

Public Service Commission - Commission Meeting
December 12, 2019

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TRANSCRIPT OF THE
PUBLIC SERVICE COMMISSION
COMMISSION MEETING

THURSDAY, DECEMBER 12, 2019
90 CHURCH STREET
BOROUGH OF MANHATTAN
10:34 a.m.

Reported By:
Nicole Ellis

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1 HEARING CONVENED AT 10:54 a.m.

2 PRESENT:

3 JOHN B. RHODES, CHAIR

4 JOHN B. HOWARD, COMMISSIONER

5 DIANE X. BURMAN, COMMISSIONER

6 JAMES S. ALESI, COMMISSIONER

7 TRACEY A. EDWARDS, COMMISSIONER

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1 Proceedings

2 CHAIRMAN RHODES: Good morning.

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

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

7 SECRETARY PHILLIPS: There are no
8 changes.

9 CHAIRMAN RHODES: So with that,
10 we'll move into the regular agenda of
11 discussion items.

12 The first item for discussion is
13 item 201, Case 16-M-0618 as it relates to
14 the proceeding on motion of the Commission
15 to seek consequences against Atlantic
16 Power & Gas, LLC for violations of the
17 uniform business practices presented by
18 Bruce Alch, Deputy Director, Office of
19 Consumer Services.

20 Lucas McNamara, Assistant Counsel,
21 is available for questions.

22 And as an aid to our court
23 reporter, I'm going to ask that our staff
24 and members, when they speak they begin
25 first with their name, although in the

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2 case of Bruce you don't need to because
3 we've just identified you, but please
4 begin.

5 MR. ALCH: Good morning, Chair
6 Rhodes and Commissioners.

7 Item 201 imposes consequences
8 against Atlantic Power & Gas, or AP&G, for
9 failure to comply with the uniform
10 business practices and prior commission
11 orders to the detriment of its customers.

12 The information before the
13 Commission today establishes that on
14 numerous occasions AP&G improperly stopped
15 its customers from leaving AP&G service
16 and taking service from a different energy
17 service company or ESCO.

18 While the UBP generally permits
19 an ESCO to attempt to reinstate or win
20 back a customer or take any steps to
21 enroll with another customer, the UBP
22 requires that the ESCO obtain specific
23 verifiable authorization from the customer
24 before canceling the pending enrollment.

25 The typical form of verifiable

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authorization is a taped telephone call of the customer confirming that he or she would like to remain with the incumbent ESCO. The confirmation must occur before the incumbent ESCO cancels the customers enrollment with the pending ESCO.

The information before the Commission establishes that AP&G did not properly record or document any customer authorizations before it reinstated the customers at issue, and therefore AP&G did not obtain the required verifiable authorization before it canceled customers pending enrollments with the other ESCOs.

The information before the Commission likewise establishes that on multiple occasions AP&G stopped the customers from leaving AP&G service returning to utility service. Under no circumstances does the UBP permit an ESCO to act to prevent a customer from returning to utility service, and therefore by definition AP&G slammed these customers.

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Notably, this is not the first time that AP&G has been before the Commission for violations of the UBP. In 2017, the Commission revoked AP&G's ability to market to or enroll customers for violations of numerous customer protection revisions.

One of the 2017 violations was AP&G's failure to comply with the UBP requirements concerning customer reinstatements, the very same requirements that are at issue today.

Given that this is AP&G's second time before the Commission for violating required business practices and rules to the detriment of several customers, the item before you recommends the revocation of AP&G's eligibility to operate in New York State.

This concludes my presentation on the item. Lucas McNamara and myself will answer any questions you have.

CHAIRMAN RHODES: Thank you very much.

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2 To my eyes, this is clearcut
3 case, clearcut case of behavior --
4 and actions that violate commission
5 rules as established in uniform
6 business practices, and it's a clearcut
7 case of behavior and actions to harm
8 customers.

9 And the record is clear and the
10 remedy is clear and I'm going to support
11 this item.

12 Commissioner Burman.

13 COMMR. BURMAN: I support the
14 item.

15 CHAIRMAN RHODES: Commissioner
16 Alesi.

17 COMMR. ALESI: Speaking about
18 business practices in general, any
19 business that relies on this kind of
20 tactic to gain or maintain a customer base
21 is not only deceitful, but it's doomed to
22 failure.

23 Sadly, AP&G's customers have
24 had to endure this nefarious
25 business

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practice, but the good news is AP&G is now out of business.

I'll be supporting this.

CHAIRMAN RHODES: Commissioner Edwards.

COMMR. EDWARDS: I will be supporting it as well. I just have a question.

Has any other company had one infraction already? 'Cause this is their second infraction, right? This was their second infraction? Is there anybody else that's in the category of having one infraction?

MR. McNAMARA: Lucas McNamara from counsel's office.

I believe -- so my understanding is that there are ESCOs in the State of New York that have had penalties imposed on them by the Commission.

Some of those penalties are until the Commission grants you approval to market and enroll again, that opportunity

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1 is prohibited. And then some of those

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3 companies have come back into compliance
4 and been able to market and enroll again.

5 So there are things like that in
6 the past. I don't know of any company in
7 a similar position to this one, with a
8 similar prior violation of this nature.

9 MR. ALCH: The various violations
10 on several components of the UBP. On
11 occasion ESCOs have been curtailed from
12 continuing enrollment, it's a very rare
13 instance that an ESCO was falling through
14 as a revocation on their ability to
15 enroll.

16 COMMR. EDWARDS: So just as a
17 follow up, would you be able to provide us
18 with any company who has a first violation
19 and has not come back into compliance? So
20 then if there was another violation, they
21 would be in the same spot as this company.

22 MR. ALCH: I can provide a list
23 of actions that have been taken by the
24 commission, sure.

25 COMMR. EDWARDS: Perfect. Thank

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1 you.

2 Proceedings

3 CHAIRMAN RHODES: Commissioner
4 Howard.

5 COMMR. HOWARD: Thank you,
6 Mr. Chairman.

7 This case has several very
8 troubling aspects to me. First it shows
9 the vulnerability of customers to
10 unscrupulous business practices by certain
11 energy service companies, commonly
12 referred to as ESCOs.

13 The company in question has
14 serious violations to the universal --
15 commission's uniform business practice
16 including slamming as well as serious
17 misrepresentations to commission staff.

18 All these actions combined with
19 the extraordinary bad behavior of one of
20 AP&G's employees more than justifies the
21 action we're taking today.

22 It is my hope that the Commission's
23 action will send a strong signal to the ESCO
24 community that this commission will not tolerate
25 repeated abuse of energy customers. And I would

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hope if deemed appropriate, the circumstances like we're remedying today, referrals may be made to appropriate law enforcement agencies, who may commence either civil or necessary criminal proceedings.

I applaud the staff for the work on this case and encourage any customer of an ESCO or regulated utility if they feel they have been treated unfairly that they contact the Department of Public Service Office of Consumer Services for assistance.

And again, thank you, ladies and gentlemen, this was work well done. Thank you.

CHAIRMAN RHODES: Thank you.

With that, we will proceed to vote on the item.

My own vote is in favor of the recommendation to revoke the company's eligibility to operate as an ESCO in New York State as discussed.

Commissioner Burman, how do you vote?

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2 COMMR. BURMAN: Yes.

3 CHAIRMAN RHODES: Commissioner
4 Alesi, how do you vote?

5 COMMR. ALESI: Yes.

6 CHAIRMAN RHODES: Commissioner
7 Edwards, how do you vote?

8 COMMR. EDWARDS: Yes.

9 CHAIRMAN RHODES: Commissioner
10 Howard, how do you vote?

11 COMMR. HOWARD: Yes.

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

15 Thank you, Luke and Bruce.

16 We will now move to the second
17 item for discussion, which is item 202,
18 Case 15-M-0127, as it relates to the
19 proceeding on motion of the Commission to
20 assess certain aspects of the retail
21 energy market in New York State, presented
22 by Ashley Moreno, Acting Chief of
23 Administrative Law.

24 Luke McNamara, assistant counsel;
25 and Erika Bergen, Administrative Law

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Judge; Ted Kelly, assistant counsel; and John Sipos, deputy general counsel are available for questions.

And I repeat the same request, for the benefit of our transcript, please identify yourself when you make comments or answer questions, except Ashley Moreno because you get to begin.

MS. MORENO: Thank you very much.

Good morning, Chairman Rhodes and Commissioners.

As you're aware, the Commission has continuously evaluated the retail energy market since its inception in the late 1990s, and periodically has issued orders making adjustments to the market in the interest of protecting consumers.

At the same time, the Department's Office of General Counsel has defended the Commission's authority to oversee energy service companies, ESCOs, and the ESCO market in court.

Item 202 before you, would further strengthen protections for

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2 residential and small commercial ESCO
3 customers, and would ensure that only
4 those ESCOs that will comply with the
5 Commission's rules and advance the
6 Commission's and the State's objectives
7 participate in market.

8 Mr. McNamara will provide you
9 with an overview of the Department's
10 jurisdiction relative to the ESCO market.
11 And Judge Bergen will provide you with an
12 overview of the administrative process
13 that was undertaken in these proceedings,
14 as well as the primary reforms that we
15 recommend in the draft order.

16 MR. McNAMARA: Good morning,
17 Chair. Good morning, Commissioners. This
18 is Luke McNamara from the Office of
19 General Counsel.

20 In the last decade, the
21 Commission began taking significant steps
22 to protect New York State consumers from
23 misleading ESCO marketing and overpriced
24 ESCO products.

25 In response to these reforms, a

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number of ESCOs and ESCO associations sued the Commission in court and challenged the Commission's consumer protection authority.

During the course of the proceedings that led to today's draft order, the New York courts have resolved two important cases in favor of the Commission.

As to the first of these cases, the Commission acted in 2016 to protect low-income New Yorkers by halting ESCOs ability to charge those customers more than they would have paid had the customers taken full utility service.

In November 2018, a unanimous panel of a New York appellate court reviewed the Commission's order and upheld these consumer protections as lawful in all respects.

In particular, that court recognized that when ESCOs charged consumers more for the same product that the utility would have provided the

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2 customers, those actions conflicted with
3 the original purpose of opening up the
4 market to ESCOs.

5 More recently in May of this
6 year, the New York State Court of Appeals,
7 New York State's highest court, definitely
8 rejected ESCOs claims that the Commission
9 lacked the authority to protect consumers
10 in New York.

11 A unanimous panel of that court
12 agreed with the Commission that the
13 legislature granted the Commission broad
14 authority that included the power to
15 regulate ESCOs access to public utility
16 systems, the systems at which ESCOs rely
17 on to conduct business in the State of New
18 York.

19 The reforms discussed in today's
20 draft order fall squarely within the
21 Commission's authority to protect New York
22 State consumers, and that authority has
23 been repeatedly affirmed in the courts,
24 including by the State's highest court.

25 Judge Bergen will now provide an

1 Proceedings

2 overview of the proceedings and of the
3 reform set forth in the draft item.

4 ALJ BERGEN: Good morning. This
5 phase of the proceedings was commenced in
6 December 2016 as part of the Commission's
7 efforts to examine whether reforms to the
8 retail energy market were warranted.

9 A notice was issued, a public
10 notice was issued at that time informing
11 interested stakeholders that the
12 Commission was concerned about reports of
13 customer abuses, as well as the lack of
14 innovative energy-related products and
15 services available to mass-market
16 customers.

17 The notice stated that an
18 administrative hearing would be held to
19 consider, among other things, whether the
20 retail energy market should be permitted
21 to continue; whether the rules and
22 regulations applicable to the market
23 should be reformed to additionally protect
24 mass-market customers; and whether new
25 products could be developed to enhance

1 Proceedings

2 energy-related benefits to customers.

3 Nineteen parties actively
4 participated in the administrative hearing
5 process by submitting testimony, exhibits,
6 and engaging in cross-examination and/or
7 submitting post-hearing briefs. These
8 parties include individual ESCOs, industry
9 trade groups, public interest groups, and
10 staff of the Department of Public Service,
11 the New York State Attorney General's
12 Office, and the City of New York.

13 Generally, the non-ESCO parties
14 asserted that mass-market ESCO customers
15 have been paying substantially more for
16 electric and gas service than those
17 customers would have paid had they
18 remained customers of traditional
19 utilities.

20 These parties also generally
21 expressed concerns the ESCOs have not been
22 providing real and measurable value to
23 mass-market customers.

24 Some non-ESCO parties argued for
25 a complete dismantling of the market while

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others argued for substantial systematic reforms to limit the types and prices of ESCO offered products and services.

The ESCO parties, for their part, generally opined that there was little to nothing wrong with the structure of the retail energy market and that the Commission need not implement sweeping reforms.

Some ESCOs did, however, acknowledge that there are a few bad actors in the market and suggested mild to moderate reforms to address that problem, such as more rigorous eligibility criteria or the implementation of financial security requirement.

The draft order before you would strength protections for residential and small commercial customers by, among other things, adopting limitations on the types and prices of products of may be offered to those customers; improving the transparency of information about ESCO products and pricing; and increasing ESCO accountability by enhancing eligibility

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2 criteria.

3 With respect to ESCO product
4 offerings, the draft order would permit
5 ESCOs to offer only the variable rate
6 commodity-only products that guarantee
7 savings in comparison to relevant utility
8 commodity service; a fixed-rate product
9 that is limited in price to a 12-month
10 trailing average utility supply rate plus
11 a five percent premium; or a renewable
12 electric commodity that would meet
13 specific standards as outlined in the
14 draft order.

15 These renewable products would be
16 required to have a renewable percentage
17 mix at least 50 percent greater than is
18 required by the renewable energy standard
19 obligation for that year for each load
20 serving entity including ESCOs; it would
21 comply with the renewable energy standard
22 locational and delivery requirements when
23 procuring their renewable energy credits
24 or entering into bilateral contracts; and
25 it would provide transparent information

1 Proceedings

2 and disclosure to its customers.

3 ESCOs will no longer be permitted
4 to offer commodity bundles of products and
5 services that are not energy related.

6 This prohibition would apply to, among
7 other things, items traditionally used to
8 induce customers to enroll with the
9 customers such as gift cards, frequent
10 flier miles, and sports teams tickets.

11 No ESCO, except for Agway,
12 provided any meaningful information
13 regarding energy-related, value-added
14 products or services that they provide to
15 New York customers. Because there may be
16 innovative energy-related products or
17 services that potentially could provide
18 benefits to mass-market customers, this
19 draft order would direct staff and
20 interested stakeholders to explore and
21 track two of these proceedings which
22 products and services, if any, can and
23 should be offered by ESCOs and then report
24 back to the Commission.

25 As for Agway, it offered proof

1 Proceedings

2 regarding its energy guard program, which
3 is a prepaid home heating and cooling
4 system maintenance contract. This draft
5 order would permit Agway to continue
6 marketing that product.

7 In addition, during the pendency
8 of the track two collaborative, any other
9 ESCO would be permitted to apply to the
10 Commission for approval to provide a
11 sufficiently similar product.

12 The draft order before you also
13 would increase price transparency for
14 customers. Customers cannot perceive the
15 existence or lack of value associated with
16 an ESCO product if it is not easy to
17 compare ESCO prices to utility prices.

18 The draft order would direct each
19 utility to work with DPS staff to develop
20 individualized plans toward implementing
21 an unbilled price comparison of ESCOs
22 utility prices, as well as an itemized
23 billing of any non-commodity ESCO charges.

24 Adding this information to the
25 customer bill will empower customers to

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make important choices about their energy provider and products.

The draft order would also increase ESCO accountability by enhancing eligibility criteria. All ESCOs would be required to identify all methods it intends to employ and marketing its services to mass-market customers;

Disclose specific data regarding complaints made in other states about the ESCO and all its related affiliates;

Disclose information regarding any data security breaches the ESCO has suffered in other states;

Specify policies it intends to use to secure data customer;

And disclose its bankruptcy history and other relevant details of its corporate structure and history.

Further, as part of the application process, each ESCO would submit a sworn affidavit or affirmation of one of its officers stating that the ESCO will comply with all applicable laws and

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2 regulations.

3 All ESCOs interested in entering
4 into new agreements to provide retail
5 energy services to mass-market customers
6 in New York would be required to submit a
7 new application within 90 days of the
8 issuance of the order.

9 As specified in the order,
10 eligibility to provide such services will
11 be based on compliance with the enhanced
12 requirements that are intended to improve
13 transparency and accountability on the
14 part of the ESCOs, and to enhance the
15 markets ability to function.

16 Staff would review the
17 applications and where appropriate
18 recommend that the Commission deny certain
19 applications that do not meet the
20 criteria.

21 Finally, the draft order would
22 establish further process on ESCO
23 financial surety requirements. It directs
24 staff to collaborate with stakeholders to
25 identify an appropriate form or forms of

1 Proceedings

2 financial surety and a proposed
3 methodology to calculate the required
4 amount.

5 Staff would be required to file a
6 report of these recommendations within
7 120 days of the date of the issuance of
8 the order. The Commission would then
9 determine which type or types of financial
10 surety would be required and how the
11 required amount would be calculated.

12 In conclusion, we recommend that
13 the draft order be adopted in its
14 entirety. As described, the order would
15 enact significant reforms for the
16 protection of residential and small
17 commercial customers. At the same time,
18 the order would allow those ESCOs
19 committed to furthering the Commission's
20 and the State's policy goals to provide
21 meaningful benefits to its customers.

22 Thank you. We're available for
23 questions.

24 CHAIRMAN RHODES: Thank you.

25 This order to me is a reset,

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2 clearly delineates what is no longer
3 permitted on the clear and foundational
4 principal of protecting customers. And it
5 acts against companies that have acted
6 badly and it acts against their practices.

7 It clearly sets new standards for
8 eligibility of these companies, including
9 sureties, it clearly delineates what's
10 permitted: Variable-rate contracts with
11 guaranteed savings, fixed-rate contracts
12 within the limits, renewable energy
13 contracts that are as described, and
14 certain, at this point only one,
15 energy-value added services.

16 Clearly provides for transparency
17 and useful comparative information for
18 customers and clearly encourages the
19 development of value-added services.

20 So in my mind, it provides
21 clarity. It provides guardrails for
22 market for the customers. For those ESCOs
23 that are committed to serving customers
24 well and flying straight, it provides
25 clarity. And for those companies that are

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not interested in doing so, it also provides clarity that New York State is no longer open for business for them.

Commissioner Burman.

COMMR. BURMAN: Thank you.

So I think I need to do a little bit of level setting and sort of give my perspective, part of that is also to look at what we have before us.

We have in New York approximately 200 ESCOs operating in New York and out of those 200 ESCOs, from the information I've gotten from staff as of September 2019, there's two million mass-market ESCO customers. And out of that two million, 1.4 are on the electric side and 600,000 are on the gas side.

So from my perspective what's really clear is a significant number of customers that we need to make sure when we're looking at this from a transition perspective, from the existing rules to the new rules, what that means for the customers. And part of what that means

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for the customers is also looking about how that will be able to be achieved for consumer protection and also enabling folks to have choice and enabling folks to be able to choose an ESCO if they so choose.

And we don't, as we saw from the first item, we don't want bad ESCOs to operate in New York, and it's important from an enforcement perspective that we make that very clear. The first item had a very egregious situation and we've taken action.

I think when we look at that it's also important to see what our enforcement has been since 2009. So since 2009, we've had 20 enforcement actions, according to staff and the research, maybe one or two who got missed, but we've had 20 enforcement actions since 2009. Out of those 20 enforcement actions, 11 of them have been for ESCOs that are not active in New York and have no customers.

So what I call it sort of a pro

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forma enforcement action is we're getting them off of our books so they don't come forward and say they want to be active. They have no customers and they are not active.

So that leaves us with nine others. Out of those nine, two of them we reinstated after taking some enforcement actions. And then one we completely revoked their ability. One of those nine is the one that we have before us today where we're completely revoking.

So I think for me some of the perspective I have is that enforcement does work. It is important to have a fair enforcement process and also to make sure that we're rigorous in it.

When we look back at some of the issues that we've had, it's been when we have not really made it clear that we're focused on enforcement, and so some of that even in terms of looking at some of the new requirements, it's really taking a hard look at what we can do from our own

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end of the processes.

I think it's important to look at the new eligibility requirements because I think on their face they are intended to be fair and they are intended to be helpful to an ESCO knowing what the rules of the road are, but also for the customers protection when needed.

And I say "when needed" because there are many very good ESCOs who are operating and work very well with their customers and we need to be excited about that. I think that we would have seen a larger increase of enforcement if there were -- if that wasn't the case.

In many ways, today's first ESCO decision was really an outlier in just the egregiousness of it, but again we'll take action when there's a very egregious need to.

So looking at the ESCO eligibility requirements, the new ones, is really eight:

ESCOs shall identify their

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2 methods used to market to customers;

3 ESCOs shall disclose specified
4 complaint data that have been made in
5 other states;

6 ESCOs shall disclose specified
7 security breaches in other states;

8 ESCO shall specify policies
9 directed at securing customer data;

10 ESCOs shall disclose bankruptcy
11 history;

12 And ESCO officers shall affirm
13 that the ESCO will comply with law and
14 regulations.

15 And then in order to continue --
16 this is the one that I'm going to drill
17 down on: "In order to continue to enter
18 new agreements in New York, ESCOs must
19 submit updated eligibility applications
20 within 90 days."

21 Paired with that is the next one
22 which is: "Staff will substantially
23 review eligibility applications and where
24 appropriate recommend to the Commission
25 that eligibility be denied."

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I think there is a recognition that we are now going to require staff to substantially review. It doesn't mean that staff wasn't doing their due diligence, but that it is a recognition for the Commission to say this is a requirement and you must substantially review. There has not been a substantial review in a long time and so now that's part of it.

But when we substantially review the eligibility applications, it's not to -- it's really intended to help facilitate those ESCOs who want to thrive in New York with their customers and follow the rules, to really be able to operate in the market. It's not intended to be a way to shutdown good ESCOs that want to do that.

The concern I have is that we may wind up going a little bit backwards to where we were before. As most of you know, I had some serious issues with the process that got us here. It's been a very long one, and it's been one that has

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2 been inundated with missteps on us
3 following the right process and having to
4 sort of correctively take action to fix
5 some of our process missteps.

6 It's been fraught with all sides
7 not feeling that they can trust one
8 another, and so that has produced a lot of
9 blockage in terms of good collaboration.

10 In the past, collaborative
11 processes have yielded very good results,
12 especially in the ESCO market. And so
13 it's really important for us to be mindful
14 of that because while we are going forward
15 from a path-forward perspective, we need
16 to keep in mind that we need to let go a
17 lot of the anger that was there because if
18 we work together in establishing the
19 guardrails in a way that helps to flourish
20 the market, it actually can benefit the
21 customers, and making sure that that's our
22 primary motivation.

23 For me, the ESCOs must submit
24 updated eligibility applications within
25 90 days. So there that's a regulatory

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2 certainty, within 90 days you must submit.
3 The difficulty is that there's no
4 requirement for when the deadline is for
5 the staff to substantially review and then
6 to bring it back to the Commission on if
7 this eligibility is denied.

8 And so for me, I really want to
9 understand when we will be seeing that and
10 have a full report about that substantial
11 review. Because it will be difficult if
12 we do one-offs in terms of we see
13 something and we say no, we're going to
14 deny them. But I need to see that there's
15 a fairness and that all of the ESCOs, all
16 200 or so or maybe new ones, are being
17 looked at in a careful way and that we can
18 judge the denial or the not on what we
19 have before us and understand and make
20 sure that there's no unfairness against
21 one and pushing somebody else that may
22 have the same issues.

23 So it's really important to me
24 that equity is there.

25 I understand that while the

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eligibility application is being looked at the ESCO can continue to operate; however, the other piece of it is that when their contracts end, what does that mean?

So if a contract ends tomorrow, what do they have to do to continue to operate? And my understanding is that they would have to give -- have to get confirmative consent from the ESCO customer to, if they want to move into one of the other pricing product requirements.

So if they want to move into a fixed-rate product priced under trailing average plus five percent, or if they want to move them to a renewable, that they need to get affirmative consent; is that fair?

Is that fair reading of it, not whether its fair.

MR. McNAMARA: So what I would say is that the affirmative consent comes at the time where an ESCO contract changes or a renewal changes based on these new criteria. And first of all, there's going

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to be a 60-day lag before the new UBP goes into effect. After which all new ESCO contracts need to satisfy the criteria set forth in the order, and that would include contracts that have an automatic renewal provision at the time where that automatic rule comes up.

If the contract needs to be changed to comply with the new rules, they'll have to get consent from the customer because it's a different contract with new criteria that's compliant with the order.

COMMR. BURMAN: And that also means that month to month, so a new contract then would be after the month ends?

MR. McNAMARA: Yes. So when the 60 days occur and the new UBP provisions go into effect, and let's say five days later there's an automatic renewal provision, the contract at that point -- so if it's compliant, it's compliant and the automatic renewal provision can take

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effect if both parties want it to.

If it's noncompliant and the ESCO is changing the nature of the offer on the new contract, and that's five days after the 60 days, that new contract needs to be compliant with the order.

So that's how the provisions will roll in customer contracts.

COMMR. BURMAN: I think that's going to wind up being a problem for the customer.

So I think that the flexibility should be, and because if we really want to make this work and especially if we want our goals if -- an ESCO is looking to go to a renewable energy product and that's something that we would be supportive of and it's there, I do think it's something to look at about what you need from the affirmative consent perspective or non-affirmative consent.

I'm going to save some of my comments for that because of the disconnect I see in the CCA process versus

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2 this. I think that for me it becomes
3 challenging when we're looking at the
4 eligibility requirements, which I think
5 are valid and good, and then yet we're not
6 applying it in the same fashion to the
7 CCAs, and we're also not applying it in
8 the same fashion to DERs and others.

9 So it's, in many aspects, a lot
10 of the issues that are in -- potentially
11 that are in the ESCO market are also ones
12 that we should be grappling with in the
13 DER market, as well as and especially in
14 the CCA where it's an opt-out.

15 And so for me it leaves me
16 concerned that like before, where we
17 changed the rules without an appropriate
18 flexibility in that fly path from the
19 transition, here we're making very crude
20 cutoffs and also having it in a way that
21 gives very little time for folks to get
22 affirmative consent.

23 And some of rationale for why the
24 majority allowed the CCA to not get
25 affirmative consent and have opt-outs

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could be the very same rationale for why ESCOs themselves would be allowed to have that, especially for customers that are existing. And for me, it's not about the industry, it's about what works for the customer.

We've seen from customers who don't have choice in the gas space, the loud outcry when folks want certain things. And so I just -- I'm a little concerned about what that means, and I think we should be open to a better process for that.

MR. KELLY: Ted Kelly. So I certainly understand concerns about the transitional period and making sure that runs smoothly.

I do want to note, the reason we do think affirmative consent is important if the contract is changing, and let me give you an example. And you mentioned if they want to switch customers who are currently on, say, a variable-rate product with no special features that wouldn't be

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2 compliant with the new order to a
3 renewable-source product. It's reasonable
4 that that renewably-sourced product is
5 likely to be at a premium because
6 renewable energy can be more expensive
7 when it's being procured that way, and the
8 goal is to ask for customers who are
9 interested to actually pay a premium to
10 get more renewables built.

11 So in that case, we think it's
12 important that the customer get
13 affirmatively asked, We'd like to move to
14 this renewable product, it's likely to
15 come at a premium, is that okay?

16 I think that's why we think
17 affirmative consent is important, and just
18 to kind of talk a little, since you
19 mentioned this, the CCA program. I think
20 that kind of core reason there the opt-out
21 was decided to be appropriate by the
22 Commission is there was a determination
23 that the municipality, which is
24 responsible -- which generally is
25 responsible for issuing franchise and

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placement and therefore chose electric companies serves their residents in the first play, that they can be a reasonable proxy for customer consent with the very important ability for customers to opt-out.

So that's where I draw the line here. And just to be clear, in the CCA program, if a contract is ever being changed, first of all, of course the municipality would have to explicitly agree to that. And then second of all, customers would get a renewed opportunity to opt-out, a renewed notification that hey, your CCA contract is changing, do you still want to stay in because of the change are you interested in opting out?

COMMR. BURMAN: Right. And I'm going, for the interest of time, I have raised a lot of issues on the CCA opt-out, and especially because I think there are a lot of challenges.

And so my comments that I've made at several of the sessions related to CCA,

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I think are very applicable. Again we're going to get into a little bit on the consolidated billing side.

I'm just raising a red flag to what I see as a problem, and I think that that is where we should have more flexibility and work not only with the ESCOs but also with the customers in terms of that engagement in a way that they be more productive and not have the potential chilling effect on the two million customers.

What worries me is that we're going to wind up having to switch, potentially, a lot of customers to the utilities. And while they may be able to take that without any issues, for me, it's about the loss of that market, that at least two million customers currently seem to want, in some fashion, we've not seen a large uptick in complaints from customers that say, we don't want the ESCO. So that to me is concerning.

So I'm going to stop there. I do

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2 think that -- I think it's appropriate on
3 all of the issues that I raised that we
4 look a little bit at it.

5 The other item that I will raise,
6 just is important to me, in the value
7 added. We have talked since the beginning
8 of REV about value-added products. I
9 think it's really important that we -- and
10 I think it's great that we're starting
11 collaborative on this.

12 I am worried that we have -- are
13 only allowing at this time one company to
14 have that value-added product, and that
15 we're saying, Well that's the only one
16 that's before us. They are doing a great
17 job and nobody else came up with anything.

18 I think that part of the nature
19 of the value-added product issues, are
20 that it's very hard even for us to
21 understand what it is that we're looking
22 at and how that fits. But it's really
23 important, it can be really helpful to a
24 lot of our goals, especially as we look to
25 AMI and demand response.

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And so for me I would like to make sure that we are truly enabling thoughtful conversation that leads to clear definition of value added but doesn't also chill the ESCOs opportunity to be adding that. And to have it done in a way that is a helpful conversation not one that seems to say, No, we don't like it 'cause you're an ESCO, but go over to the DER space and you'll be fine. That worries me, or go to CCA and you'll be fine. And the rules have to really be appropriate and fair across the board.

I also would like to see, though, that if an ESCO says, Fine, say Agway, the company Agway, has the value-added product that you are good with, that's what they put in their eligibility application, that they are going to do also that doesn't mean they have to wait for approval.

The order seems to be somewhat unclear, 'cause it would seem they have to make a petition to be able to do that which would delay things. And from my

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2 perspective, if we know already that
3 that's something that is appropriate and
4 they showcase that they can do it and also
5 we should be enabling a conversation with
6 what that looks like without stepping into
7 any trade security issues, I think that's
8 something we should be doing, especially
9 if that's been identified as a good one.

10 I'm going to be voting in part in
11 agreement, but I'm going to be descending
12 in what I think are some poor fails, and
13 also in the step forward, and also because
14 I think that the whole process from the
15 get-go has been fraught with issues and we
16 need to take stock in lessons learning
17 from that so we don't repeat those
18 failures and that we also are helping in
19 that regard.

20 I really am concerned that we're
21 going to cause disruption to customers and
22 that it's actually going to be a step
23 backwards in some of our goals and that
24 concerns me.

25 I do want to give a lot of credit

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to both ALJs as well as staff, not only staff that was involved in this, but the staff behind the scenes that have been working on the issues.

And I also want to give a lot of credit for those folks who are trying to figure out how to serve customers in New York in a way that helps things.

So thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi.

COMMR. ALESI: Thank you,
Mr. Chairman.

I agree that this does strengthen protection for residential and small business customers. It improves transparency and accountability by way of enhanced eligibility requirements which focus on renewable energy credits and eliminates things like gift cards and other incentives thereby making their product offerings more transparent to customers.

This is a solid recommendation

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resulting in significant reforms and I'll
be supporting it.

CHAIRMAN RHODES: Thank you.
Commissioner Edwards.

COMMR. EDWARDS: I have no
comments, I'm going to support.

CHAIRMAN RHODES: Thank you.
Commissioner Howard.

COMMR. HOWARD: Thank you.

For those who may not know, I've
been a keen observer of this for two
decades.

I want to begin my comments on
the commitment of the trial staff who
worked on this order for a job well done,
thank you.

For two decades New York State
has participated in a grand experiment,
utility deregulation and the introduction
of market forces to both the wholesale,
retail sale of electricity and natural
gas.

The expressed purpose of this
exercise was to provide economic models

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that would lower cost and inspire innovation to customers both large and small.

In some cases, the experiment has worked and the wholesale electric market, we've seen economic efficiencies drive down costs to the lower levels than we would have had under the vertically integrated utility model while maintaining exceptional system reliability.

For the large industrial and commercial customers who have sufficient market power, we have seen real benefits to shopping for both energy and energy services.

However, such positive results have not universally come to small mass-market customers, who in many cases, far too many cases, paid more than they would have by staying with their incumbent utility with no customer-side benefits of innovation.

Over this period, many, tens of millions of dollars, was paid by customers

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over what they had paid had they not migrated away.

Unlike our most common energy purchase, say for motor fuel, where customers can easily identify the differences in prices or services at the pump or the service station, the current system of ESCO retailers makes it difficult, or in some cases nearly impossible, for customers, particularly those who are not particularly sophisticated, in purchasing energy to see if they are realizing any savings largely due to the lack of transparency in pricing.

Today's actions will do two very important reforms. First, by requiring utilities to provide true price comparisons to ESCO customers, what the ESCO price is compared to what the utility would charge.

Second, it puts the onus on ESCOs to offer additional energy services that provide real value to customers and the

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energy systems of our state, thus potentially, I must say potentially, fulfilling the promise of ESCOs who provide customers that would work on both sides of the customers meter to maximize customer benefits.

I believe today's commission's action will go a long way in improving our retail energy markets for small customers. But I strongly encourage staff and the stakeholders to continue to work on this proceeding as expeditiously as possible with the same critical eye that produced today's order.

Again, thank you for the good work.

CHAIRMAN RHODES: Thank you.

With that, we will now proceed to vote on the item.

My own vote is in favor of the recommendation to adopt changes to the retail access energy market and establish further processes as discussed.

Commission Burman, how do you

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2 vote?

3 COMMR. BURMAN: I concur in part
4 and dissent in part.

5 CHAIRMAN RHODES: Commissioner
6 Alesi, how do you vote?

7 COMMR. ALESI: I vote yes.

8 CHAIRMAN RHODES: Commissioner
9 Edwards, how do you vote?

10 COMMR. EDWARDS: I vote yes.

11 CHAIRMAN RHODES: Commissioner
12 Howard, how do you vote?

13 COMMR. HOWARD: I vote yes.

14 CHAIRMAN RHODES: The item is
15 approved and the recommendation is
16 adopted, thank you.

17 We'll now move to the third item
18 for discussion. Item 301, Case 19-M-0463
19 as it relates to consolidated billing for
20 distributed energy resources presented by
21 Ted Kelly, assistant counsel; and Warren
22 Myers, Director of Office of Market and
23 Regulatory Economics; and Marco Padula,
24 Director of Markets and Innovations are
25 available for questions.

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2 MR. KELLY: Good morning, Chair
3 Rhodes and Commissioners.

4 The proposed order before you,
5 item 301, directs the investor-owned
6 electric utilities to implement
7 consolidated billing for community
8 distributed generation, or CDG.

9 Currently while CDG members
10 receive credits on their utility bill
11 based on project generation, CDG
12 developers, who are also called CDG
13 sponsors, must separately bill and collect
14 a membership cost.

15 Consolidated billing will allow
16 the membership costs to be collected
17 through the utility bill so that customers
18 no longer need to receive two separate
19 bills and so that CDG sponsors no longer
20 need to perform duplicative billing and
21 collections activity.

22 I'll begin by providing
23 background on the CDG program that passed
24 special consolidated billing and will then
25 describe the major decisions in the

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proposed order.

In 2015, the Commission authorized CDG in New York State. In the CDG program, a CDG sponsor develops an eligible generation product, usually a solar photovoltaic system, connected to a utility system. CDG sponsors then enroll the group of customers of that utility as project members.

When the CDG project injects electricity into the utility system, the utility applies bill credits to the bills of the members of the CDG project. Generally those members pay the CDG sponsor a separate monthly subscription fee.

In later orders, in the value of distributed energy resources proceeding, the Commission directed the consideration of consolidated billing to reduce project costs and increase simplicity and benefits for customers.

In addition, the Commission directed development of a bill discount

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pledge, or BDP, program which would allow low-income customers to use their utility bill discounts to pay for their CDG subscription fees.

On June 18th, 2019, the secretary to the Commission issued a notice seeking comments regarding consolidated billing for community-distributed generation. In addition, on September 11th of 2019, National Grid filed a petition for authority to implement community-distributed generation platform. Comments were also requested on that petition.

The National Grid petition proposed the implementation of a two-part CDG platform. The first part is a consolidated billing program, while the second part is a customer acquisition program for CDG in which National Grid would conduct request for proposals to select several CDG projects, and would then conduct marketing under its brand to enroll customers in those projects.

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A large number of comments were received on the notice and on National Grid's petition. Commenters were generally supportive of the implementation of consolidated billing. The joint utilities proposed a specific implementation model, net crediting, which I will discuss shortly.

Commenters on National Grid's proposal were generally supportive of the net crediting model and National Grid's overall consolidated billing proposal but expressed concerns about or opposition to National Grid's customer acquisition proposal.

The proposed order directs implementation of consolidated billing using the net crediting model proposed by the joint utilities and supported by the majority of commenters.

Under the net crediting model, the CDG sponsor would enroll a program in net crediting and would designate a CDG savings rate for that project, the

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percentage of the product's monthly value that will be provided to members after the subscription charge is subtracted out.

For example, for a project with a total value of credits generated in a particular month is \$10,000, if the developer has set the CDG savings rate for that project at ten percent and that project were evenly divided among ten members, each member of the project, each customer, would receive a \$100 net member credit on their utility bill for a total of \$1,000 to all customers and credits, while the CDG sponsor would receive a sponsor payment of \$9,000 from the utility in the form of a direct monetary payment.

Because this credit would always be greater than zero, the members would be guaranteed to save money on their utility bills each month. To ensure the customers achieve reasonable benefits from CDG membership, it's appropriate to set a minimum CDG savings rate. The proposed order sets a minimum CDG savings rate of

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2 five percent.

3 All CDG projects including
4 projects already interconnected are
5 eligible to employ the net crediting
6 model.

7 To avoid unnecessary
8 complications, projects employing net
9 crediting must generally use it for the
10 whole project and must use the same CDG
11 savings rate for all net crediting members
12 of that project.

13 The proposed order emphasizes
14 that net crediting is an optional program
15 and that CDG sponsors are under no
16 obligation to participate if they prefer
17 to continue to use a separate billing
18 model, and encourages CDG sponsors to
19 continue exploring innovative product
20 options in addition to using net crediting
21 where appropriate.

22 The proposed order notes that
23 under the net crediting model, low-income
24 customers can receive the same paired
25 benefit of low-income discounts plus CDG

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subscription benefits envisioned by the bill discount pledge program. For that reason, it's unnecessary and could create inappropriate divisions among customers implementing separate bill discount pledge programs.

The net crediting model should increase low-income enrollment by reducing or elimination a CDG sponsors reluctance to enroll customers based on credit worthiness issues.

The proposed order does direct staff to continue to monitor the participation of low-income customers in CDG programs and to recommend further actions as necessary to ensure that low-income customers are able to participate in and benefit from such programs.

To recover the costs of implementing consolidated billing, the proposed order authorizes utilities to collect a fee from CDG sponsors participating in net crediting through a

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2 discount rate on the sponsor payment of
3 one percent.

4 That is, for that same example
5 project described before, with a value in
6 a particular month of \$10,000 and a CDG
7 savings rate of ten percent, the utility
8 would retain \$100 through the discount
9 rate, reducing the sponsor payment to
10 8900. The ten customers would still
11 receive \$100 benefit each for the total of
12 \$1,000 in customer benefits.

13 The proposed order directs a
14 process for utility filing and
15 implementation plans and program manuals
16 with opportunities for input by
17 stakeholders. At this time, the proposed
18 order limits consolidated billing of CDG
19 programs and does not extend it to other
20 types of distributed energy resources, as
21 a generally have more complicated benefit
22 models.

23 The proposed order recognizes
24 that a number of customers discuss the
25 possibility of pairing the community

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2 choice aggregation program, CCA program,
3 which allows local governments to
4 aggregate their citizens energy purchases
5 on opt-out basis with the CDG program,
6 which consolidates billing serving as an
7 important supporter for that opportunity.

8 The proposed order directs
9 department staff to evaluate the
10 appropriate role of and appropriate rules
11 for pairing CDG with CCA and putting
12 including the rolled opt-out and directs
13 staff to make a recommendation to the
14 Commission relatively early in 2020 for
15 commission consideration so that that can
16 be evaluated in advance of the full
17 rollout of consolidated billing.

18 With regard to platform two of
19 the National Grid petition, a customer
20 acquisition and turnover management
21 proposal, the proposed order denies
22 National Grid's request to operate that
23 platform.

24 As a number of commenters argue,
25 National Grid's proposed customer

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acquisition activity risks crowding out private market rather than supplementing market activity while correcting for a market failure.

However, the proposed order encourages continued consideration of innovative program proposals including the utilities to increase low-income participation in and benefit from the CDG program.

Today's order provides significant benefits to customers and developers of CDG projects in New York State by reducing the cost associated with CDG projects will result in increased development and therefore increased opportunities for participation in the clean energy.

It will benefit both for more than one gigawatt of CDG currently in operation in late stages of development as well as the further CDG development expected over the next several years as the State pursues a six gigawatt goal for

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2 distributed solar deployment.

3 As an example of the potential
4 financial benefits, we estimate that a
5 large CDG project will save as much as
6 \$60,000 per year. If, for example, all
7 CDG projects currently in service or late
8 stages of development participated, the
9 total savings could be as large as
10 \$12 million per year total. And those
11 will only increase as more projects are
12 proposed over the next several years.

13 The order will also guarantee
14 that the CDG benefits participating
15 customers through the guaranteed savings
16 aspect of the net crediting model and will
17 protect nonparticipating customers by
18 ensuring cost recovery for the program
19 comes from program beneficiaries and by
20 avoiding imposing any new risks on the
21 utility.

22 Finally, it will substantially
23 enhance the potential for inclusion of
24 low-income customers in CDG programs.

25 That concludes my presentation

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and Marco, Warren and I are available for questions. Thank you.

CHAIRMAN RHODES: Thank you very much, Ted.

I see this is a smart and important bid of cost reduction which simply put is good for our policies and good for all customers.

It does so in a pragmatic and effective way, namely net crediting. It does so with reasonable economics for everybody, including for the providers of those billing services, namely utilities.

It intelligently and properly and usefully makes us available to old, as well as new, projects.

It intelligently incorporates the bill discount program mechanics into this.

And it further encourages innovation, especially that oriented towards low- and middle-income household, and the improvement of access to this kind of resource for those households.

And that leaves the door open, in

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a very inviting way, for further innovation, further expansion, including towards paring in the whether and how of CDG and CCA.

I'm going to support this item.

Commissioner Burman.

COMMR. BURMAN: Thank you.

So I looked very carefully as all of the submissions that came in for this.

On the record, there was not one -- almost every submission was for consolidated billing. There was strong support for it.

There was strong support for the majority of them, for the need for consolidated billing with opt-out. In fact, much of the -- many of the submissions really seem to be word for word the same, and seemed to be paired in that they were very clear that to make this work they needed consolidated billing and opt-out.

I'm concerned that that wasn't really fully addressed, and when we do

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have it we're going to look at that. But I'm just curious from listening that the majority of folks will now be upset that this order does not -- allows consolidated billing but not, at this point, opt-out.

MR. KELLY: So I hope the majority of folks won't be upset. And it wouldn't be my anticipation, although, of course, I can't predict others reactions.

I will say that some of comments that weren't as focused on opt-out, or weren't focused on opt-out at all, were from large member organization. So for example, the New York Solar Energy Industry Association, and several other industry organizations like that filed comments that were really just focused on consolidated billing and saw it as having great potential without opt-out. And so even though they filed one comment, they were representing many individuals.

I think it is an important opportunity to look at, the opt-out potential, I think that what staff

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determined was that we hadn't had a full opportunity to consider what rules and customer protections were necessary for that for this order because it wasn't part of the original notice for National Grid's petition, and therefore there was the need to further look at that.

And so that's why the order directs staff to take a hard look, to work with stakeholders and to make a recommendation to the Commission in a relatively short timeframe, by March of 2020. And what that will allow is for the Commission to make its final decision which would embrace opt-out or not before any utility actually has consolidated billing fully up and running.

So if the Commission did authorize opt-out, it really wouldn't delay the implementation of opt-out anymore than it would if we were able to decide that today.

COMMR. BURMAN: Part of my concern is that I don't think it is -- I

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think it's appropriate for member organizations to submit, as they see fit, into our dockets and acknowledging where they were based on their members.

But I do think it's incumbent upon staff to also help to pair that in that we understand that we have 20 submissions, but out of those 20, ten of them are members of X organization that's submitting the same comments.

And the reason that's important to me is that we seem to take great pains in other areas with other organizations that we may not necessarily be opposed to to be negative in that they have similar comments from their members and somehow, or from even the legislators sometimes submit, but they don't think that's wrong if they feel comfortable with that.

I think it's something for us, though, to make sure that the rules are the same and that we are carefully evaluating whether an organization, the submissions of that, based on their member

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2 interests.

3 And I think that's important for
4 us to be clear so that we don't seem to be
5 against it for one other organization or
6 other organizations but okay with it here.
7 And also fully understand, OK, that's a
8 nice pocket that makes sense why we're
9 seeing that.

10 I am very concerned about the CCA
11 and the opt-out issue and how what I would
12 call CCA opt-out plus with CDG. And I
13 don't think -- and I have -- a lot of my
14 comments went into significant detail on
15 the session so I won't do that now except
16 to adopt them here as well, because I
17 don't think we have done a true review of
18 what's working and what's not.

19 While we see from the other
20 session item that we are now mandating
21 that staff does a substantial review of
22 the ESCO eligibility applications and
23 really does in a timely fashion, I don't
24 see that we are taking a close look at
25 some of the challenges, positive and

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negative, with CCAs. I think it's unfair to put a lot of the burden on the munis that are maybe adopting it. Some of large ones may be able to handle that, may be able to have personnel who understand that, not all though.

And I think that we are we're doing a lot of pushing some of our own regulatory oversight onto the munis in a way without fully taking clear stock of what that means and it's lip service just to say, Well we explained it to them.

Sometimes when you're explaining to them also say, and you're going to get X savings and we're going to give you X amount of state funding to do this, and this is the greatest thing, that sometimes makes it very difficult to fully appreciate what that means in practice.

And as we see with everything implementations can itself have challenges. We don't really have a tracker for complaints or issues that come from CCA, in particular, the opt-out. So

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a lot of it is potentially word of mouth, sometimes folks aren't even really aware of what they've not opted out of. And I've taken a close look at some of the filings that come seeking approval for notification to the customers and I'm not favorably disposed to a lot of it. And I'm concerned that it's not truly helping in enabling good customer choice and we seem to have the get-around that, well, the munis aren't looking out for them and they made that decision.

It's not a legislatively-enacted program and my concern continues and I think that for me when we look at consolidated billing, I think consolidated billing sounds like a good thing and it can be, but it can be very complicated. It should not just be in a vacuum with CDG, there are many other opportunities that will be there. And my fear is that we will wind up having more cumbersome processes and more costs to ratepayers and others when we seek to put more into the

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consolidated billing if we don't take some time now to look at that.

We're really rushing to push CDG, CDG could be a good thing just like CCA could be a good thing, but I'm very concerned that we are not fully ensuring that the rules of the road are clear. We do lip service to saying that we want to help the low-income customers and this is a way of doing that. We don't really see -- and somehow consolidated billing seems to be the main obstacle to CDG, I don't think it's as clear as that, in fact I would argue it's not. It may be for certain folks a significant issue, but I think looking at it we really need to be careful.

Now I do think it's important that we look at, and we have an EDI working group here, and that is part of the next steps; however, for those of you who are involved in the EDI working group, it's very technical and it is very good. But it is also very important that we now

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2 don't just throw into the EDI working
3 group mix CDG as going to the top of the
4 food chain in a way that shakes up the
5 good work. And also from my reading in
6 looking at the minutes and agendas and the
7 action items that come out from the EDI
8 working group over the years, there's been
9 a lot of good incremental changes that are
10 helpful and I really caution that we need
11 to be mindful of that.

12 We need to be mindful of this as
13 technical expertise in a way that does not
14 overlook some of those challenges, and
15 we're also very careful to be doing this
16 in a way that is helpful and not a step
17 backwards.

18 I am concerned that this item
19 came so late. It is not unique. It's not
20 unique to this session with just this item
21 and it's not unique in general. It is
22 hard for me as a commissioner to evaluate
23 and to have some thought processes as to
24 whether or not this is an overall good
25 decision when it's given to me late and

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then with added on changes.

I do think that it was well intentioned, but I think it's also -- it's not just about me and my role and my review, it's also about the other staff who asked to step up and review something that they may not have seen until the week of session.

That is difficult even if they are talking about it, language is important, and that is something we need to be really mindful of and I can't -- I have to make sure that we're fully taking account in a way that I think helps get better products.

To the extent that the item talks about looking at CCA and CDG opt-out later. I want to be clear, the way the language is, it does not seem to suggest that we may take a change to opt-out. So it seems to be suggesting, and it seems to be suggesting from my read, that CDG and opt-out is something we should be moving toward with an alignment to how it would

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2 work well with CCA.

3 I would offer that it really is
4 an opportunity for us to examine how CCA
5 itself is working well, what changes we
6 may need to make to make it better for
7 customers, and also municipalities that we
8 do a deep dive substantially, not just in
9 isolation but with folks that can really
10 help enable that.

11 And that we also look at opt-out
12 in general and what that means because
13 again as we saw, we were not allowing
14 affirmative -- we were making affirmative
15 consent on the ESCO item, but as to CCA
16 there's no affirmative consent. And so
17 that concerns me and I don't think the
18 explanation that the munis are the ones
19 that are helping to have those protections
20 in place are at all reasonable.

21 I just don't see that and I think
22 that we should be looking carefully and
23 matching all of this up in a way that's
24 helpful.

25 So I do thank you for your hard

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work. I also do recognize that some of changes that were made, I think were made because we did have some discussion. So it's not to suggest that you made more changes to isolation, but it shouldn't be and it really needs to be a more thoughtful process.

So we need to figure that out, that's not on you, and your hard work is very much appreciated. So thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi.

COMMR. ALESI: Thank you,
Mr. Chairman.

Implementing consolidated billing through the net metering credit model will reduce costs for CDG projects, it will enhance the potential for low-income customers to participate in the benefits.

It engenders a measurable step forward in our pursuit of clean energy generation and I enthusiastically support this very worthwhile endeavor.

CHAIRMAN RHODES: Thank you.

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2 Commissioner Edwards.

3 COMMR. EDWARDS: Thank you,
4 Mr. Chairman.

5 I want to thank you for meeting
6 with me on the community solar projects
7 and this model as well.

8 I understand how this simplifies
9 the billing. I get that, don't have any
10 issue with it. I'm struggling with how
11 this is going to generate more projects in
12 the low-income areas. I'm struggling with
13 that because from a policy perspective I'm
14 all in with doing whatever we can to do
15 generate as many community solar projects
16 as well.

17 So putting aside the consolidated
18 billing, no problem, I can't make that
19 connection.

20 MR. KELLY: So first of all, I
21 want to be clear, I'm not talking about
22 geographic areas, this won't have anything
23 to do with where the products are actually
24 --

25 COMMR. EDWARDS: What we talked

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2 about before.

3 MR. KELLY: So to the extent that
4 people are interested in having projects
5 built in their geographic area, that's a
6 separate discussion.

7 In terms of increasing the number
8 of low-income people who get signed up, I
9 think the big potential we see in this
10 order is that right now our understanding
11 is that a lot of CDG sponsors do things
12 like credit checks or want to look at your
13 payment history with utility or something
14 like that.

15 And the reason for that is they
16 are going to start sending you a second
17 bill every month and they need to be
18 confident that you're going to pay that
19 bill every month or they are going to be
20 the ones who are out money, not getting
21 paid, doing collections activity, find a
22 new customer, and so on.

23 Under this model, the person the
24 individual who joins, keep paying their
25 utility bill, the utility bill will be

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2 guaranteed to go down, and even if they --
3 somebody is unable to pay their utility
4 bill or stops paying their utility bill,
5 that will never actually cause payments to
6 the sponsor to stop. The only thing that
7 happens is if the person is --
8 unfortunately doesn't pay their utility
9 bill for an extended period of time and is
10 shutoff, their service is shutoff, in that
11 case they would be taken off the sponsors
12 role and they'd have to find a new
13 subscriber to replace that person.

14 But the sponsor no longer needs
15 to worry about -- the vast majority of the
16 time the sponsor no longer needs to worry
17 about whether the person will be able to
18 make a payment on time each month or not.
19 They'll be getting their payment on time
20 from the utility every month no matter
21 what, and therefore they shouldn't care
22 anymore. Our strong hope is that what
23 they say is great, we no longer need to do
24 credit checks, we no longer need to ask
25 about people's payment history, we can

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2 sign them up if they are interested and
3 guarantee savings.

4 COMMR. EDWARDS: Is there a
5 commitment there that they are going to,
6 in fact, do those things that you're
7 saying?

8 MR. KELLY: There's not at this
9 time. There's not a specific requirement
10 because it's not -- we've looked at it in
11 past and it's hard to structure and hard
12 to enforce that they have a certain number
13 of percentage of low-income members, but
14 it's something we're going to track very
15 closely.

16 MR. MYERS: I would just add,
17 this gives -- the cost savings gives them
18 the incentive to stop doing those
19 redundant things.

20 So it would be, we think, in
21 their best interest to recognize that they
22 don't really have a good reason for
23 requiring those things anymore since they
24 are now getting paid by the utility.

25 COMMR. EDWARDS: So if there's a

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2 significant savings, say 60,000 using your
3 example to the utility?

4 MR. KELLY: So the savings would
5 be to the sponsor, and the utility should
6 be about even because 60,000 is after you
7 net out the fact that the sponsor will be
8 paying the utility -- for the case of
9 project that saves 60,000, they are
10 probably paying the utility about 15,000 a
11 month and that covers the utilities costs.

12 I'm sorry, a year, not a month.

13 COMMR. EDWARDS: Could we have
14 ordered that in this so that they could
15 eliminate the credit check and whereby
16 making sure that what the intent here
17 actually flows through?

18 MR. KELLY: I think that's
19 something we could keep an eye on and
20 consider on a going-forward basis if we
21 don't see the kind of progress that we're
22 expecting.

23 COMMR. EDWARDS: Is that a yes or
24 no? Could we do it here?

25 MR. KELLY: I'll say it's

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2 something we haven't looked at for this
3 order and I'd be reluctant to without
4 having gotten --

5 CHAIRMAN RHODES: If I could just
6 step in.

7 We have this order based on the
8 record. My reading of the record does not
9 show that it would provide the record to
10 support that kind of a decision.

11 I think I can say the following:
12 There is a CLCPA. The CLCPA explicitly
13 envisions, mandates, an expansion of
14 distributed solar.

15 It doesn't explicitly say it's
16 going to be CDG, but a lot of it will be,
17 and the CLCPA also specifically mandates
18 that access to the benefits of these clean
19 energy resources, including solar, need to
20 be more meaningfully, and there are
21 numbers behind the word more meaningfully,
22 accessible to low-income.

23 So that's coming our way, I
24 expect. We'll be able to think about the
25 best techniques to make that happen in

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2 other proceedings.

3 So I would say let's hold it for
4 another day, but that's not a brushoff,
5 that's simply recognition that that
6 important issue is actually getting its
7 own important attention.

8 Is that all right?

9 COMMR. EDWARDS: Well I guess my
10 concern is you're communicating in here
11 that this is going to be, in fact,
12 generate more or should generate more
13 projects, but there's really not teeth in
14 it that says that it will.

15 So is there a way for us to, I
16 mean, this to me is simplifying the
17 consolidated billing, I'm fine with that.
18 But I'm just caught on the fact that this
19 is what we hope to happen but we don't
20 have anything to say that it's going to.
21 It's -- we're just -- we're hoping that
22 that's what they do.

23 So is there a way for us to
24 request it and then if they say no then
25 we'll know that we possibly could come

1 Proceedings

2 back and revise the order?

3 MR. KELLY: It's certainly
4 something that we can request and that we
5 already have the ability to track, whether
6 it actually happens or not, and I think
7 definitely if it doesn't happy in the way
8 that we expect staff would very much be
9 happy to come back with recommendations to
10 revise the order.

11 And I think what you suggest
12 saying you can't do credit checks in
13 certain -- you have to agree in order to
14 gain certain benefits not to do credit
15 checks could be one way to do that.

16 I think yes, we can request it,
17 the order kind of does request or suggest
18 it right now, and it's something that we
19 absolutely can and will track, keep you
20 updated on and also --

21 COMMR. EDWARDS: Can we get a
22 definitive answer whether they'll do it or
23 not?

24 MR. KELLY: I understand what
25 you're saying and that there isn't as much

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2 certainty as we would like.

3 I would say that there were some
4 low-income groups that specifically
5 supported this and said that they
6 themselves see this as something that will
7 increase low-income.

8 COMMR. EDWARDS: Well good for
9 them.

10 MR. KELLY: It's not just the
11 industry claiming it, it's some folks on
12 the low-income side saying they think it
13 will happen as well.

14 I think it's something we can
15 definitely talk to the industry about and
16 come back as necessary to recommend
17 further steps as needed.

18 COMMR. EDWARDS: So I'm fine with
19 this. So why -- can we just make a
20 followup for maybe the following month to
21 see where we are with it, and if it's not
22 -- if it can't be addressed here, how else
23 is it going to be addressed and what's the
24 timing of that?

25 MR. KELLY: I'll follow up with

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2 in terms of us following up with you in
3 terms of talking to the industry and
4 stuff?

5 COMMR. EDWARDS: Chair Rhodes,
6 you all right with that?

7 CHAIRMAN RHODES: Of course I am.

8 MR. KELLY: We can certainly
9 commit to that.

10 COMMR. EDWARDS: 'Cause I want to
11 make sure that this actually happens,
12 that's it.

13 Hoping is great, I'm hoping, too,
14 but if they say, great, thanks for your
15 feedback and we're moving forward, then
16 what do we do?

17 Okay, all right. Great, thank
18 you.

19 MR. KELLY: Agreed.

20 CHAIRMAN RHODES: Commissioner
21 Howard.

22 COMMR. HOWARD: I will be
23 supporting this item. However, I do want
24 to do a cautionary tale on the CCA program
25 going forward.

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2 At my first commission meeting I
3 expressed my concerns on municipalities
4 buying street lighting apparatuses and
5 equipment, not that the fact that they
6 wouldn't save money and it wouldn't be a
7 gross savings to our system. My worry was
8 the lack of sophistication of the
9 individual municipalities being able to
10 maintain that system going forward and the
11 costs to maintain and that the lights stay
12 on.

13 My same concern goes to our
14 belief that all municipalities are
15 sophisticated enough and have -- will put
16 enough resource behind their CCA
17 applications to meaningfully go forward or
18 to handle any potential difficulties or
19 unanticipated consequences going forward.

20 I notice that many of these
21 upstate are more affluent communities who
22 seem to be adopting this model quicker,
23 but as we go to expand this as we hope as
24 a matter of policy and as belief
25 particularly as we move to a different

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model of how we buy and procure and use energy, that some entity works with these municipalities or at some point says, in all due respect, Mr. and Mrs. Supervisor or whoever, town board or village, Mayor or whatever, saying, we don't know that you are really capable of doing this to an adequate extent.

And I have great concern on that going forward as these CCA programs proliferate. And I would just hope that we keep a very close eye on that and then work on what happens for the inevitable unanticipated consequences or behavior that may not match our goals.

So again, I have, as we go forward and as we get report back as this goes forward, that is one of my singular concerns.

CHAIRMAN RHODES: Thank you, Commissioner Howard.

Commissioner Burman, did you have another comment?

COMMR. BURMAN: I just really

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need to state that I am concerned that this goes to the very issue of giving us the item so late, but also I don't see it as, well it's not in the record so we can't do X.

In fact, if it's not in record it might be also because we don't have a full enough record or the analysis that needed to be done in evaluating what was on the record, what came in, is not just a check-the-box lip service to now doing that.

This is a real issue. I also have concerns but I don't want it to be that -- part of difficultly for us is maybe this should have been an item that we discussed and then gave you our thoughts on and then come back at the next session, that used to be done historically, and then it is really accounting for what we all are interested in, however we may vote, at least it gives us a fuller understanding of where each of us are coming from and also helps to

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showcase that we're not just going forward despite the fact that commissioners have raised concerns.

I think it's really important we hear this because this is going to our regulatory credibility because for me, it's also about the regulatory certainty. Once this order goes out, we're now enabling those folks who feel that we have been given a decision that if we change it it's not going to be retroactive, it may be going forward in certain ways.

But that's a whole other process and we are moving a little too fast on this issue in light of this conversation. And I don't think citing to, with all due respect, citing to well we're figure it out and also saying to the CLCPA is comfort enough for me especially because we're supposed to be deciding what it means and doing the evaluation, not just in what's given to us but our own critical thinking in this.

So that's just my perspective and

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2 I'm concerned.

3 CHAIRMAN RHODES: Thank you.

4 So we've had a healthy discussion
5 and I think we're in a position, as per
6 process, to call the vote.

7 My vote is in favor of the
8 recommendation to direct utilities to
9 implement consolidated billing for
10 community-distributed projects with
11 mass-market subscribers as discussed.

12 Commissioner Burman.

13 COMMR. BURMAN: I vote no, not
14 because I'm against the CDG or
15 consolidated billing, but because of the
16 concerns that I raised and in light of the
17 conversation here.

18 Thank you.

19 CHAIRMAN RHODES: Thank you.

20 Commissioner Alesi, how do you
21 vote?

22 COMMR. ALESI: I vote yes for the
23 reason I gave earlier.

24 CHAIRMAN RHODES: Thank you.

25 Commissioner Edwards, how do you

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2 vote?

3 COMMR. EDWARDS: I'm fine with
4 voting yes because this is really about
5 consolidated billing.

6 My -- it's not a concern, I just
7 want to make sure that we actually have
8 the opportunity to make sure that it does,
9 in fact, generate more projects. And I'm
10 fine with the followup in 30 days to make
11 sure how the best way to implement that,
12 but this is specifically about
13 consolidated billing so I don't want to
14 hold that up, so I'll vote yes in favor.

15 CHAIRMAN RHODES: Thank you very
16 much.

17 Commissioner Howard.

18 COMMR. HOWARD: Yes.

19 CHAIRMAN RHODES: Thank you.

20 The item is approved and the
21 recommendation is adopted.

22 We will now move to the consent
23 agenda.

24 Do any commissioners wish to
25 comment on or recuse from voting on any

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2 items on the consent agenda?

3 Commissioner Burman?

4 Commissioner Alesi?

5 COMMR. ALESI: Nothing.

6 CHAIRMAN RHODES: Commissioner

7 Edwards?

8 COMMR. EDWARDS: We're going out

9 of order? What do you mean, we're going

10 out of order?

11 CHAIRMAN RHODES: Commissioner

12 Burman is gathering her thoughts and we're

13 just going to go down the commissioners in

14 sequence until we get to her again.

15 COMMR. EDWARDS: Okay. I have a

16 question.

17 I have a question on 19-G-0066,

18 19-E-0065, item number 262.

19 CHAIRMAN RHODES: For the court

20 reporter, this is Dakin LeCakes.

21 ALJ LeCAKES: Commissioner

22 Edwards, good morning, it's nice to see

23 you again. I'm the administrative law

24 judge handling the two Con Edison rate

25 matters.

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2 Do you want me to just go over
3 the consent item or do you have a specific
4 question?

5 COMMR. EDWARDS: I have a
6 question 'cause we were together last
7 night at the hearing, and I just want to
8 make sure that I understand what was last
9 night and then how it relates to this
10 today. Because I see some overlapping
11 dates.

12 So for this, it says that there
13 is a rate increase total revenue
14 4.6 percent ending 2019 and then it has
15 monthly bill 7.74 ending 12/31/2020.

16 But then last night the hearing
17 was beginning January 1st, 2020. So I'm
18 trying to figure out is this -- how is
19 this related or not?

20 ALJ LeCAKES: So what's going on
21 here is that we've needed more time to
22 consider the rates that are being proposed
23 in the joint proposal to start on
24 January 1st, 2020.

25 So under the public service law,

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2 the Commission has 30 days once a utility
3 files for new rates to suspend the
4 consideration of the request. After that,
5 they have four months that they can
6 suspend it for and then an additional six
7 months that they can suspend it for.

8 So that creates what we commonly
9 refer to as an 11-month suspension period.
10 During the course of -- and that's
11 statutory and the Commission has to act
12 within that 11 months or the rates go into
13 effect by operation of law.

14 The utility, however, is in a
15 position where it can consent to extend
16 that suspension period for any number of
17 days, but traditionally what they do is
18 they ask that they be provided a
19 make-whole. In other words, that the
20 rates, if the Commission decides, after
21 January 1st, 2020 in this case, at the
22 session in January that the rates would be
23 made effective backdated to January 1st
24 and then collected over an 11-month period
25 rather than a 12-month period.

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And so because we're reaching the end of that 12 -- and so in this case, what happened was the parties entered into settlement negotiations and the negotiations took longer than they anticipated. Con Edison consented twice to extension of the suspension period, one that would end on initially January 31st, 2020, and one that would end on February 28th, 2020, but requested in each of those consents that they gave that the rates be backdated or made effective as if they went into effect on January 1st, 2020.

So what this item does is it accepts the consent of Con Edison to extend the suspension period by an additional 30 days, 31 days here, to actually, yeah, 31 days to January 31st, so that if the Commission acts in the session on January on the joint proposal that's been submitted to it, rates would be made retroactively effective to January 1st. So the rate year would end

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on December 31st, 2020 for the first rate year in that joint proposal. Second rate year, December 31st, 2021. And the third rate year end on December 31st, 2022.

Does that answer your question?

COMMR. EDWARDS: It does.

So what happens though to the customers bill? So if this is an adjustment and then going back, is the customer getting an increase twice within the same period?

ALJ LeCAKES: No, what happens is they are getting an increase over the entire rate year that's prorated over 11 months rather than 12 months. And so the company accounts, verified by Doris Stout's accounting and finance folks, will look at it and make sure that proration is done correctly over those 11 months.

So they only get the single rate increase but they'll get their bills in January as if the existing rates right now are still in effect. So they'll pay some amount and if it's a rate increase then

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2 the prorated difference between the amount
3 that they pay for those January bills and
4 what they should have paid under the new
5 rates will then get aggregated and then
6 prorated over those months.

7 COMMR. EDWARDS: So this one is
8 on the agenda is for the prior rate case?

9 ALJ LeCAKES: It's for the
10 existing rate case to make sure that the
11 Commission can act within a sufficient
12 time that the rates that the company filed
13 for in January of 2019 don't go into
14 effect by operation of law, which are much
15 higher than the rates that are being
16 proposed in the joint proposal.

17 COMMR. EDWARDS: Okay. So what
18 is happening today has nothing to do with
19 the hearing last night?

20 ALJ LeCAKES: Right, in the sense
21 that we are not taking any action on that
22 joint proposal whatsoever, we are just --
23 we're providing the Commission additional
24 time to consider the joint proposal and to
25 provide me with additional time to

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2 consider the joint proposal so I can give
3 me recommendations to you timely.

4 And so yes, you are correct, it's
5 not taking any action on those actual
6 rates. It is just providing the
7 Commission that additional time to
8 consider that joint proposal.

9 COMMR. EDWARDS: Okay. And when
10 will this become -- when will this be on
11 the agenda, what we did last night?

12 ALJ LeCAKES: My hope -- well we
13 have until February of 2020, February
14 session of 2020, to act on those rates.
15 Given some of the concerns that have been
16 expressed and other considerations in the
17 joint proposal, I would hope that
18 potentially we could address it in
19 January, but we do have until February
20 legally to act on those rates.

21 COMMR. EDWARDS: And when, since
22 Con Edison was not present last evening,
23 when will they receive the information
24 from the hearing yesterday and previous
25 hearings? Do they normally attend?

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2 ALJ LeCAKES: They actually did
3 attend yesterday and both hearings, they
4 had staff attorneys who were in attendance
5 both in Yonkers and then last night.
6 Kerri Kirschbaum -- and I apologize I
7 can't spell her last name for you -- was
8 there last night at the SUNY Global Center
9 and one of their attorneys was with us,
10 she was in the back sitting next to the
11 court reporter, yes.

12 So they are aware and they have
13 the right to show up to the meetings and
14 monitor.

15 COMMR. EDWARDS: They didn't
16 speak, though, last night?

17 ALJ LeCAKES: No, they did not.

18 COMMR. EDWARDS: All right.
19 Thank you.

20 ALJ LeCAKES: You're very
21 welcome.

22 CHAIRMAN RHODES: Commissioner
23 Burman, are you ready?

24 COMMR. BURMAN: I am, thank you.
25 I apologize.

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So item 369, it's the joint petition for certain amendments to the New York State standardized interconnection requirements and we're modifying the SIR.

I just want to point out two things that are concerning to me. One is that, and we do regularly modify SIR, go through a very -- we have a very good, I think, very good collaborative process with the number of different stakeholders, something for us to examine in terms of are we missing anyone in that? Are we missing looking at that modeling for LIPA PSEG as well?

My concern is that the order says, starts off: "On September 5th, 2019 certain --" and I underscore that "-- members of the interconnection policy working group and interconnection technical working group filed this petition."

It's something that concerns me. We have a lot of different working groups, we have a lot of different ones that are

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2 just solely through the PSC, DPS. But
3 then we have others that agency
4 interworking groups and larger external
5 stakeholders. And many of them do work,
6 many of them do technical reports and it
7 doesn't necessarily come to us, all of it,
8 and we don't have really a good process
9 internally of making sure that we are
10 fully engaged in what comes out of it,
11 what some of the key issues are and
12 whether or not we need to look at it.

13 When I see certain members, part
14 of the thing that I think that makes me
15 concerned is that I want to make sure that
16 we've been given the information on why
17 not all of the members. And in some
18 cases, maybe those are the ones that
19 stepped up, but in others there may be
20 things that were an issue didn't come from
21 a collaborative everybody is on the same
22 page.

23 And so that to me just is
24 important that we fully understand that,
25 because I think that for me if something

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2 is coming to us as a petition from certain
3 members of a working group, if we're
4 identifying them as coming from part of
5 this working group it really should be
6 coming in a different fashion. Maybe it's
7 that staff is bringing it forth and are
8 there some kind of report that explains
9 where folks are on it and a little more
10 background on that because it does concern
11 me.

12 Otherwise I just see them as the
13 petitioners, whoever they are, are
14 bringing this. It just so happened that
15 the issue came up through the
16 interconnection working group.

17 I just want to fully understand
18 that. It may not be the case here, but it
19 is something that that's what is a
20 significant issue to me in making sure
21 that if we're going to have the working
22 groups, we don't just get them through a
23 session item, that we really do engage a
24 little more on that rather than just
25 trying to find it in a filing that may or

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2 may not be there.

3 And then to the extent that this
4 order does reference the CLCPA, I just
5 think it's important that we do a deeper
6 dive, ourselves rather than just kind of
7 like with the state energy plan, where we
8 just reference it in orders as sort of
9 this is why we're supportive of it 'cause
10 it meets the goals of -- we did that for
11 REV too, and just generically I think we
12 need to have a clearer understanding of
13 what that means.

14 That's 369.

15 On 370, which is the Citybridge
16 item, I do want to recognize I think there
17 were a lot of folks who have been very
18 engaged in this issue trying to figure out
19 some pathways and solutions.

20 It is something that I think is
21 thoughtful, I think the order is trying to
22 be very clear. I do recognize that we may
23 have other situations that come down the
24 pipe that don't necessarily fit the core
25 this is what this customer looks like and

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so we're putting them here and there.

I think it's really clear what we're doing here and so I feel comfortable with this.

There's a reference in the order that says, it's not -- "the complainant must petition the Commission if it wishes to modify the utilities tariffs. It's not sufficient for the complainant to state in its appeal that it's petitioning the Commission, and a separate proceeding would be needed to allow the Commission to consider indirect possible tariff amendments."

One could read that seeming to suggest that we would be directing them to bring a petition forward. I don't think that's what we intend. I don't think it's a problem to say, it's not its place here but we're not necessarily open to you bringing a petition based on what we've done, and sort of not rather have what I consider unclear pathways.

I think it's incumbent upon us

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when we have complaints and we've done it in others where we can look at the different complaints that come forward and some of them may be more global and do warrant us bringing or having them come forward as a global petition or global review.

This doesn't, I think, speak to that, and so I just want to make clear because I do think it would probably be a waste of time, at least as I read it. So I think it's important for us to just say that, however hard that may be to hear.

Item 376, which is the value of DER high capacity factor. So first I think it's really hard for folks when they have generic case numbers and we put it up to have to figure out what is it that we're deciding. When you go into -- I cannot, and I'm on the website every day, I cannot find things. I go into the generic proceedings or any proceeding and if there's a lot there, it's really hard. I have to constantly then ask for someone

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to pull all the comments on X petition.
And then it's, I get it but then they
didn't give me the reply comments because
they themselves didn't know to look for
that and then I have to go back.

And I just think we need to
figure out a better system where we're
talking about the use of technology and
the ability to do that, and if people are
needing to figure it out and look fully at
all of them, and when we have it on the
agenda, it shouldn't just be the generic
case number, we should be very clear about
what's before us. Just make it easier for
everybody, especially when sometimes we're
deciding them after many months or years,
we should just refresh people's mind on
what it is. That's just my personal
perspective.

But the bigger issue I have with
this is I read through all the comments or
at least all the ones that I found, and I
think people were they thoughtful and also
not necessarily all who would normally be

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2 on the same page were thoughtful,
3 especially in particular on the issues of
4 modifications to the treatment of certain
5 high-capacity factor GG in the value stack
6 framework and what the timeframe would be.

7 I really think we did not truly
8 embrace, in any real analysis way, the
9 comments that people made and we just
10 adopted the timeframe as to what was in
11 the staff white paper. And essentially
12 that's the timeframe that we went with and
13 I think that's very problematic, I think
14 there should have been a deeper analysis
15 in the order itself rather than an
16 attachment of people's comments.

17 And I think that we should have
18 been properly briefed in more detail on
19 that, and also just how folks had strong
20 comments. And this is not about
21 supporting industry, in fact, it's about
22 sort of the core issue of when do we look
23 at when things are deemed effective. The
24 staff white paper, staff reports, whatever
25 it is, it's just the staff white paper and

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the staff report. As well written as they may be, to use that as the benchmark seems to indicate that the role of the Commission is not one that has any value and that concerns me.

But when I look deeper at the comments, I was really very impressed by folks concerned about that because to me it was also seeming to send the message if we adopt this that folks cannot rely on utility tariffs, and therefore the change can happen retroactively in a way that's not really been thought out.

We should have caught this from the get-go, that's on us, and because it's on us we need to own that and look at what that means. And while we are trying to fix an issue, we need to be a little more judicious in how that works, and also help so that we are creating regulatory certainty, but more importantly, regulatory credibility in a way that makes folks confident in us truly evaluating and reading the comments and taking into

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2 consideration and having that discussion,
3 rather than just adopting what's in the
4 staff white paper.

5 So the date of the white paper
6 publication for the cutoff is just not
7 acceptable, so I'm concerned about that.

8 I'm also concerned that in this
9 item we are looking at changing the
10 definition of renewables based on the
11 CLCPA, and I don't think that we should be
12 deciding critical issues and how they may
13 interconnect with the Climate Leadership
14 and Community Protection Act in a vacuum.
15 And also just picking this and then
16 throwing that there, while I think that
17 that is well-intentioned, I think that it
18 is incumbent upon us to have a little bit
19 more overall detailed review of what it is
20 and look at that.

21 So I would suggest that folks
22 reexamine the comments that came in on
23 this issue and the thoughtfulness that I
24 think went into them, because I'm really
25 concerned about the chilling effect.

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While I understand some of the issues and trying to rectify what we did, we have to own that.

The next one is item 164, which is the National Grid confirm the order of a one commissioner order. I'm going to be voting no. It is with a heavy heart that I vote no, but I am concerned about a broken process.

I need to be clear, I think that we have, and I think that the agreement tries to understand that we have supply constraints. It's not lost on anyone that we do, or at least not lost on me. And there are obligations on the utility and there are also some lessons to be learned in customer engagement.

But there's also lessons to be learned on the regulatory role and what that means. I voted no to the order to show cause because I had seen a pattern where we bring forward orders to show causes and then we go outside of that and go outside of the normal regulatory

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processes and have settlement discussions in isolation and then come back with a settlement.

But what has been missed in the opportunity is what's been missed is the opportunity for us to fully understand, with the allegations that are made, what are we finding. In this case, it went further than any order to show cause, and sort of for me causes me to really be mindful of the fact that we seem to have lost sight of what the role of at least this commission is supposed to be doing.

I still want an understanding from the investigation and findings, I still want to understand how it relates to the overall press releases that were issued that talked about that we were going to be looking at market concerns and market conditions and doing due diligence. Publicly we know that we hired outside consultants and we also looked at that.

The gas planning is something that is supposed to be the bread and

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2 butter and it's for us, from an oversight
3 perspective, to also be looking at that.
4 And for me it seems to have flipped the
5 burden solely on now the company to put
6 forward a report, and a lot of the issues
7 that they are being asked to look at are
8 things that would have come out naturally
9 through our own planning, our own
10 engagement with them, as well as other key
11 stakeholders in the state and that somehow
12 concerns me.

13 The health of the utility is very
14 important. My fears were -- my fears on
15 some of our regulatory actions having an
16 impact on Wall Street where it came to
17 fruition with concerns raised by Moody's,
18 and that to me is really important.

19 I think it's also important for
20 folks to understand it's not that I care
21 about the fat cats, I've heard that. What
22 it means to me is the health of the
23 utility is vital. The health of the
24 energy network and the grid is really
25 important for customers. And if there is

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2 -- if there are ratings agencies who put a
3 lot of importance on the regulatory
4 structure and they don't have confidence
5 in that, that does not just effect the
6 utility shareholders, that effects their
7 ability to borrow. We've see in negative
8 revenue adjustments how we have to be
9 mindful with that because what that means
10 also in that, in that dip, in that
11 potential negative implications from the
12 ratings, what that means is that it may
13 effect customers in terms of costs for
14 them that they might have to bear, as well
15 as some of the inability for the ability
16 to get and borrow the credit that they
17 need to do certain things that are for the
18 benefit of the customers. And that that
19 will have chilling effect, or could have
20 chilling effect.

21 And so we should care because it
22 can negatively impact the customers and
23 that is of critical importance and why we
24 need to balance that interest in the
25 company as well as looking at the

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2 interests of the public and the consumers.
3 And it's really vitally important. I
4 don't think that there's as full an
5 understanding of that and we need to do
6 some due diligence in that.

7 It's important that our
8 regulatory decisions are conducted with
9 the utmost integrity to ensure confidence
10 in our regulatory regime. We do want
11 regulatory certainty, but as I've said
12 before we really want regulatory
13 credibility and we want commitment.

14 If the regulator is being
15 overlooked and there are no processes that
16 are appearing to be there, it gives folks
17 pause on if we are just checking the box.
18 We need to be very mindful of that even if
19 we may know that we have engaged or not,
20 we need to be really mindful that we
21 layout the critical processes that are in
22 place to ensure transparency as
23 appropriate, and to ensure that our
24 processes are really doing what it needs
25 to do for regulatory certainty,

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2 credibility and commitment.

3 When I look at the settlement
4 agreement itself, I'm concerned that it
5 does not do a deep enough dive and that it
6 was done without the input of the
7 necessary staff as well as the necessary
8 input from some commissioners or all of
9 us. To the extent that we can be engaged
10 in an appropriate way does not mean that
11 we are micromanaging.

12 To the extent that it talks about
13 an independent monitor, it does not go
14 into detail on what that would look like,
15 it leaves it to later to figure it out. I
16 think that's really troubling. We should
17 have a discussion on what the bar is, what
18 we want, how that differs or does not from
19 management audits that are statutorily
20 something we need to do.

21 To the extent of what does this
22 now look like going forward
23 environmentally, economically, and also
24 what that means from proper enforcement, I
25 think it's really important that the

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Commission has a voice in that because the Commission would be looking at the voices of all of the necessary folks.

From my perspective by going forward and ignoring the settlement guidelines regardless of whether or not we think that they apply, I think that that is troubling.

The settlement itself talks about 16 NYCRR 3.9, confidentiality settlement. Therefore there's at least, in the settlement, an implicit understanding that the settlement guidelines may be helpful.

And so for me we need to have a clearer pathway of when we will be ignoring the settlement guidelines and why. I would push back and say, if we go back to the very order that established the guidelines, I'm going to read from it, I think it helps explain and it really, I think for all of those who may not have looked at it, I think it's really important that people refresh their memories or look at it for the first time

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and look at what it's trying to establish 'cause it raises a lot of the issues that are of concern from engagement and process and what really makes the right settle or where we go to litigation.

"All commission decisions including those pertaining to proposed settlements must be and appear to be just, reasonable, and in the public interest.

"The threshold requirements for any such decision is that it be reached in accordance with applicable procedures.

"A failure to follow those procedures will make the decision less likely to be in the public interest and all but guarantee that it will not be perceived as being in the public interest.

"Procedural soundness of course is necessary, but not sufficient, and the facts that should be considered in the ensuing substantive review do not lend themselves to codification.

"As the comments suggests they include: One, the settlements consistency

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with law and with the regulatory economic, social, and environmental policies of the Commission and the State;

"Two, whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes;

"Three, whether the settlement strikes a fair balance among the interest of ratepayers and investors and the long-term soundness of the utility;

"Four, the existence of a rational basis for decision;

"Five, the completeness of the record;

"And six, whether the settlement is contested."

It goes on but I think you get the idea.

It's important. It's a thoughtful commission order that then produced settlement guidelines, and it's something that we look at very carefully and we should take seriously. And to the

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extent that there are things in there that we should incorporate as we move forward on our enforcement processes and give that clear pathway, I think it's really important.

I am very happy to see that the challenges with those existing customers who did not get gas, this settlement addresses that, but it doesn't mean that all customers who want gas are going to be addressed, and we're kicking the can down the road and we're pushing the burden onto others.

We need to be engaged in this, it's that important. We need to engage in what all of the different things and the pathways are so that if there are opportunities for other energy efficiency demand response, other things, that we are engaged in that.

But we also need to take note that we have an obligation to make sure that customers who want certain energy are able to get that. We heard that loud and

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2 clear, it is not just that area, there are
3 other pockets, and I really am hopeful
4 that we will roll up our sleeves and get
5 to work and also be open on a lot of the
6 things that we currently are working on
7 and are aware of and continuing.

8 It's something that I think is
9 really important. I think we're all in it
10 together. I just, for myself, am really
11 concerned that we're sending the wrong
12 signal about the engagement and
13 transparency and we need to do a better
14 job and for that.

15 And for the process fails for me,
16 it's something that I don't think the
17 settlement has the right information
18 'cause I don't know whether the result
19 compares favorably with the likely result
20 of full litigation within range, et
21 cetera.

22 So all of those prongs aren't
23 met, and for that I have to vote no and I
24 have to implore us to figure out
25 internally and externally, better

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2 processes so we can all have appropriate
3 role as necessary.

4 Thank you.

5 CHAIRMAN RHODES: Thank you.

6 Commissioner Howard.

7 COMMR. HOWARD: I just have one
8 quick comment on item 164.

9 One of the, I believe, best
10 outcomes of the settlement is the
11 beginning of a collaborative beyond just
12 the Commission and the company. That
13 local governments in particular have an
14 important and necessary role to -- going
15 forward to how we are going to address the
16 issues confronting the eastern part of
17 Long Island, including portions of New
18 York City.

19 Many of the issues that we're
20 going to decide going forward will require
21 communities to decide what type of
22 character that community will have, what
23 it's economic future will be, and how it
24 will be achieved.

25 There are other overriding

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2 statutes that now we need to conform to,
3 and that when it is quite obvious -- and I
4 was misquoted several times on this issue
5 -- that when confronted with this issue of
6 the gas moratorium, the immediate
7 response, the immediate response of local
8 government was for a new supply option.

9 As a matter of fact, this was
10 their singular response. And they now
11 need to engage in this process so we can
12 ensure that folks in the outer boroughs of
13 Brooklyn and Queens and the counties of
14 Nassau and Suffolk can look forward to a
15 future of economic prosperity and growth
16 and within the context of our new
17 environmental goals. But again, they
18 cannot ignore that.

19 Particularly issues regarding
20 energy efficiency in buildings, that is a
21 local government function. And I must say
22 I will give credit to the City of New York
23 by taking aggressive and meaningful
24 changes to their building and construction
25 codes to provide greater energy efficiency

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for buildings, admittedly starting on the large size, but going forward their engagement early on in this process I believe is exemplary and needs to be applauded.

And I will hope that the municipalities of Nassau and Suffolk County understand that they need to take actions going forward to make a sustainable economic future going forward.

And again, this is the beginning of a process, this is not the end of a process. And to get to where we are ultimately going to go, there are a lot of questions that need to be answered, some of the questions haven't even been posed yet.

So again, I thank the most -- I'm gratified that we take an expansive view of what the stakeholders are and particularly I would urge the local governments in these two service territories, three service territories to engage completely and understand that

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2 their actions and their opinions will have
3 a great deal to say about the outcomes of
4 this. And without their engagement, we
5 will not get to where I believe everybody
6 wants to go.

7 Thank you.

8 CHAIRMAN RHODES: Thank you.

9 So we've had some discussion
10 about item 164 and discussion about
11 process.

12 Can I ask you Bob, counsel to the
13 Commission, whether in your view the
14 settlement is properly arrived at, whether
15 it comports with legal and process and
16 public interest standards. That's sort of
17 a yes or no question, but you can...

18 MR. ROSENTHAL: So I'm reminded
19 of the adage of "Don't make perfect the
20 enemy of good." And that's what this
21 agreement really is all about. It is not
22 perfect, but it is definitely good.

23 I have entered into and worked on
24 well over a hundred agreements to resolve
25 disputes in my career. It's not a real

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estate deal, it's not two entities that are coming to a table that just have to negotiate on price, but they both really -- one wants to sell the property and one wants to buy the property.

The two parties come to table fundamental disagreements with respect to facts, with respect to the application of law to fact, with the application of policy.

And all of these agreements and disputes are dealt with in the course of an agreement. And here in particular there was an incentive to act quickly, given the onset of winter. The staff here, you know, acted weekends, late at night, to deal with the literally hundreds, well over a thousand, complaints that we received.

Cindy McCarren's group, Tammy Mitchell's group, Mike Reider's group, the Office of Consumer Services dealt with consumer complaints for people that were disabled, from people that were elderly,

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2 from people that were concerned that they
3 would be homeless.

4 We worked with National Grid
5 throughout the process and they were
6 willing to work with us on this process to
7 prioritize those people so they would be
8 connected immediately.

9 So with all of that said, all of
10 the provisions here, I'm not going to get
11 into the nitty-gritty of them or just a
12 couple of them, I'm not going to get into
13 the nitty-gritty of negotiations except to
14 say that like in any agreement, there's a
15 push and pull on every issue.

16 With respect to your questions
17 about SAPA, SAPA is very specific. It
18 applies to rulemaking and ratemaking, that's
19 where public comments are required. It
20 specifically does not apply to an enforcement
21 action, this was an enforcement action;
22 therefore, those separate provisions are
23 inapplicable.

24 Section one -- Section 25A of the
25 public service law, is the law that we

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were applying in this case, that provision of law was enacted in 2013. The guidelines that you talked about were promulgated in 1992, they relate to rate cases. This is not a rate case, it's an enforcement case.

I've told each of you personally, and I will honor this, we will provide you with an ongoing list that we will update on an annual basis -- I'm sorry, a monthly basis, of all of our enforcement cases. That's the least we can do and we'll seek your input on it because we think it's valuable and we'll do that going forward.

We certainly did brief you on the National Grid agreement. So let me point out a few of the very key aspects of this agreement and why we believe it should --

CHAIRMAN RHODES: So Bob, I just wanted the counsel's opinion on are we in a proper space?

MR. ROSENTHAL: And I'm getting there, sorry about the delay but I'm passionate about this given the time and

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energy that we put into it.

So there are three really important key aspects of the agreement that leads us to believe it certainly is in the public interest.

Number one is the obligation for National Grid to lift the moratorium immediately, which they have agreed to do. They already connecting well over 1,400 customers and have agreed to connect all new customers moving forward until September 1st, 2021.

Number two, the company's agreement to file a report regarding long-term capacity options and taking comments on that report and four hearings to takes place in a downstate service area, which we believe will put them on the road to having a long-term policy in place, such that moratorium will be indefinitely lifted.

And three, the agreement to make impact the ratepayers whole. So like every agreement, there's a give and take,

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2 and I'm not going to get into the
3 specifics but we firmly believe that
4 looked at in whole, this agreement is in
5 the public interest, in particular in the
6 best interest of National Grid's downstate
7 ratepayers.

8 CHAIRMAN RHODES: Thank you.

9 So I'm going to call an end to
10 the comments and questions and proceed to
11 a vote on the consent items.

12 My own vote is in favor of the
13 recommendations on the consent agenda.

14 Commissioner Burman, how do you
15 vote?

16 COMMR. BURMAN: I vote yes for
17 all the items except for the ones that I
18 identified as concerning.

19 I am voting no on 164. I take
20 very different legal opinion on many of
21 the issues. It is not a negative on staff,
22 I think staff worked really hard, but as
23 their own press release showed there were a
24 number of folks engaged outside of the
25 Commission that signed onto the press release

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2 and I wasn't made aware of it until the press
3 release was going live, and then my review
4 was after the fact.

5 It's not about me, it's about
6 what makes sense. Settlement guidelines
7 are not just for the rate case and we
8 really should take ownership on looking
9 at, and even if it may not fit the four
10 corners, if we're using enforcement action
11 as a way of getting around the settlement
12 guidelines and the transparency, it's very
13 distressing.

14 CHAIRMAN RHODES: Thank you.

15 SECRETARY PHILLIPS: May I clarify
16 before we go forward, are you then also
17 voting no on item 369, 370 and 376?

18 COMMR. BURMAN: No, 369, I just made
19 comments on. 370 I made comments on. 376
20 I'm a no on -- on 376 I concur in part and
21 dissent in part. And 164 I'm a no on.

22 Thanks.

23 SECRETARY PHILLIPS: Thank you.

24 CHAIRMAN RHODES: Thank you,
25 Michelle.

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Commissioner Alesi, how do you
vote?

COMMR. ALESI: Yes.

CHAIRMAN RHODES: Commissioner
Edwards, how do you vote?

COMMR. EDWARDS: So I just want
to thank the staff for working on 164 and
continuing to work on the results of both
National Grid's moratorium and the
settlement.

I'm going to say what I said
before, I believe that this was a pipeline
approval strategy, and while we want to
have healthy utilities, we also want to
have healthy families, healthy small
businesses, and I believe that they
improperly denied service to thousands and
thousands of people who struggled their
hard-earned money to open up pizzerias and
close on homes and cook for their
families.

And you all are living with the
outcome of that still because they are
still struggling as a result of what I

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believe was a pipeline approval strategy.

There were other options, we know that this is true today because now they are exploring other options including clean energy and other things that could have been done, in my belief, before the implementation of this moratorium.

At the end of the day, I want to thank all of you because this was chaotic and is still chaotic and you all are working very hard to try to, as late as yesterday, receiving complaints from consumers that are still struggling as a result of this.

So it's great that we all have our voices, but it's important for me to end with thanking all of you for working on both the settlement, which you are correct is not perfect, but continue to work with the staff that's in here and outside. This was a tough thing and I want to thank all of you for doing so.

And I will vote yes.

CHAIRMAN RHODES: Thank you.

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Commissioner Howard.

COMMR. HOWARD: I'll be voting
yes, Mr. Chairman.

CHAIRMAN RHODES: Thank you very
much.

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

SECRETARY PHILLIPS: No.

CHAIRMAN RHODES: Thank you.

So I know we've talked about some
serious things today, but I want to make
one more serious or heartfelt comment,
which is: It is holiday season, I wish
all of our colleagues, I wish all of our
guests happy holidays.

And my one wish is that you can
enjoy your time and pay attention to your
families and your loved ones and your
friends.

Happy holidays. Thank you.

(Time noted: 1:01 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.:
COUNTY OF QUEENS)

I, NICOLE ELLIS, a Notary Public for and within
the State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related to any
of the parties to this action by blood or by
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 19th day of December 2019.

Nicole Ellis

NICOLE ELLIS

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