around this whole issue.

When Cablevision started offering Internet protocol based telephony in competition with Verizon, it only offered those telephone services in its established footprint, not necessarily building out to the ends of whatever Verizon exchanges were serving the area.

But in the other direction, when Verizon started offering high speed broadband over its FiOS network, in competition with cable's modem -- Internet modem service, Verizon didn't have to build out to the end of the network because Internet access service is completely unregulated by -- by both the cities and -- and by this Commission.

So the whole area of competition is one that's -- that's very complicated. There's disparate treatment in terms of regulation among the three services of the triple play, telephony, data, and video. And an argument can be made that maybe we're over-regulating cable or maybe we're under-regulating telephony.

But I can say in terms of this item, I'm reluctant to say that we ought to give up our level playing-field rules for video. I'd be very concerned if there is some kind of economic or racial red-lining going on by one competitor over another. There isn't in this case and, as with the Chair, that helped me reach a positive conclusion on this item. And I, like the Chair, look forward to our study of telecom in general to see if we can resolve some of these thorny issues.

CHAIR ZIBELMAN: Thank you.

Commissioner Burman?

COMMISSIONER BURMAN: I just have a clarification. I know that we are saying that Cablevision and the City of Glen Cove will be working together on the claw-back provision. If they are not able to reach consensus and agreement, is there a pathway for them to come back to the Commission for us to help them?

MR. MCGOWAN: Yes. The order, in fact, would invite the parties, if they have difficulty, to come back to the Commission as we may be able to help them resolve whatever differences they have.

COMMISSIONER BURMAN: Okay. Thank you.

COMMISSIONER ACAMPORA: I just want to add one more thing. I'm hoping that the City of Glen Cove and Verizon will get in a conversation because what we're talking about is such a small percentage of folks who don't and will not have this service that the company will agree to bring all those

other people in at some point in time, so that they will be able to feel whole as the rest of the town.

CHAIR ZIBELMAN: Thank you. I think it's a good observation. I think for those of us -- for us, it's a little hard to see how you can serve ninety percent of a community and -- and just leave a little bit out and say we can't do that. It seems like -- it doesn't seem to be particularly good business, but it's not our decision to make, I guess, in this instance.

With that, first of all, I appreciate the work that Peter and the rest of the telecom staff -- I know Steven and Kevin, you're sitting here, but -- and Doug, I know you were involved in this as this was a difficult case, Mike Corso. There's a lot of input. I know there was a lot of back and forth, but I believe that we've arrived at the -- at a good conclusion.

So, with that, all those in favor of the recommendation to approve, with conditions, the petition of Verizon for a certificate of confirmation for a geographically limited franchise for the City of Glen Cove, please indicate by saying aye.

THE COMMISSIONERS: Aye.

CHAIR ZIBELMAN: Opposed? Hearing no opposition, there being none, the recommendation is adopted, so thank you.

We'll move to the consent agenda. Are there -- does any Commissioner want to abstain from any matter on the consent agenda?

Okay. Any comments on any matters on the consent agenda?

Okay. With that, all those in favor of the recommendations on the consent agenda, please indicate by saying aye.

THE COMMISSIONERS: Aye.

CHAIR ZIBELMAN: Opposed? There being no opposition, the -- the recommendations are adopted.

Secretary Burgess, are there any other matters before us today?

SECRETARY BURGESS: There are no other matters for today and the next Commission session will be September 4th at ten thirty.

CHAIR ZIBELMAN: Well, thank you. And I hope everyone enjoys the rest of your summer. Stay safe and see you after Labor Day.

(The proceeding adjourned at 11:40 a.m.)

STATE OF NEW YORK

I, Jamie-Lee Greene, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 62, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 19th day of August, 2014.

Jamie-Lee Greene, Reporter