

1 4-15-2021 - Monthly Meeting
2 MONTHLY MEETING OF THE
3 PUBLIC SERVICE COMMISSION
4 VIA WEBEX

5
6 Thursday, April 15, 2021
7 10:30 a.m. until 11:24 a.m.

8
9
10 COMMISSIONERS:

11 JOHN B. HOWARD, Chair

12 DIANE X. BURMAN

13 JAMES S. ALESI

14 TRACEY A. EDWARDS

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2 CHAIRMAN HOWARD: Good morning. This
3 is John Howard, Interim Chair of the New York State
4 Public Service Commission. I call this session of
5 the Public Service Commission to order. Secretary
6 Phillips, are there any changes to the final agenda?

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

9 CHAIRMAN HOWARD: Great, thank you.
10 Before we get started, I'd like to note our
11 arrangements for our session today. In line with the
12 guidelines concerning social distancing and
13 minimizing large gatherings and in light of the
14 Executive Order that suspended the provisions of the
15 Open Meetings Law on an emergency basis, we are
16 conducting today's session remotely.

17 I would like to remind those who are
18 participating by phone, to please mute their lines,
19 except when they are speaking. The public will have
20 an opportunity to listen to the session on the
21 Department's webcast page and we will record and
22 transcribe the session, as has been our practice.

23 These arrangements have been reviewed
24 by our general counsel and he has found these to meet
25 the requirements of the Executive Order.

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2 Before we move to our agenda, I would
3 like to conduct a roll call of the Commissioners.
4 Please confirm that you are with us when I call your
5 name. Commissioner Diane Burman?

6 COMMISSIONER BURMAN: Here.

7 CHAIRMAN HOWARD: Commissioner James
8 Alesi?

9 COMMISSIONER ALESI: Good morning, I'm
10 here.

11 CHAIRMAN HOWARD: Commissioner Tracey
12 Edwards?

13 COMMISSIONER EDWARDS: Good morning.

14 CHAIRMAN HOWARD: All right. Thank
15 you. We will begin our -- our regular agenda.
16 First, we will begin with Item 201, Case 20-M-0082,
17 which is the Matter of Strategic Use of Energy
18 Related Data, presented by Marco Padula, Director of
19 Office of Markets and Innovation, Tom Dwyer,
20 Assistant Counsel, Peggy Neville, Deputy Director of
21 Efficiency and Innovation, Adrian Bletz, Utility
22 Analyst and Kelly Straight, Utility Analyst III are
23 both available for questions. Marco, would you
24 please begin your presentation?

25 MR. PADULA: Good morning, Chair

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2 Howard and Commissioners. Item 201, is a Draft Order
3 adopting a data access framework and establishing
4 further process. Recall that in March of 2020, the
5 Commission initiated the generic proceeding on the
6 strategic use of energy related data, to further
7 develop data issues in a comprehensive manner,
8 through a new proceeding.

9 The Commission noted, that while the
10 approach to date had been necessary to deal with
11 discrete data issues and application unique to
12 individual proceedings, addressing data across
13 numerous proceedings was not the optimal way to
14 develop a unified treatment of data issues.

15 As an initial step, the Commission
16 directed Department of Public Service Staff, to file
17 two white papers. The first white paper addressed
18 the creation of an integrated energy data resource or
19 I.E.D.R., that would provide a platform for useful
20 access to useful data. The I.E.D.R. white paper,
21 addressed among other things, recommendations for
22 stakeholder engagement, data resource design,
23 implementation and operation, as well as data
24 resource use cases. The Commission acted on the
25 I.E.D.R. whitepaper, with the issuance of the Order

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2 implementing an integrated energy data resource on
3 February 11th, 2021.

4 The second white paper required by the
5 Commission, addressed development of a data access
6 policy framework, that standardizes the necessary
7 privacy, cyber security and data quality requirements
8 for access to energy related data. The data access
9 framework white paper, address among other things,
10 standard definitions of key data related terms,
11 customer consent processes, access to what types of
12 data and by whom, privacy and cyber security
13 requirements and data quality standards.

14 The Draft Order before you today,
15 reflects the adoption of many of the recommendations
16 included in the data access framework white paper.
17 Generally, the -- the Draft Order addresses the
18 following areas, applicability of the data access
19 framework that is to any entity seeking access to
20 data from a data custodian, establishment of an
21 energy service entity data ready certification
22 process and associate -- and associated enforcement,
23 data responsibilities and relationships, data access
24 continuous improvement and customer sharing of energy
25 related data.

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2 In summary, the data access framework
3 Order provides a consistent and more efficient
4 application of existing Commission policies on cyber
5 security and customer privacy, to enable achievement
6 of the goal of useful access to useful energy data.
7 It does so, by identifying the rules, roles and
8 responsibilities for parties seeking access to energy
9 related data and ensures uniform treatment of energy
10 data access requests, regardless of where the data
11 are being housed, which ultimately provides certainty
12 to customers, utilities and energy service entities.

13 It is important to note, that the
14 framework incorporates the Commission's cyber
15 security Order, including that the necessary cyber
16 security and privacy protections must be commensurate
17 to the risk associated with the data being shared and
18 the way it is being accessed. To accomplish this,
19 the data access framework requires implementation of
20 a statewide data ready certification program, that
21 will be used to confirm that an energy service entity
22 has implemented the appropriate cyber and privacy
23 requirements, based on requests for access to energy
24 data, that includes the purpose, the access mechanism
25 and the data type. Such certification will rely upon

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2 a matrix to be filed by D.P.S. Staff, that maps the
3 existing cyber security and privacy requirements to
4 the various combinations of purpose, access mechanism
5 and data type, to determine the appropriate
6 requirements, based upon the risk presented.

7 The framework also establishes
8 expectations placed upon data custodians, the
9 utilities in today's environment and the I.E.D.R. in
10 the future, to provide accurate and timely data, by
11 defining data quality and integrity standards. The
12 Order also give practical meaning to customer control
13 of energy related data and recognizes that customers
14 need simple, practical, yet still protective
15 approaches to granting informed consent.

16 Lastly, the Draft Order provides
17 standard definitions of key data related terms and
18 requires the filing of an easy to understand data
19 access framework application guide that outlines the
20 necessary steps to obtain access to energy related
21 data in a uniform and consistent manner. This
22 concludes my presentation on Item 201 and we are
23 available for any questions.

24 CHAIRMAN HOWARD: Thank you, Marco.

25 First of all, I really want to thank Staff for their

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2 work on this. I've been following this since my
3 early days in -- on the Commission and I -- quite
4 honestly, I had a degree of skepticism and concerns
5 going forward with this proceeding. However, through
6 the really great work of Staff and not only on their
7 work on this Order but their work in communicating it
8 to me and my other Commissioners, has been
9 extraordinary and -- and I thank you.

10 This -- this Order is -- this process
11 is vital for moving forward to a new and far more
12 complex energy system and we will allow, we hope, a
13 new innovation in product designs and a whole -- and
14 a whole variety of levels for customers. And, it
15 is very important that it is held to core
16 principles. Particularly, a concern of mine was
17 customer privacy and I believe this Order is --
18 satisfies that to my needs.

19 An additional thing is, to develop
20 systems guaranteeing the highest cyber security
21 protocols that are maintained now and in the future.
22 This is an ongoing process and I am confident that
23 the Staff and future Commissioners will -- will
24 maintain the vigilance that'll be required to make
25 this Order a success. With that, I will turn it over

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2 to my fellow Commissioners for comments.

3 Commissioner Burman?

4 COMMISSIONER BURMAN: Thank you so
5 much. Can you hear me?

6 CHAIRMAN HOWARD: Loud and clear.

7 COMMISSIONER BURMAN: Great. So, to
8 me this Draft Order seeks to convey that, of course,
9 the Commission takes security and privacy concerns
10 seriously and will continue to do so but it also
11 recognizes the need to establish a reasonable
12 framework that allows data to be accessed in a
13 consistent and quality way. This access not only
14 seeks to support the achievement of the State's
15 overall energy goals but to enable customers to seek
16 products and services from the market.

17 This Order includes importantly,
18 perhaps for the first time, the Commission
19 articulating to data custodian utilities, its
20 expectation for quality and integrity of the
21 information it provides. This is critical for the
22 market place and customers to be able to rely upon.

23 Also, while there are a number of
24 utilities in the State that house this data, it is
25 important to have a fairly consistent approach across

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2 all service territories in applying Commission policy
3 and engagement with market participants, including
4 energy service providers.

5 The approach taken in the Order -- in
6 the Draft Order, seeks to take advantage of economies
7 of scale, by removing redundancy among utilities and
8 implementing the policy more efficiently across all
9 of the State ratepayers.

10 There are some important aspects in
11 the Draft Order that give me serious pause and will
12 require diligent attention and perhaps modifications
13 down the road. We must ensure as we embark on the
14 next steps in implementation, that we stay focused on
15 truly listening to all interested stakeholders and
16 working to continuously improve our processes, with a
17 real openness to take into consideration other
18 viewpoints and reasonable alternative mechanisms that
19 may help us in this overall endeavor.

20 Overall, I feel comfortable voting for
21 this item, as I believe it is a thoughtful approach
22 to a path forward. Make no mistake, the challenges
23 are significant as we move now into this next phase
24 of this data access framework and we still have many
25 things to work through as the Order lays out. I

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2 recognize the enormous work load this will entail for
3 Staff and stakeholders. I truly appreciate the
4 thinking that led into where the Draft Order ends up
5 on various issues and lays out consideration for some
6 future Commission approvals where appropriate. Thank
7 you so much.

8 CHAIRMAN HOWARD: Commissioner Alesi?

9 MR. ROSENTHAL: You may be on mute,
10 Commissioner Alesi.

11 CHAIRMAN HOWARD: Okay. While we're
12 waiting for Commissioner Alesi, we'll go to
13 Commissioner Edwards.

14 COMMISSIONER EDWARDS: Yes, thank you.
15 You know, I am -- definitely am going to support
16 this. Data is power. It influences. It allows us
17 to make better decisions. It provides information in
18 time for us to adjust, if there are some issues that
19 pop up along the way. It really ensures that our
20 actions match our goals. So, I truly appreciate this
21 and I'm looking forward to working as quick and
22 efficiently as we can to put this in place. Thank
23 you.

24 MR. ROSENTHAL: And, Chair it looks
25 like Commissioner Alesi may have come off mute.

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2 CHAIRMAN HOWARD: Okay. Commissioner
3 Alesi?

4 COMMISSIONER ALESI: Hello, good
5 morning. Okay. Yes, this is a -- a tremendous piece
6 of work; a job well done. And, I believe this
7 approach will serve as a single source for data
8 access on a statewide basis. The framework provides
9 consistency, as to the availability of energy related
10 data and ensures enhanced privacy and cyber security
11 and I will be supporting it.

12 CHAIRMAN HOWARD: Thank you very much.
13 Now, I will call for a -- a vote. My vote is for
14 this -- to adopt this Order, the data access
15 framework as discussed. Commissioner Burman, how do
16 you vote?

17 COMMISSIONER BURMAN: Yes.

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

20 COMMISSIONER ALESI: I vote yes.

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

23 COMMISSIONER EDWARDS: I vote yes.

24 CHAIRMAN HOWARD: Thank you very much.
25 The item is approved and the recommendation is

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2 adopted. Now, we'll go to our second item, Item 301,
3 Case 19-E-0065, as it Relates to the Petition of
4 Consolidated Edison for a Transmission Investment.
5 It will be presented today by Steve Kramer, Assistant
6 Counsel, Leka Gjonaj, our Chief of Electric Safety
7 and Reliability, Ms. Grisaru, Deputy Director of
8 Electric, the Office of Electric Gas and Water and
9 Allison Manz, Chief Officer of Accounting Audits and
10 Finance are available for questions. Steve, will you
11 begin?

12 MR. KRAMER: Thank you, Chair Howard
13 and good morning Chair Howard and Commissioners.
14 Item 301 is a Draft Order, addressing a petition
15 filed by Con Edison, which was contemplated by the
16 joint proposal adopted by the Commission in Con
17 Edison's last rate case.

18 In its petition, Con Edison seeks a
19 Commission Order, no later than April 15th, 2021,
20 that one, authorizes cost recovery, including
21 authorization of surcharge mechanism for three
22 transmission projects, if any such project is in
23 service, prior to the effective date of the company's
24 next rate plan. These three transmission projects
25 are, the Rainey to Corona Project, the Gowanus to

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2 Greenwood Project and the Goethais to Greenwood
3 Project.

4 The Company called these three
5 projects the transmission reliability and clean
6 energy projects or TRACE projects. In addition, the
7 Company also seeks approval and authorization of cost
8 recovery for the three TRACE projects because they
9 are necessary to meet specific reliability needs that
10 occur in 2023 and 2025 and/or achieve Climate
11 Leadership and Community Protection Act goals.

12 Third, requested an authorization that
13 the costs of the TRACE projects, while initially
14 recovered from Con Edison's customers, be included in
15 the C.L.C.P.A. cost tracker.

16 And, finally adoption of a halting
17 mechanism that would authorize the company to recover
18 all costs incurred for the TRACE projects if any of
19 the projects is halted for any reason, whether such
20 costs are incurred prior to or following the
21 suspension of construction, including but not limited
22 to the Company's financial obligations to third
23 parties.

24 Now, in 2019, New York State
25 Department of Environmental Conservation adopted

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2 regulations requiring peakers other than black-start
3 resources, with a name -- name plate capacity of 15
4 megawatts or greater, that inject power into the
5 transmission and distribution system, comply with
6 regulations limiting allowable nitrogen oxide during
7 the ozone season, which runs May 1st through
8 September 30th and is typically the worst air quality
9 period.

10 According to Company, the TRACE
11 projects are required to address the announced
12 retirement or intention not to run during the ozone
13 season of these peaker units which are used to be --
14 to peak electric demand during summer. The Draft
15 Order before you, would approve the recovery of costs
16 for the TRACE projects through a surcharge -- from
17 surcharging Edison customers, the carrying costs --
18 charges after they -- the projects are placed into
19 service and until such costs are reflected in base
20 rates.

21 The Draft Order also declines to
22 address the allocation of these TRACE project costs
23 in the C.L.C.P.A. tracker, since such an allocation
24 framework has not been established yet by the
25 Commission.

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2 Finally, the request to establish a
3 halting mechanism is also denied under the Draft
4 Order and cost recovery for any halted TRACE projects
5 would be determined by the Commission, based on the
6 specific facts and circumstances related to the need
7 to halt the particular project. This concludes my
8 presentation and we are available for questions.

9 CHAIRMAN HOWARD: Thank you. Pardon
10 me. It's my belief, we will see the -- many more of
11 these projects as we transform our electric system.
12 However, as we see our transformation of our electric
13 system to a non-carbon system, we also have to make
14 sure then we will maintain our commitment and as our
15 first job, is maintaining system reliability.

16 The primary reason for the
17 construction of this project, is to maintain
18 reliability but it also builds in safeguards, if and
19 when certain generation assets are curtailed or shut
20 for environmental reasons, either directly related to
21 or unrelated to the C.L.C.P.A. implementation.

22 And, the mechanisms we have for cost
23 recovery, I think, helps protect customers going
24 forward and the recognition that we have not set our
25 C.L.C.P.A. guidelines yet for those projects designed

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2 specifically to meet those goals, I think that will
3 come for another day. Again, I will be supporting
4 this because it primarily and foremost, maintains
5 system reliability in the -- in the Con Ed system
6 going forward. With that said, Commissioner Burman,
7 do you have any comments?

8 COMMISSIONER BURMAN: Thank you so
9 much. Can you hear me?

10 CHAIRMAN HOWARD: Yes, we can.

11 COMMISSIONER BURMAN: Thank you. So,
12 I'm going to be voting in concurrence with this. I
13 do have some serious concerns as we move forward.
14 There are big changes coming to the grid. C.L.C.P.A.
15 and the implementation of that act and others are
16 really important. Here we are not addressing the
17 focus on the C.L.C.P.A. to the extent that the
18 petitioner sought to recover costs, you know, from --
19 from the perspective of two things really.

20 One, is the reliability from the
21 retirements and then two, is the C.L.C.P.A. and set
22 -- to set up a tracker. So, my top concerns for
23 where we are going and how we will get there, overall
24 for everything that we're doing as we move into a
25 more decarbonized State, is one, the reliability of

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2 the power supply. That is really paramount. We have
3 to ensure that the future grid has adequate firm and
4 flexible resources to balance the high levels of
5 intermittent renewable generation, while maintaining
6 our highest reliability standards.

7 The second, is the understanding of
8 the need for T and D. infrastructure investments and
9 the increase for that. Recognizing also that
10 transmission is only one part of the picture and our
11 role, you know, is really important but the whole
12 nature of the electric power system and frankly the
13 electric service itself, is important at the
14 distribution -- local distribution and bulk -- bulk
15 transmission levels and recognizing that changes are
16 rapidly occurring.

17 And, then the third is understanding
18 consumer behavior and working with folks in that
19 regard. And, then the -- really the underpinning is
20 and -- and part of the concern here, is the cost.
21 How do we achieve the outcome at the lowest cost and
22 who shall pay? We are leaving without getting into
23 details on the next steps, on what would be the
24 decisional framework for approving and prioritizing
25 potential C.L.C.P.A. driven investments. Utilities

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2 are going to still have to meet their traditional
3 obligations but really, it was I think, important and
4 I am happy that the -- the petitioner is really
5 asking, who's going to pay for these investments,
6 what is an appropriate cost-recovery mechanism and
7 trying to come up with some solutions. It's
8 something we're going to need to grapple with.

9 We see over in the Climate Action
10 Council, there is a continuing focus on many things
11 that may need to be done. I will be mindful, that
12 those will be recommendations and not directives. It
13 will then be from many different agencies and
14 commissions, ourselves included, to really be looking
15 at the things that are our responsibility and take
16 those into consideration but not be a be-all and end-
17 all, just because they are recommended by this
18 Climate Action Council, though they may have some
19 weight.

20 So, the next is the pace. How do we
21 go all sectors moving in the same direction with
22 similar -- with the similar pace? And, then
23 environmentally, are we actually doing what our
24 stated goals are or are we merely -- merely chasing,
25 trying to meet the goals that are laid out in the

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2 C.L.C.P.A. and that folks are deciding what that
3 means but we're actually not actually being helpful
4 in the long run. So, I come back to, I am in
5 concurrence on this item. I believe the reliability
6 issues are significant and we need to address that.
7 I am also mindful that we are denying aspects of it
8 that relate to addressing some of the underlying
9 concerns I have on the approving and prioritizing
10 C.L.C.P.A. driven investment and who's going to pay
11 for that and what's the appropriate cost-recovery
12 mechanisms. We're going to need to get under the
13 hood on that. In -- in the Climate Action Council,
14 as well as during the budget, there was a focus on
15 asking for specifics on the true costs and the --
16 it's been consistently talked about. That will come
17 at a later point in individual projects perhaps. We
18 really need to get a better handle on that now and I
19 think that we should start to do that. Thank you so
20 much.

21 CHAIRMAN HOWARD: Thank you
22 Commissioner Burman. Commissioner Alesi?

23 COMMISSIONER ALESI: Good morning. Do
24 you hear me?

25 CHAIRMAN HOWARD: Yes, we do.

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2 COMMISSIONER ALESI: Okay. Thank you.
3 I'll be supporting this. I believe the approach will
4 help Con Ed meet the goals of the C.L.C.P.A., as well
5 as comply with the -- the D.E.C. regulations also.
6 It is hoped that there will be a reduction in
7 pollutants in environmental justice communities and
8 make it easier to transition to a cleaner low-carbon
9 grid. So, I will be supporting.

10 CHAIRMAN HOWARD: Thank you very much.
11 Commissioner Edwards?

12 COMMISSIONER EDWARDS: I will be
13 supporting it as well. I think it's -- I think it's
14 good. It's a good step in the right direction.
15 Anything that we can do for consistency, in terms of
16 meeting the goals, is -- is exactly right. So, I
17 will be supporting it, as well. Thank you.

18 CHAIRMAN HOWARD: Thank you. Now, I
19 will call for a vote. My vote is in favor of the
20 recommendations to approve the projects and
21 associated carrying costs, as directed. Commissioner
22 Burman, how do you vote?

23 COMMISSIONER BURMAN: I concur. Thank
24 you.

25 CHAIRMAN HOWARD: Commissioner Alesi?

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2 COMMISSIONER ALESI: I vote yes.

3 CHAIRMAN HOWARD: Commissioner

4 Edwards?

5 COMMISSIONER EDWARDS: I vote yes.

6 CHAIRMAN HOWARD: Thank you. This
7 item is approved and the recommendations are now
8 adopted. We will move to our final items, our
9 consent agenda. Do any Commissioners wish to comment
10 or recuse themselves from voting on any items on the
11 consent agenda? We'll begin with Commissioner
12 Burman.

13 COMMISSIONER BURMAN: Thank you so
14 much. I have five items that I will be commenting
15 on. I'm going to go in numerical order, except to
16 the extent that Item 161, I will go out of order and
17 leave that last, since those are my most extensive
18 comments. On 365, I will be voting in concurrence.
19 I do note, this is the modifications to the Dynamic
20 Load Management Programs. The Commission is adopting
21 modifications to this. My concern here really lies
22 in, while I think these are appropriate to make the
23 modifications are, we are referencing the demand
24 response COVID relief aspects of it. We do have an
25 outstanding generic COVID proceeding that we needed

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2 some closure on and so I just remind folks of the
3 importance of that.

4 Item 367, which is the adopting the
5 Investor Owned Utilities petition to modify the
6 energy storage Order, to approve the procurement
7 results, with modification I will be concurring with
8 this. I do note, that this Order lays out in several
9 areas, that the Commission will conduct a tri-annual
10 review of the progress towards achieving the energy
11 storage deployment goal and the effectiveness of the
12 energy storage deployment policy in meeting the State
13 goal and references the energy storage Order.

14 It also talks about the -- the fact
15 that the Commission expects Staff to continue to
16 collaborate with the joint utilities, NYSERDA, LIPA
17 and the I.S.O. to advance the energy storage
18 deployment policy and report and recommended changes
19 in the tri-annual review. My concern here and why I
20 am in concurrence, is that we have before utilized
21 the tri-annual review in Orders, most notably back in
22 August 2016, for the C.S.E. -- C.E.S. triannual
23 review and that was used as a way to help people feel
24 comfortable with what we were doing; that there would
25 be an appropriate review and modifications.

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2 Unfortunately, the C.E. -- C.E.S. triannual review,
3 was not used in my opinion, in any helpful way. And,
4 while then moved from tri-annual to biannual review,
5 it was really done without getting the full benefit
6 of what the tri-annual review was supposed to do. I
7 think it's important for us to keep in mind, we
8 really do need to make sure that we are fully looking
9 at it and making changes, if appropriate, in a timely
10 fashion and with proper stakeholder engagement,
11 including the Commission, as a body.

12 The next item is 372, I have no
13 comment but I will be concurring on that. And, then
14 the next, second to last item, is Item 561. I --
15 this is the Charter management audit. I concur on
16 Item 561, which is the Charter audit. My reason for
17 a concurrence, is that I believe the Draft Order did
18 not sufficiently address Charter's concerns about the
19 audit process. Now, I'm not taking a position on
20 Charter's arguments but I do strongly believe, there
21 should be a more fulsome discussion, analysis and
22 openness to more fully take into considerations,
23 their concerns in our Draft Order. The truth is,
24 this audit was unique in many ways. We with good
25 reason, rarely audit telephone service and rarely get

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2 involved in labor management issues. Moreover, there
3 were and are, legitimate questions about our
4 jurisdiction over other services affected by the same
5 infrastructure. And, there was very significant
6 litigation and tension between our agency, the State
7 and Charter, which was happening in parallel to this
8 audit.

9 For those reasons, the situation was
10 so unique, that frankly, it is understandable that
11 Charter would be cautious in its approach to fully
12 engage with Staff and the auditors in the audit
13 process. Again, I'm not saying that they were right
14 or wrong but I am saying that more context should
15 have been provided in the Draft Order, to try and
16 understand what was happening during the audit
17 process, from Charter's vantage point.

18 Now, I'm going to talk about Item 161.
19 I'm just getting my papers. Thank you.

20 I'm going to be voting no for this
21 item. I am concerned and I think this sets up a
22 potentially dangerous precedent. I am mindful that I
23 do believe in good faith, the Commission -- that
24 D.P.S. Staff, as well as the Company, worked together
25 to try to seek some resolution and did it through the

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2 modification of the settlement agreement. I think it
3 is appropriate for Staff to engage with companies in
4 different areas that are important under our
5 jurisdiction and relate to the handling of movement
6 of funds and what should be done and the status on
7 important, substantive issues.

8 However, this -- this entire
9 settlement agreement, has a very tortured history.
10 It's important for me, to level set a little bit and
11 not rehash it all but at least remind folks, of the
12 process and the substantive issues at hand.

13 In October of 2019, the Commission was
14 faced with confirming a One Commissioner Order, to
15 open up an Order to Show Cause and institute a
16 proceeding against the Company, concerning the
17 moratorium on new or increased firm natural gas
18 service. I dissented at that time. My comments in
19 that session, are on the public transcript and I went
20 into quite detail about my concerns at that time and
21 the underlying issues that we as the State were
22 doing, related to the reliability and -- of -- of the
23 natural gas service and the need for us to address
24 supply and constraint issues.

25 In fact, at that time, the October

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2 2019 session, we were also dealing with our winter
3 preparedness issues and dealing with other
4 moratoriums in other areas of the State and we talked
5 about the need for engagement on moratorium report,
6 looking at grid reliability and resiliency.

7 Then in November, 2019, the Governor
8 issued a press release, notifying the Company of its
9 intent -- of the intent to possibly revoke the
10 downstate gas franchise. In -- November 25th, 2019,
11 the Governor and the Company announced an agreement
12 to lift the moratorium. November 26th, 2019, a One
13 Commissioner Order was issued approving that
14 settlement. Then December 12th, 2019, there was a
15 Confirming Order, confirming that One Commissioner
16 Order for the settlement.

17 I dissented, at that time. I voted no
18 in summary because I disagreed on the legal rational
19 on many of the issues. I voted no because I also was
20 concerned that the press release announcing the
21 settlement, had a number of folks signing onto that
22 press release and showed that there was clearly
23 engagement outside the Commission on the settlement
24 parameters. However, I only became aware of the
25 settlement, when the press release was going live.

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2 So, any review or input I might have had, was done
3 after the fact. It's not about me. It's not about
4 what makes sense. I believe the importance of our
5 settlement guidelines, are not just for the rate
6 cases and at that time, I stated that we can't use an
7 enforcement action as a way of getting around the
8 settlement guidelines and I felt the lack of
9 transparency was distressing.

10 I will say, Staff has taken to heart a
11 lot of my concerns over all in other areas and does
12 try to engage more on what they're doing, as it
13 relates, not in this one, but in -- in others.

14 And, then in -- March 13th, 2020, part
15 of the settlement had been related to having an
16 independent monitor and on March 13th, 2020, the
17 monitor issued his first report. To date, there have
18 been eight monitor reports issued and I believe for
19 each and every one, the Company has also responded.

20 There have also been in the -- if you
21 look at the docket, there have also been a number of
22 folks raising concerns throughout and addressing
23 concerns. A lot seem to be related to the
24 transparency and engagement and process concerns.

25 On October 2nd, 2020, a One

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2 Commissioner Order was -- was issued and then there
3 was a Confirming Order for October 20th, 2020, to
4 that One Commissioner Order. That One Commissioner
5 Order was the first amendment to the settlement
6 agreement and that related to repurposing the funds
7 that were to be used for program specific and reused
8 -- reallocate that and use it for funds to go now to
9 the monitor, who was needing more funding for his
10 engagement. I voted no, at that time. I stated that
11 I did not appreciate a One Commissioner Order at the
12 eleventh hour, looking to move money from one pot
13 under the settlement that would have gone to the
14 program that was dedicated under the settlement for
15 customers, in a sense. And, from my perspective, to
16 move it now to pay the fees that are incurred for the
17 monitor, were -- was inappropriate.

18 At that time, we still had not as a
19 Commission, had formal engagement on all of the
20 activities of the monitor and the report, in the way
21 that I felt would be helpful to the Commission as a
22 whole with our oversight responsibilities. I frankly
23 did not understand what exactly the monitor was doing
24 because we had never had full engagement. I
25 personally never had an engagement with the monitor.

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2 And, I'm not really sure -- at that time, I was not
3 really sure that our focus should be on quickly
4 acting on moving money to the monitor to address the
5 monitor's need for funding and certainly not --
6 should not have been done through a One Commissioner
7 Order that was then seeking to be confirmed. I feel
8 it should have been something that was flagged much
9 earlier to the Commission and done in a more fiscally
10 responsible way, so that we could fully examine the
11 issues and evaluate the issues.

12 Today, we're being asked to approve a
13 settlement that was issued between the Staff and the
14 Company on February 25th, 2021. This would be the
15 second amendment to the settlement agreement. I
16 don't think this is the right process. In fact, my
17 concern is as I look to the file, there was no notice
18 in there, that there was engagement between the
19 Company and Staff. Again, it's not inappropriate for
20 the Company and the Staff to work together and to
21 look at the best use of the funding. And, if there
22 is a need to now pivot and change that, I think that
23 would be an appropriate petition to bring to the
24 Commission. Both the Staff and the Company could
25 agree, jointly, that they felt that this was

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2 appropriate and seek our guidance. However, doing it
3 through a modification to a settlement agreement that
4 had already been modified once without any notice of
5 engagement, I just think is -- is not the right way
6 to go.

7 It leaves concerns about the finality
8 of any settlement agreement. In fact, by doing this
9 now for the second time, it concerns me because we do
10 need to have finality in settlement agreements and we
11 do need not only for the Commission to know that it's
12 final but for stakeholders to do so, otherwise we can
13 be looking at reopening each and every settlement
14 agreement. In this case, the settlement was posted
15 without engagement, at least from my perspective as a
16 Commissioner, and I learned about it by default
17 through the posting.

18 The other issue I have, is the --
19 there is discussion now on the fact that we -- we
20 need to do this because the funding that was there,
21 which under the settlement agreement, was to -- the
22 Company was committing 20 million dollars of
23 shareholder funds, to be used to support clean energy
24 projects and our investments in New York based
25 startup energy businesses and technologies, to reduce

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2 reliance on non-renewable sources. The settlement
3 stated, that the funds were to be used at the
4 direction of the Director of the New York State
5 Division of Budget, in consultation with the
6 Department. So, here we're being asked to do this,
7 essentially for the rationale that to date, those
8 funds remain unused. I have nothing in this filing
9 that shows that the Director of the Budget has -- has
10 engaged in consultation with the Department. I have
11 no idea if there has been any discussion by the
12 D.O.B. or Staff or the Company on how those funds
13 should be utilized and frankly, this is exactly one
14 of the reasons why the first settlement never should
15 have inappropriately directed the diversion of these
16 funds to be used by D.O.B. It is for us, as a
17 Commission, through our processes and proceedings, to
18 determine the appropriate use of these fundings.

19 So, I personally am comfortable that
20 we are seeking to re -- to right what I think was
21 inappropriate from the first settlement agreement, in
22 directing that the funds would be used by the
23 director, in consultation with the Department. The
24 budget director does not need to be involved in
25 these. He is not an expert in the use of what the

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2 funds for us, under our commission processes and
3 proceedings and settlements, on how it should be done
4 and that was something that was inappropriate.

5 However, now I look at this and I feel
6 that trying to modify the settlement agreement, to
7 change that now and redirect it to a different
8 purpose, even though somewhat related, doesn't really
9 make sense without a fuller understanding of what the
10 engagement was between folks since that settlement
11 was done and -- and why the funds remained unused and
12 to fully understand that. I -- there is no
13 explanation in that and so, it's lacking in that.

14 The other issue that I have with this,
15 is that I believe that since this is related to the
16 initial settlement and since this is related to not
17 one but eight monitor reports that have been issued,
18 it really -- I have the same concern I had back in
19 the first settlement agreement. We need to be more
20 engaged with the monitor, on exactly what the monitor
21 is doing and who he is reporting to and how he is
22 coming up with some of his analysis and monitoring.

23 Very -- many of these issues are still
24 out there for us substantively to address, in terms
25 of, you know, ongoing reliability concerns, the --

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2 the -- the -- the issues for customers. And -- and
3 so, we really do need to be ensuring that the
4 monitor's clearly doing what is the -- what was the
5 intent of the initial proceeding and then the
6 settlement with that and not just leaving it for us
7 just being passer-byers, by looking at what the
8 monitor puts in the -- in the -- in the filing. I do
9 think also, that there are some areas and -- and I am
10 very mindful that I think that the Company did take
11 great care to be really responsible in its responses
12 to the monitor and we should also understand that
13 many of the things that the monitor is suggesting,
14 are really not understanding the initial concerns
15 with some of the State policies that are making it
16 nearly impossible for the Company to achieve success.
17 And, I would go back to my comments that I've raised
18 many times in other gas-related issues but primarily
19 from the first October of 2019 session, when we
20 opened the Order to Show Cause, to institute the
21 proceeding.

22 Then, the other issue I have and I
23 will be wrapping up, is that the Order states --
24 states that the -- references the fact that there
25 were several folks and a letter was entered into by I

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2 think 14 entities, that addressed concern with the
3 process, as well and our Order, I think does lip
4 service to them. I believe very strongly that we
5 need to fully understand the concerns but we also
6 need to set some true guardrails. I do believe that
7 the March 10th, 2021 letter needs to be more fully
8 analyzed and for us to truly lay out where they are,
9 perhaps correct and perhaps not correct. I don't
10 know whether they're right or wrong in many of the
11 things but I do think that we need to be much more
12 engaged and really be open about what falls under the
13 jurisdiction and what doesn't and how this may or may
14 not be something that we are considering. Instead,
15 all we do is we say, that using the shareholder funds
16 to meet these targets in a manner that mitigates the
17 financial impacts to rate payers of implementing
18 energy efficiency measures is not a failing but a
19 virtue of the second amendment to the settlement
20 agreement. That conclusory statement does not give
21 me comfort that we are truly conveying and
22 communicating the next steps and what we -- what we
23 see.

24 We're now putting this settlement
25 agreement modification into an open rate case where

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2 there are ongoing settlement discussions. It is
3 important for me, to convey to anyone who is engaged
4 in confidential settlement discussions, that they do
5 need to know that those confidential settlement
6 discussions, are not for sharing publically. We are
7 -- they -- they are signing confidentiality
8 agreements. They must engage in that. They can
9 choose not to sign onto a joint proposal. They can
10 choose to no longer participate in a settlement
11 discussion. However, they have to be mindful that
12 when they sign confidentiality agreements and start
13 to engage in settlement discussions, that we take
14 very seriously those confidentiality aspects of it
15 and the need to make sure that there's not chilling
16 factor in that.

17 I think it's really important for us
18 to ask the A.L.J.s to look at the ongoing settlement
19 discussions and how to ensure, whether in this rate
20 case or others, that we are truly making sure folks
21 understand the seriousness of participating. You do
22 have the opportunity -- all parties have the
23 opportunity to participate but settlement
24 negotiations are completely confidential until an
25 agreed-upon joint proposal is issued and it's really

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2 important for us to make sure that folks clearly
3 understand their responsibilities. With that, I'm
4 going to be voting no and I appreciate allowing me to
5 speak on what I am very passionate about. Thank you.

6 CHAIRMAN HOWARD: Thank you,
7 Commissioner Burman. With that, I will call a vote
8 on the consent agenda. My vote is to approve the
9 consent agenda in its totality. Commissioner Burman,
10 how do you vote?

11 COMMISSIONER BURMAN: I vote yes on
12 all items, except for the ones that I articulated I
13 was voting differently on.

14 CHAIRMAN HOWARD: Okay. Thank you.
15 Commissioner Alesi?

16 COMMISSIONER ALESI: I vote yes.

17 CHAIRMAN HOWARD: Commissioner
18 Edwards?

19 COMMISSIONER EDWARDS: I vote yes.

20 CHAIRMAN HOWARD: Thank you very much.
21 Secretary Phillips, is there anymore items before us
22 today?

23 SECRETARY PHILLIPS: There is nothing
24 further to come before the Commission today.

25 CHAIRMAN HOWARD: Thank you very much.

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2 With that, I will call for an adjournment of this
3 meeting and thank you very much, my Commissioners and
4 Staff for your participation. Thank you.

5 (The meeting concluded.)

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2 STATE OF NEW YORK

3 I, BECKY FOSTER, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 38, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 26th day of April, 2021.

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13 BECKY FOSTER, Reporter

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