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Monthly Meeting - 12-17-20

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

MONTHLY MEETING OF THE  
PUBLIC SERVICE COMMISSION

VIA WEBEX

Thursday, December 17, 2020

10:30 a.m. until 11:36 a.m.

COMMISSIONERS:

JOHN B. RHODES, Chair

DIANE X. BURMAN, Commissioner

JAMES S. ALESI, Commissioner

TRACEY A. EDWARDS, Commissioner

JOHN B. HOWARD, Commissioner

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2 CHAIRMAN RHODES: Good morning. This  
3 is John Rhodes, Chair of the Public Service  
4 Commission and I call this session of the Public  
5 Service Commission to order. Secretary Phillips, are  
6 there any changes to the Final Agenda?

7 SECRETARY PHILLIPS: Good morning.  
8 This is Secretary Phillips. I do want to confirm  
9 that the Consent Agenda also includes an Item 167.  
10 The Case Numbers are 19-G-0309 and 19-G-0310,  
11 Proceeding on Motion of the Commission, Concerning  
12 the Rates, Charges, Rules and Regulations of the  
13 Brooklyn Union Gas Company, Doing Business as  
14 National Grid New York, for Gas Purpose and also for  
15 Keyspan Gas East Corporation, Doing Business as  
16 National Grid for Gas Service.

17 These -- this item was circulated but  
18 it was inadvertently omitted from the Agenda, so I'm  
19 just confirming that it will be considered by the  
20 Commission, as part of the Consent Agenda under the  
21 gas items. Thank you.

22 CHAIRMAN RHODES: Thank you very much.  
23 With that, I'll change to the Agenda. Let's get  
24 started and before we get started, I would like to  
25 notice -- note our arrangements for the session

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2 today. In line with the guidelines concerning social  
3 distancing and minimizing large gatherings and in  
4 line with Executive Orders that suspend provisions of  
5 the Open Meetings Law on an emergency basis, we are  
6 conducting today's session remotely.

7 I'd like to remind those who are  
8 participating by phone, to please mute your lines,  
9 except when you are speaking. The public will have  
10 the opportunity to listen to the session on the  
11 Department's webcast page and we will also record and  
12 transcribe the session, as has been our practice.  
13 These arrangements have been reviewed by our general  
14 counsel and he has found that they -- that these meet  
15 the requirements of the Executive Orders and also,  
16 that they meet my own expectations of honoring the  
17 intent of the Open Meetings Law, to the maximum  
18 extent permitted by our duty to protect the public  
19 health of New Yorkers

20 Excuse me, before moving to the  
21 Agenda, I would like to conduct a roll call of the  
22 Commissioners. Please confirm that you are with us  
23 when I call your name. Commissioner Diane Burman?

24 COMMISSIONER BURMAN: Here.

25 CHAIRMAN RHODES: Commissioner James

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2 Alesi? If -- if you -- if you are responding, you're  
3 muted. Let's move on and -- perhaps someone can try  
4 to raise him on his cell phone. Commissioner Tracey  
5 Edwards?

6 COMMISSIONER EDWARDS: Here, good  
7 morning.

8 CHAIRMAN RHODES: Thank you. Good  
9 morning and thank you. Commissioner John Howard?

10 COMMISSIONER HOWARD: I'm here, Mr.  
11 Chairman.

12 CHAIRMAN RHODES: Great, I'm trying  
13 again for Commissioner Jim Alesi?

14 COMMISSIONER ALESI: Yes, I am here.

15 CHAIRMAN RHODES: Fantastic. With  
16 that, our -- our Commission is complete and we will  
17 move to the regular Agenda, which has one item, Item  
18 301, Case 18-E-0138, as it relates to LIPA's Petition  
19 for a Declaratory Ruling on Eligibility for Electric  
20 Vehicle Prize Competitions, presented by Bridget  
21 Woebbe, Assistant Counsel. Zeryai Hagos, Deputy  
22 Director of Clean Energy and Markets, is available  
23 for questions. Bridget, please begin.

24 MS. WOEBBE: Thank you and good  
25 morning, Chair Rhodes and Commissioners. The draft

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2 item before you, grants a petition for a declaratory  
3 ruling filed by the Long Island Power Authority or  
4 LIPA. LIPA's petition requests that the Commission  
5 declare that the prize competitions, established by  
6 the Commission's July Make Ready Order, are open to  
7 projects located in communities, anywhere in New York  
8 State, regardless of whether those communities are  
9 served by an investor-owned utility or by non-  
10 jurisdictional electric service provider, such as  
11 LIPA.

12 The July Make Ready Order, directed  
13 Staff and NYSERDA, to establish the New York Clean  
14 Transportation prizes, to develop innovative  
15 approaches to address areas outside of the Make Ready  
16 Program and to drive benefits to disadvantaged  
17 communities.

18 The Make Ready Order, established the  
19 Environmental Justice Clean Vehicles Transformation  
20 Prize, which will be branded and implemented, as the  
21 Clean Neighborhoods Challenge. The Clean Personal  
22 Mobility Prize, which is being branded and  
23 implemented as the Electric Mobility Challenge and  
24 the Clean Medium and Heavy Duty Vehicle Innovation  
25 Prize, which is being branded and implemented as the

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2 Electric Truck and Bus Challenge.

3 In the July Make Ready Order, the  
4 Commission was explicit, that the Prize Competition  
5 is open across the State, to all communities served  
6 by electric utilities regulated by the Commission.  
7 The Commission also directed NYSERDA and the  
8 Department of Public Service Staff, to work  
9 collaboratively, to determine appropriate cost  
10 allocation for these PILOTs, under the framework that  
11 costs will generally be allocated to all customers  
12 within the service territory, where the program  
13 activity takes place, with the exception that program  
14 activity is with statewide benefits, may be allocated  
15 to multiple utilities, based on a number of factors.

16 The item before you clarifies, that  
17 the 85 million dollars directed by the July Make  
18 Ready Order, is only open to communities within  
19 investor owned utility service territories. And,  
20 this draft ruling remains consistent with the July  
21 Order, by continuing the policy that benefits will  
22 accrue to the ratepayers funding the chosen prize.  
23 However, other communities throughout the State,  
24 would also be allowed to participate in the prize  
25 competitions, so long as a separate funding source is

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2 secured for any project selected outside of an  
3 investor-owned utility service territory.

4 By granting LIPA's request for relief  
5 and declaring that the New York Clean Transportation  
6 prizes are open to projects proposed anywhere in New  
7 York State, the Commission is leveraging NYSERDA's  
8 expertise in running prize competitions and the  
9 administrative experience in tools NYSERDA has gained  
10 and developed, in implementing the New York Clean  
11 Transportation prizes. As -- as Chair Rhodes  
12 indicated, Zeryai Hagos and I are available to answer  
13 any questions that you may have on the declaratory  
14 ruling.

15 CHAIRMAN RHODES: Thank you, I was  
16 waiting for the, and this concludes my remarks but I  
17 appreciate the implicit statement. So, my own -- my  
18 own comments are, that first of all, I -- I think the  
19 -- the Commission's Order on Make Ready, was a very  
20 important step forward and I -- and I -- in my mind  
21 -- in my view, the -- the prize competition element,  
22 was a very important part of that and in that, it  
23 expands the realm of the possible.

24 We know we need good functional, cost-  
25 effective, clean transportation, electric

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2 transportation solutions across the board and we need  
3 more innovation and we -- on a couple of areas, in  
4 finding good solutions for disadvantaged communities  
5 and neighborhoods and in terms of expanding beyond  
6 the passenger and light-duty vehicle types, which are  
7 relatively established now as electric vehicle use  
8 cases, to other more heavy and medium duty vehicles.

9 So, we're exploring to find better  
10 solutions with these three prizes. It's entirely  
11 appropriate that we include all of New York in that  
12 initiative. And, it's also entirely appropriate,  
13 that we are careful and prudent and responsible in  
14 ensuring who pays for what. And, in keeping the  
15 principals in the Order, that in the case of an  
16 investor-run utility, the utility in whose service  
17 territory the prize takes place, will have to provide  
18 the funding. This Draft Order provides -- implements  
19 exactly that same principle.

20 So, I find this a very  
21 straightforwardly good and entirely appropriate  
22 ruling and I am going to be in favor. Commissioner  
23 Burman?

24 COMMISSIONER BURMAN: Thank you so  
25 much. I appreciate it. I'm just pulling up my



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2 information, so I'm sorry. So, first I do want to  
3 thank Staff, in particular not just Bridget Woebbe  
4 and Zeryai Hagos, who are on the call today if we  
5 have any questions that they can address. I do want  
6 to thank more globally, the Prize Team -- the  
7 Steering Committee, as well as the Prize Team that  
8 really crosses over to D.P.S. and NYSERDA and D.E.C.

9 I was very pleasantly surprised by the  
10 briefing I had on the -- the process and the  
11 engagement among D.P.S. and NYSERDA and D.E.C., on  
12 figuring out the steps for implementation and the  
13 implementation plans and I just want to thank them  
14 because they clearly are very -- Staff is being very  
15 thoughtful on this. And, so I know there's a number  
16 of them, so I don't want to leave anyone out but I  
17 did want to pass on publicly, my support for Staff on  
18 this.

19 It is important for me to give a  
20 little historical perspective on where I was on this  
21 item and where I am now. As a reminder, at -- at the  
22 July Order, I think it's important to explain how I  
23 voted and why I voted the way I did. At the July  
24 session, I concurred in part and dissented in part.  
25 The dissented part, was truly based on several

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2 factors, one being I was concerned on NYPA's role,  
3 even though we were capping them at 30 million and  
4 that's six percent of the incentive budget, I was  
5 truly concerned about that, especially as what that  
6 meant for the market outside of NYPA, as well as the  
7 munis who were concerned about being a part of this,  
8 as well.

9 The other reason I was concerned about  
10 it and -- and very -- very concerned, was on the  
11 prize competitions themselves and the concern about  
12 what this meant and why we were doing it this way.  
13 Then the other was, the lack of detailed discussion  
14 on resiliency. Another reason I voted in dissenting  
15 in part, was my concerns around the definition of  
16 environmental justice and also, financial impacts  
17 that this -- that Order would have. And, then also,  
18 other proceedings, including and how that may impact,  
19 including the statewide M.O.U. that was entered into  
20 with 14 other states. And, I was also concerned  
21 about ensuring that the adoption of the program, is  
22 carefully evaluated and there is accountability for  
23 deliverables on whether it was successful or not.

24 Being that it is in May of -- and  
25 especially since I did speak at the session about my

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2 concern on the prize competitions, now seeing the  
3 petition that came before us and that comes before us  
4 from LIPA, asking to be included in the prize  
5 competitions, on the basis that the project's  
6 benefiting communities located in all service  
7 territories in New York State, regardless of whether  
8 they are served by investor-owned utilities or by  
9 LIPA, should be included, so they're being broader  
10 than just LIPA and asking for all non-jurisdictional  
11 entities to potentially being included.

12 I am putting aside my dissent and  
13 concern, as to the prize competitions because that  
14 was, at that time, how I voted and the majority  
15 supported going forward on that. So, being that as  
16 it may, I now have to look at where we are and  
17 whether the prize competition, as it is with the  
18 implementation plan, that it is appropriate to  
19 include LIPA and other non-jurisdictional entities  
20 into the prize competition.

21 My first thought, which I had shared  
22 with the Staff, was that I was confused by why we  
23 were looking at, it and since LIPA was or would be a  
24 free rider to this competition, there is  
25 administrative costs. It's an 85 million dollar

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2 program and out of that 85 million for the three  
3 programs, 40 goes to E.J. prize, 25 million to the  
4 Clean Personal and then 20 to the remaining prize,  
5 the Clean Medium and Heavy Duty. And, then there are  
6 dollars taken out of each of those, for the  
7 administrative costs in running this program.

8 It was determined in the Draft Order,  
9 that if LIPA and the other non-jurisdictional  
10 entities were to be under the prize competition, that  
11 they would not have to pay for the administrative  
12 costs because it was not that much more difficult to  
13 include them. I will say that, I -- I can understand  
14 that, to some degree. However, it is ratepayer  
15 dollars that we're talking about and to the extent  
16 that we need to really truly look at the cost and  
17 ensure that they are being a part of this, is not  
18 adding significant additional cost to that and just  
19 be cognizant of that because that -- that may be  
20 something that we need to look at.

21 From my perspective, I looked at the  
22 LIPA papers that were submitted and the question that  
23 comes from my perspective is, why do they feel that  
24 they need to do this in this prize competition, when  
25 they could undertake it outside of the prize

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2 competition to achieve the same result. I think it's  
3 important to hear from Staff on their perspective on  
4 this because I think it is an important one.

5 CHAIRMAN RHODES: I'm sorry,  
6 Commissioner, is there -- is there a question there?

7 COMMISSIONER BURMAN: So, I was --  
8 well, I want Staff to explain their perspective on  
9 why they feel that it -- it would be appropriate for  
10 LIPA and other non-jurisdictional entities to take  
11 part in the prize competition and I think that's  
12 important, their perspective.

13 MR. HAGOS: Hi, Commissioner Burman.  
14 This is Zeryai Hagos, can you hear me?

15 COMMISSIONER BURMAN: Yes.

16 MR. HAGOS: Wonderful. So, I -- I'd  
17 like to address that question. You know, first, I  
18 think we do want to make sure that cost allocation is  
19 appropriate and we don't, you know, ratepayers in one  
20 -- one service territory or utility, subsidizing  
21 these programs or the -- the -- the specific projects  
22 that were awarded in another service territory.  
23 That's why the, you know, the Commission Order  
24 directed us to allocate those -- those -- those  
25 awards to the service territory in which they're

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2 located within.

3 But, for the administrative and  
4 statewide costs that aren't really specific to a  
5 project in a utility service territory, you know, the  
6 Order essentially asked the Staff to -- to work with  
7 NYSERDA, to determine an appropriate cost allocation  
8 framework there. And, you know, the plan is to, like  
9 with many other, I guess, administrative budgets,  
10 allocate those costs by -- across the investor's  
11 utilities, by kWh sales or the relative sides of each  
12 utility's load. And so, you know, that's the plan  
13 for cost allocation for the administrative budget,  
14 which is a little bit shy of 20 percent of the  
15 overall 85 million dollars.

16 As -- as a matter of, you know, how we  
17 would account for additional non-jurisdictional any  
18 utility service territories that may enter into the  
19 prize competition in the future, we also examined  
20 whether those -- those additional projects would add  
21 administrative costs to the existing prize that we  
22 are establishing for the investor's utilities and we  
23 were able to determine that the -- the increase in  
24 costs would be nominal and -- and so, really this  
25 adds no additional burden on -- on the ratepayers

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2 that we initially sized the prize competition for,  
3 which I think is an important finding to then, you  
4 know, consider, you know, the next steps of how we  
5 fairly incorporate Long Island or other jurisdictions  
6 in to the prize competition.

7 As a matter of timing we, you know,  
8 have the implementation of the prize competition  
9 under way right now. So, you know, unless we had  
10 specific funding already set aside from these  
11 additional non-jurisdictional utility service  
12 territories, there isn't a way for Staff to define or  
13 really establish a specific, you know, contribution  
14 for the administrative costs. And, so we really felt  
15 it would -- the -- the option was either have a  
16 separate prize for the non-jurisdictional utility-  
17 service territories, at this point, and let them  
18 develop their own administrative budget and cost or  
19 -- or roll them in and use the framework we -- we  
20 recommend, which is having them cover the costs of  
21 any awards made within their services territories.  
22 And, we think that provides some additional statewide  
23 benefit, by -- by, you know, increasing the size of  
24 the prize. And, making this a truly statewide  
25 competition, we're going to generate more attention

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2 from industry versus two separate competitions for  
3 the I.O.U.s and the Long Island Power Authority and  
4 other non-jurisdictional utilities.

5 And, by increasing the the prize  
6 competition, we think all the stakeholders will  
7 benefit from that additional notoriety and will  
8 ultimately result in more investment from the private  
9 sector and in more submissions and higher quality  
10 submissions.

11 D.P.S. Staff and NYSERDA have already  
12 invested a tremendous amount of intellectual capital  
13 into the design and implementation of the prize and  
14 as we've looked for support in the private section  
15 from, you know, contractors that have experience  
16 running prizes like this, we -- we really have, you  
17 know, uncovered that there's really very few people  
18 in the world, that have successfully run challenges  
19 at this skill and, you know, for this prize  
20 competition of those recruiting that talent into our  
21 competition to design and implement a prize that has,  
22 you know, the best possible outcomes for New Yorkers  
23 in mind.

24 On a similar vein, the Prize Team will  
25 also need to recruit a number of subject matter



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2 experts and community representatives to judge and  
3 evaluate the proposals that are coming in. And, so  
4 recreating that machine that will administer and  
5 evaluate the proposals and ultimately run the  
6 challenge twice for -- within New York, you know, is  
7 really very inefficient and wasteful.

8 In my opinion in -- and I think we'd  
9 be unlikely to recreate it at the same caliber. And  
10 so, you know, those are some additional statewide  
11 benefits that we believe justify this approach and --  
12 and -- and I -- and I -- I truly do believe that we  
13 have a stronger prize competition by expanding the  
14 scope of it.

15 COMMISSIONER BURMAN: Great, thank  
16 you. That was very helpful and I thought, you know,  
17 you and I have discussed this but I thought it was  
18 worth sharing publicly, sort of that thinking because  
19 I think that is sort of underlying the rationale for  
20 why include like, another non-jurisdictional  
21 entities.

22 I do just want to make note that, LIPA  
23 does not reference in its petition, where they expect  
24 to obtain this funding, so that the -- the Draft  
25 Order before us, says that non-jurisdictional

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2 entities can participate in this prize competition  
3 but that any funding would not come out of the 85  
4 million dollars that had been allocated to it from  
5 the July Order.

6 My concern is that, it is important  
7 for us to understand where that funding stream may  
8 come. It would be concerning to me and it's  
9 something that I think LIPA should have put in their  
10 petition or at least shortly after this Order,  
11 clearly identify how much money they are looking at  
12 from funding and where the funding source would come  
13 from. New York City makes clear in their support of  
14 this, that the funding should come from LIPA. Be  
15 that as it may, it does -- it's not clear that LIPA  
16 would be, you know, not also asking for other funding  
17 that might come for example, from the VW Settlement  
18 Fund or from RGGI or from other pots of money. That  
19 is really important for us to fully understand that  
20 but also since the funding may come from their  
21 ratepayers, themselves, and we don't have oversight  
22 of that. I think it's really clear to me, that LIPA  
23 should be sharing that information because I think  
24 that would also help to align the ongoing  
25 proceedings, like their Utility 2.0 and others that

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2 may impact decision-making processes.

3 What I am concerned about, is that a  
4 prize award might be allocated in LIPA's territory  
5 but it has no funding and then they say, they don't  
6 have the funding for it but it's a statewide -- you  
7 know, statewide benefit, therefore it should be  
8 funded by either a statewide funding stream and  
9 that's something that I just think we need to be  
10 careful, when we're looking at this.

11 I also recognize that LIPA sits  
12 differently than the other non-jurisdictional  
13 entities that may want to be a part of the prize  
14 competition. They may have the resources and also  
15 more direct access to advocate for themselves or  
16 other funding streams and also for shaping, you know,  
17 the prizes. Therefore, I would strongly encourage  
18 that, just like the July Order talked about, engaging  
19 with municipal entities, that we do so in a way that  
20 is helpful and appropriate, to ensure that we are  
21 properly coordinating and working with them. So, I  
22 -- I -- I just want to sort of raise that because of  
23 the, in -- in my mind, sort of the equity issues that  
24 can be there for the non-jurisdictional entities.

25 As to the statewide benefits, it can

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2 be, and -- and I do mention this because what are  
3 statewide benefits, is in potentially the eye of the  
4 beholder and there can be a slippery slope  
5 perspective that -- that might be something we need  
6 to keep in mind. Here we know exactly how this prize  
7 competition is being run and we also know from an  
8 allocation perspective, about the 85 million dollars  
9 and that being for the jurisdictional entities. But,  
10 if we establish there is a statewide benefit, that  
11 can be problematic down the road, in terms of cost  
12 allocation. Here it's clear that the cost allocation  
13 is fair and not taking outside of -- from ratepayers  
14 from outside their territories. So, I -- I do just  
15 want to raise my concern on our interpretation of  
16 statewide benefits and what that may mean for cost  
17 allocation and understand that we need to be very  
18 careful and mindful about looking at what that is and  
19 how that may then get interpreted on a more -- more  
20 broader focus.

21 There was a M.O.U. in July that was  
22 entered into with the State and 14 other states,  
23 particularly relating to ramping-up electrification  
24 of diesel busses and trucks by 2050 and really on the  
25 medium and heavy duty E.V.s. I do think that at some

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2 point, we're going to have to consider a broader  
3 statewide policy for the medium and heavy duty  
4 sectors. And, so the prize competition -- one of the  
5 prize competitions, the Environmental the Clean  
6 Medium and Heavy Duty Innovation prize itself, really  
7 is looking at a way of how this investment and --  
8 and, you know, some lessons learned from that may be.

9 I am cognizant of the fact that there  
10 was in July with that M.O.U., it was announced that  
11 six -- within six months, there would be a report or  
12 an analysis done that would give more information on  
13 ways to deal with the medium and heavy-duty  
14 electrification. And, I do think that information  
15 would be helpful before we finalize the prize  
16 competitions. So, if my numbers are right, that  
17 looks like around January that would be coming out.

18 To the extent that we're engaged in  
19 those issues, I think it's important. I don't know  
20 if Staff has any more information on the M.O.U. and  
21 their status, as to that report.

22 MR. HAGOS: Commissioner Burman, this  
23 is Zeryai Hagos again. I don't have an update on the  
24 status of that report, at this time but we'll be sure  
25 to follow-up with you, as soon as, you know, we have

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2 more information about the timing and the content  
3 within that report.

4 MS. WOEBBE: And, this is Bridget.  
5 I'll just add that, we do participate -- D.P.S. Staff  
6 does participate in monthly zero emissions vehicle  
7 inter-agency calls, amongst the relevant New York  
8 State agencies and the D.E.C. is really taking the  
9 lead with coordinating that report, at this time but  
10 we can certainly come back to you with timing and  
11 more details but right now, the status is that the  
12 report is ongoing.

13 COMMISSIONER BURMAN: Yes. Okay.  
14 Thank you. And -- and, this isn't a criticism of  
15 Staff but when I did raise the issue in July about  
16 the M.O.U. and not having any information on that,  
17 it's getting -- it got released right at the same  
18 time as we were doing the Order and my concern and  
19 part of my dissent in part, was based on the other  
20 proceedings and that included the statewide M. --  
21 M.O.U. and not having information on that and making  
22 sure that we're really working carefully to be  
23 aligned and to not -- and to -- and to the extent  
24 that that report was to help share some challenges  
25 and -- and opportunities, to the extent that the

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2 prize competition and perhaps, you know, the folks  
3 involved in that, could be actually helpful to all of  
4 that, from a statewide perspective. I just -- I just  
5 have to kind of, underscore my concern, you know. If  
6 I -- if anything, I would think the -- the lead staff  
7 on these prize competitions, would be engaged in --  
8 in that process because it's, I think, helpful  
9 overall.

10 So, in any event, I am going to wrap  
11 up. I -- I am going to concur on this. I do think  
12 that Staff is being very thoughtful, that NYSERDA and  
13 D.P.S. Staff and to the extent, I think there's one  
14 staffer from D.E.C. who is involved, and I do think  
15 that there are -- there are going to be opportunities  
16 but there will also be challenges. I am still  
17 concerned, sort of from an accountability perspective  
18 and to the extent that LIPA and other non-  
19 jurisdictional entities but in particular LIPA, is  
20 being allowed to be a part of this prize competition,  
21 I do want to caution that from my perspective, the  
22 accountability is really important, ensuring that  
23 they are being good stewards, as well as being good  
24 partners in this and that we are allowing them to  
25 come in as free riders and we do expect that they

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2 will be under our oversight, as being a part of this  
3 program. And, from the perspective that the  
4 information that they can share is really valuable, I  
5 know both NYPA and the utilities, have filed  
6 implementation plans for their medium and heavy duty  
7 Make Ready PILOT Programs. NYPA's done some filings  
8 on their implementation plan, as it relates to our  
9 E.V. Order and I would like to see LIPA be following  
10 similar sharing of information that can be helpful.

11 I -- I call upon them to the extent  
12 that they can be transparent in their funding  
13 streams, before the prizes are put out, I think  
14 that's very helpful, especially for folks to  
15 understand where that may be. So, with that, thank  
16 you very much and again, thanks to Staff for working  
17 through the issues with me.

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

20 COMMISSIONER ALESI: I will be  
21 supporting this, thank you.

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

24 COMMISSIONER EDWARDS: I will be  
25 supporting this, as well. I just want to -- or just



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2 add a little bit of what's some follow-up for -- for  
3 the future. It's critical that the disadvantaged  
4 communities are not left behind. So, I really want  
5 to commend the Staff and NYSERDA for putting some pen  
6 to paper and some actual actions that are going to  
7 deliver this.

8 What I would like to see though, is  
9 that for the future, some status reports with NYSERDA  
10 that have a direct line back to our policies within  
11 the P.S.C. You know, just some timelines, some  
12 checkpoints, just to make sure that whatever it is  
13 that we have outlined, like is actually working, so  
14 that, if we have to change course or amend any of the  
15 things that are in place, we have time to do that.  
16 But, overall, I think that this is good and I want to  
17 thank you for -- for putting so much work into it.  
18 Thank you.

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

21 COMMISSIONER HOWARD: Yes, I will be  
22 supporting this. However, I am going to start a -- a  
23 recurring theme. Much of the work that the  
24 C.L.C.P.A. and other initiatives in New York State is  
25 undertaking to change our electric system and

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2 electrify transportation buildings, etcetera, I truly  
3 believe while this is a very good start, we cannot  
4 finance it exclusively through ratepayer dollars and  
5 it is my sincere hope, with a new administration in  
6 Washington, that these initiatives will be funded, at  
7 least in part if not in total, through the Federal  
8 Fisc. It is -- the benefits, while we say they will  
9 be statewide, in fact, they will be nationwide and  
10 they will be worldwide, in their ultimate benefits.  
11 And, I do believe that going forward, we will need  
12 this money, particularly as we add the cost of each  
13 individual initiative from transportation, to  
14 buildings, to renewable energy.

15 So, I will be supporting this but I --  
16 as I've expressed to Staff, I will be watching very  
17 closely and I concur with Commissioner Edwards's  
18 point, that at some point, we need to be able to  
19 provide flexibility, to make sure we are getting  
20 value for our money and that the promises and  
21 expectations that the Commission has had, are -- are  
22 being met and -- and we know when as quickly, when  
23 things aren't working as well as we had intended.  
24 So, with that, I will be supporting this.

25 CHAIRMAN RHODES: Thank you, very

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2 much. With that, we will proceed to vote and I call  
3 for that vote. For good-order sake, I confirm that I  
4 am John Rhodes and my own vote is in favor of the  
5 recommendation to grant the petition, as discussed.  
6 Commissioner Burman, how do you vote?

7 COMMISSIONER BURMAN: I concur.

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

10 COMMISSIONER ALESI: I vote yes.

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

13 COMMISSIONER EDWARDS: I vote yes.

14 CHAIRMAN RHODES: Thank you,  
15 Commissioner Howard, how do you vote?

16 COMMISSIONER HOWARD: Yes.

17 CHAIRMAN RHODES: Thank you. The item  
18 is approved and the recommendation is adopted. We  
19 will now move to the Consent Agenda. Noting for  
20 good-order sake, that we are including Item 167 in  
21 this Consent Agenda. Do any Commissioners wish to  
22 comment on or recuse from voting on any items on the  
23 Consent Agenda, beginning with Commissioner Burman?

24 COMMISSIONER BURMAN: Thank you, so  
25 much. I will be commenting on two items. The first

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2 item is, Item 372, which is 15 -- Case 15-E -- excuse  
3 me, 15-E-0302. It's the motion -- it's a Proceeding  
4 on Motion of the Commission to Implement a Large  
5 Scale Renewable Program in Clean Energy Standard.

6 I think it's important to go through  
7 the process a little bit. The relief requested --  
8 so, on October 15th, 2020, there are actually two  
9 Orders relating to this case number. The Order that  
10 we're addressing here, is an Order adopting  
11 modification to the Clean Energy Standard. The other  
12 Order is a separate one, that was SAPA and noticed  
13 and is not before us today. However, on both Orders,  
14 I had dissented and spoke in session, sharing my  
15 dissent.

16 Coming now, both on November 14th,  
17 there was a petition for a re-hearing by Ravenswood  
18 Development and Brookfield Renewable and on November  
19 16th, there was a petition for clarification by IPPNY  
20 New York. The Petitioners request that the  
21 Commission modify the eligibility requirements for  
22 Tier Four Renewable Energy Certificates in two ways.  
23 One, the Petitioners request that existing hydropower  
24 resources be deemed eligible under Tier Four, even if  
25 the resource cannot comply with the greenhouse gas

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2 base line requirement and two, the Petitioners  
3 request that Tier Two eligible resources, be deemed  
4 eligible for Tier Four or without satisfying the Tier  
5 Four vintage requirements.

6 In addition to IPPNY petitions for  
7 clarification, requested the Commission provide  
8 clarification, regarding two new specific issues  
9 related to Tier Four eligibility. The first, was  
10 IPPNY sought clarification concerning whether the  
11 historical average of hydropower generated by the  
12 supplier for purposes of calculating the supplier's  
13 greenhouse gas base line, is tied specifically to  
14 ownership of the facility. And, the second, IPPNY  
15 sought clarification that certain material issues,  
16 related to the supplier's establishment of greenhouse  
17 base line, be included, along with any Draft  
18 Agreements, for the procurement of Tier Four RECs  
19 that are filed for public comment and approval with  
20 the Commission.

21 That -- these petitions for a re-  
22 hearing, just for clarification as I said, came from  
23 our October 15th Order. The threshold issue for me,  
24 is that we are looking at in the Draft Order for the  
25 petition for a re-hearing, denying it for failure to

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2 identify any error of law or fact or assert that new  
3 circumstances warrant a different determination.

4 And, we also state that Petitioners haven't made a  
5 compelling argument, as to why the Tier Four baseline  
6 vintage of requirements, designed to ensure that  
7 evolvment of new renewable energy resources in the  
8 State, should be relaxed or modified.

9 And, then for the petition for  
10 clarification, we -- we do say that the Commission  
11 should clarify that NYSERDA shall design the Tier  
12 Four R.F.P., in ways that accommodate deliverability  
13 of renewable resources throughout the entirety of the  
14 State. And, Staff recommends clarifying that when  
15 establishing the Tier Four baseline, the party  
16 responding to the Tier Four R.F.P., shall provide  
17 historical generation associated with the facility at  
18 issue, irrespective of whether it was owned by one or  
19 more entities over the 20 year period in question.

20 However, we are not agreeing to adopt  
21 IPPNY's proposal to modify the Commission's approval  
22 process for Tier Four agreement, as such information  
23 may not be necessary for the Commission to determine  
24 whether a proposed agreement for the procurement of  
25 Tier Four RECs, advances the public interest.

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2 We do have, however, in both the  
3 petition for a re-hearing and for the petition of  
4 clarification, reference in the Order as for the  
5 petition for hearing, we do reference that while  
6 Ravenswood and Brookfield in the Draft Order, have  
7 not made a compelling argument as to why these  
8 requirements should be relaxed or modified, we do  
9 encourage them to continue working to develop other  
10 proposals that may be eligible under the Clean Energy  
11 Standard. So, we do recognize that and -- and share  
12 it within the context of the Order.

13 And, as for the petition for -- for  
14 clarification, while we are declining to adopt a  
15 requirement that any agreement for the procurement of  
16 Tier Four RECs filed with the Commission for approval  
17 include the information, regarding the baseline  
18 established prior to the submission of binding Tier  
19 Four bids, we recognize that that information may not  
20 be necessary for the Commission to determine but the  
21 Commission because it may not, doesn't mean it -- it  
22 -- it may also be important. So, we recognize that  
23 the Commission will retain discretion, as to whether  
24 or how any information, regarding the establishment  
25 facility's baseline, is made publicly available.

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2 So, I think we have sort of carefully  
3 looked at these issues, with both the petition of a  
4 re-hearing and petition for clarification. And, in  
5 -- in -- in fact, you know, it's probably the right  
6 way to land on these issues. The petition for  
7 clarification, I feel very comfortable with. I am  
8 more hesitant on the petition for a re-hearing and I  
9 think it's important to look at this and why I am  
10 hesitant because it gets to a core threshold issue.

11 From where I sit, we need to always  
12 keep in mind, that establishing a well lined and  
13 strong regulatory review process, is critical to  
14 sound regulatory decision making. Typically, we  
15 notice and/or SAPA petitions for a re-hearing, even  
16 if we ultimately do not grant the petition for a re-  
17 hearing. In fact, for many folks bringing petitions  
18 for a re-hearing, they know that this is an uphill  
19 battle to have a petition for a re-hearing granted.

20 So, we've -- you know, for me, when I  
21 look at it, I see that in here, this petition for a  
22 re-hearing, was not SAPA'd and was not noticed. Now,  
23 whether or not we have to legally do it, might be  
24 subject to some debate but even if we did not have to  
25 legally do it, in fact, our processes on petitioner



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2 for a re-hearing, generally err on the side of SAPA  
3 and/or noticing that petition for a re-hearing.

4 I can think of no other time, except  
5 once as in -- in for me as a Commissioner, that we  
6 ever voted on a petition for a re-hearing, that was  
7 not SAPA'd and/or noticed in some form, prior to the  
8 vote. And, at that time, I had raised serious  
9 objections to not doing that.

10 This item is before us today. ACE New  
11 York did submit comments in support of the petition  
12 for a re-hearing. They came yesterday. They're --  
13 they were well written and so for me, I am concerned  
14 about our threshold regulatory processes. I think  
15 regulatory excellence originates with the integrity  
16 of an institution, with people that are motivated by  
17 its mission and a commitment to transparency and  
18 continual learning. Policy makers, including  
19 ourselves, must safeguard the public's trust and be  
20 deliberate about creating space for public input and  
21 processes.

22 For us, I think it is really  
23 important, that we establish what the regulatory  
24 processes will be for petitions for a re-hearing. In  
25 general, folks need to know whether a petition for a

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2 re-hearing, will or will not be SAPA'd or noticed and  
3 they need to know that formally. Failure to SAPA --  
4 in this case, if it was before us and for whatever  
5 reason we decided that we did not agree with Staff's  
6 recommendation, it would be a further delay in the  
7 process by granting it, which may tip inequitably, in  
8 favor of denying something, that on its face, we may  
9 want to -- we may have wanted to grant.

10 Therefore, the intent behind notice  
11 and SAPA, is to get out the information. If folks  
12 have important input to share with us, they have that  
13 that they can do that and it gives us a further  
14 regulatory process and information. In fact,  
15 Brookfield and Ravenswood footnote; one, in their  
16 petition, was cognizant of the SAPA process and also  
17 recognizing that part of the difficulty here for us,  
18 was that NYSERDA was to issue a Tier Four request for  
19 proposals by December 15th. ACE New York also  
20 recognized, that that timeline was extended to  
21 January. And, so from my perspective, the failure of  
22 us to do the thresholds process of SAPA'ing and/or  
23 noticing the petition for a re-hearing, is one that  
24 concerns me.

25 Therefore, as to the petition for

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2 clarification, I am going to vote in favor but as for  
3 the petition for a re-hearing, I think it's a failure  
4 on its -- on its face, on the threshold issue and I'm  
5 going to deny, without prejudice, to come back for  
6 us.

7 I do think we need to looking forward,  
8 in here we do have language in the Order that is --  
9 is at least I think, trying to rectify the issue  
10 because we do have where Brookfield and Ravenswood,  
11 are encouraged, appropriately so, to work -- to work  
12 further to develop other proposals that may be  
13 eligible under the C.E.S. So, it's not a -- it's not  
14 a fatal failure on the threshold issue. However,  
15 going forward, we do need to be clear in our  
16 regulatory certainty, for folks to understand whether  
17 a particular petitioner for a re-hearing, will be  
18 SAPA'd and/or noticed or if there will be no SAPA or  
19 notice -- ironically if we don't -- if we indicate  
20 that we are not SAPA'ing or noticing it, we are  
21 actually indicating that we are then going to be  
22 denying the petition for a re-hearing. So, I think  
23 in -- in a sense, it would err on the side of us  
24 needing to SAPA and/or notice it, especially because  
25 there have been times, where initially we may have

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2 thought we were going to deny a petition for a re-  
3 hearing but after comments were received and  
4 established in the record, it actually tipped in  
5 favor of granting petitions for a re-hearing.  
6 Therefore, the critical input from the public, I  
7 think is really important. So, that's kind of where  
8 I -- where I come out of. It is consistent with my  
9 historical voting record on this issue. So, I -- I  
10 do share that because I think it's important for  
11 folks to understand.

12 And, Item 461, this is Case Number 19-  
13 W-0726. It's the Joint Petition of SUEZ Water and  
14 Heritage Hills and for SUEZ to acquire a hundred  
15 percent of the water system assets of Heritage Hills  
16 water works. In it, we reference the AIM Policy --  
17 the Commission's existing AIM Policy and we  
18 reference, actually a few times, one we reference  
19 that the transfer is consistent with the Commission's  
20 AIM Policy, with consolidating small water system, to  
21 promote long-term system viability and improve the  
22 water system serving customers, through mergers and  
23 acquisitions by large systems.

24 We do deny the -- we do deny the  
25 ability to retrieve -- excuse me, I'm just looking

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2 for the information, the goodwill, based on the fact  
3 that -- we say it is not consistent to do that under  
4 our existing AIM Policy. So, while we recognize that  
5 the acquisition will be consistent with the  
6 Commission's policy goal of consolidating small water  
7 systems, to improve the quality of water service to  
8 New York ratepayers, we do deny their seeking funds  
9 for goodwill.

10 Why I pause here, is -- I am  
11 supportive. I am going to be voting for this but it  
12 does concern me. I'll reference to the AIM Policy,  
13 which gives us the support to vote for this item this  
14 way. However, December 2015, an Order was commenced  
15 and opened for comments, on looking specifically at  
16 whether we should revise the existing Public Service  
17 Commission's 1994 Acquisition Incentive Mechanism  
18 Policy. I am currently the only Commissioner that  
19 remains -- that voted for that item that's -- that's  
20 here now. And, that Order has -- essentially an  
21 Order commencing the proceeding, did have initially  
22 some activity. We should have noticed seeking  
23 comments. We received very thoughtful comments back,  
24 specifically addressing issues related to defining  
25 non-viability, defining customer benefits, looking at

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2 valuation methodology, proxy rate base and the  
3 recovery of goodwill, itself, which is the subject of  
4 discussion here.

5 Those comments were filed and the last  
6 comments filed publicly, were March 2016. My concern  
7 is that, that is another generic proceeding that has  
8 languished and essentially, lies dormant. I think  
9 it's incumbent upon us, to carefully look at those  
10 and decide how we're going to deal with dormant  
11 generic proceedings and give some kind of indication  
12 to the public, especially to those who have taken the  
13 time to file comments, to indicate whether we are  
14 ever going to take up those generic proceedings,  
15 whether it's inappropriate to close them out or  
16 whether some of those comments that may have been in  
17 there, could have been moved to the record for  
18 others, like here where we're looking at the AIM  
19 Policy of recovery of goodwill and deciding the  
20 appropriateness of dealing with that.

21 So, I do raise that because it is a  
22 particular concern of -- of mine. We do have on the  
23 session today, an item where it's about a -- the  
24 five-year review, that generally happens for all of  
25 our regulations and maybe it's time for us to think

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2 about how we annually are, you know, every few years,  
3 review what are the open generic proceedings and  
4 dockets and indicate some status update, that may  
5 help people know whether they should still follow it  
6 or whether they should be updating their comments and  
7 other proceedings where things will land or if we  
8 should frankly, just close out those generic  
9 proceedings and send that message, that we're no  
10 longer looking at that, if it's appropriate.

11 With that, that's all I have to say on  
12 these items. Thank you so much. All the others,  
13 I'll be voting in favor of.

14 CHAIRMAN RHODES: Thank you very much.  
15 Commissioner Edwards, do you have any comments or  
16 questions or wish -- and I'm sorry, back to you  
17 Commissioner Burman, do you have any items on the  
18 Consent Agenda, to which you -- which you would like  
19 to recuse from?

20 COMMISSIONER BURMAN: Me, no.

21 CHAIRMAN RHODES: Great, thank you.  
22 So, now back to you, Commissioner Alesi, do you have  
23 any comments or questions on items or you wish to  
24 recuse your voting on any items on the Consent  
25 Agenda?

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2 COMMISSIONER ALESI: No, comments and  
3 I will be supporting the Consent Agenda.

4 CHAIRMAN RHODES: Thank you very much.  
5 Commissioner Edwards, do you have any comments or  
6 questions on any items or wish to recuse from any  
7 items on the Consent Agenda?

8 COMMISSIONER EDWARDS: I just have a  
9 general comment on the cable franchises that are up  
10 for renewal. Nothing specific but, you know, due to  
11 the educational continued gaps, as a result of the  
12 access -- lack of access and slow speed during this  
13 virus, I think that we really need to take a hard  
14 look at all of the companies and do a review on where  
15 do we still have access issues and the rural  
16 communities and low income communities and what is  
17 the current speed -- top speed.

18 So, this is something that I would  
19 like to ask for, for the future, for us to take a  
20 look at and then if we could overlay, if there are  
21 any plans in place by the companies to expand, I'd  
22 like to know the timeline of that.

23 So, nothing specific for the ones that  
24 are on the Agenda but I would just like to raise  
25 that, as something that I believe that we should be



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2 looking for going forward and I will be supporting  
3 the Consent Agenda. Thank you.

4 CHAIRMAN RHODES: Thank you,  
5 Commissioner Edwards.

6 Commissioner Howard, any comments or  
7 questions on items on the Consent Agenda or do you  
8 wish to recuse from voting on any item?

9 COMMISSIONER HOWARD: I also will be  
10 commenting on, as was Commissioner Edwards, on Item  
11 661, the Franchise Renewals and I will also again and  
12 I think I may have said this before in session, local  
13 governments under their, quite honestly, very arcane  
14 regulatory regimen dealing with cable television and  
15 now broadband, the only opportunity of real leverage,  
16 I believe, in this process of making sure issues  
17 that, for instance Commissioner Edwards brought up or  
18 other issues dealing largely with broadband, not with  
19 cable T.V., this provides the only real meaningful  
20 leverage and it begins with local governments. And,  
21 I would greatly encourage them, under the current  
22 circumstances, to use that leverage to the -- their  
23 greatest extent possible, in renewing these franchise  
24 agreements.

25 With that being said, I would also --

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2 it is high time that Washington, the Congress and the  
3 Executive, take a 21st century look at how we  
4 regulate cable television and broadband services. As  
5 a matter of fact, we don't regulate broadband  
6 services. And, I would encourage the Congress, to  
7 give that power to States, to regulate broadband  
8 services, writ at large because since these very old  
9 statutes have been written, broadband services have  
10 become a clear utility function in this State and  
11 across the Nation.

12 So, again I would ask Congress to give  
13 us, the Commission, power to regulate these -- these  
14 companies and -- which in most cases, particularly  
15 the one I -- in the area I live in, is a monopoly.  
16 So, that being said, that's my comment but I will be  
17 supporting these Consent Agenda.

18 CHAIRMAN RHODES: Thank you very much.  
19 With that, I will proceed to call for a vote. For  
20 the record, I am John Rhodes and my own vote is in  
21 favor of the recommendation to accept the Consent  
22 Agenda. Commissioner Burman, I believe I noted that  
23 you were going to be yes, on the petition for -- or  
24 at least for clarification part of 372 and no, on the  
25 petition for a re-hearing part of 372 and you were

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2 going to be yes, on Heritage Hills, 461?

3 COMMISSIONER BURMAN: Correct.

4 CHAIRMAN RHODES: If I have that  
5 correct, how do you vote?

6 COMMISSIONER BURMAN: Correct and I  
7 vote -- with everything else, I vote yes. Thank you.

8 CHAIRMAN RHODES: Thank you very much.  
9 Commissioner Alesi, how do you vote?

10 COMMISSIONER ALESI: I vote yes.

11 CHAIRMAN RHODES: Thank you.

12 Commissioner Edwards, how do you vote?

13 COMMISSIONER EDWARDS: I vote yes.

14 CHAIRMAN RHODES: Thank you.

15 Commissioner Howard, how do you vote?

16 COMMISSIONER HOWARD: Yes.

17 CHAIRMAN RHODES: Thank you. The  
18 items are approved and the recommendations are  
19 adopted. Before I ask Secretary Phillips if there's  
20 anything further to come us before -- to come before  
21 us today, I'd like to ask Kevin Wisely, our Director  
22 of the Office of Resiliency and Emergency  
23 Preparedness, to give us an update on Winter Storm  
24 Gale. We are naming very many storms this year but  
25 Kevin, over to you.

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2 MR. WISELY: Good afternoon, Chair  
3 Rhodes and Commissioners. As Chair Rhodes stated, my  
4 name is Kevin Wisely. I am the Department Director  
5 of the Office of Resiliency and Emergency  
6 Preparedness. I would like to provide a brief update  
7 on our latest winter weather event.

8 As you are aware, New York State has  
9 been impacted by a significant snow and gusty wind  
10 event that began yesterday afternoon and continues to  
11 linger across the eastern areas of the State, at this  
12 time. The storm system will move out of the State by  
13 early afternoon. All portions of the State received  
14 snow from this Nor'easter storm, with a -- with a  
15 significant band of snow that expanded from the  
16 Southern Tier/Binghamton Region, through the Capital  
17 Region/Saratoga Region, with many locations receiving  
18 30 inches or more of accumulating snow from this  
19 event. In addition, the system brought gusting winds  
20 of up to 50 miles per hour in the Downstate Regions  
21 of Long Island and New York City.

22 The New York utilities began assessing  
23 and preparing for this event earlier in the week  
24 prior to the onset of the snow impacts. Currently,  
25 there are approximately 11,000 electric customer

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2 outages, statewide. Restoration efforts set and  
3 ongoing through the event, all the while new outages  
4 continued to be incurred, while the system lingers.  
5 All storm restorations are expected to be completed  
6 today. Thank you for the opportunity to provide the  
7 brief storm update. This concludes my remarks.

8 CHAIRMAN RHODES: Thank you very much,  
9 Kevin. Now -- now, I -- now, I ask Secretary  
10 Phillips, whether there is anything further to come  
11 before us today?

12 SECRETARY PHILLIPS: This is Secretary  
13 Phillips, there is nothing further to come before you  
14 today.

15 CHAIRMAN RHODES: Thank you very much.  
16 With that, I adjourn. I also note, that this is the  
17 last session before the holidays. And, also of  
18 course, I note that we're -- we're still in a fraught  
19 COVID situation. So, to my fellow Commissioners,  
20 D.P.S. colleagues and everybody on this listening in,  
21 Happy Holidays and stay safe. Thank you very much.

22 (The proceeding concluded.)

23

24

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2 STATE OF NEW YORK

3 I, TRACY WILLIAMS, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place,  
5 as stated in the caption hereto, at Page 1 hereof; that  
6 the foregoing typewritten transcription consisting of  
7 pages 1 through 46, is a true record of all proceedings  
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 20th day of December, 2020.

11

12 \_\_\_\_\_

13 TRACY WILLIAMS, Reporter

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