

1 Monthly meeting - 1-21-21

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4

5 MONTHLY MEETING OF THE

6 PUBLIC SERVICE COMMISSION

7 VIA WEBEX

8

9 Thursday, January 21, 2021

10 10:33 a.m. until 11:56 a.m.

11

12

13 COMMISSIONERS:

14 JOHN B. RHODES, Chair

15 DIANE X. BURMAN

16 JAMES S. ALESI

17 TRACEY A. EDWARDS

18 JOHN B. HOWARD

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2 (On the record 10:33 a.m.)

3 CHAIRMAN RHODES: Good morning
4 everybody. This is John Rhodes, chair of the Public
5 Service Commission and I call this session of the
6 Public Service Commission to order. Secretary
7 Phillips are there any changes to the final agenda?

8 SECRETARY PHILLIPS: There are no
9 changes to the final agenda.

10 CHAIRMAN RHODES: Thank you very much.

11 Before we get started I would like to
12 note our arrangements for the session today. In line
13 with the guidelines concerning social distancing and
14 minimizing large gatherings, and in light of
15 executive orders that suspend provisions of the open
16 meetings law on an emergency basis, we are conducting
17 today's session remotely.

18 I would like to remind those who are
19 participating by phone to please mute your lines
20 except when you are speaking. The public will have
21 the opportunity to listen to the session on the
22 department's webcast page and we will also record and
23 transcribe the session as has been our practice.
24 These arrangements have been reviewed by our general
25 counsel and he has found that these meet the

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2 requirements of the executive orders, and also that
3 they meet my own expectations of honoring the intent
4 of the open meetings law to the maximum extent
5 permitted by our duty to protect the public health of
6 New Yorkers.

7 Before moving to the agenda, I would
8 like to conduct a roll call of the commissioners.
9 Please confirm that you are with us when I call your
10 name. Commissioner Diane Burman?

11 COMMISSIONER BURMAN: Here.

12 CHAIRMAN RHODES: Thank you.
13 Commissioner James Alesi?

14 COMMISSIONER ALESI: Yes, I am here.

15 CHAIRMAN RHODES: Great. Thank you.
16 Commissioner Tracey Edwards?

17 COMMISSIONER EDWARDS: Here.

18 CHAIRMAN RHODES: Thank you.

19 Commissioner John Howard?

20 COMMISSIONER HOWARD: Here.

21 CHAIRMAN RHODES: Thank you. With
22 that we will move into the agenda beginning with the
23 regular items.

24 The first and second items for
25 discussion are Items 301 and 303, Cases 20-E-0444 et

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2 al as they relate to the energy storage tariff
3 filings presented by Sandra Hart Utility Engineer
4 Specialist 2. Marco Padula, director, Office of
5 Markets and Innovation, Bridget Woebbe, assistant
6 counsel and Mary Ann Sorrentino, chief of -- of
7 upstate rates and tariffs are available for
8 questions. Sandra, please begin.

9 MS. HART: Good morning, Chair Rhodes
10 and Commissioners. Item 301 which is a draft order
11 in Case 20-E-0444. It's a tariff filing by Con
12 Edison to modify its electric tariff schedule
13 regarding the cost recovery of its energy storage
14 programs. And then the companion Item Number 303
15 which is a draft order addressing tariff filings made
16 by Central Hudson, New York State Electric and Gas
17 Corporation, RG&E, Orange and Rockland and National
18 Grid in Case 18-E-0130 in the matter of energy
19 storage deployment program.

20 Con Edison originally filed tariff
21 amendments on April 11th of 2019 which became
22 effective on a permanent basis on April 12th of 2019.
23 The draft order for Item 301 addresses revisions
24 filed by Con Edison to add a definition for net
25 annual wholesale market revenues and modify its

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2 language associated with the cost shares mechanism
3 pursuant to the commission's order establishing
4 energy storage goal and deployment policy issued
5 December 13th, 2018.

6 During the presentation I will refer
7 to this order as the energy storage order. The draft
8 order for Item 303, the tariff filing submitted by
9 Central Hudson, New York State Electric and Gas
10 Corporation, Niagara Mohawk Power Corporation, Orange
11 and Rockland Utilities and Rochester Gas and Electric
12 Corporation into effect on a permanent basis.

13 The tariff filings of these companies,
14 which are currently in effect on a temporary basis,
15 were made pursuant to the commission's energy storage
16 order regarding the cost recovery of energy storage
17 implementation contract costs. Pursuant to the
18 energy storage order, Consolidated Edison was
19 required to procure and acquire 300 megawatts of
20 qualified energy storage. And the other major
21 electric companies were required to procure and
22 acquire at least 10 megawatts of qualified energy
23 storage provided that the bids do not exceed a
24 utility specific defined ceiling cap.

25 In addition, the energy storage order

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2 directed that these companies file cost recovery
3 tariff amendments on not less than 30 days' notice to
4 become effective on a temporary basis on June 1st of
5 2019. Item 303 is making these companies tariff
6 filings permanent. To provide an incentive for the
7 companies to maximize the wholesale revenue of the
8 storage excess, the energy storage order authorized
9 revenue sharing of 30% to the utility shareholders
10 and 70% to the ratepayers when wholesale revenues
11 exceed contract costs annual basis.

12 The energy storage order required that
13 the cost of energy storage be recovered from all
14 delivery customers using the same recovery mechanisms
15 through which non-wires alternative program costs are
16 -- are recovered. However, cost recovery for non-
17 wires alternative program costs is not consistent
18 across the utilities which subsequently carries over
19 to the differences in energy storage deployment cost
20 recovery.

21 Specifically NYSEG and RG&E recover
22 non-wires alternative costs from standby customers on
23 an as-used demand basis whereas the other utilities
24 recover these costs on a contract demand basis.
25 Therefore, energy storage cost recovery is different

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2 for these utilities. As the companies are in
3 compliance with the energy storage order, the draft
4 order does not direct further modifications for the
5 proposed cost recovery. But does -- does identify
6 this as an area that could be considered modified to
7 make consistent amongst the utilities.

8 The draft order in Item 303 also
9 acknowledges that the companies have different
10 proposals regarding recovery of costs that are not
11 made with a specific or specific developer contract.

12 For example, O&R proposes to amortize
13 such costs over seven years. This is consistent with
14 how Con Edison's recovery -- recovers these costs.
15 However, National Grid, Central Hudson, NYSEG and
16 RG&E offer to recover these costs as they're actually
17 incurred. Even though there are inconsistencies
18 amongst the utilities, the draft order finds the
19 companies' proposals to be reasonable. But
20 identifies this is an area that could be revisited.

21 Finally, the draft order directs the
22 companies to file in the work paper supporting the
23 cost recovery of energy storage contract and
24 implementation costs beginning January 1st, 2022.

25 This requirement remains in effect

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2 until the companies are directed to discontinue the
3 filings by the commission. This concludes my
4 presentation of the draft orders. Marco Padula,
5 Bridget Woebbe, Mary Ann Sorrentino or I and I are
6 available for questions.

7 CHAIRMAN RHODES: Great. Thank you
8 very much. This is John Rhodes. Before I jump into
9 my remarks and comments just for, you know, quality
10 of discussion I note that there was a red line
11 circulated updating this order for best understanding
12 by the commissioners. Could you Sandra or Mary Ann
13 or whoever give a brief -- give the gist of the
14 impact of what this -- what this correction achieves?

15 MS. SORRENTINO: I, yes, Chair Rhodes.
16 This is Mary Ann. I will give a summary of the red
17 line.

18 The draft order had originally
19 identified an area of difference amongst the
20 utilities with respect to the treatment of revenues
21 in excess of cost associated with the energy storage
22 contracts. We had indicated that two of the
23 utilities had proposed to defer such revenues.
24 However, all of the utilities proposed to put those
25 revenues to -- some of those revenues back to

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2 customers using the same mechanism that they used to
3 recover the cost of the energy storage contracts.

4 CHAIRMAN RHODES: Great. Thank you
5 very much. So with that, my -- my observation is
6 that this is a thoughtful and well done item. With
7 this -- with this last correction and in general it
8 achieves a very good balance of consistency,
9 transparency and practicality. It's good practice to
10 -- to order these -- these tariff aspects. And it's
11 also important to open up energy storage -- open up
12 opportunities consistent with our energy storage
13 order of 2018 in order to support our clean energy
14 goals for the state, our reliability goals for the
15 state and system savings all to the benefit --
16 benefit of New York's customers. I will be
17 supporting this item. Commissioner Burman, any
18 comments or question?

19 COMMISSIONER BURMAN: I have no
20 comments or questions. Thank you.

21 CHAIRMAN RHODES: Sorry, Commissioner
22 Alesi, any comments or questions?

23 COMMISSIONER ALESI: Just simply that
24 I'll be supporting the tariff revisions as they're
25 presented. And, yes, I'll be voting yes.

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2 CHAIRMAN RHODES: Thank you very much.
3 Commissioner Edwards, any comments or questions?

4 COMMISSIONER EDWARDS: No comments, no
5 questions. Thank you.

6 CHAIRMAN RHODES: Thank you. And
7 Commissioner Howard?

8 COMMISSIONER HOWARD: Yeah, I will be
9 supporting. And my only comment is we are at the
10 actual beginning of our baby steps of our enormous
11 goals on storage. And I'm confident that storage
12 will come back to us time and time again as we move
13 forward with compliance with the climate act as
14 currently implemented. But I will be supporting.

15 CHAIRMAN RHODES: Thank you. And
16 indeed if I can react to your -- to your observation.
17 We will with that we will proceed to vote. And we'll
18 vote on these items separately. For the record, I am
19 John Rhodes and we're voting on item 301. And my
20 vote is in favor of the recommendation to approve the
21 tariff amendments as discussed. Commissioner Burman,
22 how do you vote?

23 COMMISSIONER BURMAN: I am concurring.

24 CHAIRMAN RHODES: Thank you.

25 Commissioner Alesi, how do you vote?

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2 COMMISSIONER ALESI: I vote yes.

3 CHAIRMAN RHODES: Thank you.

4 Commissioner Edwards, how do you vote?

5 COMMISSIONER EDWARDS: I vote yes.

6 CHAIRMAN RHODES: Thank you.

7 Commissioner Howard, how do you vote?

8 COMMISSIONER HOWARD: Yes.

9 CHAIRMAN RHODES: Thank you. The item
10 is approved and the recommendation is adopted. Let's
11 now proceed to vote on Item 303. Again, for the
12 record it's John Rhodes speaking and my vote is in
13 favor of the recommendation to approve the tariff
14 amendments as discussed. Commissioner Burman, how do
15 you vote?

16 COMMISSIONER BURMAN: I concur.

17 CHAIRMAN RHODES: Thank you.

18 Commissioner Alesi, how do you vote?

19 COMMISSIONER ALESI: I vote yes.

20 CHAIRMAN RHODES: Thank you.

21 Commissioner Edwards, how do you vote?

22 COMMISSIONER EDWARDS: I vote yes.

23 CHAIRMAN RHODES: Thank you.

24 Commissioner Howard, how do you vote?

25 COMMISSIONER HOWARD: Yes.

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

4 With that we will move to the third
5 item for discussion which is Item 307, Case 20-E-0586
6 as it relates to New York State Electric and Gas
7 Corporation's preparation for and response to
8 Tropical Storm Isaias presented by Andrea Cerbin,
9 assistant counsel. Robert Rosenthal, general
10 counsel, Joseph Suich, director of office of
11 investigations and enforcement and Kevin Wisely,
12 director, office of resilience and emergency
13 preparedness are available for questions. Andrea,
14 please begin.

15 MS. CERBIN: Thank you. Good morning
16 Chair and Commissioners. My name is Andrea Cerbin
17 and I'm in the Office of Investigations and
18 Enforcement. And before you today is a draft order
19 adopting the terms of a joint proposal in 20 -- in
20 Case 20-E-0586. As you know, Tropical Storm Isaias
21 struck the state on August 4th, 2020 and caused
22 nearly a million power outages of which 183,000
23 occurred in the NYSEG service territory.

24 Most of the NYSEG outages were in its
25 Brewster division which serves customers in Dutchess,

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2 Putnam and Westchester Counties. With respect to
3 outage restoration times, more than 90% of the
4 customers in NYSEG's Brewster division were restored
5 by 5 p.m. on August 8th with full restoration
6 occurring sometime after 10 a.m. on August 10th. As
7 required under the commission's storm regulations,
8 NYSEG disclosed in its, quote unquote, storm
9 scorecard, three apparent violations of its emergency
10 response plan or E.R.P.

11 Specifically, NYSEG identified its
12 failure to, first, contact 80% of all life support
13 equipment or L.S.E. dependent customers within 12
14 hours. Second, to contact 100% of L.S.E. customers
15 within 24 hours. And, third, respond to 80% of all
16 incoming customer calls within 90 seconds on August
17 4th.

18 In the joint settlement agreement
19 entered into between D.P.S. staff and NYSEG that is
20 attached to the draft order before you, NYSEG has
21 admitted to all 3 violations and has agreed to pay
22 the maximum penalty for a combined \$1.5 million
23 thereby eliminating the need for future
24 administrative litigation. This penalty, paid by
25 shareholders, will be used for the benefit of

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2 ratepayers in NYSEG's next electric rate case where
3 ratepayers will have the ability to provide input on
4 how the funds shall be used.

5 As a side note here, in the 2018
6 storms, winter storms and related settlement where
7 you might recall NYSEG admitted to nearly 20 E.R.P.
8 violations, NYSEG and staff have worked closely to
9 raise NYSEG's standards and storm response
10 preparedness. However, more work is needed and the
11 department is currently reviewing NYSEG's recent
12 E.R.P. submissions to incorporate lessons learned
13 from Tropical Storm Isaias including evaluating input
14 from other public commenters such as United
15 Westchester.

16 The results of the Department's ERP
17 proposed revisions will appear before the Commission
18 later this year. In this case, however, given that
19 NYSEG's agreement to pay the full statutory maximum
20 and to admit to the violations, the department
21 recommends the adoption of the order based on the
22 terms of the settlement agreement.

23 Thank you for your consideration and
24 the team is available for questions.

25 CHAIRMAN RHODES: Thank you very much,

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2 Andrea. This is a well done item and documents a
3 well done outcome. I think its -- the two salient
4 points are that NYSEG acknowledged indeed, you know,
5 self-reported the violations and agreed to pay the
6 statutory maximum which obviously is consistent with
7 the spirit of accountability and performance that we
8 need to maintain by our utilities for New York's
9 customers.

10 This is a sensible settlement and I
11 also preach a side note -- appreciate the side note
12 about E.R.P. revisions and associated review to -- to
13 come later in the year. And obviously I also concur
14 with the -- this very fair observation that more work
15 is going to be needed on storm preparation, storm
16 restoration and protection of New York customers as
17 we go forward. This is a very straightforward item
18 to approve and I will be supporting it.

19 Commissioner Burman? Any -- any
20 comments or questions?

21 COMMISSIONER BURMAN: Thank you so
22 much. Thank you so much. I do have some brief
23 comments. For the record, I am going to be speaking
24 in more detail on Item 376 which is on the consent
25 agenda and some of my comments at that time may be

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2 relevant to this item as well. But it doesn't
3 preclude me from voting now on the item. I do want
4 to first thank Andrea in particular and her
5 colleagues because I think this was a very well done
6 settlement or agreement between staff and the
7 company.

8 I do think it's important to note that
9 while we are characterizing this as a joint proposal,
10 I think that's a wrong usage of the word. Joint
11 proposals have other meanings in our settlement
12 processes and usually involves the ability for others
13 to decide to be a party to engaging in those
14 settlement discussions. I don't think it's
15 inappropriate for staff and companies to work
16 together on and looking at the emergency response
17 plans and all the different things that go into it
18 and coming to some agreement separately because I
19 think it goes to the core work that goes on in trying
20 to ensure proper oversight and engagement on storm
21 response and preparing for the next one.

22 However, I do think we need to be
23 mindful of our usage of the word joint proposal and
24 the meaning behind that as well as carefully lining
25 out the ability for staff and the companies to engage

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2 in discussions that may be appropriate and fruitful.

3 The other point that I'd like to raise
4 is the order states that the funds will be used to
5 provide or the draft order that the funds will be
6 used to provide ratepayer benefits in a manner to be
7 determined by the commission in the company's next
8 electric rate case allowing for ratepayer notice and
9 comment on the funds used.

10 My concern with that really goes to
11 the heart of we're not giving any real direction on
12 how to utilize these funds. And while it is to be
13 determined in a manner -- in a manner determined by
14 the commission, it generally would come after it's
15 been through settlement discussions or some other.
16 And then we are only left to approve, modify or deny
17 what is in the joint proposals that come before us.

18 I think that we do need to have
19 engagement as the commission to clearly determine how
20 to appropriately utilize those funds or give
21 direction to the parties who may be involved in the
22 next rate case so that it's not just used as a way to
23 lessen the rate impacts but is truly used for the
24 purposes as related to what some of the violations
25 were, et cetera. So I just point that out because

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2 it's a real issue for me as we go forward. And I
3 want staff and parties to be mindful of that. Thank
4 you.

5 CHAIRMAN RHODES: Thank you very much.
6 Commissioner Alesi, any comments or
7 questions?

8 COMMISSIONER ALESI: Thank you, Mr.
9 Chairman. I believe it's a good example of
10 cooperative engagement. A reasonable settlement as a
11 result of intensive investigation that assures
12 accountability. And I think it was a good job all
13 the way around by the department.

14 CHAIRMAN RHODES: Thank you very much.
15 Commissioner Edwards, any comments or
16 questions?

17 COMMISSIONER EDWARDS: No, my only
18 comment is I will be voting in favor. I think the
19 staff did a really good job of expediting this
20 investigation. There's a lot of pain out there in
21 terms of lack of accountability and customer service.
22 And I, you know, I hope there comes a day that we
23 don't have to move forward in these directions
24 because the customers get the -- the service that --
25 that they deserve. So thank you very much.

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2 CHAIRMAN RHODES: Thank you very much.

3 And, Commissioner Howard, any comments
4 or questions?

5 COMMISSIONER HOWARD: None for me. I
6 will be supporting this.

7 CHAIRMAN RHODES: Thank you very much.
8 So with that I will move to call for a vote. For the
9 record my own vote is in favor of a recommendation to
10 adopt the terms of the joint proposal as discussed.
11 Commissioner Burman, how do you vote?

12 COMMISSIONER BURMAN: Yes.

13 CHAIRMAN RHODES: Thank you.
14 Commissioner Alesi, how do you vote?

15 COMMISSIONER ALESI: Yes.

16 CHAIRMAN RHODES: Thank you.
17 Commissioner Edwards, how do you vote?

18 COMMISSIONER EDWARDS: Yes.

19 CHAIRMAN RHODES: Thank you.
20 Commissioner Howard, how do you vote?

21 COMMISSIONER HOWARD: Yes.

22 CHAIRMAN RHODES: Thank you. And with
23 that the item is approved and the recommendation is
24 adopted. We'll now move to the fourth item for
25 discussion which is Case 19-T-0549 which is the

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2 Article 7 application to construct the Marcy to New
3 Scotland transmission upgrade project presented by
4 Administrative Law Judge Anthony Belsito. Robert
5 Rosenthal, general counsel is available for
6 questions. Judge Belsito, please begin.

7 A.L.J. BELSITO: Thank you, Chair.
8 Good morning Chair and Commissioners. This
9 proceeding involves an application submitted pursuant
10 to Article 7 of the Public Service Law by L.S. Power
11 Grid New York and New York Power Authority for
12 authorization to construct the Marcy to New Scotland
13 upgrade project, a 93 mile 345 kilovolt transmission
14 line starting at the Edic substation in Marcy and
15 passing through Oneida, Herkimer, Montgomery,
16 Schenectady and Albany Counties before terminating at
17 the New Scotland substation in the City of Albany.

18 The project would include construction
19 of new substations in Princetown and Rotterdam and
20 upgrades to various existing substations. The
21 project is expected to increase the transfer
22 capability across the central east interface by at
23 least 350 megawatts. The submission of the Article 7
24 application addressed by the draft order follows and
25 results from the New York Independent System

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2 Operators or NYISO public policy transmission
3 planning process.

4 The NYISO's public policy transmission
5 planning process was developed to comply with the
6 federal energy regulatory commission's Order Number
7 1,000 which requires, among other things, a planning
8 process for the consideration of transmission need
9 driven by public policy requirements. Related to the
10 project considered in this proceeding in December of
11 2015 the commission found a public policy
12 transmission need for new 345 kilovolt major electric
13 transmission -- transmission facilities to cross the
14 central east and upstate interfaces to move power
15 from upstate to downstate.

16 The commission also found that the
17 2015 state energy plan and portions of state energy
18 law together constitutes public policy requirements
19 driving transmission needs. The commission then
20 directed the NYISO to commence the solicitation and
21 evaluation of proposed solutions to the identified
22 public policy transmission needs.

23 On August 20th, 2019 the applicant is
24 one of the developers selected to the public policy
25 planning process, submitted its Article 7 application

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2 for considering -- consideration in this proceeding.
3 The application was determined complete as of
4 December 18th, 2019. On January 7, 2020 the
5 applicant filed a notice of impending settlement
6 negotiations notifying parties and interested persons
7 that settlement negotiations would begin on or about
8 January 17th, 2020.

9 Five public statement hearings and
10 information sessions were held along the route.
11 Commenters discussed the use of alternating current
12 instead of direct current lines, the importance of
13 closing gates in agricultural areas throughout the
14 project, the need for additional transmission
15 upgrades beyond those proposed by this project. And
16 the possibility of siting renewable energy projects
17 within transmission right of way -- rights of way.

18 As a result of the settlement
19 negotiations noticed in January 2020, on June 5th of
20 20 -- also 2020 the applicant filed a joint proposal
21 settling the issues between the signatory parties
22 which include the applicant, staff and the Department
23 of Public Service staff, the Department of
24 Environmental Conservation and staff at the
25 Department of Agriculture and Markets.

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2 The joint proposal represents
3 comprehensive settlement that is sufficiently
4 supported by a record that will allow the commission
5 to make all the required findings -- Article 7
6 required findings include, among others, the basis of
7 need for the facility, the nature of the probable
8 impacts and the facility -- and that the facility
9 presents minimum adverse environmental impact facts
10 considering safe technology and the nature and
11 economics of the various alternatives.

12 And that the facility conforms to a
13 long range plan for expansion of the electric power
14 grid of the state and the interconnected systems.
15 National Grid, Dominion Energy Transmission,
16 Incorporated and the Iroquois Gas Transmission System
17 L.P. do not oppose the joint proposal but file
18 comments or testimony relating their concerns about
19 the project impact on existing gas pipelines within
20 and adjacent to the projects right of way.

21 Cricket Valley Energy Center, L.L.C.,
22 a natural gas fired generation plant located in
23 Dutchess County, opposes the joint proposal arguing
24 that the project is not needed. However, as
25 described in detail in the draft order, the record in

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2 this case fully supports a finding that the facility
3 is necessary to increased transmission capacity
4 across the central east interface. And that need --
5 and that need is expected to continue as New York
6 works towards the requirements of the Climate
7 Leadership and Community Protection Act and the
8 Accelerated Renewable Act.

9 The record also demonstrates that by
10 moving power efficiently and cost effectively across
11 the central east interface, the project will advance
12 numerous public policies including reducing
13 congestion and production costs, improving market
14 competition and liquidity, enhancing efficiency,
15 reliability and resiliency and avoiding refer --
16 refurbishment cost of aging infrastructure.

17 Therefore, the draft order recommends
18 the commission grant to the applicant pursuant to the
19 Public Service Law Article 7 Section 121 a
20 conditional certificate of environmental
21 compatibility and public need.

22 That is the end of my presentation.
23 Myself and Mr. Rosenthal are available for questions.

24 CHAIRMAN RHODES: Thank you very much,
25 Judge Belsito. My own reaction is that this is a

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2 good application that flows from a good planning
3 process with a good record. And importantly good
4 consideration of the impacts and benefits. In short
5 this is a good project and represents a meaningful
6 milestone on a one critical aspect of New York
7 State's energy transmission strategy to support our
8 transition to clean energy, enhance -- preserve and
9 enhance a reliability and cost effective is all to
10 the benefit of customers. This project as I see it
11 is very clearly in the public interest and I will be
12 supporting.

13 Commissioner Burman, any comments or
14 questions?

15 COMMISSIONER BURMAN: I have no
16 comments or questions. Thank you.

17 CHAIRMAN RHODES: Thank you very much.
18 Commissioner Alesi, any comments or
19 questions?

20 COMMISSIONER ALESI: Thank you,
21 Chairman. Yes, I am going to support this. It
22 clearly serves the needs of the citizens with an
23 appropriate concern for the environment. And I know
24 that's a simple statement but I'd like to underscore
25 that I'm sure that significant effort went into the

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2 details of bringing this about. I'll be voting yes.

3 CHAIRMAN RHODES: Thank you very much.

4 I'm not sure everybody's on mute. I did hear

5 Commissioner Alesi's remarks but there's a little bit

6 of interference, so if you're not muted please mute

7 unless you're Commissioner Edwards in which case I'm

8 asking you if you have any comments or questions.

9 COMMISSIONER EDWARDS: I do not have

10 any comments or questions. I will be voting in

11 favor. Thank you.

12 CHAIRMAN RHODES: Thank you very much.

13 And Commissioner Howard, any comments

14 or questions? Commission Howard, you may be on mute.

15 COMMISSIONER HOWARD: Yes, I'm sorry.

16 I have a little problem with my phone. This -- this

17 line has been part of my life for most of my life.

18 In fact over 40 years I've lived within a mile or 2

19 of -- of this -- of the current line. And -- and has

20 been no problems that have occurred in my life with

21 this.

22 The issue of the need for this line

23 goes back way before this particular proposal. The

24 need for more cross state interconnection. And at

25 the time the need was to help reduce pricing across

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2 -- into downstate regions taking advantage of lower
3 price assets upstate. Now we've moved to a more
4 environmentally sensitive planning process which will
5 allow bringing up many megawatts of renewable energy
6 into the load areas in downstate New York.

7 With that being said, I don't think
8 the commission really sees projects of this magnitude
9 with this much consensus behind them. And I will be
10 supporting it.

11 CHAIRMAN RHODES: Thank you very much.
12 With that I will proceed to call for a vote on the
13 item. For the record, it's John Rhodes and my vote
14 is in favor of the recommendation to grant the
15 certificate, subject to conditions as discussed.
16 Commissioner Burman, how do you vote?

17 COMMISSIONER BURMAN: I concur.

18 CHAIRMAN RHODES: Thank you.

19 Commissioner Alesi, how do you vote?

20 COMMISSIONER ALESI: I vote yes.

21 CHAIRMAN RHODES: Thank you.

22 Commissioner Edwards, how do you vote?

23 COMMISSIONER EDWARDS: I vote yes.

24 CHAIRMAN RHODES: Thank you.

25 And Commissioner Howard, how do you

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2 vote?

3 COMMISSIONER HOWARD: Yes.

4 CHAIRMAN RHODES: Thank you. The item
5 is approved and the recommendation is adopted. We
6 will now move to the next item for discussion which
7 is related. Item 304, Cases 19-E-0739 and 20-E-0361
8 as they relate to petitions by L.S. Power for a
9 lightened regulation and financing presented by
10 Bridget Woebbe, assistant counsel. Bridget, please
11 begin.

12 MS. WOEBBE: Thank you, Chair Rhodes
13 and good morning, Commissioners. This item pertains
14 to the request of L.S. Power pursuant to Public
15 Service Law Section 68 to allow the exercise of
16 rights and privileges granted under certain municipal
17 road crossing agreements and authorization of a
18 lightened regulatory regime under the Public Service
19 Law similar to that afforded by the commission to
20 other entities engaged in competitive wholesale
21 markets.

22 This item also addresses a separate
23 request by the petitioners for approval pursuant to
24 Public Service Law Section 69 to enter into a
25 financing agreement to support the construction and

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2 operation of the project. The project will transmit
3 electric power in the wholesale electricity market
4 only and will at all times be under the operational
5 control and tariff administration of the New York
6 Independent System Operator.

7 Petitioners will not have any retail
8 customers, and as a result, they will not have any
9 adverse effect on captive retail customers requiring
10 the commission's rate regulation protection. L.S.
11 Power's first request for relief under Public Service
12 Law Section 68 requires an electric corporation to
13 obtain a certificate of public convenience and
14 necessity or C.P.C.N. before constructing electric
15 plant including the proposed transmission facility.

16 The commission may grant a C.P.C.N.
17 after a hearing and finding that the project is
18 necessary and convenient for the public service and
19 is in the public interest. C.P.C.N. requests also
20 must be supported with evidence that the company is
21 economically viable, can finance construction and
22 improvements, will be able to provide safe, adequate
23 and reliable service, has obtained all necessary
24 municipal consents, and has provided a certified copy
25 of its charter.

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2 As detailed in the proposed item,
3 petitioner satisfied each of these requirements. I
4 also note that the proposed transmission line would
5 yield substantial public benefits as Judge Belsito
6 just discussed. It is recommended therefore that the
7 commission grant a C.P.C.N. with appropriate
8 conditions to address market power concerns including
9 the petitioner's commitment to provide the New York
10 Independent System Operator with operational control
11 over the facilities.

12 Turning to petitioner's request for
13 lightened regulation, commission precedent has
14 established a lightened rate making regulatory regime
15 for electric service providers that participate in
16 competitive wholesale markets and do not present a
17 market power risk or other potential harm to captive
18 ratepayers.

19 It is worth noting that an affiliate
20 of L.S. Power, Helix Generations owns T.C.
21 Ravenswood, a generation facility located in Queens,
22 New York. In the 2017 order approving transfer
23 subject to acceptance of conditions and making other
24 findings, the commission addressed the significant
25 potential risk of vertical market power in the future

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2 if an L.S. Power affiliate was selected in the New
3 York Independent System Operator's public policy
4 planning process and directed the actual divestiture
5 is the only mitigation measure that is adequate to
6 eliminate the vertical market power risks over the
7 long term.

8 In the present petition for a C.P.C.N.
9 enlightened regulation, the petitioner's affirmed
10 that Helix has unconditionally accepted all of those
11 protective conditions on behalf of itself and its
12 affiliates. And because both Helix and petitioners
13 have fully complied with those conditions to date and
14 will continue to comply with those conditions, they
15 have addressed the commission's statement of policy
16 regarding vertical market power.

17 The proposed item recommends that L.S.
18 Power be granted a lightened rate making regulatory
19 regime that is comparable to the regulatory treatment
20 of other similarly situated wholesale market
21 participants.

22 Petitioner's request for flexible
23 financing approval pursuant to Public Service Law
24 Section 69 is appropriate under the standard applied
25 to lightly regulated entities. Consistent with

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2 commission precedent, the scrutiny applicable to
3 monopoly utilities may be reduced for lightly
4 regulated companies like petitioners.

5 The proposed \$478 million in financing
6 would be for a statutory purpose to support the
7 project and does not appear contrary to the public
8 interest. The order before you therefore approves
9 petitioner's proposed financing up to a maximum
10 amount of \$478 million with flexibility to modify
11 without the commission's prior approval the identity
12 of the financing entities payment terms and the
13 amount financed so long as it does not exceed the
14 maximum amount. That concludes my presentation on
15 this item and I'm available to answer any questions
16 you may have.

17 CHAIRMAN RHODES: Thank you very much,
18 Bridget. We've just discussed, as you noted, the
19 underlying project and approved it on the basis that
20 it was in the public need. On other requests that
21 are presented in this item I find as you do that the
22 -- the requests generally meet the requirements for
23 approval of lightened regulation and flexible
24 financing and meet the test of being in the public
25 interest with the considerations at the -- sorry, the

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2 conditions I've discussed including the conditions
3 that relate to market power. I will be approving
4 this item.

5 Commissioner Burman, any comments or
6 questions?

7 COMMISSIONER BURMAN: No comments or
8 questions. Thank you.

9 CHAIRMAN RHODES: Thank you very much.
10 Commissioner Alesi -- Alesi, excuse
11 me, any comments or questions?

12 COMMISSIONER ALESI: Yeah, thank you,
13 Mr. Chairman. I --

14 CHAIRMAN RHODES: I'm sorry, I
15 couldn't hear you very well.

16 COMMISSIONER ALESI: -- I believe that
17 the -- yes, we have a little background there. All
18 set? Okay. Yes, I'm -- I'm going to vote yes on
19 this. I think it satisfactorily address any issues
20 of financing. Also addresses the issue of
21 operational control and ultimately the project itself
22 is -- I believe we're heading in the right direction
23 on this and I am going to be supporting it.

24 CHAIRMAN RHODES: Thank you very much.

25 Commissioner Edwards?

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2 COMMISSIONER EDWARDS: I will be
3 supporting this item. Thank you.

4 CHAIRMAN RHODES: Thank you very much.
5 And Commissioner Howard, any comments
6 or questions?

7 COMMISSIONER HOWARD: I have no
8 comments.

9 CHAIRMAN RHODES: Thank you. With
10 that I will proceed to call for a vote. For the
11 record, it's John Rhodes and my vote is in favor of
12 the recommendations to grant this certificate,
13 established a lightened regulatory regimen with
14 conditions and approve the financing as discussed.

15 Commissioner Burman, how do you vote?

16 COMMISSIONER BURMAN: I concur.

17 CHAIRMAN RHODES: Thank you.

18 Commissioner Alesi, how do you vote?

19 COMMISSIONER ALESI: I vote yes.

20 CHAIRMAN RHODES: Thank you.

21 Commissioner Edwards, how do you vote?

22 COMMISSIONER EDWARDS: I vote yes.

23 CHAIRMAN RHODES: Thank you.

24 Commissioner Howard, how do you vote?

25 COMMISSIONER HOWARD: Yes.

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2 CHAIRMAN RHODES: Thank you. The item
3 is approved and the recommendation is adopted. We'll
4 now proceed to move to the sixth and final discussion
5 item which is Item 306, Case 19-T-0549 as it relates
6 to the environmental management and construction plan
7 for the Marcy to New Scotland transmission upgrade
8 project presented by Brian Ossias, managing attorney.
9 Corey Strub, utility supervisor is available for
10 questions.

11 Brian, please begin.

12 MR. OSSIAS: Thank you. Good morning,
13 Chairman Rhodes and Commissioners. Today along with
14 Corey Strub we will be presenting the first segment
15 of the environmental management and construction plan
16 or E.M. and C.P.s filed in accordance with the L.S.
17 Power Article 7 certificate previously approved in
18 Case 19-T as in Tom 0549 at today's session. The
19 E.M. and C.P. will ultimately consist of eight
20 components altogether that are expected to be grouped
21 into four individual E.M. and C.P. filings.

22 Today's draft order recommends
23 approval of the first segment of the E.M. and C.P.
24 That segment work includes the removal of 2 existing
25 single circuit 230 kilovolt transmission lines on

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2 each framed structure and replacement with 2 single
3 circuit 345 K.V. transmission lines on steel
4 monopoles between the Princetown and Gordon Road
5 substations. Construction of the new Gordon Road
6 substation adjacent to the existing Rotterdam
7 substation yard and the establishment of a Depot Road
8 lay down yard and tree clearing need near the New
9 Scotland substation area.

10 Department of Public Service staff and
11 Department of Agriculture and Markets provided
12 informal comments and recommendations to the -- for
13 the certificate holder and a revised segment one E.M.
14 and C.P. was filed November 3rd, 2020 addressing
15 these informal comments. One formal comment was
16 received from Iroquois Gas requesting clarification
17 on the blasting plan and the certificate holder
18 committed to not conduct blasting within the pipeline
19 right of way or within the project right of way
20 adjacent to the pipeline right of way without a
21 blasting plan approved by the utility owner and
22 D.P.S. staff.

23 Approval of segment one, approval of
24 segment one E.M. and C.P. will allow the certificate
25 holder to begin construction on the segment one work

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2 previously described. The certificate holder has
3 adequately addressed the comments and the revised
4 E.M. and C.P. and D.P.S. staff recommends approval.
5 Thank you and we are available for any questions you
6 may have.

7 CHAIRMAN RHODES: Thank you, Brian and
8 thank you, Corey. This -- this item represents good
9 work to identify the issues including ample
10 opportunity for comments and good work to address on
11 the issues that -- that were identified. This to me
12 is a very clear-cut item and I will be voting in
13 favor. Commissioner Burman, any remarks or
14 questions?

15 COMMISSIONER BURMAN: No, I have no
16 comments or questions.

17 CHAIRMAN RHODES: Thank you very much.
18 Commissioner Alesi, any remarks,
19 comments or questions?

20 COMMISSIONER ALESI: More good work.
21 I'll be voting yes.

22 CHAIRMAN RHODES: Thank you very much.
23 Commissioner Edwards, any comments or
24 questions?

25 COMMISSIONER EDWARDS: I will be

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2 supporting this item.

3 CHAIRMAN RHODES: Thank you very much.

4 And Commissioner Howard, any comments

5 or questions?

6 COMMISSIONER HOWARD: No comments from

7 me.

8 CHAIRMAN RHODES: Thank you very much.

9 With that I will proceed to call for a vote. For the

10 record, again, it's John Rhodes and my vote is in

11 favor of a recommendation to approve the revised

12 environmental management and construction plan as

13 discussed.

14 Commissioner Burman, how do you vote?

15 COMMISSIONER BURMAN: I concur.

16 CHAIRMAN RHODES: Thank you very much.

17 Commissioner Alesi, how do you vote?

18 COMMISSIONER ALESI: I vote yes.

19 CHAIRMAN RHODES: Thank you.

20 Commissioner Edwards, how do you vote?

21 COMMISSIONER EDWARDS: I vote yes.

22 CHAIRMAN RHODES: Thank you.

23 And Commissioner Howard, how do you

24 vote?

25 COMMISSIONER HOWARD: Yes.

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2 CHAIRMAN RHODES: Thank you. The item
3 is approved and the recommendation is adopted. We
4 will now move to the consent agenda. Do any
5 commissioners wish to comment on or recuse from
6 voting on any items on the consent agenda beginning
7 with Commissioner Burman?

8 COMMISSIONER BURMAN: Thank you so
9 much. I'll be commenting on six items. First item
10 is Item 264. This is the ESCO draft order which
11 seeks to grant those petitions by ESCOs for
12 authorization to market specified home warranty
13 products as compliant with commission precedent and
14 seeks to deny the ESCO petitions for authorization to
15 market specified green gas products without complying
16 with the default price guarantee rule except to the
17 extent that the draft order seeks to grant a limited
18 waiver for one year only in which ESCOs could
19 continue to sell green gas products at premium prices
20 only to those customers who currently receive such
21 products.

22 This one year period is intended to
23 permit staff industry and interested parties time to
24 better explore the integrity and impacts of carbon
25 offset natural gas products in a track two

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2 collaborative process that is contemplated. This one
3 year period is also intended to minimize customer
4 disruptions.

5 The draft order also goes on to say
6 that as a condition of such authorization for the
7 home warranty products, each petitioner shall within
8 30 days of the issuance of this order file with the
9 Department of Public Service staff stranded sales,
10 agreements for each of the products authorized in
11 this determination. And any ESCOs wishing to offer
12 such products filing these proposed standard sales
13 agreements and any other supporting information for
14 review and approval by staff who will then review the
15 proposed home warranty products and ensure compliance
16 with the uniform business practices and commission
17 orders. But ESCOs may not market or sell such
18 products without first obtaining staff approval.

19 Moreover, the order -- moreover the
20 order states that the secretary shall within 60 days
21 after the implementation of ordering clause 3 not of
22 this order but of the September 18th, 2020 order of
23 rehearing, reconsideration and providing
24 clarification of the instant case dockets issue a
25 notice establishing a date and time for the

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2 initiation of track 2 proceedings.

3 I do have some real concerns about the
4 -- a lot of the aspects in the order and the process
5 that is there. I do want to recognize since the
6 order refers back to and incorporates the September
7 18th, 2020 order in its ordering clause and states
8 that the track two -- track two process can't be set
9 up until that ordering clause three is implemented.

10 I do want to note that the September
11 18th, 2020 order, the commission specifically noted,
12 and this is also embodied in the order, the draft
13 order before us, that the concept of green gas
14 products is relatively not novel. The commission's
15 existing renewable energy policies, particularly
16 those included as part of the clean energy standard
17 have to date been focused on the electric sector
18 within the clean energy standard program a REC is
19 tied to a megawatt hour of electric generation. And
20 there's no equivalent certificate for therms or any
21 other measurement of natural gas production or
22 consumption.

23 Thus this back to the September 2020
24 order thus while the commission is not foreclosing
25 the option of a product offering intended to provide

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2 renewable generation component to offset natural gas
3 usage, an insufficient record was developed during
4 the administrative hearing to provide for a green gas
5 product in the December 2019 order or in this order
6 on rehearing. Thus the commission's September 2020
7 stated that the commission may revisit the green gas
8 option in response to the ESCOs petition mentioned
9 above or generically as part of track two.

10 For the record and reminder, I
11 dissented on the September 18, 2020 order and it's
12 relevant to read the comments that I said at that
13 time because they very much the similar comments from
14 today. At that time I stated I had a few brief
15 observations. I stated I don't plan to rehash in
16 detail -- detail here the history of ESCO and the
17 commission orders on this. My past comments of prior
18 commission sessions on these matters still stand.

19 These comments today are really about
20 looking forward. I believe that ESCOs continue to
21 play and should play a beneficial role in New York
22 State. From my perspective, I would like to see the
23 commission and staff on a going-forward basis expand
24 their work in the ESCO area to integrate on a
25 holistic basis additional items not limited to but

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2 including community choice aggregation programs and
3 distributed energy resources.

4 I also think that staff in the next
5 phase of these proceedings should now turn to and
6 address issues surrounding ESCO's development of
7 renewable gas products. Renewable energy products
8 are important and it seems to me that the draft order
9 punts on these issues. Turning to our general
10 concerns, we're going through a unique and
11 challenging time with the Corona virus. I would
12 suggest that in the ESCO context, as we've done in
13 similar other areas, we examine the fiscal impact of
14 COVID-19 on their many energy customers and energy
15 service companies.

16 As part of those concerns I believe is
17 important for staff to address current data and
18 analysis of ESCOs including whether there's been a
19 change in which companies still operate in New York
20 and how we can help with the economic recovery that
21 benefits all consumers. We have an obligation to be
22 focused on recognizing the value that all of our
23 energy folks -- players provide. That includes
24 ESCOs.

25 ESCOs can play a role not just for

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2 economic recovery but to meet our energy goals and
3 provide value to customers. We should recognize that
4 and seek to move in a positive direction with that.

5 In reviewing the September 2020 draft
6 order, I stated I believe that at times it includes
7 unnecessarily prescriptive requirements with, perhaps
8 without meaning to, negative dismissive tone against
9 the industry, the ESCO industry as a whole.

10 Going forward I'd like to see the
11 commission try to move forward in a more positive
12 direction and we should when appropriate consider
13 lifting requirements that are now perhaps
14 unnecessarily burdensome on the good ESCOs that are
15 there. At that time I then voted no on the September
16 2020 order. I believe we have similar failings here
17 in this draft order.

18 In particular, I think that the focus
19 on green gas as potentially a carbon offset is
20 innovative thinking and is novel and we should be
21 encouraging such thinking rather than continually
22 seeming to not pay any attention to it and say that
23 the ESCOs are the ones that are not putting enough
24 information forward. We should have been leaning
25 into it. As my comments at session stated, I felt

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2 that we should be looking at that more closely.

3 I am concerned that the order also has
4 more obstacles in terms of having to wait for staff
5 approval which may take a very long time and can be
6 delayed as well as the order not moving forward on
7 track two until ordering clause three from the
8 September 2020 order is implemented. I think that
9 there is no reason that we should not be starting to
10 move forward and really leaning into this in a way
11 that we take ownership on the fact that we want to
12 encourage looking at this innovative thinking,
13 understanding and analyzing it and seeing if it is
14 relevant and how we can make it work. Therefore, I'm
15 going to concur in part and dissent in part. Thank
16 you. That's for Item 264.

17 On Item 265 this is a petition for
18 waiver -- this is addressing a matter that's denying
19 a petition for waiver or modification of Daroga Power
20 regarding grandfathered status for value stack
21 compensation as a high capacity factor D.E.R. The
22 project at issue here is a 2,000 kilowatt natural gas
23 fired fuel cell project at 141 Parkhill Avenue in
24 Staten Island.

25 A residential property consisting of 3

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2 affordable housing apartment dwellings with a total
3 of 361 residential units. The fuel cells
4 manufactured by Bloom Energy would be located on an
5 empty lot without -- without -- within the property
6 boundary and in accordance with New York City setback
7 requirements. As designed the project would connect
8 to and be fueled from the natural gas system of
9 natural -- of National Grid and connected to the Con
10 Edison electric system and operated as a C.D.G.
11 project.

12 Sadly, the facts are an example of a
13 company harmed because we're denying it -- it's of a
14 company trying to follow the rules and policies that
15 are set forth to develop a project. Due to changing
16 and continued changing circumstances of such
17 policies, both at the state level and at the city
18 level, they had to worry about completing on time to
19 still stay under the grandfathered provisions of the
20 value stack compensation.

21 New York City permitting process
22 seemed to doom a viable project because it no longer
23 qualified at the site location. Unfortunately, the
24 current state rules don't allow for grandfathering
25 based on the facts presented however reasonable and

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2 justified their request is. I concur based on our
3 current grandfathering rules, but I don't feel good
4 about it.

5 In fact, it is not the harm that we're
6 doing to the company, and while they can retain, get
7 back some of their monies that they've put forward,
8 the harm extends to L.M.I. customers, affordable
9 housing project with 361 residential units and an
10 ability for us to be inflexible as we work to try to
11 figure this out. So I -- I raise that because I am
12 really concerned about that. That's Item 265.

13 The next item is Item 361. This is a
14 proceeding on the motion of the commission to examine
15 the safety of electric transmission and distribution
16 systems as Con Ed brought a petition to -- to enhance
17 electric safety standards.

18 The petition is -- the draft order is
19 approving in part and with modifications. I agree
20 with staff that by allowing utilities to adopt an
21 asset management approach to underground inspections
22 that there may be an opportunity for utilities to
23 create cost effective inspection programs that
24 maintain or improve the current safety and
25 reliability of the underground system.

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2 Moreover, I agree with staff regarding
3 Con Edison's risk based inspection program. That the
4 proposal properly splits the underground facilities
5 into three risk categories based on the possibility
6 of failure and historical data. This may lead to
7 increased public safety with the structures most
8 likely to experience a manhole event being expected
9 more freely.

10 However, I point out that there are
11 other separate issues in these two case numbers that
12 still need to be addressed. We do need to look at
13 that and make sure that we are properly responding.
14 I take note that there was back in 2016 a notice
15 soliciting comments regarding the use of negative
16 revenue adjustments with the electric safety
17 standard. We opened up that proceeding. We had
18 comments received and then we did not move on that or
19 indicate that it was now a dormant issue.

20 I believe it is a dormant issue but I
21 do think when we are soliciting comments and not then
22 following up on that, even if it's to say we're no
23 longer going to be looking at that, I think that that
24 is something we need to be mindful of.

25 I also want to remind folks of my

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2 concern. This is not related to -- to above ground
3 stray voltage but to the extent that we are looking
4 at stray voltage issues, in particular, with street
5 lighting, it's something that we should be mindful
6 of. That's my comment for 361.

7 The next item is 362. This is 20-E-
8 0376. It's the matter of the 2019 amendment to the
9 Public Authority's Law relating to expanded authority
10 for the New York Power Authority. In July 2020 this
11 matter was initiated via notice by secretary in order
12 for the commission to consider tariff modifications
13 that may be necessary to effectuate amendments to the
14 public authority's law that were included in the New
15 York State budget for fiscal year 2020.

16 The effect of the amendments is to
17 authorize the New York Power Authority to contribute
18 to existing economic development customers and serve
19 new governmental customers. Specifically, NYPA is
20 authorized to supply power and energy procured from
21 competitive market sources or supply renewable power
22 and energy procured from competitive market sources
23 to any authority customer, public entity or community
24 choice aggregation community through the supply of
25 such projects through an energy service company or

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2 other entity that is authorized by the commission to
3 procure and sell energy projects to participants of a
4 CCA program.

5 All New York electric and municipal
6 utilities subject to the commission's jurisdiction
7 were mandated to review their respective tariffs to
8 ensure compliance with the revised public authority
9 law sections that gave NYPA that expanded authority
10 and file any requisite tariff amendments if
11 appropriate.

12 Through these proposed tariff filings,
13 we do see that an issue emerged on whether we should
14 authorize delivery surcharge exemptions for NYPA
15 customers and public entities receiving power under
16 the extension of NYPA power supply service enabled by
17 the amendments to Public Authority's Law Section
18 1005.

19 Utilities and RESA correctly argue
20 that to allow such exemption is not mandated under
21 the legislative amendments and would provide NYPA
22 with an unjustified competitive advantage over other
23 energy service companies and increase the rate burden
24 on the companies' remaining NYPA ineligible
25 customers.

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2 I do recognize this order if adopted
3 will be disappointing to NYPA who would benefit from
4 this competitive advantage if we allowed the
5 exemption and M.I. customers who want such exemption
6 applied here. However, overall, I agree with the
7 staff, the utilities and RESA that such exemption
8 expansion would result in inappropriate cost
9 shifting, the expense of clean energy and other
10 public benefit programs to customers not supplied by
11 NYPA.

12 NYPA incorrectly, in my opinion,
13 argues, among other things, that since the statute
14 language was silent on this issue that it should be
15 allowed to apply the surcharge exemptions here. I
16 disagree for the reasons the draft order carefully
17 lays out but also because I think NYPA should have
18 felt a duty to expressly raise or flag such
19 underlying issues like this before the granting of
20 its expanded authority.

21 This way proper analysis of any cost
22 impacts, underlying administrative and inflation
23 challenges and potential unfair competitive advantage
24 that may result could have been considered. Luckily
25 here the utilities raised this issue and we were able

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2 to properly review the issue. And REESA submitted
3 supporting comments in December 2020 once it realized
4 this was an issue being discussed in these tariff
5 filings.

6 It was not -- it's not unusual for
7 them not to have done it immediately because normally
8 such utility tariff filings wouldn't come to their
9 diligent attention. I think this issue is likely one
10 example of other implement -- implementation
11 challenges that may be present with the expansion of
12 NYPA's authority. We as a commission should be very
13 mindful as we go forward that we have an obligation
14 to ensure any impact, positive and negative, from
15 NYPA's expanded authority must be carefully analyzed
16 to ensure we are responsibly giving guidance on
17 implementing these provisions of law as the
18 legislature intended and with no unintended
19 consequences on aspects that fall within our
20 jurisdictional reach.

21 Next item is 461. This is a draft
22 order that would confirm the -- one commissioner
23 order by Chair Rhodes that proposed -- that postpones
24 the authorized January 1st, 2020 rate increase system
25 improvement charge in the revenue adjustment clause,

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2 property tax reconciliation surcharges and for the
3 make whole provisions to continue allowing charges on
4 lost revenue through May 1st, 2020.

5 My concern here, and I will be voting
6 for this, but my concern is that we are -- we are --
7 this is another item where we are postponing rate
8 changes. While that may be appropriate in light of
9 the current economic environment as a result of the
10 ongoing COVID pandemic and the state of emergency
11 declared by the governor, it is important for us to
12 remember we opened a docket, a generic COVID
13 proceeding docket. We do need to be mindful that
14 comments were received, and we need to be carefully
15 looking at that and discussing it rather than just
16 continually postponing some decision making that we
17 may need to make.

18 Now I'm going to go back to the next
19 and final item which is Item 364. This is Case
20 Numbers 20-E-0422, 20-E-0586, 20-E-0641, 20-E-0643.
21 This is in the matter of the Department of Public
22 Service staff investigation into the utilities
23 preparation for and response to the August 2020
24 Tropical Storm Isaias and resulting electric power
25 outages. This concerns Consolidated Edison, Orange

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2 and Rockland Utilities and Central Hudson Gas and
3 Electric Utilities.

4 This draft order would direct
5 commencement of a hearing and other related matters
6 as the next procedural step in the August 2020
7 Tropical Storm Isaias utility saw in preparation and
8 enforcement action. The draft order would seek to
9 commence an evidentiary hearing before an
10 administrative law judge to address any genuine
11 issues of material fact related to the alleged
12 violations, demonstrate why the proposed penalties
13 should be assessed under Public Service Law Section
14 25A alleged in the show cause order, as well as to
15 assess the prudence of each of the subject utilities,
16 Con Edison, O&R and Central Hudson in preparation and
17 response to Tropical Storm Isaias.

18 In fact, when we look at this, it also
19 talks in ordering clause two and three, that the
20 assigned A.L.J. for the -- will be assigned for the
21 purposes of undertaking all, and I underscore the
22 word all, evidentiary proceedings related to and
23 including evidentiary hearing discussed in the body
24 of this order as well as giving them -- setting a
25 date for procedural conference to establish a

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2 schedule to the completion of discovery, the filing
3 of any prehearing motions and responses thereto. The
4 undertaking of any evidentiary hearing and other
5 proceedings deemed necessary and relevant by the
6 assigned administrative law judge.

7 I'm very concerned about this. It --
8 it may be appropriate and under Public Service Law
9 Section 25A an evidentiary hearing or hearing is
10 required. However, I think it is premature. We
11 brought a -- in November we brought a order to
12 commence proceeding and show cause alleging
13 violations. At that time we based that on an interim
14 investigation report. As far as I'm -- as far as I'm
15 aware, there is no final report that's been issued
16 that relates to this.

17 Moreover, since that order to show
18 cause was filed, each of the utilities, Con Edison,
19 Orange and Rockland and Central Hudson filed detailed
20 response to the order to show cause as they were
21 directed to. They were directed to within 30 days to
22 file these responses.

23 Their responses were extensive and
24 raised some potentially very valid issues not only as
25 to substance but as to the process. Moreover, since

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2 the November order to show cause, there have been
3 several public statement forums that have been
4 conducted as well as -- as well as filings with the
5 part -- filing with the Part 105 requirements related
6 to the E.R.P.s and the scorecards.

7 My concern lies, and I think as a
8 commission we need to take a pause, but we need to
9 discuss what are we doing in terms of the process
10 with storms. We have E.R.P.s. Filings were made for
11 the December 15th E.R.P.s. We're look -- we have the
12 scorecards. We are continually knowing that we have
13 to assess and be ready and prepared for the next
14 storm.

15 We have an obligation to carefully
16 look at the responses that came in as a requirement
17 from the order to show causes that were filed. This
18 order before us today, which some may see as just a
19 next procedural step, for me misses the mark. It is
20 something that we need to talk about, we need to look
21 at and carefully evaluate substantively the responses
22 that came in.

23 In a sense the -- the -- this is
24 seeking to try to cure some possible procedural
25 infirmities in the order to show cause. However, we

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2 can't really do that if we're not fully examining the
3 substantive information that we've received since the
4 November 2020 orders to show causes were set out. As
5 far as I'm concerned, we need to have better
6 processes but we also need to be focused on what are
7 we doing for the benefit of the customers.

8 We see that we had a settlement that
9 we entered into with a company that was not the
10 subject of the November 2020 order to show causes.
11 And, in fact, we should be looking at whether or not
12 we are being fair across the board to all of the
13 utilities and their customers in having really
14 careful collaborative discussions. And in really
15 seeing the substantive information that has come in
16 showcasing some of the concerns for our very own --
17 our commission actions.

18 Not only in the responses from the
19 utilities that filed those responses but, in fact,
20 from the very public that we sought information on.
21 It is something that I am mindful of. I see from the
22 hearings, excuse me, the forums themselves as well as
23 from the written comments that came in, something
24 that we need to take into consideration.

25 Moreover, as we go forward with the

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2 A.L.J.s, we need to give them more guidance in what
3 exactly they're being asked to do. It is very
4 unclear and we need to set some clear guardrails on
5 that. We as a commission should not give such wide
6 open discretion without ensuring that we're looking
7 more carefully at that. I am imploring staff and the
8 chair to make sure that even if this draft order goes
9 forward that we are carefully evaluating the
10 guardrails that should be in place for the next steps
11 that may happen such that we give regulatory
12 certainty to the parties.

13 Such that we give regulatory certainty
14 to the customers. And is really looking at how do we
15 move forward in a way that helps to address and
16 prepare for the next storms in a way that is helpful.
17 I am very mindful that there are many good ideas even
18 included in the United Westchester report on things
19 to do. But we also need to be mindful that many of
20 those recommendations have a cost attached to them.

21 However, it's not detailed in what
22 we're getting. That's something that we need to be
23 very mindful of. And we also need to, as we move
24 forward, for recommendations that people are putting
25 forward they need to understand that their

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2 recommendations also have costs attached to them. As
3 I look here today, in -- in the full record that I
4 have from these cases, with the open and not yet
5 reviewed and responded to responses that came in from
6 the order to show causes from the utilities as well
7 as from the transcripts and the written comments that
8 came in. And as well as the fact that there is still
9 an ongoing investigation not only with the
10 telecommunications sector but also with the inter
11 report that was interim.

12 So to that extent I do not feel
13 comfortable rushing forward now in moving this over
14 to an A.L.J. to handle without some more
15 thoughtfulness from us and see how it is appropriate
16 or not for us to move forward on the orders to show
17 cause or retract in some fashion what we put out. So
18 thank you. I'll be voting no.

19 CHAIRMAN RHODES: So thank you
20 Commissioner Burman. For good orders sake, can I
21 just ask the secretary if she is clear in how you are
22 voting on the six items that you mentioned? And also
23 I just confess, perhaps I misheard, I heard you --
24 you call the last item you discussed as Item 364.
25 But I'm wondering if perhaps it was 376?

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2 COMMISSIONER BURMAN: Yes, it was 376.
3 I'll go over. So 264, I'm concurring in part,
4 denying in part. 265 I'm a yes. 361 I'm a yes. 362
5 I'm a yes. 461 I'm a yes. 376 I'm a no.

6 CHAIRMAN RHODES: Thank you very much.
7 Extremely clear.

8 COMMISSIONER BURMAN: Thank you.

9 CHAIRMAN RHODES: Appreciate that.
10 Commissioner Alesi, any comments or recusals?

11 COMMISSIONER ALESI: No, I will be
12 voting yes for the entire agenda.

13 CHAIRMAN RHODES: Thank you very much.
14 Commissioner Edwards, any comments or recusals or
15 questions?

16 COMMISSIONER EDWARDS: No, I'd just
17 like to thank the staff for American Water moving
18 forward and no other comments. Thank you.

19 CHAIRMAN RHODES: Thank you very much.
20 Commissioner Howard, any comments or
21 questions or recusals?

22 COMMISSIONER HOWARD: Yeah, I have a
23 comment on Item 376, the -- the Con Ed, O&R and
24 Central Hudson investigation. Throughout this entire
25 period one of the things is most clear to me about

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2 how we are reacting and how companies reacted to
3 storm preparation is the issue of weather
4 forecasting. If they get it right, generally the
5 things have proceeded pretty well. But when they get
6 it wrong and -- and getting it wrong may be they were
7 off by 100 miles on the impact of a storm.

8 The truth is we do not have currently
9 consensus weather forecasting that affects not just
10 only our state's utilities, both energy and telecom,
11 but also every other aspect of the government and
12 other aspects from airports to transportation to a
13 wide variety of activities that are 100% dependent
14 upon accurate, and I use that phrase very loosely,
15 weather forecasting.

16 And one of the fundamental questions
17 that I believe come out of this is that when do
18 utilities or other entities react to a weather
19 forecast and to what extent. If a weather forecast
20 is a 50/50 are we all in with storm prep? If the
21 weather forecast is 60/70 not to happen are we still
22 in even though it -- it happens?

23 So I would suggest at some point,
24 either and probably not through this proceeding and
25 these hearings that we think about entertaining at

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2 least a white paper if not a generic proceeding on
3 storm preparation and weather forecasting per se
4 because to me it is the fundamental question that we
5 need to answer here is how we prepare and to what
6 extent we do based on what we believe is accurate,
7 reliable forecasting.

8 And I believe we will see this again
9 and again and again. I just point out that while not
10 a terrible impact on utility customers, the most
11 recent storm in the southern tier was very poorly
12 forecasted with an idea of 18 to 20 inches of snow
13 that ended up over 4 feet in certain localities. So,
14 again, the inquisition of -- of that forecasting
15 model will need to be taken into account. And I do
16 agree with Commissioner Burman that many of the
17 recommendations that we have seen to date on the
18 record are very, very well meaning and will import
19 into increasing reliability and service.

20 However, they will not be free. And
21 whether it's increased hardening of lines, increased
22 hiring or prestaging of crews, these will not be
23 without a cost to ratepayers. And potentially very
24 significant cost. But with that saying, I will
25 concur with this -- this order. And but, again, I

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2 have a variety of cautionary tales surrounding it.

3 With that I will be supporting the entire consent

4 agenda.

5 CHAIRMAN RHODES: Thank you very much.

6 So with that I will proceed to call for a vote on the

7 consent agenda. My own vote is in favor of the

8 recommendations on the consent agenda.

9 Commissioner Burman, recognizing the

10 position that you just laid out on those six items,

11 how do you vote?

12 COMMISSIONER BURMAN: I vote yes on

13 the other items. Thank you.

14 CHAIRMAN RHODES: Thank you very much.

15 Commissioner Alesi, how do you vote?

16 COMMISSIONER ALESI: I vote yes on the

17 agenda.

18 CHAIRMAN RHODES: Thank you very much.

19 Commissioner Edwards, how do you vote?

20 COMMISSIONER EDWARDS: I vote yes.

21 CHAIRMAN RHODES: And, Commissioner

22 Howard, how do you vote?

23 COMMISSIONER HOWARD: Yes.

24 CHAIRMAN RHODES: Thank you. The

25 items are approved and the recommendations are

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2 adopted. Secretary Phillips, is there anything
3 further to come before us today?

4 SECRETARY PHILLIPS: There is nothing
5 further today.

6 CHAIRMAN RHODES: All right. Thank
7 you. Thanks everybody. We are adjourned and please
8 stay safe. Good bye.

9 (Off the record 11:56 a.m.)

10 (The meeting concluded.)

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2 STATE OF NEW YORK

3 I, JANET WALLRAVIN, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and place,
5 as stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription consisting of
7 pages 1 through 64, is a true record of all proceedings
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 25th day of January, 2021.

11

12

13 JANET WALLRAVIN, Reporter

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