

1 11-19-2020 - Monthly Meeting

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, November 19, 2020

10 10:40 a.m. until 12:57 p.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 (The proceeding commenced at 10:40 a.m.)

3 CHAIRMAN RHODES: Good morning. This
4 is John Rhodes, Chair of the Public Service
5 Commission and I'd like to call this session of the
6 Public Service Commission to order with apologies for
7 the 10-minute logistical delay.

8 Secretary Phillips, are there any
9 changes to the final agenda?

10 SECRETARY PHILLIPS: Good morning,
11 Chair. Yes, there are several changes to the final
12 agenda. We are pulling Item 301A, Item 301B and Item
13 378.

14 CHAIRMAN RHODES: Okay. Thank you
15 very much. And before we get started, I'd like to
16 repeat my usual remarks and note our arrangement for
17 session today. In line with the guidelines
18 concerning social distancing and minimizing large
19 gatherings and in light of executive orders which
20 suspend provision of that Open Meetings Law on an
21 emergency basis we are conducting today's session
22 remotely. I'd like to remind those who are
23 participating by phone to please mute your lines
24 except when you are speaking.

25 The public will have the opportunity

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2 to listen to the session on the Department's webcast
3 page. We will also record and transcribe the session
4 as has been our practice. These arrangements have
5 been reviewed by our General Counsel and he has found
6 that these meet the requirements of the executive
7 orders and also that they meet my own expectations of
8 honoring the intent of the Open Meeting Law to the
9 maximum extent permitted by our duty to protect the
10 public health of New Yorkers.

11 And before moving to the agenda, in
12 keeping with this audio format, I would like to
13 conduct a roll call of the Commissioners. Please
14 confirm that you are with us when I call your name.
15 Commissioner Diane Burman.

16 COMMISSIONER BURMAN: I am here.

17 CHAIRMAN RHODES: Thank you,
18 Commissioner Jim Alesi?

19 COMMISSIONER ALESI: Present.

20 CHAIRMAN RHODES: Thank you.
21 Commissioner Tracy Edwards?

22 COMMISSIONER EDWARDS: I'm here. Good
23 morning.

24 CHAIRMAN RHODES: Thank you and
25 Commissioner John Howard.

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2 COMMISSIONER HOWARD: I'm here as
3 well, Mr. Chairman.

4 CHAIRMAN RHODES: Thank you very much.
5 With that, we will enter into the regular agenda.
6 The first item for discussion is Item 201 cases 19-E-
7 0378 et. al. which are the electric and gas rates for
8 NYSEG and RG&E presented by Administrative Law Judge
9 James Costello. Administrative Law Judge Michael
10 Clark, Jeff Hogan, Deputy Director of Management and
11 Operations Audit, and Tammy Mitchell, Director of Gas
12 -- of Electric Gas and Water are available for
13 questions.

14 Judge Castello, please begin.

15 A.L.J. COSTELLO: Good morning,
16 Chairman Rhodes and Commissioners. Before you is a
17 draft order that would establish electric and gas
18 delivery rate plans for New York State Electric and
19 Gas Corporation or NYSEG and Rochester Gas and
20 Electric Corporation or RG&E, which I will refer to
21 together as the Companies.

22 The rate plans in the joint proposal
23 cover three years running from April 17th, 2020 to
24 April 30th, 2023. The rate plans would be based on
25 the joint proposal filed in this case with certain

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2 modifications with respect to the Company's electric
3 businesses to bring total bill increases to
4 approximately 2 percent or under for each rate year.
5 I'm going to start with a brief background of the
6 proceedings.

7 The Companies made their initial
8 filings in May 2019 and filed updated and corrected
9 testimony in August 2019. Department of Public
10 Service Staff and various other intervening parties
11 filed testimony in September 2019. The Companies,
12 Department of Public Service Staff and other
13 intervener parties filed rebuttal testimony in
14 October of 2019.

15 On October 11th, 2019, the companies
16 filed a Notice of Impending Settlement Negotiations.

17 In February of 2020, the companies
18 submitted a letter stating that they had reached an
19 agreement in principle with Department of Public
20 Service Staff and various other intervening parties
21 and had begun working on a joint proposal.

22 However, on March 7th, 2020, Governor
23 Cuomo declared a State of Emergency due to the COVID-
24 19 pandemic.

25 Although the Public Utility Law

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2 Project of New York which I will refer to as PULP and
3 AARP New York requested that the companies be
4 directed to provide new rate case data and
5 supplemental testimony to address the economic
6 impacts from the COVID-19 pandemic.

7 The Administrative Law Judges denied
8 that request and granted the request by the
9 Companies, Department of Public Service Staff and
10 multiple interveners to allow the parties to resume
11 settlement negotiations to address the economic
12 impacts arising from the COVID-19 pandemic.

13 On June 22nd, 2020, the companies
14 filed the joint proposal under consideration. The
15 joint proposal assigned in whole or in part by 23
16 parties representing diverse interests including the
17 Companies, Department of Public Service Staff,
18 environmental groups, a labor union, individual
19 ratepayers and industrial, commercial and
20 institutional energy consumers.

21 On August 6 of 2020, Judge Clark and I
22 conducted an evidentiary hearing in which we received
23 evidence into the record and allowed for cross-
24 examination.

25 The Order before you would adopt the

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2 joint proposal but with certain modifications that I
3 will discuss later, and it will establish three-year
4 rate plans for the Companies' electric and gas
5 businesses that provide the Companies with the
6 revenues necessary to ensure they can provide safe,
7 reliable, and adequate service while also containing
8 provisions that minimize impacts to the Companies'
9 customers particularly in light of the economic
10 climate created by the COVID-19 pandemic.

11 I will now turn to a brief discussion
12 of the revenue increases for the gas businesses. The
13 joint proposal's gas provisions contain modest rate
14 increases overall and include forward looking
15 strategies designed to ensure the Companies
16 compliance with the Climate Leadership and Community
17 Protection Act or the CLCPA.

18 Including the effects of shaping and
19 levelization, NYSEG's gas delivery rates would be
20 decreased by 514,000 dollars in rate year one. After
21 rate year one, NYSEG rates are increased by 3.4
22 million dollars in rate year two and increased by 5.3
23 million dollars in rate year three. For an average
24 residential gas heating customer consuming 90 therms
25 per month, this would lead to a slight decrease in

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2 the monthly average bill in rate year one, an
3 increase of 53 cents in rate year two and an increase
4 of 1.22 dollar in rate year three. For RG&E gas
5 after shaping and levelization, delivery rates would
6 be decreased by 1.1 million dollars in rate year one.
7 Rates are then increased by 0.9 million dollars in
8 rate year two and by 3.9 million dollars in rate year
9 three. Under this plan, monthly average bills for
10 average residential gas heating customers decrease by
11 80 cents in rate year one, followed by increases of
12 10 cents in year two and by 81 cents in rate year
13 three.

14 Before turning to the electric revenue
15 requirements, I want to point out that the joint
16 proposal contains innovative gas-related provisions
17 that further New York's ambitious climate-related
18 policy goals and that can serve as a model for future
19 rate cases. These leading edge gas provisions have
20 garnered widespread support by the signatory parties
21 and in public comments.

22 The Companies commit to achieving net
23 zero growth in gas sales throughout their service
24 territories during the term of the rate plans. They
25 will discontinue all active promotion of natural gas

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2 service to reduce or eliminate gas expansion. The
3 Companies will also incentivize the expanded use of
4 heat pumps and energy efficiency measures, pursue
5 non-pipe alternatives and use more electric and
6 hybrid vehicles.

7 In addition, the Companies agree to
8 forego further gas infrastructure investments
9 including investments in the DeRuyter and
10 Lansing/Freeville pipelines.

11 The Companies will submit a report to
12 the Commission analyzing how their businesses will
13 evolve within the context of the CLCPA's expressed
14 greenhouse gas reduction and renewable energy goal.
15 The Companies also will conduct a study on the
16 potential depreciation impacts from the CLCPA on
17 their gas, electric and common assets.

18 Turning to the Companies' electric
19 businesses, the revenue increases for the electric
20 businesses are more significant with the largest
21 increases proposed for NYSEG electric customers.
22 These increases are one reason why various
23 environmental groups and some individuals who signed
24 the joint proposal in support of the gas provisions
25 did not sign the joint proposal in support of the

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2 electric revisions.

3 However, increased revenues are
4 necessary to address important issues such as NYSEG's
5 ability to timely restore service and avoid outages
6 caused by trees as its service territory is impacted
7 by more frequent and severe storms. Also, as a
8 result of the gas provisions of the joint proposal
9 that address climate change issues, usage is expected
10 to shift away from natural gas, resulting in
11 increased demands on the electric system which
12 requires investments for maintenance, reliability,
13 and growth. Recognizing these needs, various
14 intervening parties representing different customer
15 classes have signed on to the electric provisions of
16 the joint proposal.

17 Under the terms of the joint proposal,
18 NYSEG's electric delivery revenues would be increased
19 by 45.7 million dollars in rate year one, 84.8
20 million dollars in rate year two and 88.6 million
21 dollars in rate year three.

22 However, out of concern for the size
23 of the increases, especially given the economic
24 impact from COVID-19, the proposed order modifies
25 those revenue increases. Thus, under the orders rate

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2 plan, NYSEG's electric-delivery revenues would be
3 increased by 45.3 million dollars in rate year one,
4 45.6 million dollars in rate year two and 36 million
5 dollars in rate year three.

6 With those modifications, monthly
7 bills for typical residential customers would
8 increase by 2 dollars and 48 cents in rate year one,
9 1.84 dollar in rate year two and 2 dollars and 42
10 cents in rate year three.

11 The total customer bill increases
12 companywide for the electric businesses would be
13 approximately 2 percent for each rate year. I'm
14 sorry, for NYSEG's company -- electric company
15 businesses. Under the terms of the joint proposal
16 RG&E's electric delivery revenues as levelized in
17 shape would be increased by 15.2 million dollars in
18 rate year one, 28.1 million dollars in rate year two
19 and 30.7 million dollars in rate year three.

20 However, the proposed order would
21 modify those increases to 21.4 million dollars in
22 rate year one, 13.9 million dollars in rate year two
23 and 15.8 million dollars in rate year three. With
24 those modifications, monthly bills for typical
25 residential customers at RG&E would increase by 1.20

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2 dollar in rate year one, 1.95 dollar in rate year two
3 and 2.26 dollars in rate year three. The total
4 customer bill increases would be approximately 1.6
5 percent in rate year one, 2 percent in rate year two
6 and 2 percent in rate year three.

7 It is important to note that even with
8 the increases just mentioned, the Companies' electric
9 delivery rates would be amongst the lowest in New
10 York State. To lower the amount of the electric rate
11 increases, the proposed order modifies the joint
12 proposal as follows.

13 First, the collections for the
14 Companies' electric energy efficiency and heat pump
15 programs are being capped at the level proposed in
16 the joint proposal for rate year one.

17 Second, the grid model enhancement
18 project will be capitalized rather than expensed.

19 Third, NYSEG electric will use
20 additional excess depreciation reserve in rate year
21 two and rate year three. In rate year two that
22 amount will go from 34.95 million to 38.95 million
23 and in rate year three, the amount will go from 39.1
24 million to 71.6 million.

25 Fourth, the amortization period for

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2 the Vegetation Management Danger Tree Program will be
3 10 years for each year -- each rate year's expense
4 rather than the five years proposed in the joint
5 proposal. For NYSEG Electric, rather than being
6 expensed, the Vegetation Management Reclamation
7 Program will be amortized over a 10-year period in
8 the same manner as the Danger Tree Program costs.

9 Finally, for RG&E Electric the shaping
10 levelization of rates is modified which makes the
11 rate increases higher in rate year one and
12 significantly lower in rate years two and three.

13 The draft order establishes rates
14 based on a return on equity of 8.8 percent and a 48
15 percent common equity ratio. The 8.8 percent return
16 on equity includes the stay out premium and also
17 reflects additional risks to the company for greater
18 imputed predicted -- productivity savings.

19 Return on equity is lower than the
20 company's current return on equity of 9 percent and
21 is equivalent to or lower than the return on equity
22 provided to other electric and gas utilities in
23 recent rate cases.

24 It is important to note that the joint
25 proposed return on equity was arrived at in

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2 consideration for Commission's generic finance
3 methodology and that Department of Public Service
4 Staff has indicated at any post-COVID update to its
5 litigated position likely would have increased its
6 return on equity recommendation.

7 The rate plans also include an
8 earnings sharing mechanism, enabling customers to
9 receive the benefit of any additional earnings beyond
10 the company's allowed return.

11 In addition to the modifications I
12 mentioned earlier, several provisions in these rate
13 plans are in -- in direct response to the current
14 economic crisis brought -- brought about by the COVID-
15 19 pandemic and all parties to the joint proposal
16 should be commended for their efforts in this regard.

17 The rate plans include an Emergency
18 Financial Relief Program to provide immediate
19 assistance to the most financially insecure
20 customers. Specifically, the rate plans create a 30-
21 million-dollar customer benefit that can provide a
22 one-time bill credit of 100 dollars to vulnerable
23 residential and small business customers.

24 The bill credit will be available
25 immediately to the company's low income discount

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2 program participants and customers with minimum
3 payment Deferred Payment agreements. Additionally,
4 the credits will be offered in three phases. So that
5 customers who did not qualify in phase one may become
6 eligible in phase two or three.

7 The Companies have also suspended
8 disconnections and related charges such as late
9 payment and reconnect fees, residential customer
10 deposits and same day turn-on fees. These
11 suspensions will remain in effect until a date that
12 would be -- will be determined in consultation with
13 Department of Public Service Staff and the
14 Commission.

15 The Companies will continue their
16 Arrears Forgiveness Program within the low income
17 programs through funding of 1.5 million dollars at
18 NYSEG and 1.1 million dollars at RG&E. And they will
19 extend low-income program eligibility to customers
20 who are HEAP eligible but have been denied a grant
21 for lack of available funding.

22 The joint proposal allows for more
23 flexible Deferred Payment agreements given the --
24 giving the Companies more flexibility to address
25 individual situations as their customers continue to

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2 experience the economic impacts of the pandemic while
3 continuing to meet these essential utility services.

4 The joint proposal creates a COVID-19
5 Economic Development Program providing funds for
6 small business and large business customers focused
7 on economic recovery and retention projects
8 necessitated by the pandemic.

9 Under the joint proposal, the
10 Companies will delay implementation of the grid model
11 enhancement project to rate year two and they have
12 delayed the in-service dates of more than 30 other
13 projects reflected 25 percent lower collection
14 related plus in rate year one, reduced non-essential
15 travel budgets by 20 percent in rate year one,
16 reduced inflation and debt grades for all three
17 years, delayed implementation of Advanced Metering
18 Infrastructure or AMI deployment by 12 months and
19 information technology by 6 to 12 months.

20 In addition, the companies' Superstorm
21 deferral amortization has been changed from 5 years
22 to 10 years. Together, these pandemic-related
23 revenue reductions amount to approximately 98.9
24 million dollars during the three rate years.

25 Furthermore, as the signatory parties

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2 recognize these provisions can be modified or
3 expanded as necessary in the Commission's generic
4 COVID-19 proceeding, in case 20-M-0266.

5 Last, while the rate plans provide for
6 the closure of six customers walk-in offices, five of
7 the offices are among those that had the lowest
8 levels of customer-service transaction and one office
9 is being closed for security concerns. Further, in
10 recognition of COVID-19, the closures are being
11 delayed --.

12 (INTERRUPTION)

13 A.L.J. COSTELLO: Sorry, can I just
14 ask everyone who's not speaking to please put their
15 phones on mute?

16 So in recognition of COVID-19, the
17 closures are being delayed and will not begin until
18 at least June 2021 and any planned closures will be
19 reevaluated before closure for any offices that
20 experience a material increase in customer traffic.

21 For those offices that are closed, the
22 rate plans provide for a process for customers to
23 request an in-person meeting with a customer-service
24 employee as needed.

25 Some background is necessary to

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2 understand what is driving the rate increases in this
3 case. Both companies have been operating on a very
4 lean basis, especially NYSEG, which has experienced
5 decreased reliability in recent years.

6 For example, in case 19-M-0285, after
7 investigating NYSEG response to several storms in the
8 winter and spring of 2018 DPS Staff recommended that
9 NYSEG increase its overhead line resources by 100 to
10 150 full-time equivalents.

11 In addition, both companies were
12 subject to penalties for their response to those
13 storms with NYSEG agreeing to pay 9 million dollars
14 and RG&E 1.5 million dollars in penalties which are
15 being used to offset the revenue requirements in
16 these rate plans.

17 Under the rate plans, at a time when
18 unemployment has been increasing in many sectors, the
19 Companies will be providing jobs by adding 522 full-
20 time equivalent employees between January 2019 and
21 April 2023. 456 full-time equivalent employees will
22 be added to the company's electric businesses
23 including the 150 linemen and 55 apprentice lineman
24 which are needed for reliability and storm response.
25 Despite these employee level increases the rate plans

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2 include generous productivity adjustments of 1.5
3 percent in rate year one and 2 percent in both rate
4 year two and rate year three to help offset the rate
5 increases. These adjustments are higher than the 1
6 percent productivity adjustment typically applied by
7 the Commission in rate proceedings.

8 Finally, to ensure the customers only
9 pay for employees that are actually hired, the rate
10 plans have a downward only labor expense
11 reconciliation mechanism. For reliability purposes,
12 it is also critical that the Companies investment and
13 plan to replace, maintain and upgrade an electric
14 system that is older than the average system in New
15 York. The majority of the increases in electric
16 revenues over the three rate years are due to
17 additional plant investment.

18 Over the course of the rate plans
19 there will be 1.6 billion dollars of investment in
20 NYSEG's electric system and 871 million dollars of
21 investment in RG&E's electric system. This
22 represents a 72 percent increase over the 2016 to
23 2018 spending level for NYSEG and a 34 percent
24 increase for RG&E.

25 The capital spending will be used for

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2 reliability and resiliency with an increased focus on
3 equipment replacement and substation wiring required
4 upgrades to the bulk electric system that increase
5 reliability and system performance, further work on
6 the Rochester area reliability projects to strengthen
7 the existing transmission system by building an
8 additional power station, Non-AMI distributed system
9 implementation plan grid automation and advanced
10 metering infrastructure implementation. For NYSEG
11 Electric the largest category of investment is in
12 mandatory projects which are necessary due to the
13 statutory regulatory code and industry standard
14 requirements.

15 On the gas side, in addition to
16 capital spending to maintain and upgrade the system
17 and for AMI implementation capital is being spent on
18 leak prone pipe replacement which will lower
19 greenhouse gas emissions and have a positive impact
20 on the environment.

21 These increased expenditures from
22 capital investments and labor costs are expected to
23 have a positive impact on the economy for areas of
24 the state that desperately need such a boost during
25 this difficult time.

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2 Distribution Vegetation Management is
3 one of the issues raised by various parties during
4 the course of this rate plan with many people
5 advocating that NYSEG Electric should be given
6 funding to bring it to a full five-year trim cycle.

7 Because of the increased costs that
8 would be involved resulting in yet larger rate
9 increases, the rate plan before you would not bring
10 NYSEG to a full five-year trim cycle, although it is
11 expected to bring substantial progress toward
12 reaching that goal in the future. As such, the rate
13 plan increases NYSEG's distribution vegetation
14 management budget from the current 30 million dollars
15 per year to a total of 57 million dollars per year.

16 That increased amount includes 17
17 million dollars for reclamation of circuits that have
18 either not been trimmed in over five years or have
19 been identified as circuits that have experienced
20 reliability issues. The rate plan also includes 10
21 million dollars per year for a Danger Tree Program
22 for NYSEG to address trees that are likely to result
23 in electric outages. To better align the benefits of
24 the program with its cost and to moderate rate
25 impacts, the Danger Tree Program costs are being

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2 phased into the revenue requirements and otherwise
3 deferred for later recovery.

4 Given the large increase in
5 Distribution Vegetation Management costs NYSEG is
6 required to hire an external monitor to provide
7 review and oversight of its program. The
8 Distribution Vegetation Management Program for NYSEG
9 places reliability concerns at the forefront and
10 balances the need to bring NYSEG closer to a five --
11 full five-year trim cycle with the need to mitigate
12 bill impacts.

13 The proposed order includes funding
14 for the company's estimated five-year costs of 489.1
15 million dollars in capital expenditures for the
16 implementation of AMI across all four businesses.
17 The AMI benefit cost analysis in the record supports
18 implementation of AMI which will allow customers
19 access to new tools and information to effectively
20 manage and reduce electric and gas usage, establish
21 new markets to promote the implementation of low
22 carbon distributed energy resources and improve
23 service restoration times.

24 Operational savings through changes in
25 business operations and reductions in capital

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2 purchases also support implementation of AMI. The
3 AMI plan is reasonable and properly included as part
4 of these rate plans.

5 Another rate driver in these cases is
6 the fact that companies have experienced decreases in
7 forecasted sales revenues which creates a need for
8 higher rates to cover costs. On the other hand, the
9 rate plans include various funds to help lower rates.

10 For example, the Companies' revenue
11 requirements passed back to customers benefits that
12 result from the Tax Cuts and Jobs Act 2017 and the
13 amounts of approximately 61 million for NYSEG
14 Electric, 31 million for RG&E Electric, 13.7 million
15 dollars for NYSEG Gas and 8.9 million dollars for
16 RG&E Gas.

17 The rate plans would increase the
18 Companies' low income program budgets to
19 approximately 21 million dollars for NYSEG and 17
20 million dollars for RG&E due to anticipated higher
21 enrollments.

22 Current discount levels with monthly
23 discount levels ranging from 3 dollars to 36 dollars
24 will remain the same for our rate year one and will
25 be reviewed and adjusted as necessary in rate years

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2 two and three. Low Income discount participants will
3 continue to receive needed assistance.

4 On average, the 100-dollar bill credit
5 discussed earlier will offset approximately 70
6 percent of the rate increases a typical NYSEG low
7 income discount program customer experience and over
8 90 percent of the rate increases a typical RG&E low
9 income customer would experience during the term of
10 the rate plans. The Companies will expand community,
11 agency and municipal outreach to notify customers of
12 potential bill assistance that is available.

13 The Companies have committed to
14 additional protections for residential customers
15 during cold weather periods and heat advisories, and
16 they have also agreed to conduct a study to identify
17 potential partnerships for senior customer outreach
18 concerning energy efficiency opportunities, low
19 income discounts, and other senior customer related
20 opportunities.

21 Under the proposed rate plans, the
22 customer service performance targets are either made
23 more stringent or kept the same as those currently in
24 place for the Companies. An arrears component is
25 added to the terminations and uncollectibles

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2 incentive and the incentive targets have been
3 tightened. Also, the system reliability performance
4 targets would be continued by the rate plans.

5 In addition, the electric rate plans
6 add a new distribution line inspection program and
7 associated targets designed to incentivize the
8 Companies to eliminate their backlog of level two
9 deficiencies, which are electric system conditions
10 that are likely to fail prior to the next inspection
11 cycle and that represent a safety or reliability
12 threat should a failure occur prior to repair.

13 For gas safety metrics, both companies
14 are implementing a more aggressive leak management
15 program and damage prevention targets, as well as a
16 gas safety violations performance metric that is
17 modified to be consistent with a metric applied to
18 public utilities.

19 The proposed rate plans will increase
20 fixed customer charges for the Companies' electric
21 and gas businesses. Various -- various parties
22 direct opposition mainly to the proposed changes to
23 the residential fixed customer charges for electric
24 service. The monthly residential customer charges
25 for NYSEG of 15 dollars and 11 cents and for RG&E 21

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2 dollars and 38 cents have been in place since 2010
3 and will remain in place during rate year one.

4 The customer charges for the
5 residential service classes will increase at NYSEG to
6 16 dollars and five cents in rate two and 17 dollars
7 in rate year three. And that RG&E to 21 dollars and
8 70 cents in rate year two and 22 dollars in rate year
9 three.

10 Even with the increases to the
11 electric customer charges, those customers related
12 costs remain below the cost of service. Relatively
13 modest increase in fixed customer charges do not
14 undermine the cost signals that are provided by the
15 volumetric delivery charges and will not interfere
16 with the state's energy efficiency goals.

17 So, in evaluating the terms of a joint
18 proposal, the Commission must determine whether the
19 joint proposal considered as a whole produces a
20 result that is in the public interest. In doing so,
21 the Commission considers whether the terms of the
22 joint proposal are consistent with the environmental,
23 social and economic policies of the Commission in the
24 state, whether they produce results within the range
25 of outcomes that might result if the issues in the

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2 case were fully litigated, and whether they
3 appropriately balance the interests of the utilities
4 ratepayers, investors, and the long term viability of
5 the utilities.

6 The Commission also looks at whether
7 the record is complete and the extent to which the
8 settlement is contested. In these cases, the parties
9 had full notice and opportunity to make their views
10 known in both the litigated and settlement tracks of
11 the proceedings, both before and after the onset of
12 COVID-19 crisis. And we have a full record with
13 testimony and exhibits submitted by various parties.

14 The rate plans electric and gas
15 provisions are joined by various parties with
16 different and often opposing interests. Although the
17 gas provisions have broader support, opposition to
18 the electric provisions rests largely on the size of
19 the proposed rate increases and on different opinions
20 as to how the collected funds should be spent.

21 While other valid choices could have
22 been advanced by the signatory parties to the joint
23 proposal, we believe that the rate plans with the
24 modifications made in the proposed order, mitigate
25 rate impacts to the extent practicable and strike an

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2 appropriate balance between the interests of
3 ratepayers and the long-term viability of the
4 Companies.

5 The rate plans provide immediate
6 relief from the economic impacts of the COVID-19
7 pandemic, enable needed and mandatory infrastructure
8 improvements, enhance distribution vegetation
9 management programs to improve system reliability,
10 resiliency, and safety, and institute fundamental
11 changes to the Companies' natural gas businesses in
12 furtherance of the aggressive goals established by
13 the CLCPA.

14 The signatory parties to the joint
15 proposal took significant steps to defer expenses
16 where appropriate and to mitigate the effect of
17 necessary expenses through the levelization and
18 shaping of rates, modification of amortization
19 periods, the use of excess depreciation reserve
20 balances to address rate compression and the use of
21 other regulatory assets as offset. The modifications
22 in the proposed order takes further steps to reduce
23 rate impacts.

24 The rate plans benefit ratepayers by
25 including an earnings sharing mechanism, various

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2 downward only reconciliation mechanisms, and negative
3 revenue adjustments of the Companies' established
4 targets for certain customer service electric
5 reliability and gas safety performance metrics.

6 Rate plans contain various programs
7 and initiatives that further reforming the energy
8 vision policies. They provide for energy efficiency,
9 heat pump and electric build programs and promote
10 non-wire and non-pipe alternatives to electric or gas
11 capital investments where appropriate and cost
12 effective.

13 The rate plans include earnings,
14 adjustment mechanisms related to energy efficiency
15 and system efficiency including targets for the
16 reduction of system peak demand for load factor
17 improvement and to increase the use of distributed
18 energy resources. The implementation of AMI in the
19 company service territories also result in benefits
20 to ratepayers.

21 Based upon the testimony filed by the
22 parties, the terms of the proposed rate plans could
23 reasonably have been expected to result from the
24 parties litigated positions or provide benefits that
25 could not have been achieved within the context of

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2 litigation. The draft order before you has strived
3 to be faithful to the actions and priorities agreed
4 to in the joint proposal and to the extent there are
5 changes, they are only related to the timing of
6 collections from customers.

7 The provisions of the proposed rate
8 plans resulting from the joint proposal with
9 modifications will allow the companies to continue
10 the provision of safe and adequate service and take
11 into consideration the needs of customers as they
12 manage the economic effects of the COVID-19 pandemic.
13 The proposed rate plans are in the public interest
14 and we recommend that they be adopted as stated in
15 the draft order.

16 This concludes my -- my presentation
17 and Advisory Staff Judge Clark and I are available
18 for any questions you may have.

19 CHAIRMAN RHODES: Thank you very much,
20 Judge Costello. It's -- obviously it's John Rhodes
21 speaking. To me, this is an important and
22 responsible step. With this, we would authorize and
23 focus the Companies on the most important
24 investments, expenditures and activities carefully
25 determined to best serve the needs of utilities

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2 customers, notably affordability, reliability and
3 achievement of the state's energy policies even in
4 these challenging times. This set of investments and
5 expenditures and activities was developed in a joint
6 proposal and an evidence based and inclusive process
7 with highly engaged parties and ultimately with a
8 broad set of representative signatories.

9 The order reflects some narrow
10 modifications to the joint proposal that preserve the
11 intent and investments and planned achievements of
12 that J.P. while appropriately managing the final --
13 financial impacts on customers. I commend the work
14 that went into this, and I will be voting in favor.

15 I now turn to my colleague
16 commissioners for any comments or questions that they
17 may have, beginning with Commissioner Burman.

18 COMMISSIONER BURMAN: Thank you so
19 much. Can you hear me?

20 CHAIRMAN RHODES: Yes, thank you.

21 COMMISSIONER BURMAN: Thank you.

22 Generally, when I speak at session I am not nervous.
23 I have had time to look at a matter and then to
24 carefully weigh how I may or may not vote. I take my
25 job very seriously as do all the other Commissioners.

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2 We have a broad mandate to ensure that consumers
3 receive safe and reliable utility service at
4 reasonable rates and with the least adverse effect
5 upon the environment.

6 Our Commission stands at the
7 crossroads of the public need for virtually essential
8 core services and the private needs of the
9 shareholder to ensure continued investment in the
10 services. As such, this occupies an incredibly
11 important and unique role for us in balancing these
12 interests in a way that ensures the most advanced and
13 reliable services while at the same time ensuring
14 they're effectively and efficiently delivered.
15 Critical importance of our Commission's mission today
16 is to the economic wellbeing of the state and its
17 citizens, and that can't be overstated.

18 I am nervous speaking today, because I
19 am uncomfortable with the regulatory rate process as
20 it relates to NYSEG specifically, but our rate cases
21 in general as we go forward. I've spoken for the
22 last several years about my concerns about -- both
23 internally and publicly about my concerns on where we
24 are in how we are handling rate cases, how we were
25 dealing with our public policy goals and

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2 incorporating them in a way that is really
3 appropriate and understandable and providing
4 regulatory certainty.

5 I note that I know that we are in
6 general looking at capital plans on wires, capital
7 plans on utilities in general that have been
8 submitted for supporting the CLCPA, and looking at
9 them it's clear it will require, in the future huge,
10 rate increases to deal with those things and to
11 accommodate our CLCPA goals, E.D.'s, etc.

12 I also am looking at increasing public
13 policies that are valid, that are noble but that are
14 not necessarily taking the time to look at the
15 impact, short and long term, on the costs. It really
16 is important we have to -- there is a more cautious
17 outlook economically due to the lingering COVID
18 impact. There is looming uncertainty as we head into
19 2021, 2022, etc.

20 Reliability is critical. NERC came
21 out with a Winter Reliability Assessment the other
22 day that showcases the need for us to seek seriously
23 especially in the northeast and New England in
24 particular on the growing uncertainty with our
25 preparedness.

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2 For me, I think that in my role as a
3 regulator -- as a regulator that I am growing, and I
4 am now uncomfortable with voting for this rate case.
5 It is not that I don't think staff did a good job and
6 thinking back I think staff has worked tirelessly to
7 try to make very strategic and important decisions on
8 -- with the focus on helping the ratepayers on this
9 huge impact.

10 However, I don't think the process has
11 been a good one. In fact, I think it's been very
12 much herky-jerky, not only on whether the item was or
13 was not on not only giving things internally in a way
14 that didn't provide for me personally, an opportunity
15 to really weigh in and get under the hood. But I
16 feel that we are shooting from the hip on what our
17 standards are, as it relates to dealing with COVID in
18 these rate cases.

19 This is going to be the first major
20 rate case decided during this time in a way that is
21 speaking directly to making changes to the joint
22 proposal because of the COVID-19 impact. Therefore,
23 I think it takes a really important amount of
24 dedicated time not just in asking staff to sharpen
25 their pencils but to work with all relevant

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2 stakeholders including the Commissioners; to take a
3 fair and balanced look at this rate case, all
4 interested parties should have had an opportunity to
5 submit input on the issues as part of the record.

6 It is the record that drives our
7 decision making. We need the record to be able to
8 support whatever we decide to do. And we need to
9 make sure that there are not outside influences
10 pushing us in a direction, if the record does not
11 support that.

12 As I look at this, I see that there
13 are many issues that we are not carefully developing.
14 The evidentiary record is not there. It may be that
15 the result itself is a sound one. The result itself
16 could have been supported by an evidentiary record.
17 However, after the joint proposal was filed there was
18 no engagement on the record to ensure that what we
19 were doing would be supported by the record itself.
20 Even if it is supported by it sounds good, sound
21 decision making maybe there, we do need to make sure
22 that we are making decisions based on that.

23 This is not a productive development
24 of how we may handle other rate cases. In fact, for
25 me, what is notable is that this joint proposal was

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2 filed on June 22nd, 2020 in the middle of the COVID
3 crisis. And yes, at that time many of us, myself
4 included, were hoping that we -- this would be a
5 short-lived pandemic and it's had a much more --
6 longer life shelf and then we continue to deal with
7 these ramifications.

8 However, that joint proposal did look
9 with 23 parties representing diverse interests --
10 looked at the impacts and what we may do from a COVID
11 perspective. Very thoughtful, very engaged and yet
12 we sat on that joint proposal. We did not officially
13 come together and talk about what it was that we were
14 looking for further to fine tune that. We did not
15 open it back up to ask those who had taken the time
16 to look at that joint proposal to come together even
17 if it was on limited issues that we wanted to focus
18 on.

19 For me, I am very cognizant of the
20 fact that we also have ongoing generic proceedings
21 that have not been decided and yet they are timely to
22 be decided, including the gas planning matter,
23 including relevant studies that we've asked to be
24 undertaken, including looking at resource adequacy,
25 including looking at the COVID-19 impacts. All of

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2 those things in those records could have also been
3 somehow shared with us in a way that would give us
4 information for the record in this case to feel
5 comfortable that we were making a decision not just
6 based on what -- what the staff felt was important,
7 but really was a fair and balanced decision based on
8 the evidentiary record itself.

9 I am looking for us, as we move
10 forward, to figure out where it is that we need to
11 fix what I see as a process problem that is leading
12 to huge potential substantive issues. I myself want
13 to roll up my sleeves and help figure it out in a way
14 that makes us move forward in a positive way. I have
15 spoken to our finance staff on the concerns I have
16 with the market analysts and some of the outlooks and
17 ratings projections that they've done. I would ask
18 Doris to speak a little bit about some of what we've
19 talked about especially as it relates to NYSEG in
20 general. Moody's put out in September 2020 an
21 outlook that talked about moving NYSEG and RG&E to
22 negative, and reading that ratings analysis and
23 rationale, it concerns me.

24 I am concerned that this movement
25 today on resolving the rate case while that may in

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2 some corners appear to be a positive because it is
3 resolving an outstanding item that needs to be
4 resolved, based on my reading of Moody's analysis,
5 I'm not sure that they would move off of their
6 negative rating. And in fact we're playing right
7 into the rationales that led them to have concerns
8 with this negative rating. So, I'd like Doris to
9 speak about it. Just because I think it is that
10 important for folks to truly understand how our
11 actions can negatively or positively impact the
12 markets.

13 MS. STOUT: So good morning. This is
14 Doris Stout and as Commissioner Burman indicated
15 we've had some conversations on this and bond ratings
16 analyses are quite complex. So I'm going to
17 apologize up front for the length of my answer, but
18 there's really no quick answer to the concerns being
19 raised.

20 To evaluate the potential reaction of
21 the rating agencies, we have to consider two key
22 aspects. One is the quantifiable impact the
23 financial impact of our actions including the impact
24 on earnings and cash flows. And the other being the
25 non quantifiable or qualitative impacts of our

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2 actions on the perceived regulatory environment. And
3 those potential impacts need to be gauged within the
4 context of the Companies' existing ratings including
5 the parent company's ratings. And also, you know, we
6 have this overlying impact of the COVID-19 pandemic
7 which adds some additional uncertainty to the
8 analysis.

9 Both S&P and Moody's rate NYSEG and
10 RG&E in the low A rating category. The two companies
11 are rated A minus by S&P, A3 by Moody's. S&P has the
12 companies with a stable outlook, whereas Moody's has
13 a negative outlook on the company as Commissioner
14 Burman indicated. So -- and both S&P and Moody's
15 rate Avangrid, NYSEG and RG&E's parent in the triple
16 B plus or BAA1 category, which is one notch below
17 what's a NYSEG and RG&E ratings are. All of those
18 ratings are investment grade.

19 And again, with the Avangrid, S&P is
20 rating, Avangrid stable and its category and Moody's
21 is also negative for Avangrid.

22 So the two rating agencies have, you
23 know, different perspectives, and in March 2020 S&P
24 found that the regulatory environment in New York is
25 generally constructive. S&P specifically noted

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2 benefits from our forward test year in revenue
3 decoupling. And at that time, S&P stated that a
4 settlement in principle had been reached in the rate
5 case and found that the company's management of its
6 regulatory risks to be in line with *peers and S&P
7 expected the company to continue to be able to
8 effectively manage that regulatory risk.

9 And Moody's similarly has recognized
10 New York's suite of credit friendly cost recovery
11 provisions such as multi-year plans like this one,
12 use of a fully forward test year and revenue
13 decoupling mechanisms. However, despite these
14 positive factors, Moody -- Moody's currently
15 recognizes and categorizes New York as having, what
16 it considers, credit negative regulatory
17 developments.

18 In a report issued on Friday, Moody's
19 lists various developments in New York that have
20 created negative credit implications over the past 12
21 months including the NYSE-RG&E rate case, noting that
22 the companies have negative outlooks due to the joint
23 proposal that backloads rate increases and results in
24 sustainably weaker financial metrics. Moody's
25 changed its outlook for NYSEG and RG&E to negative in

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2 September. The negative outlook was based on the
3 potential for financial metric deterioration
4 specifically with regards to cash flow under the
5 joint proposal, as well as the beginning stages of
6 limitations on natural gas investments which are
7 about 20 percent of the utilities business.

8 Moody's specifically noted that if the
9 cash flow is forecast to stay at a lower level over
10 the three years of the rate plan, it could lead to a
11 downgrade. So therefore I believe, you know, that
12 given these Moody's statements about back loading the
13 increases and the cash flows under the original joint
14 proposal as well as its categorization with a
15 negative outlook, that the modifications proposed to
16 the joint proposal, which further pushed cost
17 recovery to later years could add to the pressure on
18 the company's cash flow metrics and it would increase
19 the likelihood of a potential downgrade. This would
20 bring NYSEG and RG&E's bond ratings to be AA1 and
21 consistent with their parent Avangrid's rating. And
22 that would still be investment grade so they should
23 still have good access to capital but at a slightly
24 higher cost.

25 S&P's analysis is a little harder to

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2 read. Their analysis specifically on NYSEG and RG&E
3 is from March 2020 and they currently have had -- had
4 NYSEG-RG&E with a stable outlook because they
5 considered the regulatory environment in New York is
6 generally constructive. But in a more recent report,
7 S&P indicated that it had looked at the regulatory
8 jurisdictions including New York and it indicated it
9 was monitoring developments surrounding the
10 heightened political scrutiny in New York to
11 determine whether or not it could negatively impact
12 credit quality of the utilities in the state. So
13 it's a little harder for me to say, you know, where
14 S&P's ratings might go for the company.

15 But overall, I think, you know, as
16 Commissioner Burman indicated it's -- it's a question
17 of balance. And the Commission should weigh the long
18 term cost of a potential downgrade against the
19 benefits of constraining the rate increases during
20 the economic crisis of COVID-19 pandemic.

21 COMMISSIONER BURMAN: Thank you so
22 much. Doris, that was very helpful. Where I land is
23 I am going to vote no on this item. I am, as I said,
24 very concerned and nervous about our regulatory
25 actions and what would give me comfort in being able

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2 to vote for this in what I do believe is a good faith
3 effort on the part of the staff and the company in
4 trying to balance those interests fails because we
5 are not relying on the evidentiary record and we're
6 not utilizing the generic proceedings on many of
7 these items that were supposed to help us formulate
8 more regulatory certainty and -- and give us -- and
9 give stakeholders information on how we would be
10 dealing with these public policy considerations and
11 economic situations.

12 So I'm a no.

13 Thank you.

14 CHAIRMAN RHODES: Thank you very much,
15 Commissioner Burman, and also thank you, Doris.

16 Commissioner Alesi.

17 COMMISSIONER ALESI: Good morning.

18 Thank you, Mr. Chairman. I believe that this is a
19 sensible approach, especially in today's world. It
20 provides immediate relief with modifications to low
21 income programs, redesigning capital plans,
22 reformatting investment decision making, that
23 displays an awareness of the needs of small business
24 to provide a positive impact on the environment.

25 Overall, I think the joint proposal

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2 does serve the public interest with regards to the
3 environment, society, the economy, and I believe it
4 does balance the needs of ratepayers as well as
5 investors. So I will be supporting it.

6 CHAIRMAN RHODES: Thank you very much.
7 Commissioner Edwards?

8 COMMISSIONER EDWARDS: Yes, thank you.
9 I want to thank you, Judge Costello and Judge Clark
10 and the staff. And, you know, I -- and thank you,
11 Doris.

12 I -- I think that you articulated, you
13 know, really what is in front of us in terms of bond
14 rating and -- and for the company, and that
15 definitely has to be considered.

16 But it's one piece of the puzzle, we
17 have to look at the consumers' ability to pay, or how
18 to continue our efforts on CLCPA, how to continue to
19 improve safety measures, like it's being done here in
20 terms of increasing the metrics on leak management
21 program.

22 Adding jobs in this unprecedented time
23 to focus on storm recovery. It is a very balanced
24 approach. We are in unprecedented times, it's very
25 difficult. So I want to commend all of you for

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2 putting this forward, the efforts to minimize the
3 impact on low-income customers.

4 The focus on economic recovery for
5 business customers also should be commended, there is
6 no perfect way right now. Everyone is doing the very
7 best that they can. So I am -- I have no hesitation
8 to -- to vote in favor of this. Thank you.

9 CHAIRMAN RHODES: Thank you.
10 Commissioner Howard?

11 COMMISSIONER HOWARD: Thank you, Mr.
12 Chairman. This case is the first one that my term --
13 during my term as a commissioner that I've seen from
14 its initial filing to now producing orders.

15 I attended public statement hearings,
16 when we could in person and then subsequently
17 remotely. I must say that the initial size of -- of
18 these electric cases increases request, and the
19 subsequent settlement -- yeah, it gave me great
20 pause.

21 And that was before the impact of
22 COVID-19. While I agree to an extent with
23 Commissioners Burman's comment on process, I feel
24 that the end result is vastly improved.

25 I still have many concerns with

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2 aspects to this order, particularly issues regarding
3 the advanced metering initiative. I'm pleased to see
4 that is somewhat postponed, and I would hope that we
5 will be able to -- again keep our pencils very sharp
6 because as of now, I remain skeptical about the many
7 aspects of the AMI initiative.

8 While I wish we were in the position
9 to freeze or even lower electric rates, I know that
10 is impossible. And in this case, sometimes parties
11 need a deadline to reach a settlement and to this
12 case, the closer we got today, the more reasonable
13 the outcome became poor ratepayers.

14 In regards to the gas case, I want to
15 applaud those involved with this quite honestly, very
16 precedent-setting initiative. And that recognizing
17 that the way we have done gas cases in the past and
18 how companies approached it has changed dramatically,
19 and abandoning particularly the concept of build it
20 and they will come philosophy of -- of pipelines on
21 the distribution system, I think is this outcome were
22 well served with that.

23 I maintain that many of the new
24 technologies that we are trying to do in this case
25 and across the board in the State of New York, should

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2 not be borne solely on the backs of the rate-paying
3 public.

4 And it is my sincere hope that in 2021
5 we'll see a far greater role for the federal tax code
6 and the federal budget to help New Yorkers and all
7 Americans invest in our new energy future.

8 With those comments being said, I will
9 be supporting this and this -- these orders. Thank
10 you.

11 CHAIRMAN RHODES: Thank you very much.
12 With that, I will proceed to call for a vote. For
13 the record, this is John Rhodes, and my vote is in
14 favor of the recommendations ... to opportunity to
15 joint proposal with modifications as discussed.
16 Commissioner Burman, how do you vote?

17 COMMISSIONER BURMAN: No.

18 CHAIRMAN RHODES: Commissioner Alesi,
19 how do you vote?

20 COMMISSIONER ALESI: Yes.

21 CHAIRMAN RHODES: Commissioner
22 Edwards, how do you vote?

23 COMMISSIONER EDWARDS: I vote in
24 favor.

25 CHAIRMAN RHODES: Commissioner Howard,

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2 how do you vote?

3 COMMISSIONER HOWARD: Yes.

4 CHAIRMAN RHODES: Thank you all. The
5 item is approved and the recommendation is adopted.
6 We will now proceed to the now second item for
7 discussion, which Secretary Phillips I believe is
8 item 302, Cases 20-E-0588 and 20-E-0587. Is that
9 correct?

10 SECRETARY PHILLIPS: That is correct.

11 CHAIRMAN RHODES: Thank you very much.
12 These cases are investigations into Consolidated
13 Edison's 2009 -- July, 2019 outages in Manhattan and
14 in Brooklyn presented by Joseph Suich, Director,
15 Office of Investigations and Enforcement.

16 Kevin Wisely, Director of Office of
17 Resilience and Emergency Preparedness Tim Canty
18 Acting Deputy Director office of accounting Audit and
19 finance.

20 And John Sipos, Deputy General Counsel
21 are available for questions. Joe, please begin.

22 MR. SUICH: Good morning, Chair Rhodes
23 and commissioners. I am thrilled to propose an
24 order, instituting a proceeding and to show cause
25 relating to two July, 2019 outages occurring in the

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2 Manhattan and Brooklyn service territories of
3 Consolidated Edison New York, Inc. which is also
4 referred to here as Con Edison.

5 In short, the proposed order directs
6 Con Edison to show cause why the commission should
7 not commence a review of the prudence of its outage
8 actions while the commission should not pursue civil
9 penalties, and why Con Edison should not implement
10 the department's remedial recommendations provided in
11 an accompanying staff outage report.

12 Besides in 302, along with items 303
13 and 266, currently before the commission, of a second
14 set of proposed orders coming from the department's
15 new office of investigations and enforcement formed
16 earlier this year.

17 During the summer of 2019, Con Edison
18 experienced two sizeable outage events eight days
19 apart. Neither was storm related. The first
20 occurred on Manhattan's west side on the evening of
21 Saturday, July 13th, 2019.

22 Emptying numerous theaters and
23 restaurants with their patrons. There's nearly five
24 hour outage caused approximately 73,000 customers to
25 lose electric service from Fifth Avenue, to the

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2 Hudson River, and from 31st Street to 71st Street.

3 The second outage, a two-day event
4 occurred in the Flatbush area of Brooklyn on July 21
5 to 22nd, 2019. And resulted in the loss of electric
6 service for approximately 33,000 customers.

7 Immediately after the outages the
8 Department initiated an investigation of Con Edison's
9 preparation for and response to these events.

10 Staff investigation focused on among
11 other things, the technical root causes and remedial
12 measures for each outage. And to consider whether
13 Con Edison complied with the public service law, it's
14 Commission approved emergency response plan or ERP
15 the outage notification incentive mechanism and
16 commission regulations and audits.

17 Staff also evaluate that Con Edison's
18 actions were prudent. The department's 13 month
19 investigation, including interviews, requesting and
20 reviewing thousands of pages of technical and
21 business documents. Numerous stakeholders
22 discussions and examination of Con Edison's
23 communication efforts to customers, emergency
24 personnel and government officials and media.

25 The department also leveraged external

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2 experts in this technical evaluation. The results of
3 the department's investigation are memorialized in
4 104 page outage report, which is provided to the
5 commission contemporaneously with this proposed
6 order.

7 The outage report identifies that the
8 outages were the result of apparently foreseeable,
9 relay failures for Manhattan. In -- in adequate load
10 shedding and restoration procedures for Brooklyn.
11 The proposed order requires Con Edison to show cause
12 why it should not implement the 84 corrective actions
13 commenced in the staff report.

14 The proposal also reflects the 8
15 apparent ERP violations and 4 apparent owning
16 violations identified in the investigation, which
17 includes inadequate and untimely outage press
18 releases, briefings and other communications to
19 customers and government officials and inaccurate
20 vague, estimated times of restorations.

21 These apparent violations, if
22 confirmed by the Commission may total more than \$25
23 million in penalties. In addition, these potential
24 penalties, the Commission has already assessed and
25 applied \$15 million in negative revenue adjustments

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2 to Con Edison in relation to these outages further --
3 further terms of their rate case order. The proposed
4 order requires Con Edison and also to show cause
5 whether acted prudently during the outages.

6 Lastly, should the commission confirm
7 any of the apparent violations in this proposed
8 order, it may then in combination with other admitted
9 or confirmed violations of Con Edison's failure to
10 provide safe and adequate service move to commence a
11 proceeding to consider the revocation or modification
12 of Con Edison certificate to operate.

13 As such, the Department recommends the
14 commission adopt the proposed order instituting a
15 proceeding and to show cause. This concludes my
16 presentation. Thank you for your consideration, and
17 the team is available for questions.

18 CHAIRMAN RHODES: Thank you, Joe.
19 This -- this item is the product of careful probing
20 and expert investigation into notable and highly
21 customer impactful blackouts at Con Ed last year.

22 These blackouts and the associated
23 problematic restoration and communications aftermath
24 had causes and we now know what those causes were and
25 we understand the failures behind those causes, this

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2 order takes us to an important next step via the
3 order to show cause as you described, next steps
4 spoke toward prevention of occurrence and towards
5 accountability -- accountability for performance by
6 this utility. I am going to be in favor of this
7 item.

8 Commissioner Burman?

9 COMMISSIONER BURMAN: Thank you so
10 much. I'm going to save most of my comments for
11 items 303 even though some of the comments that I
12 will raise will perhaps apply to 302. However, I'm
13 going to just focus on one issue right now or
14 actually two issues.

15 First is you mentioned that there were
16 outside experts. Could you share sort of the process
17 with those outside folks, how many, how did they get
18 selected? What -- what exactly did they work on, and
19 what was -- what was the amount of money spent to
20 hire these folks?

21 MR. SUICH: Thank you, Commissioner.
22 I'll ask John Sipos to address that question.

23 COMMISSIONER BURMAN: Thank you.

24 MR. SIPOS: Good morning,
25 Commissioner Burman. This is John Sipos. Good

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2 morning, commissioners, can you hear me all right?

3 MR. ROSENTHAL: Yes, we can John. Go
4 ahead.

5 MR. SIPOS: Thank you. I appreciate
6 that. So -- so good morning, John Sipos and
7 Commissioner Burman to your question, the process
8 regarding the outside external independent panel
9 members and their selection.

10 Shortly after the first and then also
11 after the second outage, there was a recognition of
12 the significance of those outages and the need to
13 have a thorough evaluation and investigation of that.

14 And as a result of that, NYPA offered
15 some assistance in thorough and going into formal
16 agreement and to promote the public interest, and to
17 protect the electrical power system and to provide,
18 you know, timely assistance in this unplanned outage
19 regarding various electrical systems.

20 You know, it was appropriate to accept
21 that offer, and staff of the Department of Public
22 Service evaluated various outside individuals for --
23 for their fit and, you know, assistance on the
24 investigation.

25 And the process was much like the

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2 process that would be for hiring an expert for
3 litigation matter. And at the end of the process,
4 and -- and the evaluation of those, you know,
5 candidates was done in conjunction with OEGW Office
6 of Resilience and Emergency Services, and also the
7 Office of General Counsel and issues -- the criteria
8 for examination included, you know, potential
9 conflicts of interest.

10 But also expertise of the individuals,
11 the objective analysis, that they might have their
12 availability to assist in the investigation, which we
13 wanted to start, you know, very -- very rapidly. And
14 also, you know, any other commitments that they might
15 have in terms of their schedule, in terms of teaching
16 schedules or, you know, commitments for -- for -- for
17 other projects.

18 And at the -- when the -- when the
19 process was done, there were five outside external
20 experts who brought, you know, independent experience
21 to assist and support the DPS staff team on it and
22 worked to, as I said, work to support the
23 understanding.

24 And their expertise included -- these
25 were very -- each of -- each of the five had

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2 significant expertise, you know, decades of
3 experience across very targeted areas that we needed
4 to look at including relays, relay protection, cables
5 and joints, and breakers and transformers.

6 They came from various educational
7 institutions as well as with private experience as
8 well. And they provided great assistance to -- to
9 the DPS team.

10 COMMISSIONER BURMAN: So much, and I
11 just want to make clear, I don't have an issue if we
12 determine that we do need outside help on
13 investigations to be able to figure out how to find
14 them and hire them.

15 My concern really lies with the
16 process of it, because we want to make sure that we
17 are not only being transparent to the process, but
18 also ensuring that we are following a -- a prudent
19 process in those.

20 You refer to them as independent
21 experts and I just want to push back a little bit
22 because they aren't necessarily independent because
23 they were hired to work with us, not give, you know,
24 their own independent work product, etcetera.

25 So, you know, I think it would be fair

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2 to say that if an entity hired experts, they're those
3 -- though that entities experts and you couldn't say
4 that they were independent from, you know, the -- the
5 company that hired them unless there was -- there's
6 -- was more sort of guardrails on what that look
7 like. Is that fair to say?

8 MR. SIPOS: I guess my take would be
9 different Commissioner Burman, the -- the
10 individuals, the five individuals brought experience
11 that was independent from staff. They -- they had
12 their own experience, the professional experience
13 either in academia or in consulting, you know, very
14 robust electrical engineering experience for specific
15 systems, structures, components and also large
16 electric systems.

17 And we're able to bring that -- bring
18 that to bear, to support and to augment the -- the
19 staffs' experience. So, I would say they were, you
20 know, they were outside external and independent and
21 the process benefited from them.

22 It's a process that is not -- I would
23 say unusual in -- in, you know, legal in -- in legal
24 cases, or in maybe, you know, business cases in
25 general.

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2 So, I -- I hear -- I certainly hear
3 and -- and appreciate your comments. At the end of
4 the day, they were able to support and augment the --
5 the staff's investigation and -- and assist and, you
6 know, and -- and at the end of the, you know, at the
7 end of the process, or where we are now in the
8 process, we do have, you know, a pathway going
9 forward and potentially pathway going forward, and we
10 have the staff report, as well.

11 COMMISSIONER BURMAN: Right. Thank
12 you. So I appreciate that I think we're probably,
13 you know, slicing the -- the definition, you know, to
14 me, an independent consultant versus an employee,
15 versus someone who's truly independent.

16 These folks were hired with the help
17 of NYPA to work with the Department staff on this
18 investigation rather than to work independently and
19 give, you know, their own independent work.

20 So from my perspective, I know you and
21 I have spoken about this is that they -- they're not
22 technically independent as we might think of when we
23 hire through the R.F.P. process in management audit,
24 an independent outside auditor because in those
25 cases, that process is -- is fairly rigorous in terms

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2 of the commission being involved in, you know, the
3 R.F.P. process, as well as then, you know, deciding
4 which one is the right one to select.

5 And then them actually engaging, you
6 know, in -- in their work product with the
7 commission. So I think it is a little different, I
8 do think that it's something for us to look at as we
9 go into the future because I think it is helpful to
10 ensure that we are properly providing the guardrails
11 and also establishing the record on those folks who
12 will be hired as consultants, consulting experts, and
13 ensure that, you know, we -- we have all the relevant
14 information, you know, and -- and what exactly
15 they're doing, who's -- who's overseeing their work,
16 etcetera.

17 I have no problem again with that. I
18 just do think that using the term independent experts
19 is not necessarily the -- the correct terminology
20 since they were DPS's experts. And just for
21 clarification purposes, my understanding is NYPA did
22 not have any substantive role in this investigation.
23 Is that correct?

24 CHAIRMAN SIPOS: That is correct,
25 Commissioner.

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2 COMMISSIONER BURMAN: Okay. Thank
3 you, I just want to make that's clear. I'm going to
4 -- again, as I said, I'm going to save my comments as
5 it relates holistically on investigations to 303. I
6 appreciate it, and I -- I thank you for your sharing
7 with us today. Thank you.

8 MR. SIPOS: Thank you, Commissioner.

9 CHAIRMAN RHODES: Thank you,
10 Commissioner Burman.

11 Commissioner Alesi?

12 COMMISSIONER ALESI: Thank you, Mr.
13 Chairman. With your indulgence, I'm going to combine
14 my statement as well with 302 and the next item which
15 is 303 at the end of the 303 presentation.

16 CHAIRMAN RHODES: Okay. Got it.
17 Thank you. Commissioner Edwards?

18 COMMISSIONER EDWARDS: Thank you very
19 much. The only thing I would say, Joe, is we've
20 talked about speed of investigations and I know that
21 we've -- we've done a lot of work, all of you have
22 done a lot of work in order to do that, that's why
23 we're going to move to 303.

24 So I think that whatever we can do to
25 continue to do that is absolutely necessary, you

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2 know, we -- the 84 corrective actions that are
3 recommended when you are losing any part of your
4 service communication to customers is key.

5 Providing accurate ETAs is absolutely
6 appropriate. So I am voting in favor of this item.
7 Thank you.

8 CHAIRMAN RHODES: Thank you very much.
9 Commissioner Howard?

10 COMMISSIONER HOWARD: Yes. To me this
11 -- this case falls in two distinct buckets. One
12 dealing with the technical analysis of what went
13 wrong, and potential technical fixes that will ensure
14 that this won't happen in the future. The second
15 part is dealing with communications.

16 I think it may be imperative going
17 forward that we revisit how all utilities communicate
18 with their customer base on a going forward basis. I
19 know there was great emphasis on the lack of press
20 releases and the like, I think they're certainly more
21 effective measures broadly how utilities can cut --
22 communicate with their customer base.

23 And that I hope as we move forward in
24 a constructive manner, that we have great emphasis on
25 improving that in a way that is truly meaningful for

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2 customers and not just an exercise in, you know, in
3 -- in issuing press releases and -- and the like so.
4 But with that I'm -- will be supporting it.

5 CHAIRMAN RHODES: Thank you very much.
6 With that I will proceed to call for a vote. For the
7 record, it's John Rhodes, and my vote is in favor of
8 the recommendations to institute a proceeding to
9 direct Consolidated Edison to show cause as
10 discussed. Commissioner Burman, how do you vote?

11 COMMISSIONER BURMAN: I concur.

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

14 COMMISSIONER ALESI: Yes.

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

17 COMMISSIONER EDWARDS: I vote in
18 favor.

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

21 COMMISSIONER HOWARD: Yes.

22 CHAIRMAN RHODES: Thank you. The item
23 is approved and the recommendation is adopted. We'll
24 now move to the currently third item for discussion,
25 item 303, case 20-E-0586 which is the department's

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2 investigation into utilities preparation for and
3 response to tropical storm Isaias in August, 2020 of
4 this year.

5 And the resulting electric power
6 outages also presented by Joe Suich. Kevin Wisely
7 and Leka Gjonaj Chief of Electric Safety and
8 Reliability, and Rory Lancman, Special Counsel for
9 ratepayer protection are available for questions.
10 Joe, please begin.

11 MR. SUICH: Thank you, Chair Rhodes
12 and commissioners. 303 is a proposed order
13 commencing a proceeding and to show cause directing
14 Consolidated Edison of New York, Inc. Orange &
15 Rockland Utilities, Inc. and Central Hudson Gas and
16 Electric Cooperation to show cause why the commission
17 should not commence a prudency proceeding or pursue
18 civil penalties relating to their preparation or in
19 response to the August, 2020 tropical storm Isaias
20 and related outages.

21 Throughout this presentation I'll
22 refer to these utilities individually as Con Edison,
23 O&R and Central Hudson, and together as the subject
24 utilities. Also at the end of my presentation, I
25 will ask my colleague Rory Lancman, special counsel

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2 for ratepayer protection to relay his forthcoming
3 public measures to better understand outage impacts
4 to customers and businesses.

5 On August 4th, 2020, tropical storm
6 Isaias struck New York with 70 plus mile per hour
7 wind gusts and heavy rains, causing extensive damage
8 and 900,000 peak customer outages largely in Hudson
9 Valley, New York City and Long Island regions.

10 Con Edison had 333,000 customer
11 outages that took eight days to fully restore. O&R
12 had 189,000 customer outages that took seven days to
13 fully restore and Central Hudson had a 116,000
14 customer outages that took four days to fully
15 restore.

16 Network telephone, cable and internet
17 service outages persisted even longer than the
18 electric outages. As restoration of these services
19 often follow the power in many circumstances require
20 power to operate.

21 Thousands of New Yorkers already
22 forced to work from home because of the COVID
23 pandemic, lacked electric, telephone, cable and
24 internet service for extended periods of time during
25 which temperatures reached or exceeded 90 degrees

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2 Fahrenheit.

3 The day of the storm, the Department
4 initiated an all-hands-on-deck investigation to
5 understand root causes and push for speedy
6 restoration. The Department management conducted
7 site visits of some of the worst hit areas and
8 Department staff engaged in real time communications
9 with utilities, municipal and regional leaders
10 regarding the storm response.

11 The Department based on its initial
12 observations, discussions and efforts were able to
13 issue notices of apparent violations or NOAV on
14 August 19th, 2020, two among others, Con Edison, O&R,
15 Central Hudson relating to their preparation for and
16 response to tropical storm Isaias.

17 These L.E.D. served two purposes.
18 First, the NOAVs put the subject utilities on notice
19 of apparent violations of the Public Service Law or
20 PSL.

21 Its regulations and Commission
22 approved Emergency Response Plans and/or ERPs noting
23 among other things, subject utilities apparent
24 failures to properly staff to the storm.

25 Second, the Department required the

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2 subject utilities as well as other utilities not
3 served with NOAV to implement a series of remedial
4 actions to mitigate the impacts of future storms,
5 most notably a requirement to increase storm
6 staffing.

7 At the same time the NOAVs were
8 issued, the governor requested the Department of
9 Financial Services and its forensic team to support
10 the Department in its investigation.

11 With this added support, the
12 Department committed to expedite its storm
13 investigation from its typical one year timing to
14 less than six months. Only two days after the
15 Department issued NOAVs it began the second phase of
16 its investigation.

17 This next phase included but was not
18 limited to conduct the 43 utility employee and
19 related party interviews and deposition ranging from
20 two to 14 hours each. Submitting document
21 preservation notices, requesting and later reviewing
22 tens of thousands of emails and technical documents.

23 Meeting with regional, city and town
24 officials, reviewing hundreds of customer complaints
25 submitted to the Department and analyzing utility

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2 submitted ERP scorecards and storm reports.

3 The Department's ability to
4 investigate soon after the event, when memories of
5 involved parties were still fresh, combined with
6 increased staffing and forensic support ensure that
7 investigation speed did not compromise thoroughness,
8 attention to detail, in short, we followed the facts.

9 The result of the Department's
10 investigation memorialized in the Department's Isaias
11 storm report, which is provided initial
12 contemporaneously with this proposed order. The
13 proposed order also reflects the subject utilities
14 apparent violations of the ERPs identified in the
15 investigation.

16 These apparent violations relate to
17 storm classification and staffing, call center
18 staffing, call center response times, inadequate and
19 untimely estimated times of restoration. Inoperable
20 website and outage maps, and the wholly unacceptable
21 apparent failure to contact registered life-support
22 equipment customer.

23 These apparent violations, if
24 confirmed by the commission, would vary in penalty
25 amount based on a statutory formula. It can be

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2 summarized as follows, Con Edison, 33 apparent ERP
3 violations resulting in a potential penalty of up to
4 approximately \$102 million.

5 O&R, 38 apparent ERP violations,
6 resulting in a potential penalty of up to \$19
7 million. Central Hudson, 32 apparent ERP violations
8 resulting in a potential penalty of up to \$16
9 million.

10 The proposed order also requires each
11 subject utility to show cause why a prudency
12 proceeding should not be commenced as to their
13 actions and omissions relating to tropical storm
14 Isaias.

15 Lastly, as to Con Edison and O&R, but
16 not Central Hudson. Should the commission confirm
17 any of the apparent violations in this proposed
18 order, it may then in combination with these
19 utilities either admitted or confirmed repeat
20 violations of failing to provide safe adequate
21 service, commence a proceeding to the utility the
22 revocation or modification of Con Edison's and O&R
23 certificate to operate.

24 In this respect, at the July session,
25 the Commission approved a joint proposal or J.P.

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2 between Con Edison, O&R and staff telling the order
3 to show cause related to the 2018 Riley and Quinn
4 storms in which Con Edison, O&R each admitted to
5 multiple violations of their ERPs.

6 They also have the order to show cause
7 and the 2019 Manhattan and Brooklyn outages, item
8 302, which is before the commission today and further
9 alleges ERP violations. ... raises to point out that
10 finding repeat violations is a threshold issue of
11 whether the commission may elect to commence a
12 proceeding to consider the revocation or modification
13 of Con Ed and O&R certificate to operate.

14 The subject utilities have 30 days to
15 respond to the proposed order. As such, the
16 Department recommends the commission adopt the
17 proposed order commencing a proceeding and to show
18 cause.

19 I also note that the Department
20 pursuant to its authority under PSL Section 3B
21 provided the Long Island Power Authority or LIPA on
22 November 13, a letter summarizing the results of the
23 Department's review and recommend investigation of
24 its service provider PSEG Long Island during tropical
25 storm Isaias.

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2 The Department will also provide LIPA
3 with the Isaias storm report, which includes a PSEG
4 Long Island technical review after today's session.

5 No action is required by the
6 Commission as the LIPA or PSEG Long Island. Further,
7 the Department's tropical storm Isaias
8 telecommunications investigation is continuing. This
9 concludes my presentation.

10 Thank you for your consideration and
11 on sincere behalf of the Department, I'd like to
12 thank Superintendent Linda Lacewell of D.F.S. and her
13 team, particularly Kevin Puvalowski and Alison Passer
14 along with Christian Bonvin, Laurie Cornelius,
15 Nicholas Forst and Lucas McNamara of D.F. -- of DPS
16 for their tireless effort and support over the past
17 three months.

18 I will now turn over to my colleague
19 Rory Lancman, after which the team is available for
20 questions. Thank you.

21 MR. LANCMAN: Thank you, Joe. Good
22 afternoon, Chair Rhodes, commissioners. My name is
23 Rory Lancman, the statewide special counsel for
24 ratepayer protection appointed by Governor Andrew
25 Cuomo.

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2 As you might know, I come to this
3 position having previously served as a member of the
4 state legislature and the New York City counsel,
5 where my focus was reforming the civil and criminal
6 justice systems for the benefit of ordinary people.

7 The kinds of people I've represented
8 for 19 years as an active member of the New York Bar,
9 protecting their employment rights and their safety.

10 And I believe these are also the kinds
11 of people that Governor Cuomo had in mind when he
12 established this position and appointed me to it.

13 Ordinary people who can't understand
14 why their electricity takes so long to restore after
15 bad weather, why their water bills are so high, why
16 their kids can't access affordable high speed
17 internet.

18 Tropical storm Isaias is just the
19 latest example, and my colleague laid out a
20 compelling case itemizing the utility companies,
21 numerous alleged failures and violations of the law.

22 Given the extent of those failures,
23 and the penalties, we are seeking a thorough
24 evidentiary record of the harm and damage inflicted
25 on the public will be necessary, that will be my

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2 responsibility. As Mr. Suich detailed, we know that
3 330,000 Con Edison customers lost power, some for as
4 long as eight days.

5 189,000 Orange & Rockland customers,
6 some for as long as a week. 116,000 Central Hudson
7 customers, some for four days, and PSEG Long Island,
8 which is not subject to this proceeding, but rather a
9 sort of parallel one driven by LIPA 645,000 customers
10 lost power, some for eight days.

11 When you consider that each customer
12 is an entire household or business, that's well over
13 2 million New Yorkers who went without light,
14 refrigeration, air conditioning, computer access,
15 truly modern life's essentials.

16 How did this harm children who
17 couldn't access the internet for online learning or
18 engagement. Adults who couldn't telecommute and the
19 businesses relying on them. How many hundreds of
20 millions of dollars in productivity and economic
21 activity were lost.

22 For how many businesses was this
23 outage the straw that broke the camel's back. How
24 many seniors and other vulnerable populations were
25 unable to access health care and social services they

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2 rely upon.

3 How much additional strain did this
4 put on our already overburdened healthcare workers
5 and first responders. Were people who lost food and
6 medicine and other goods properly reimbursed?

7 It is important that all these voices
8 be heard in this proceeding. And that the commission
9 consider the damage and harm caused to them if and
10 when the time comes to assess sanctions.

11 We intend to provide the commission
12 with the evidence enabling you to do so. Thank you.

13 CHAIRMAN RHODES: Thank you, Rory, for
14 that helpful summary of your role in continuing the
15 investigation especially with the emphases on
16 assessing the harm to customers. I should note here
17 that I would sign an operation -- authorization under
18 Section 8 of Public Service Law to give you the
19 standing and authority to allow you to do just that.

20 And also thank you for joining and
21 strengthening the team and positioning us to do even
22 more to protect the customers, welcome.

23 With regards to this item, we had
24 tropical storm Isaias and after that we experience
25 broad extended severe -- severe and -- and

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2 unacceptable level of outages which were especially
3 difficult to our fellow New Yorkers in our COVID
4 stress circumstances.

5 This item that we have before us is
6 the item, again, of a probing, and I mean, careful
7 and this time swift investigation, very useful and
8 helpful supported by the Department of Financial
9 Services.

10 Joe has discussed the output of, I
11 guess, the first stage of the investigation namely
12 the NOAVs that the team produced and -- and the staff
13 issued on a very timely basis important as they were
14 still in the midst of hurricane season and exposed to
15 the danger that flowed from that.

16 We are now at the next stage. As in
17 the prior item, we now know in an evidence based way
18 the nature and underlying causes of the failure. And
19 we know that the effect of this on customers was
20 unacceptable, the evidence of that failure is
21 compelling and it's time to act to the ensure
22 accountability.

23 I am going to be in support of the
24 item which drives us in that direction.

25 Commissioner Burman?

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2 COMMISSIONER BURMAN: Thank you so
3 much. Before I ask other questions, I think I would
4 like to call upon Doris Stout again to talk a little
5 bit about the Moody's analysis that was released last
6 week on Friday as it relates to the proposed
7 legislation that the Governor put forward and has
8 been introduced in the assembly and the senate, I
9 believe, as it relates to storm issues etcetera.

10 MS. STOUT: So good -- good afternoon,
11 Commissioner Burman. This is Doris Stout again. A
12 number of my comments that applied to NYSEG or RG&E
13 would apply in this circumstances as well.

14 When we try to assess what the impacts
15 are of our action on bond ratings, we have to look at
16 both the quantifiable financial impacts and the non-
17 quantifiable qualitative impacts of our actions on
18 perceived regulatory environments.

19 So the financial impacts of the
20 potential penalties under the order to show cause are
21 generally viewed as one-time events, and often time
22 surveying agencies would discount those because
23 they're looking at a longer term impact in terms of
24 analyzing the utilities financial matrix.

25 What's more difficult to ascertain is

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2 that qualitative impact of the order to show cause
3 and as you mentioned Moody's has made some -- some
4 clear statements in their analysis that was issued on
5 Friday.

6 And that detailed the various
7 development in New York including the legislation
8 that have had negative credit implications over the
9 past 12 months, and also noted the impact of Isaias
10 on -- on -- on their assessment.

11 S&P, I think I also mentioned earlier
12 that they still find New York as very credit
13 supportive and they're monitoring those development
14 associated with the legislation. And so this is an
15 important topic because our regulatory environment
16 mounts to or accounts to about 50 percent of the
17 rating agencies analysis of credit quality.

18 And so the determination of -- of when
19 that -- of concerns about regulatory environment
20 might have an impact -- again, it's going to depend
21 on the existing ratings of the utilities and -- and
22 how well they are supported by their financial
23 metrics within their rating category.

24 So if a company is currently stable or
25 is, you know, if it has a strong financial metrics

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2 which less likely to be immediately impacted by the
3 -- the negative regulatory environment. But a number
4 of the New York utilities have been flagged by
5 Moody's and -- and -- negative outlook.

6 So additional actions like the
7 legislation that they and -- an interactions on these
8 orders to show cause could have additional negative
9 impact on-- on their assessment of the bond ratings
10 of the New York utilities.

11 All that being said, you know, Joe
12 Suich detailed and the Chair mentioned these orders
13 to show cause are builds upon a very thorough
14 analysis and it's a very methodical approach and the
15 utilities have an opportunity to respond before the
16 commission takes its -- its final action.

17 So -- so the final actions are yet to
18 come, this is just one stage in analysis. And
19 similar to what I said about NYSEG and R -- R -- RG&E
20 case, you know, are stable and predictable regulatory
21 environment is important. And strong bond ratings
22 are important for being able to raise capital at
23 reasonable rates, if utilities can't deliver safe and
24 adequate service such as reasonable rates.

25 The commission may still have to take

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2 certain actions to enforce a regulations or -- as
3 they did in NYSEG RG&E protect rate payers from the
4 high rate increased in the extraordinary financial
5 times that we're facing. So ultimately similar to
6 NYSEG and RG&E the act of weigh and balance the long
7 term cost of a potential downgrade with the benefits
8 of our actions.

9 COMMISSIONER BURMAN: Thank you Doris,
10 that was very helpful. I did listen yesterday to
11 LIPA board of trustees meeting as they went over
12 their 90 day report which was held by the steering
13 committee which consisted of DPS staff.

14 And the thing that I was struck with
15 was that the board of trustees asked many of the
16 questions that I would put forward to staff as it
17 relates to what LIPA was doing and is doing etcetera.

18 And I -- I do understand the nuances
19 with LIPA and PSE&G Long Island in a different
20 regulatory structure. However I -- I am struck by
21 the fact that I do think that it would benefit these
22 rate payers as a whole whether they're PSE&G Long
23 Island rate payers or state wide rate payers under
24 our jurisdiction.

25 For the commission body as well as the

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2 board of trustees to engage in -- in some fashion as
3 appropriate to be able to facilitate better
4 communication. I was struck that the P.C -- excuse
5 me, that the LIPA board members really were shocked
6 and said that they had lost trust in PSEG Long Island
7 and I -- I guess I am -- I -- I look to the
8 recommendations that have been put forward both by
9 LIPA and DPS

10 For some real specifics on -- perhaps
11 better oversight of the LIPA board itself and also
12 DPS and perhaps the commission as to the -- the
13 things that needed to be in place for better
14 regulatory oversight that leads to better compliance.

15 I think that adds something that we
16 can all take to heart even as we sit here looking at
17 this is what are we doing that may be better from a
18 process perspective to help us in our regulatory
19 oversight in a way that actually produces better
20 results.

21 It does seem like there's a --
22 there's a difference significantly from the PSEG Long
23 Island situation and the 70 recommendations from DPS
24 and I think a 100 or so from LIPA And then, you
25 know, a lesser number, in this situation however on

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2 still something for us to look at.

3 I do also know that both of the
4 reports for 302 and 303 seem to have been uploaded to
5 D.M.M. So I do want to make it clear that we're not
6 voting -- I believe we're not voting on those
7 reports.

8 And while they were contemporaneously
9 given to us with this draft order and -- and I
10 thought they were getting released after and -- if
11 and when we adopted the orders.

12 I do want to just make clear that
13 those reports are staff reports and that we are
14 looking at it through the order to show cause
15 process. Is that -- is that fair to say?

16 MR. SUICH: Yes -- yes, Commissioner I
17 think that's right on.

18 COMMISSIONER BURMAN: Okay, great.
19 Thank you. The other thing I was struck with was
20 that PSEG -- excuse me, I keep saying PSEG Long
21 Island, LIPA focus on a tier approach where they were
22 looking at the different recommendations to be done
23 that were sort of and I -- I don't know that they
24 used this wording.

25 But a high priority, medium priority,

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2 low priority and that we're looking at what was
3 necessarily in terms of violation may have occurred,
4 but at -- that wasn't necessarily a problem to
5 whatever -- they didn't necessarily relate to damage
6 per se and we're needing to look at making sure that
7 we dealt with theses as appropriate in terms of how
8 severe they were, not only at the time of the storm,
9 but in terms of fixing.

10 And how does that sort of mirror what
11 staff is doing in the cases before us?

12 MR. SUICH: Well, I'll ask Kevin
13 Wisely and the OREP team to comment further.
14 Commissioner, as you know Kevin and I are on the LIPA
15 report -- on the LIPA task force.

16 COMMISSIONER BURMAN: Right.

17 MR. SUICH: We have input into their
18 record, they have an understanding of what our -- our
19 findings were as well which we related to them in --
20 both in the letter and -- and verbally.

21 As we're trying to sync our efforts
22 while at the same time they may be autonomous, we are
23 having autonomous report and so do they.

24 There's three tier approach, it seems
25 to make sense to me, and they are looking at the

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2 highest risk first and trying to -- to address those.

3 And we support that in a sense that
4 things such as the OMS and other, there could be a
5 storm tomorrow, and because of that they need to
6 right away fix those issues right -- in case there's
7 an incoming storm.

8 So I think we do support their --
9 their tier approach. Kevin, I've asked you to
10 comment further please?

11 MR. WISLEY: Sure, Joe. Thank you.
12 And Commissioner Burman, yes we have followed along
13 and work with them and do follow their -- their
14 tiered approach.

15 There are assurance that things are --
16 are much more important as Joe articulated the
17 management system is of utmost importance to you
18 rectify and having in service the staff team will
19 continue to review the findings that we have, and we
20 already documented and build and develop
21 recommendations.

22 And those that are appropriate to be
23 integrated into the Emergency Response Plans, we will
24 ensure that that happens prior to representing the --
25 the next round of -- of Emergency Response Plans at

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2 the beginning of the year.

3 COMMISSIONER BURMAN: Okay, great.

4 Thank you so much. I -- I guess I'm also looking at
5 it from the perspective that, you know, we have the
6 LIPA report, DPS is also doing as LIPA indicated at
7 its board meeting it -- its separate investigation as
8 well.

9 And we heard from our newest member
10 Rory Lancman and it's a pleasure to hear from today,
11 but I do think that it is important for us to look
12 sort of globally at all of the different activities
13 that are going on in an investigative way that
14 doesn't trip over themselves.

15 As well as provide critical feedback
16 globally on some of these things. You know, I do
17 note that Rory mentioned and the Chair confirmed that
18 he will be following, you know, looking to have an
19 evidentiary record that looks at potential harm and
20 damage on the public.

21 And I guess I'm looking at that as and
22 -- and mentioned sanctions, I guess I'm looking at
23 that and I'm thinking that folks may be a bit
24 confused on the different tracks of this
25 investigation and where things are matching up and

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2 where there is overlap.

3 But also to have some finality, I'm
4 not just as the public engaged but as the -- the
5 necessary due process for the companies. So I think
6 there needs to be a little bit more clarity on what
7 this investigation process looks like including now,
8 this new development of -- it seems like a separate
9 enquiry limit it's on the side of pure damages or
10 potential damages.

11 And what that may look like especially
12 if that means public hearings known especially with
13 the sense of the need for transparency as well as the
14 proper due process and proper scrutiny and following,
15 you know, a tight schedule but also proper
16 investigation protocols and ethics.

17 So I just, you know, would -- would
18 look to flush that out as we go forward, because I do
19 think that will be very important especially as Doris
20 spoke about the concerns that Moody's had as the
21 proposed legislation. Some of those concerns could
22 also be applied potentially to our future processes.

23 And so I think that we need to be very
24 focused on providing the certainty, especially as to
25 the role of all these investigations and inquires and

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2 the commission itself. Does that make sense?

3 MR. SUICH: It does, Commissioner.

4 And -- and thank you for that, as -- as you I -- I
5 think the process going forth at least in some
6 aspects is quite clear. So the subject utilities is
7 now as you now have 30 days to respond which would be
8 --

9 COMMISSIONER BURMAN: Right.

10 MR. SUICH: -- on or about 19 December
11 or so. As well the subject utilities may submit a
12 NOIS and notice of impending settlements to try to
13 enter into settlement negotiations with the
14 department as respondents. If those settlements --
15 agreements cannot be reached, we would move to an
16 evidentiary hearing.

17 And as Doris said, this is simply a
18 step in the process, that process would provide due
19 process to all parties and in colloquial terms will
20 allow everyone to tell their side of the story.

21 And that would include how they see
22 the events and their facts as compared to our facts.
23 This will be before an objective tribunal in the
24 sense of Administrative Law Judge, and also that
25 A.L.J. at some point would render a recommend

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2 decision for the department.

3 Now, to match up with the other
4 aspects, part of the penalties of how the damages
5 which would be part of any analysis on if it were --
6 our penalties applied, it would be where Rory would
7 come in and go to the commission as well as the
8 A.L.J. to provide his testimony that he's collected.

9 Secondly, as to making sure, and this
10 is an important one that we don't just follow the
11 investigation path to a compliance but we also tie
12 off immediate recommendation which could be just as
13 important. On 15th December as you know better than
14 I, we have the next set of ERP reviews by the
15 department.

16 Kevin Wisely and his team and I don't
17 want to speak for him, Kevin Wisely and his team
18 would be wrapping in lessons learned, and best
19 practices from the storm and from item 302 into those
20 ERPs. Kevin, any -- anything further on -- on the
21 ERP section?

22 MR. WISLEY: No, Joe, that's right as
23 you articulate it, we -- and as I mentioned earlier
24 we will be looking at identifying those corrective
25 actions and recommendations that will be made part of

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2 the Emergency Response Plan review and authorization
3 as we move forward.

4 COMMISSIONER BURMAN: Thank you. I --
5 I did speak to Joe beforehand about, you know, the
6 sort of the balance and the enforcement and also that
7 our -- our goal is really to drive compliance and
8 improve performance, it does mean that we also have
9 to look at ways that we ourselves can do better.

10 But since many of these public policy
11 decisions as to what to do to improve, you know,
12 performance in storms as it gets driven into the ERPs
13 as -- as well as the scorecards which I know LIPA has
14 been focused on, but we don't frankly seem to focus
15 on the scorecards, publicly at least.

16 It does drive cost especially when you
17 talk about needing more staff and needing more mutual
18 aid etcetera. So we really do need to be mindful
19 that the right balance and -- and look at that
20 carefully because, you know, we will see potential
21 increase in the need for rate impacts. So it's
22 something for us to be cognizant of.

23 COMMISSIONER BURMAN: Okay. I am
24 wrapping up I thank you so much for this. I am just
25 making sure folks know that I -- I see this as also

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2 for us to look at, you know, helping to set the tone
3 in a way that moves us forward with a better
4 performance across the board but also in light of the
5 fact that we have different entities involved we have
6 LIPA and PSEG Long Island.

7 You know that the LIPA Board was
8 discussing and putting a lot of claim on PSEG New
9 Jersey and -- you know I find it so -- I -- I just
10 want to make sure that we are not comparing apples to
11 oranges as it goes for the utilities that we're
12 looking at and that means that we really do have to
13 get under the hood as a commission on the
14 recommendations and analysis over on PSEG Long
15 Island.

16 But New Jersey's electric utilities in
17 the New Jersey board of public utilities they just
18 issued a report yesterday and my quick read on it was
19 that they found that the New Jersey electric
20 utilities even though there was wise -- widespread
21 power outages that the performance was -- was
22 acceptable.

23 And I -- I would just like to see a
24 sort of analysis in comparing, you know, sort of
25 performance and also our own regulatory scrutiny when

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2 we look at that. So thank you very much.

3 CHAIRMAN RHODES: Thank you very much.

4 Commissioner Alesi?

5 COMMISSIONER ALESI: Thank you Mr.

6 Chairman. I will be succinct, not because I don't
7 have a lot to say, but I think in fairness we are at
8 the 50 yard line and there is more to see in the
9 upcoming months but we'll be looking at the -- at
10 that in an environment where we already know there
11 have been historic failures and over the history of
12 those failures fines have been levied, fines have
13 been paid, penalties have been paid and yet we see
14 time and time again the failure to deal with.

15 It's easier to deal with the known
16 causes of many of these failures, they could go down
17 the list overgrowth, lack of preventive maintenance,
18 not enough seasonal staff, a weak mutual aid system
19 et cetera but I think that as we look at resources we
20 have coming from the state look into the ... and some
21 sort of significant changes that with -- with history
22 in mind and knowing if the future has to be different
23 than what we've seen in the past, that's it.

24 CHAIRMAN RHODES: Thank you very much.

25 Commissioner Edwards?

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2 COMMISSIONER EDWARDS: Yes. You know
3 my comments actually are to worry. First of all,
4 thank you and welcome, you know, I was struck by what
5 you said and I just want you to clarify or add to,
6 you know, because when you -- I was struck by what
7 you said that accessing harm to customers in looking
8 for everyday customers and business is going to be
9 your job.

10 It's all of our jobs, you know, I am
11 con -- consistently go back to the mission of
12 ensuring affordable safe and secure service. And
13 nowhere in there, does it say sometimes. Nowhere in
14 there, does it say except to the storm.

15 So what your added role to help us
16 strengthen that process will be is well needed in --
17 in it's-- it's welcome. Your part of us as a whole
18 and I just want to make sure that we keep our eye on
19 ensuring that all of us are responsible for -- for
20 that. Thank you.

21 MR. LANCMAN: Well, thank you and I
22 look forward to working with you.

23 COMMISSIONER EDWARDS: You too.

24 CHAIRMAN RHODES: Thank you both. And
25 Commissioner Howard?

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2 COMMISSIONER HOWARD: Yeah, just
3 there. A couple of questions and then some comments.
4 Much of -- of the -- the report particularly in
5 dealing with Con Ed and O&R focuses on weather
6 forecasting. Again, in conversation with staff and
7 my own personal history, we know that this is less
8 than precise.

9 So as we go forward I -- I guess this
10 is your question will be in a something that
11 Commissioner Burman alluded to is how much
12 preparation at what cost. For instance, if we come
13 out of this proceeding and were they more gold plated
14 and much more expensive system that will deal with a
15 -- I don't want to say completely rare, but not
16 constant problems that we don't over pay.

17 And there's a question particularly in
18 regard -- I'll just make the comment in the report
19 regarding the Con Ed meteorologist indicated there
20 was the 50-50 chance of major damage to be added by
21 this storm system. The question becomes what is the
22 prudent guess because that's what forecasts are in
23 many cases is a guess.

24 Is it 50-50 we go full bore in
25 preparation or is it 20 percent. And at what point

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2 is that correct balance because we know that it will
3 not be free. Second of all as I'll say this is
4 someone who's lived in rural New York my entire life,
5 there I think we've now had an increasing expectation
6 on customers that no matter where you live in our
7 state that your reliability will be the same as those
8 in a much more urban environment with better
9 protective systems.

10 Again, I think a lot would go to
11 communication to elected leaders in such that can
12 actually explain how restoration works particularly
13 on the triage and how the system is designed to do
14 the most customers the quickest. And I think that we
15 will have to understand that -- hopefully understand
16 that all customers and the very leafy rural
17 environment by definition cannot expect the same
18 level of service to someone in -- in a city.

19 But that being said I think there were
20 lot of questions here and the outcome needs to be not
21 only -- how we're going to make this corrected and
22 compensate customers for that behavior. But also
23 with an eye on what the remedy will be and how much
24 it will cost in the end. So those are my comments.
25 Thank you.

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2 CHAIRMAN RHODES: Thank you very much.

3 I will now proceed to call for a vote. For the
4 record it's John Rhodes and my own vote is in favor
5 of the recommendations to commence the proceeding and
6 direct the utilities to show cause as discussed.

7 Commissioner Burman, how do you vote?

8 COMMISSIONER BURMAN: I concur.

9 CHAIRMAN RHODES: Thank you.

10 Commissioner Alesi, how do you vote?

11 COMMISSIONER ALESI: Yes, sir.

12 CHAIRMAN RHODES: Thank you.

13 Commissioner Edwards, how do you vote?

14 COMMISSIONER EDWARDS: I vote yes.

15 CHAIRMAN RHODES: Thank you.

16 Commissioner Howard how do you vote?

17 COMMISSIONER HOWARD: Yes.

18 CHAIRMAN RHODES: Thank you. The item
19 is approved and the recommendation is adopted. We
20 will now move to the consent agenda. Do any
21 commissioners wish to comment on or recuse on voting
22 on, any items on the consent agenda? Beginning with
23 Commissioner Burman.

24 COMMISSIONER BURMAN: Thank you. I
25 have 3 short comments and different vote from voting

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2 yes in the consent agenda. On item 266 which is in
3 the matter of Greenlight Networks' poll attachments
4 in RG&E and Frontiers territory. I am going to be
5 voting in concurrence, but I do want to say that this
6 may be -- I think this is a wider problem than just
7 this company Greenlight Networks and the utilities
8 involved here.

9 Broadband deployment expansion and
10 access especially for low income folks is important.
11 Safety is paramount and we need to be sure that this
12 attachment statewide on any poles and safe and
13 accounted for. I truly appreciate the hard work that
14 staff has done, but I do believe that more work needs
15 to be done.

16 And I also believe this is not just a
17 telecom issue or matter, but really it is also an
18 electric matter. And it can have impacts on helping
19 to mitigate rates of the electric customers
20 especially when we are counting for this pole
21 attachments so would like to make sure that we are
22 laser focused on this issue and in a way that is
23 helping to resolve the issues in a way that -- that
24 is helpful to the consumers.

25 On Item 375 which is the petition for

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2 hearing on the village of Freeport I will be
3 abstaining from voting. On Item 376 this is the
4 petition that was filed by NYSERDA to allow for
5 voluntary conversion of the existing fixed renewable
6 energy credit contracts Index Recs contracts and
7 suggesting that the draft order is approving with
8 modifications.

9 I am going to be voting no on this
10 item, it's consistent with some of the other issues I
11 have raised on NYSERDA petitions as a whole, but as
12 to Index Recs. I also do think that when we are
13 talking about how the commission voted on other items
14 especially referencing in this case the Index Recs
15 and the rationale behind them, I do think it is
16 incumbent upon staff to share with the commissioners
17 before they're voting.

18 My comments or anyone's comments, that
19 may have been made at a session related to the items,
20 you know I had voted differently and raise some
21 concerns on Index Recs. I think that could have been
22 teed up in a way that would have been helpful and
23 also would have laser focused all of us on the
24 importance of what we may or may not be doing.

25 I will note that there are commentators

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2 that did raise concerns in here the joint utilities
3 for one and -- and the most were interveners. And I
4 do think that those comments are really important. I
5 am concerned that this petition really is with rose-
6 colored glasses and speculative and not truly focused
7 on potentially negative outcomes that could harmed
8 ratepayers and so I think it's incumbent upon us to
9 really look carefully at this and not just go along
10 with this without some more.

11 They do not provide anything other --
12 in my mind other than real lip service on this is --
13 this is a one time thing and should be helpful. I
14 think we need more than that. Thank you.

15 CHAIRMAN RHODES: Thank you very much.
16 Commissioner Burman, just to confirm you are no 376
17 and abstaining on 375?

18 COMMISSIONER BURMAN: Correct.

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

21 COMMISSIONER ALESI: Yes, I'll -- I'll
22 be supporting the non-controversial calendar with the
23 exception of Item 266. I would like to recuse
24 myself.

25 CHAIRMAN RHODES: Thank you very much.

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2 Commissioner, Edwards any recusal or comments?

3 COMMISSIONER EDWARDS: Yes I will be
4 supporting the consent agenda, but would like to
5 recuse myself on item number 375.

6 CHAIRMAN RHODES: Thank you very much.
7 Mr. Howard -- sorry Commissioner Howard any comments
8 or recusals?

9 COMMISSIONER HOWARD: Yes I -- on one
10 item -- Item 263. I will be voting no. And as we've
11 discussed Mr. Chairman I become increasingly
12 skeptical on our A.M.A. -- AMI programs. I believe
13 they are not providing the promises today -- that we
14 expected so again I will be voting no on Item 263 and
15 supporting the balance of the consent agenda.

16 CHAIRMAN RHODES: Thank you very much.
17 So I will proceed to call for a vote and for the
18 record my own vote is in favor of recommendations on
19 a consent agenda with no amendments. Commissioner
20 Burman, how do you vote nothing your extension on 375
21 and no on 376?

22 COMMISSIONER BURMAN: Correct and on
23 266 I'm a concurrence. I just want to make clear
24 that I am yes on all -- there is -- on 375 I am
25 abstaining not recusing, I'm abstaining.

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2 CHAIRMAN RHODES: Okay. Thank you. I
3 -- I appreciate that I am sorry I misspoke. And
4 Commissioner Alesi, how do you vote noting your recusal
5 on 266?

6 COMMISSIONER ALESI: That's correct, I
7 vote yes on everything, I am recusing myself on 266.

8 CHAIRMAN RHODES: Thank you very much.
9 And Commissioner Edwards, noting your recusal on 375
10 how do you vote?

11 COMMISSIONER EDWARDS: Yes on all
12 other items.

13 CHAIRMAN RHODES: Thank you very much.
14 And Commissioner Howard noting your no vote on the
15 non-AMI, how do you vote on the rest of the consent
16 agenda?

17 COMMISSIONER HOWARD: I will be
18 supporting the balance of the consent agenda.

19 CHAIRMAN RHODES: Thank you very much.
20 The items are approved and the recommendations are
21 adopted.

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

24 SECRETARY PHILLIPS: Yes, Chair. I
25 just have one clarification for Commissioner Burman I

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2 should note concurrent on 266 and yes on everything
3 else except for 375 which you're abstaining and 376
4 which is a no, is that correct?

5 COMMISSIONER BURMAN: That's correct
6 for the consent agenda item.

7 SECRETARY PHILLIPS: Thank you. With
8 that I have nothing further.

9 CHAIRMAN RHODES: Thank you very much.
10 Thank you all for -- thank you Commissioners for
11 paying such well -- serving so well today very
12 serious. And thank you staff, you've really done a
13 great work once again. Thank you all. With that
14 we're adjourned and happy Thanksgiving.

15 (Off the record, 12:57 p.m.)

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