

1 5-19-2021 - Special Session Meeting
2 STATE OF NEW YORK
3 PUBLIC SERVICE COMMISSION
4 SPECIAL SESSION MEETING
5 VIA ZOOM

6
7 Wednesday, May 19, 2021
8 1:00 p.m. until 2:25 p.m.

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COMMISSIONERS:
JOHN B. HOWARD, Chair
DIANE X. BURMAN
JAMES S. ALESI
TRACEY A. EDWARDS

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2 (On the record 1:00 p.m.)

3 CHAIRMAN HOWARD: Good afternoon.

4 This is John Howard, interim chair of the Public
5 Service Commission and I call this special session of
6 the Public Service Commission to order. Secretary
7 Phillips, are there any changes to the final agenda?

8 SECRETARY PHILLIPS: There are no
9 changes.

10 CHAIRMAN HOWARD: Thank you. But
11 before we get started I'd like to note our
12 arrangements for session today. In line with the
13 guidelines concerning social distancing and
14 minimizing large gatherings in the light of previous
15 executive orders that suspended provisions of the
16 open meetings law on an emergency basis, we are
17 conducting today's session remotely. Like to remind
18 those who are participating by phone to please mute
19 their lines except when they are speaking.

20 The public will have an opportunity to
21 listen to the session on the department's webcast
22 page and we'll also record and transcribe the session
23 for future review. These arrangements have been
24 reviewed by our general counsel that has found that
25 they have meet the requirements of the executive

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2 orders.

3 Before moving to the agenda I'd like
4 to conduct a roll call of the commissioners and if
5 you could please confirm you're with us when I call
6 your name. Commissioner Diane Burman?

7 COMMISSIONER BURMAN: I am here.

8 Thank you.

9 CHAIRMAN HOWARD: Commissioner James
10 Alesi?

11 COMMISSIONER ALESI: Hello, I'm here.

12 CHAIRMAN HOWARD: Commissioner Tracy
13 Edwards?

14 COMMISSIONER EDWARDS: Good afternoon.
15 I'm here.

16 CHAIRMAN HOWARD: Thank you very much.
17 So our first item for discussion is Item 301 Case 19-
18 E-0730 as it relates to the joint proposal on the
19 proposed transfer of the Indian Point Enter -- Indian
20 Point from Entergy Affiliates to Holtec Affiliates.
21 It will be presented today by John Sipos, deputy
22 general counsel, Jeff Hogan, acting director of
23 Office of Accounting and Audits and Finance, and
24 Bridget Frymire our utility supervisor along with
25 Ryan Coyne, assistant counsel will be available for

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2 questions. With that, Counselor Sipos, would you
3 begin your presentation?

4 MR. SIPOS: Yes. Good afternoon,
5 Chair Howard, Commissioner Burman, Commissioner Alesi
6 and Commissioner Edwards. The staff of the
7 Department of Public Service appreciates this
8 opportunity to discuss this proceeding, support the
9 parties April 14, 2021 joint proposal and to answer
10 questions. The joint proposal here fairly resolves
11 the issues presented in this proceeding and includes
12 several financial assurance, oversight and reporting
13 provisions that in the staff's view advance the
14 public interest in this Public Service Law Section 70
15 proceeding.

16 This case concerns the proposed
17 transfer of the corporate ownership interests in the
18 Indian Point facilities and associated assets and
19 obligations from Entergy affiliates to Holtec
20 affiliates. The joint petition requested that the
21 commission not exercise jurisdiction over the
22 proposed transfer or, in the alternative, that the
23 commission review and approve the joint petition
24 pursuant to Public Service Law Section 70.

25 The Indian Point facilities and site

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2 are currently owned and operated by Entergy entities,
3 and by way of background, the federal government
4 authorized the siting and the construction of the
5 first Indian Point reactor in 1958. The third and
6 last reactor retired earlier this year on April 30.
7 If the proposed ownership transfer is approved,
8 Holtec petitioner here, which is called Nuclear Asset
9 Management Company, L.L.C. or NAMCO for short will
10 not operate nuclear power reactors. It will,
11 however, operate Indian Point's spent fuel pools and
12 support systems as well as the onsite, Independent
13 Spent Fuel Storage Installation also known by the
14 acronym ISFSI and that facility houses the spent --
15 the spent nuclear fuel in dry storage casks.

16 In compliance with federal regulatory
17 requirements, NAMCO and its corporate affiliates, and
18 I'll generally refer to them collectively here as
19 Holtec will also decommission the facilities and
20 site, move all nuclear spent fuel from the spent fuel
21 pools to dry cask storage, maintain and secure the
22 independent spent fuel storage installation until the
23 used nuclear fuel is removed from the site. And it
24 will also undertake and complete site restoration
25 activities. So those are, in short, the rules of the

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2 road that go along with ownership.

3 Turning to the proposed transfer
4 transaction before the commission today, the petition
5 details a proposed two-part transaction that is
6 scheduled to occur by the end of this month, May
7 2021. The first part is an internal reorganization
8 and transfer inside the Entergy corporate umbrella
9 involving the transfer of Indian Point and other
10 assets and liabilities from Entergy Nuclear Indian
11 Point 2, L.L.C. and Entergy Nuclear Indian Point 3,
12 L.L.C. to two liability companies whose membership
13 interests will ultimately be owned by an entity
14 referred to as Merchant Properties, L.L.C., which is
15 another limited liability corporation.

16 In the transaction's second phase, the
17 membership interests in Merchant Properties will be
18 transferred to NAMCO, a wholly-owned subsidiary of
19 Holtec International. The transaction would thus
20 result in NAMCO indirectly owning Indian Point and
21 the related assets and liabilities formerly owned by
22 the Entergy entities. NAMCO would then subsequently
23 merge with Merchant Properties resulting in NAMCO
24 directly owning Holtec Indian Point 2, LLC and Holtec
25 Indian Point 3, LLC Holtec International will thus

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2 indirectly own Indian Point and its related assets
3 through this chain of wholly-owned subsidiaries.

4 Holtec International also indirectly
5 owns Holtec Decommissioning International, LLC which
6 I'll also refer to as HDI which jointly owns as
7 majority owner Comprehensive Decommissioning
8 International, LLC or CDI. And the minority owner of
9 CDI is SNC hyphen ... Lavalin Group through its
10 subsidiary (Kentz USA, Inc.) ... If the transaction
11 is approved and completed H.D.I. would manage the
12 decommissioning operation with C.D.I. acting as the
13 general contractor.

14 And under this arrangement, Holtec
15 projects that it could obtain partial site release
16 from the United States Nuclear Regulatory Commission
17 or N.R.C. by 2036 or possibly as early as 2033. In
18 short, Holtec has stated that it would file what is
19 known as a DECON, that's D-E-C-O-N schedule.

20 Alternatively, if the transaction is
21 not completed Entergy has announced its intention to
22 follow a deferred decommissioning schedule also known
23 by the industry term SAFSTOR, S-A-F-S-T-O-R, under
24 which the N.R.C. would allow Entergy up to 60 years
25 or until 2081 to decommission the site.

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2 And I'd like to note here and explain
3 the term that I just referenced partial site release.
4 That's a concept that involves the N.R.C. releasing a
5 portion of the site, and in this case it would be a
6 larger portion of the site, for unrestricted use but
7 maintaining restrictions and N.R.C. regulatory
8 authority over the smaller portion of the site
9 containing the independent spent fuel storage
10 installation and dry cask storage site that holds the
11 spent nuclear fuel until that fuel is removed under
12 the auspices of the Federal Department of Energy.

13 Now in addition to the proceeding
14 before the New York State Public Service Commission
15 there was another proceeding before the Nuclear
16 Regulatory Commission and that -- that proceeding was
17 in addition to this Public Service Law Section 70
18 proceeding. Before the Nuclear Regulatory Commission
19 Entergy and Holtec also applied to that federal
20 agency for authorization to transfer the federal
21 operating licenses that were issued pursuant to the
22 Atomic Energy Act from Entergy to the Holtec
23 entities. The State of New York represented by the
24 Office of the Attorney General submitted a request to
25 participate in that federal proceeding and requested

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2 a hearing.

3 And at the same time, Holtec requested
4 that the N.R.C. provide an exemption from a federal
5 regulation limiting the purpose for which money from
6 the decommissioning trust or trust, I should say, may
7 be used. Ultimately, both N.R.C. staff and three
8 N.R.C. commissioners granted the exemption, denied
9 the state's intervention petition and request for
10 hearing and granted the transfer of the federal
11 licenses from the Entergy entities to the Holtec
12 entities.

13 The State of New York, represented by
14 the Attorney General's Office, the Village of
15 Buchanan, the Town of Cortland, the Hendrick Hudson
16 School District and Riverkeeper filed petitions for
17 judicial review of that N.R.C. action. And those
18 petitions for review are pending today.

19 I'm going to turn back now to the
20 Public Service Law Section 70 proceeding. During
21 2020 the commission received public comments about
22 the Public Service Law Section 70 proceeding and the
23 proposed transfer of ownership interest. The
24 commission heard roughly seven hours of oral
25 testimony at two virtual public statement hearings

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2 held on February 23rd, 2021. On the same day, D.P.S.
3 staff from the Office of Accounting, Audits and
4 Finance reviewed Holtec International financial
5 statements brought to D.P.S. staff by Holtec
6 International Representatives.

7 And throughout the proceeding D.P.S.
8 staff also continued to engage in informal written
9 discovery with the petitioners. And during the
10 course of the proceeding, D.P.S. staff served and
11 petitioners responded to 35 separate information
12 requests. More recently, following exploratory
13 discussions, D.P.S. staff filed a notice of impending
14 settlement negotiations on March 19, 2021 informing
15 the parties that the issues presented in this
16 proceeding might be amenable to settlement and that
17 negotiations would commence on March 24, 2021.

18 And those negotiations did commence,
19 all parties participated in the ensuing negotiations
20 and those negotiations culminated with the filing of
21 the April 14, 2021 joint proposal. My -- I'd like to
22 just briefly summarize the joint proposal. It was
23 agreed to by all parties and it establishes multiple
24 financial assurance mechanisms intended to ensure
25 that the new corporate owners maintain sufficient

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2 funds to comply with the legal obligations associated
3 with owning and operating the site and to complete
4 those obligations.

5 The joint proposal also -- also
6 contains oversight and reporting provisions to
7 provide the commission department staff, New York
8 State and the public with information needed to
9 properly oversee those attendant obligations and
10 responsibilities and includes. It includes other
11 provisions designed to protect the public's interest
12 in Indian Point's thorough and prompt decommissioning
13 and site restoration as well as the responsible
14 management and security of its spent nuclear fuel.

15 THE COURT REPORTER: Excuse me.

16 MR. SIPOS: Yes, Becky.

17 THE COURT REPORTER: You are trailing
18 off just a little bit. Just the last few seconds I
19 did -- wasn't able to pick up.

20 MR. SIPOS: Would you like me to
21 repeat that?

22 THE COURT REPORTER: Please.

23 MR. SIPOS: I'd be happy to. I'll go
24 back to the joint proposal contains oversight and
25 reporting provisions to provide the commission,

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2 D.P.S., New York State and the public with
3 information needed to properly oversee those
4 attendant obligations and responsibilities. And it
5 includes other provisions designed to protect the
6 public's interest in Indian Point's thorough and
7 prompt decommissioning and site restoration as well
8 as the responsible management and security of its
9 spent nuclear fuel. How am I doing, Becky? Is that
10 better?

11 THE COURT REPORTER: Yes, very much.
12 Thank you.

13 MR. SIPOS: Thank you. Just wanted to
14 check. There are three types of financial assurance
15 conditions here. Minimum trust balances, D.O.E.
16 litigation recoveries and third party surety
17 guarantees. And specifically, the joint proposal
18 establishes a series of minimum balances that Holtec
19 must maintain in the decommissioning trust funds over
20 time. First, Holtec has agreed to maintain a minimum
21 balance of no less than \$400 million in the trust
22 funds until at least 2031. After 2031, Holtec has
23 further agreed to maintain a minimum balance of no
24 less than \$360 million until it has obtained partial
25 site release from the N.R.C., the concept we

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2 discussed previously.

3 And finally, because the independent
4 spent fuel storage installation and its dry storage
5 casks and spent fuel will remain on site following
6 partial site release, Holtec has also agreed to
7 maintain a minimum balance of an amount to be
8 determined based on projected remaining costs at
9 partial site release until the spent fuel is removed
10 from the site and the ISFSI is decommissioned and the
11 site is fully restored.

12 Now as an additional financial
13 assurance, Holtec must return and deposit at least
14 50% of any spent fuel management reimbursement --
15 excuse me -- start that again.

16 As an additional financial assurance,
17 Holtec must return and deposit at least 50% of any
18 spent fuel management reimbursements obtained from
19 the United States Department of Energy to a dedicated
20 subaccount until Holtec obtains partial site release.
21 If the funds collective balance is ever projected to
22 fall below the required minimum balance, Holtec must
23 first use D.O.E. recoveries other than those
24 deposited in the dedicated subaccount to replenish
25 the funds.

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2 Only if additional funding is still
3 needed to achieve the required minimum balance may
4 Holtec rely on the recoveries in the segregated
5 subaccount. Additional financial assurance is
6 further provided under an administrative consent
7 order executed by both the New York State Department
8 of Environmental Conservation and Holtec. Under that
9 administrative consent order, Holtec has committed to
10 conducting comprehensive site investigations,
11 characterization, remediation and restoration
12 activities for non-radiological waste and other
13 contaminants at Indian Point.

14 Moreover, in the administrative
15 consent order, there is an acknowledgement and it
16 further requires Holtec to remediate residual radio
17 activity below the nuclear regulatory commission's 25
18 millirem per year standard and instead achieve the
19 New York State guidance of 10 millirem per year. To
20 ensure that funds are available to complete this
21 work, Holtec will secure third party financial
22 assurance in the amount of \$110 million that names
23 D.E.C. as the beneficiary.

24 Additionally, Holtec will obtain a \$30
25 million pollution liability insurance policy that

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2 would offset costs arising from previously unknown
3 releases of hazardous substances. The joint proposal
4 also establishes a series of reporting requirements
5 with which Holtec must reply -- excuse me, with which
6 Holtec must comply. First, Holtec has agreed to meet
7 monthly with state and local representatives to
8 provide project updates. And at these meetings,
9 Holtec will report on, among other topics, the status
10 of major project activities, the project budget and
11 any significant changes to either the project
12 schedule or projected costs.

13 New York State will also receive twice
14 yearly updates on the status of the decommissioning
15 trust funds. Both reports will be accompanied by in-
16 person meetings between New York State
17 representatives and Holtec executives to review their
18 contents. Finally, in addition to these -- these
19 financial assurance and reporting provisions, the
20 joint proposal addresses a variety of other concerns.

21 It requires, for example, that Holtec
22 notify D.P.S. staff and the owners of the natural gas
23 pipelines located onsite before undertaking certain
24 decommissioning activities. Holtec is also required
25 to promptly notify D.P.S. staff of any nuclear

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2 emergency, fatal accident, serious security threat or
3 media event should one occur during the course of
4 decommissioning. And it incorporates a memorandum of
5 understanding between Holtec and the local
6 governments in which Holtec commits to honor
7 Entergy's previous payment in lieu of taxes agreement
8 in and which establishes a process for negotiating
9 future PILOT agreements.

10 It also covers payments to emergency
11 planning agencies. The joint proposal also includes
12 an agreement among the parties that they will
13 promptly withdraw all litigation within 10 days
14 related to the N.R.C. license amendment and transfer
15 proceeding. That was the litigation I mentioned
16 earlier.

17 From staff's perspective, the joint
18 proposal fairly resolves all concerns regarding the
19 Public Service Law Section 70 petition. D.P.S. staff
20 recommends that the commission approve the joint
21 proposal. First, the record indicates that the
22 Holtec entities appear to possess the financial
23 wherewithal needed to decommission the site as well
24 as to restore the site under the auspices of D.E.C.
25 Under the proposed transfer, Holtec would take

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2 custody of the decommissioning trust funds which had
3 a collective balance of more than \$2.4 billion as of
4 December 31st, 2020.

5 That sum exceeds Holtec's projected
6 decommissioning costs even before accounting for the
7 projected D.O.E. reimbursements, half of which will
8 be deposited back into the trust funds until partial
9 site release. Additionally, D.P.S. staff have
10 reviewed several years of Holtec International's
11 audited financial statements and the information
12 contained therein indicates that the company is
13 financially sound.

14 Most importantly, the joint proposal
15 includes multiple financial assurance provisions that
16 apply regardless of Holtec International's financial
17 health and that protect the public's interest in
18 ensuring that Holtec does not exhaust the trust funds
19 before it completes the decommissioning and site
20 restoration work. The various minimum balances will
21 ensure that the funds remain well capitalized until
22 certain significant project milestones are achieved.
23 These balances are moreover backed by a dedicated
24 revenue stream in the form of future D.O.E.
25 recoveries related to the breach of contract claims.

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2 Finally, Holtec's site restoration
3 obligations under the D.E.C. administrative consent
4 order are further secured by other third party
5 financial assurance instruments and therefore in
6 light of the trust funds current balances, as secured
7 by the joint proposals various financial assurance
8 provisions, D.P.S. staff find that the Holtec
9 entities possess the financial wherewithal necessary
10 to responsibly assume ownership of the site.

11 Second, based on D.P.S. staff review
12 and the information gained so far, Holtec appears
13 competent and capable of managing spent nuclear fuel
14 and decommissioning the site. Holtec has experience
15 in the fuel -- in -- excuse me, Holtec has experience
16 in the field of spent nuclear fuel management and has
17 previously worked at Indian Point under a contract
18 with Entergy. The established working relationship
19 between Holtec and Entergy should assist in a smooth
20 transition.

21 Holtec has furthermore been approved
22 by the N.R.C. to decommission two other nuclear
23 facilities, Oyster Creek Nuclear Generating Station
24 in New Jersey and Pilgrim Nuclear Power Station in
25 Massachusetts. D.P.S. staff's review of those

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2 projects has determined that while both projects
3 remain in the early stage of decommissioning, they
4 appear thus far to be proceeding on schedule and in
5 line with Holtec's projected budgets.

6 With these decommissioning projects
7 commencing some years in advance of Indian Point, New
8 York stands to benefit from the experience gained and
9 the lessons learned at Oyster Creek and Pilgrim.
10 D.P.S. staff find that Holtec possesses the necessary
11 technical capabilities and experience with spent fuel
12 management to decommission and restore the Indian
13 Point site.

14 Finally, several other factors favor
15 commission approval of the joint proposal. First,
16 Holtec intends to complete the decommissioning
17 obligations decades faster than Entergy would under
18 N.R.C.'s deferred SAFSTOR decommissioning approach.
19 Under the joint proposal, Holtec has committed absent
20 a force majeure event, to transferring all spent fuel
21 to the independent spent fuel storage installation
22 dry casks no later than December 31st, 2024. After
23 that Holtec projects that all work except the ISFSI
24 decommissioning will be completed by 2036, possibly
25 as early as 2033.

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2 Again, this window is far shorter than
3 the permissible window for Entergy's deferred SAFSTOR
4 decommissioning approach which could leave the site
5 unrestored and sitting idle for up to 60 years, in
6 other words, until 2081 if not later.

7 Second, the joint proposal augments
8 meaningful New York State oversight of the project.
9 New York State representatives will receive monthly
10 project updates and semiannual reports on the
11 decommissioning funds status. This will complement
12 P.S.C.'s regulatory tools already included in the
13 Public Service Law. Holtec has agreed to create a
14 public website that will house public documents
15 related to the decommissioning work.

16 And I should also note that the joint
17 proposal acknowledges the impending establishment of
18 the decommissioning oversight board. Although the
19 establishment of the board is not within the scope of
20 this proceeding, I note that the department is
21 working to organize and stand up the decommissioning
22 oversight board and expects to have that process
23 completed during coming weeks and indeed is working
24 on it even today.

25 So in conclusion, for the reasons I've

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2 discussed, D.P.S. staff submits that the joint
3 proposal strikes a fair balance between rate payer
4 and business interests, meaningfully advances the
5 state's policy goal of a prompt and thorough
6 decommissioning and site restoration of Indian Point,
7 and represents a compromise among multiple parties
8 that have often been adverse to one another over the
9 previous many years. D.P.S. staff therefore
10 respectfully recommends that the commission approve
11 the joint proposal in its entirety. This concludes
12 staff's presentation and Jeff Hogan, Bridget Frymire,
13 Ryan Coyne and I are available for questions. Thank
14 you very much.

15 CHAIRMAN HOWARD: Thank you, John. I
16 -- I really do appreciate it. Could you describe the
17 differences between the initial petition by Holtec
18 and Entergy to what we are -- this order outlines?

19 MR. SIPOS: Yes. The baseline, the
20 initial petition was what I would characterize as a
21 -- as a straight transfer. The -- the ownership
22 interests would pass from Entergy to the Holtec
23 entities without much -- without much more. And what
24 the joint proposal has brought to the table, has
25 brought to the -- the commission today is the

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2 additional financial assurance, is the additional
3 financial reporting requirements, there from a public
4 interest perspective. There is the aspect of the
5 D.E.C. oversight of site restoration.

6 There is the recovery of claims from
7 the breach of the federal contract which is known as
8 the standard contract. There's recovery under those
9 ... breach of contract claims. Fifty percent of that
10 comes back to a segregated account. There is
11 acknowledgements about additional use of D.O.E.
12 recoveries should the need arise. There has been
13 recognition of, you know, the role or the interest --
14 the role and the interest that the local governmental
15 entities have as well as the emergency planning
16 agencies, both at a state and local level.

17 So the -- what was initially proposed,
18 the baseline proposal was -- was -- I would say it
19 was, you know, as -- was very straightforward. There
20 -- there were really, you know, not the conditions
21 that D.P.S. staff thought was important to protect
22 the new owner, the new owner to ensure that the new
23 owner could comply with the -- with the rules of the
24 road, with the legal obligations that go along with
25 ownership. So those are -- those are I think those

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2 are my -- my top topics that -- that reflect
3 differences between what -- what we -- what the
4 commission got in -- in late 2019 and what is in the
5 joint proposal from April 2021.

6 CHAIRMAN HOWARD: So absent this --
7 this action that we hope to take today, we would have
8 to rely exclusively on the federal government and the
9 nuclear regulatory commission for assurances both
10 financial and managerial throughout this entire
11 process?

12 MR. SIPOS: I believe that is correct,
13 yes. And also as I noted the federal government
14 through the N.R.C. granted a -- an exemption from a
15 -- from a longstanding federal regulation that the
16 scope of projects that decommissioning trust funds
17 could be used for. And the N.R.C. authorized the use
18 of the decommission trusts for spent fuel management
19 purposes. In the end, the spent fuel management
20 costs are a result of an action or actually an
21 inaction on the part of another federal agency, that
22 being the Department of Energy who has not taken
23 possession of the spent nuclear fuel at Indian Point
24 and at other sites around the country.

25 So that was -- that was a complicating

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2 factor and one that I think in the joint proposal
3 that the parties were able to have ... present to the
4 commission today to address that. To -- to address
5 consequences of that exemption.

6 CHAIRMAN HOWARD: Was it safe to say
7 that the other parties involved in this petition and
8 signed on were skeptical of the federal government's
9 assurances to date?

10 MR. SIPOS: I believe given the fact
11 that the Office of the Attorney General had pursued
12 litigation options as had the local governments and
13 Riverkeeper, I believe that would be -- that would
14 indicate that they had concerns about what the
15 nuclear regulatory staff and commission had done, you
16 know, over in the federal proceeding. Again, the
17 federal proceeding is separate from the proceeding
18 here but there was -- I believe there was concern on
19 the part of -- on the part of those -- those
20 petitioners -- those litigants.

21 CHAIRMAN HOWARD: Now could you
22 elaborate for myself and my other commissioners a --
23 the timeline for the removal of the spent nuclear
24 fuel from the Indian Point site?

25 MR. SIPOS: Yes, I -- I could -- I

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2 could speak to that. When -- in short it will likely
3 be years. And by way of background when the federal
4 government first authorized the operation of the
5 Indian Point sites and other sites around the country
6 such as Vermont Yankee, it -- it told the host
7 communities that the spent fuel would not remain on
8 site for a long period of time. In -- in actuality
9 -- in actuality it told the host communities that the
10 spent fuel would be removed promptly.

11 That has not occurred for a number of
12 reasons. Everyone at this meeting is aware and there
13 was -- there have been a number of projections, a
14 number of projections or I should say predictions as
15 to when the federal government would pick up the
16 waste. Some of that was, you know, spoken to over
17 the course of several years, several decades in the
18 so called waste confidence, quote unquote,
19 regulation. But those deadlines came and those
20 deadlines went, and the federal government still has
21 not been able to pick up the spent nuclear fuel.

22 It is likely that the fuel will remain
23 for -- for many years. I recall there was a proposal
24 back in, I believe, 2012 or 2013 that there might be
25 a -- an initiative by 2021 for a pilot interim

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2 storage facility. You know, we are now in 2021 and
3 that has not -- that has not occurred yet. So it
4 could be a long time. That's -- that's the whole --
5 that ties into the concept of the partial site
6 release that we talked about earlier. The waste --
7 the spent nuclear fuel is likely to remain in the
8 dry, concrete storage casks for -- for -- for several
9 years, for many years into the future.

10 CHAIRMAN HOWARD: So the
11 decommissioning plan as outlined by Holtec in their
12 application to the N.R.C. is completely decoupled
13 from any potential timeline on spent fuel removal off
14 the site?

15 MR. SIPOS: The Holtec is projecting
16 that D.O.E. will pick up fuel over the timeline of
17 the next 40 years. But that isn't a projection.
18 That is a prediction. You know, one could say -- one
19 would hope that past is not prologue. It could very
20 well be on this topic.

21 CHAIRMAN HOWARD: Okay. Thank you. I
22 just have a couple questions now probably for Jeff
23 Hogan.

24 Jeff, you know, can you describe the
25 current status of the decommissioning trust funds and

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2 are they now hedged and are put in more secure
3 instruments than they previously were -- were now
4 that in anticipation of active decommissioning work?

5 MR. HOGAN: Sure. The decommissioning
6 funds, as John mentioned, have over 2.4 billion
7 invested in them. And these trust funds typically
8 have a mix of investments, equity and debt. But as
9 you get closer and closer to the decommissioning time
10 the trustees of such funds and the investment
11 managers of such funds generally what we call de-risk
12 and slowly increase the amount of fixed income
13 securities that are being invested in and lowering
14 the amount of equity that's invested in because of --
15 to decrease the volatility in the fund. So that's
16 been going on.

17 But, you know, what's critical here is
18 that when the funds are transferred over to Holtec
19 the -- the funds will be transferred. There will be
20 the same trustees and investment managers involved,
21 and Holtec has stated to us a plan for overwhelming
22 amount of fixed income securities to be in the plans.
23 And -- and those fixed income securities will be
24 laddered. What that means is essentially that they
25 will have maturities that should match the expected

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2 spending of the plan. So we do believe that, you
3 know, it's a -- it's a really safe fund.

4 And that there's a two -- two reports
5 per year that we're going to receive. There's both
6 the N.R.C. report which comes out in -- it has to be
7 provided in March. But this order also includes an
8 extra report each August where we'll be told the
9 balances, a breakdown of what the investments are,
10 what withdrawals have occurred. And we'll have in-
11 person meetings with Holtec personnel to discuss the
12 plan.

13 So there's a gradual de-risking that's
14 been going on with these funds but we expect it to be
15 nearly complete if and when Holtec takes over in
16 terms of being -- I don't want to get into specifics
17 because we met in camera to review a lot of their
18 plans and their financial information. But we expect
19 an overwhelming amount to be fixed income securities.

20 CHAIRMAN HOWARD: To that review,
21 which I know you can speak to probably the form but
22 certainly not to substance that your review is
23 critical to the staff's determination that Holtec
24 would have financial -- financial wherewithal to
25 complete the decommissioning as outlined. Could you

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2 elaborate on how we came to that conclusion?

3 MR. HOGAN: Sure. So we did -- it --
4 it was indeed critical to this decision as John
5 mentioned that we -- I believe that there's financial
6 security with Holtec. So staff's initial review
7 began with some discovery requests looking for
8 financial information. We were provided some summary
9 financial metrics. The company was -- this isn't
10 unusual for -- especially for private companies to --
11 was reluctant to provide too much, you know, in
12 writing to us.

13 So what we ended up doing was in
14 February staff met with Holtec in person to review
15 the company's financial statements. They provided
16 financial statements audited 2017 through 2019, and
17 at the time in 2020 was unaudited but we reviewed
18 those as well. We reviewed the income statements,
19 balance sheets, cash flow statements, the company
20 notes. There were voluminous notes regarding all of
21 their -- of their financial statements.

22 We asked many questions of Holtec at
23 -- at this time from their financial personnel --
24 regarding the company's business practices, its
25 approach to financial issues and other related

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2 issues. And through all of that effort we concluded
3 that the -- that Holtec would be a -- you know, a
4 financially secure company in terms of dealing with
5 the trust fund.

6 CHAIRMAN HOWARD: And was this -- and
7 you make reference to a private company that Holtec
8 is not a private publicly held company meaning that
9 its financials are less transparent by nature than it
10 would be if it was a publicly-traded company?

11 MR. HOGAN: That is correct. It is
12 less transparent due to that nature.

13 CHAIRMAN HOWARD: Okay. Thank you
14 very much. That's all I have for my questions. I
15 have a few comments. When I joined this commission
16 in 2019 the then Chair Rhodes asked me what items of
17 interest I was most interested in. And -- and
18 without hesitation I told him that the issues
19 surrounding the sale of the Indian Point nuclear
20 facilities to Holtec and their plans for
21 decommissioning was first on my agenda. And to that
22 end, within the first six weeks of my tenure, I
23 visited the plant and heard from the Holtec and
24 Entergy staff directly on their plans.

25 The concept of decommissioning by a

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2 new owner and third party rapid decommissioning is --
3 is a new concept for here in New York. In fact, this
4 is only the third such transaction of this nature in
5 the entire country. I must admit I was quite
6 skeptical of the original proposals. The issues
7 surrounding the past corporate practices of both
8 Holtec and its partner S.C.N.-Lavalin (sic) were
9 troubling to say the least. And the N.R.C. I
10 believed did and continues to do an inadequate job on
11 this and many other issues surrounding the nuclear
12 industry.

13 My skepticism was not at all allayed
14 by the N.R.C. staff and the three commissioners who
15 imposed no conditions whatsoever on the transfer of
16 the federal licenses. And in fact, went out of their
17 way to squelch New York's request for a hearing so
18 these proposals could be vetted in public. And
19 additionally, a numerous number of granting of
20 exemptions from existing federal regulations.

21 Clearly at the time I believe there
22 could and had to be a better outcome. And to that
23 end, D.P.S. staff along with other parties pushed for
24 a far superior proposal that would adequately protect
25 New Yorkers in a variety of ways of potential flaws

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2 in the original proposal by Entergy and Holtec. I
3 believe that today's order allays my skepticism and
4 provides a continued and financial and operational
5 oversight by New York State that will be necessary to
6 guarantee the public interests are met.

7 The D.P.S. staff and other parties
8 negotiated financial assurances and reporting
9 conditions to address and augment the corporate
10 transfer of ownership interest. They also recognized
11 that the D.E.C. will oversee the actual site
12 restoration of the property, including financial
13 assuredness to that end. And after reviewing the
14 parties' joint proposals and financial assurance and
15 reporting conditions, I now feel comfortable in
16 supporting the joint proposal and its conditions.

17 However we should recognize that the
18 corporate transfer here is a first of its kind
19 initiative and going forward I will remain cautious
20 and vigilant about the implementation and the parties
21 compliance with today's order.

22 You know, I'd like to provide an
23 additional observation that's separate and apart from
24 the transaction the commission is doing today. Even
25 with a successful decommissioning and site

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2 restoration of the Indian Point plants, the failure
3 of the federal government's statutory and contractual
4 duty to accept the disposal of thousands of pounds of
5 spent nuclear fuel result in this highly radioactive
6 material remaining on site for many years.

7 In fact, I wrote Department of
8 Energy's Secretary Granholm a letter last month
9 asking her what New York could expect in terms of the
10 movement of the spent fuel from all of our nuclear
11 facilities. To date I have not received an answer.
12 I do believe the federal government has an obligation
13 to ... to this community and communities across the
14 nation. And as long as the spent fuel remains on
15 site, the communities need to be compensated for that
16 because as long as the nuclear material is on site,
17 the full value and hopes of what the site could be
18 will never be realized.

19 To that end I note that Senator
20 Gillibrand has introduced legislation that would aid
21 communities that will be host to these de facto long-
22 term, high-level nuclear waste facilities. And I
23 urge the congress to take action as quickly as
24 possible.

25 Finally, I just want to say what this

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2 item is and what it is not. It is not a referendum
3 on nuclear power its benefits or its liabilities.
4 Rather its sole focus is on a transfer of the
5 ownership of the Indian Point facility from Entergy
6 to Holtec and the issues surrounding the
7 decommissioning of this plant as described by a
8 potential new owner.

9 To that end I'd like to make one more
10 observation. In my four decades of public service, I
11 don't think I've ever seen better performance by a
12 group of people in support of public interest. I am
13 very proud of all of those involved and I would like
14 to take this opportunity to thank them personally.

15 From the Office of the Attorney
16 General, Bureau Chief Lisa Burianek, assisting
17 attorneys Joshua Tallent and Channing Wistar-Jones.
18 From the Department of Environmental Conservation
19 Mark Sanza, Andrew Guglieimi, and Commissioner Basil
20 Seggos.

21 From our D.P.S. staff Deputy Counsel
22 John Sipos, Utility Supervisor Bridget Frymire,
23 Financial Analyst Mike Augstell, Auditor Mike O'Neil,
24 Acting Director Jeff Hogan, and Assistant Counsel
25 Ryan Coyne. Congratulations. I'd also be remiss if

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2 I did not mention the decades long work of our
3 Executive Deputy Tom Congdon who has been shepherding
4 D.P.S. efforts for many years. And he will -- his
5 position keeps going on. And, again, Tom, thank you
6 for the work that you have done.

7 With that I would like to turn it over
8 to my fellow commissioners for any comments that they
9 may have. Commissioner Burman?

10 COMMISSIONER BURMAN: Thank you so
11 much. Can you hear me?

12 CHAIRMAN HOWARD: Yes, we can.

13 COMMISSIONER BURMAN: Great. So first
14 before going specifically into Indian Point, I do
15 want to take a moment to thank you, Interim Chair.
16 This special session was properly and timely noticed
17 not just on the date, time and place but what was on
18 the session. It is addressing items that could not
19 wait till the regular June session, and you could
20 have done this through a one commissioner order. But
21 instead you chose to have this special session giving
22 the entire commission body the opportunity to weigh
23 in and shape the decisions. I personally appreciate
24 your thoughtful leadership in ensuring this was done
25 to include the full commission body. So thank you.

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2 As to the Indian Point matter, we are
3 approving, as you know, the joint proposal of this
4 matter concerning transfer of Indian Point facility's
5 site, spent nuclear fuel and remedial trust funds.
6 As the order shows, we believe we have jurisdiction
7 over this proposed transaction and the order
8 reasonably sets forth that we are consistent with
9 prior orders, approving lightened regulation in
10 general and specific for Entergy affiliates.

11 The order reconfirms our continued
12 regulatory interest over funding for decommissioning
13 and site restoration. In fact, the order expressly
14 makes clear the importance of ensuring proper funding
15 for decommissioning, site restoration and emergency
16 response capabilities after a reactor ceases
17 operations. This order is limited to those transfer
18 issues before us that show the transfers in the
19 public interest and leaves aside those other issues
20 about closure of Indian Point and other perhaps
21 thornier energy-grid impacts.

22 Here we determine Holtec possesses the
23 financial strength and technical qualifications to
24 responsibly assume leader -- assume ownership of the
25 Indian Point site and decommissioning it. Rigorous

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2 public oversight mechanisms are appropriately built
3 into the order to properly monitor Holtec activities
4 going forward, and I will be voting in favor of this
5 item. Thank you.

6 CHAIRMAN HOWARD: Thank you.
7 Commissioner Alesi? Commissioner, I believe you're
8 still on mute.

9 COMMISSIONER ALESI: Hello. Hello.

10 CHAIRMAN HOWARD: Hello Commissioner.

11 COMMISSIONER ALESI: Okay. Thank you.
12 Just seems to be a muting pandemic. I -- I need to
13 start as -- as both you and everyone else has started
14 by thanking and noting the incredible amount of
15 coordination that has gone into this from so many
16 various parties that come -- come at this from
17 different angles. And how amazingly we have come to
18 this joint proposal. So kudos to all involved. John
19 Sipos, thank you for the good report. It's a
20 reflection of that coordinated effort.

21 I will be supporting this because I
22 think that it provides a significant financial
23 assurance and reporting. It secures appropriate
24 removal of spent fuel, expedites the overall
25 decommissioning and restoration of the site itself in

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2 a manner that is in the best interests of the general
3 public. So great job, an amazing job and one that
4 will serve us very well as we pursue other means of
5 providing energy and protecting the environment and
6 saving our own lives. Thank you.

7 CHAIRMAN HOWARD: Thank you,
8 Commissioner. Commissioner Edwards?

9 COMMISSIONER EDWARDS: Yes, thank you
10 very much, Chair Howard. I will tell you that, you
11 know, you asked a lot of great questions. I also
12 share your skepticism. I just have two requests.
13 One is financial and one is environmental. So I
14 think the staff for the joint proposal did a great
15 job of outlining to ensure that there were going to
16 be enough finances to complete the project. I would
17 like to just have some reporting back to us
18 especially in the last phases to ensure that there
19 still is enough money set aside to complete the last
20 pieces of the project, the decommissioning.

21 Second, while I understand that the
22 SEQRA was a negative declaration because this was a
23 financial transfer, I do want to ensure that we
24 receive the D.E.C. reports ongoing especially when
25 they make their determination and of all of the

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2 different things that have to be required so that we
3 can make sure that this is being done as safe as
4 possible. With that I thank you very much for all of
5 your in-depth questions.

6 CHAIRMAN HOWARD: Thank you,
7 Commissioner. Now we'll call for a vote on the item.
8 Commissioner Burman, how do you vote?

9 COMMISSIONER BURMAN: Yes.

10 CHAIRMAN HOWARD: Commissioner Alesi,
11 how do you vote?

12 COMMISSIONER ALESI: Yes.

13 CHAIRMAN HOWARD: Commissioner
14 Edwards, how do you vote?

15 COMMISSIONER EDWARDS: Yes.

16 CHAIRMAN HOWARD: Thank you. I also
17 will be voting for this item and it is approved as
18 presented. And thank you. Next we'll go to our
19 consent agenda.

20 Now do any of the commissioners wish
21 to comment or recuse themselves from voting on any
22 consent agenda items -- item in this regard?
23 Commissioner Burman?

24 COMMISSIONER BURMAN: Yes, thank you I
25 do wish to comment. When we look at rate cases we do

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2 have a broad mandate to ensure that consumers receive
3 safe and reliable utilities for this at reasonable
4 rates and with the least adverse effect upon the
5 environment. I have noted before that the commission
6 really stands at the crossroads of the public need
7 for virtually essential core services and the private
8 needs of the shareholder to ensure continued
9 investment in these services.

10 As such, we as the commission really
11 do occupy an incredibly important and unique role to
12 balance these interests in a way that ensures the
13 most advanced and reliable services while at the same
14 time ensuring they are effectively and efficiently
15 delivered. So the critical importance of the
16 commission's mission is to the economic wellbeing of
17 the state and citizens and that cannot be overstated.

18 In a rate case there is a formal
19 process that is used to determine the amounts to
20 charge customers for electricity, natural gas,
21 private water, et cetera provided by regulated
22 utilities. And rate cases are our primary instrument
23 of our regulation of these industries. We do allow
24 interested persons to intervene and become parties in
25 the utility company's rate case, and we do go through

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2 a process, a rate setting process where the utility
3 company submits a filing to demonstrate the need for
4 a rate increase.

5 And then included in that rate filing
6 are estimates of expenses operating expenses, looking
7 at labor, pension costs, materials, fuel,
8 depreciation costs, taxes, return on investor
9 provided capital, recognition of utility plant
10 additions and capital expenditures. And then we have
11 a rate setting timeline where the Department of
12 Public Service provides a staff team that's charged
13 with that responsibility to analyze their rate filing
14 and represent the public interest.

15 And administrative law judges can be
16 assigned to preside over the case, hear all the
17 evidence, provide recommendations to the P.S.C.
18 There are also testimony that's filed by staff, other
19 interested groups, rebuttal testimony, hearings with
20 cross examination of expert witnesses. There may be
21 an opportunity for negotiating a settlement on the
22 issues. There's initial reply briefs, initial and
23 reply briefs that are filed, and there are public
24 statement hearings that are held.

25 And then there can be additional

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2 briefs filed with the P.S.C. And then we, as a
3 commission, deliberate and hold an open public
4 meeting and decide a written order to resolve the
5 outstanding issues and matters necessary to determine
6 the utility company's revenue requirement and the
7 amount to charge customers.

8 In this case there were two A.L.J.s
9 assigned. Both were seasoned energy professionals.
10 There were procedural technical conferences held.
11 The A.L.J.s identified the procedural scheduled
12 ruling, testimony was done. Stakeholders -- in fact
13 some stakeholders who would normally be opposed in
14 other rate cases supported some of the aspects of the
15 company's proposal.

16 There was a settlement discussion,
17 prehearing conferences rulings on schedules, the
18 session and information sessions and public statement
19 hearings were held. And then there was also --
20 Corning presented a settlement offer. There was one
21 extension given on the suspension period which took
22 us through May 31st. And then because there was not
23 a further extension on the suspension period, we are
24 here today as a special session having to decide this
25 rate case.

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2 It is important to note that Corning
3 initially filed the rate case on February 27th, 2020.
4 At that time if we adopted it in its entirety the
5 filing would have raised, according to Corning's
6 filings, the average customer bills by 10.9% on a
7 levelized basis beginning on February 1st, 2021. The
8 time of their filing it had been over three and a
9 half years since the company had come in and filed a
10 rate case.

11 The three year rate case -- rate plan
12 proposed in the case and there were several factors
13 that necessitated, according to the company, the
14 increase. The two most important reasons for the
15 increase for the company was that there were
16 commission mandated initiatives as well as our new
17 decarbonization legislation, the C.L.C.P.A. resulting
18 in the company's determination, shorter plant
19 depreciation lives and that a higher revenue
20 requirement was needed to cover this increased
21 depreciation expense.

22 According to the company, these two
23 items compromised approximately 50% of the rate
24 increase request. The balance of their other request
25 was to recover increases of health insurance, wages

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2 and other inflationary costs. The company does --
3 did plan to continue to utilize local gas reduction
4 and other economic sources of gas to reduce the
5 impact of customers. And according to the company
6 from an environmental and safety perspective, the
7 company's continued investment in pipe replacement
8 and leak elimination has already reduced methane
9 emissions from its system by approximately 85%.

10 And Corning believed that the
11 anticipated investment of replacement facilities as
12 requested in their rate filing would nearly eliminate
13 leaks within three years. It's important for me to
14 explain why I am concurring in this matter today. I
15 have carefully weighed the issues. Looking very
16 carefully at what Corning summarized as the major
17 drivers behind the proposed rate increase that they
18 put forth, of the 6.25 million rate year increase,
19 the cost of mandated initiatives compromised about
20 4.5 million.

21 Of that total about 3.1 million was in
22 response to legislation enacted by the State of New
23 York including in particular the Climate Leadership
24 and Community Protection Act. And Corning really was
25 focused on, and this is the largest issue, that the

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2 accelerated depreciation was necessary because the
3 C.P. -- C.L.C.P.A. would shorten the effective life
4 of the company's existing and future investment in
5 infrastructure. So that about \$3.1 million increase
6 in revenue requirement from the proposed accelerate
7 -- accelerated depreciation was the largest single
8 issue in this case amounting to nearly half of the
9 proposed one year rate increase.

10 For me, there are things in here that
11 I think are very good. In this order we continue a
12 number of positive and negative incentive mechanisms.
13 We direct a number of measures to ensure that the
14 company continues its leak prone pipe replacement
15 program at its current level increases its effort to
16 reduce its leak backlog, minimizes evacuation damage
17 to its facilities, maintain its current targets for
18 fast response times in emergencies, fully complies
19 with pipeline safety regulations, increases its work
20 to repair minor leaks in a flood prone area, improves
21 coordination with and training of other emergency
22 responders, and establishes a pilot program for
23 residential methane detectors which we have seen
24 positive results in other utility areas.

25 We will also continue and improve the

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2 company's customer service metrics and programs to
3 minimize complaints, achieve good results on customer
4 satisfaction surveys and minimize missed appointments
5 on collectables and terminations. We also in this
6 order direct an improvement to the company's outreach
7 and education plan. Approve a proposal by staff
8 which was accepted by the company to eliminate fees
9 for credit and debit card payments. And also approve
10 a proposal by staff also accepted by the company to
11 file a plan for electronic deferred payment
12 agreements.

13 For me there were a couple of things
14 that gave me pause so I concur with reservation.
15 This is only a one year rate case. Our commission
16 has traditionally focused on multi-year rate cases.
17 I think it's important to understand the school of
18 thought with that. A multi-year rate case is really
19 something that studies have shown including from a
20 report that was done by the Lawrence Berkeley
21 National Laboratory that the more often a utility
22 takes a rate case to its utility regulator, the more
23 its customers and performance can be negatively
24 impacted.

25 The report that was issued talked

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2 about more frequent rate cases are also statistically
3 correlated with higher customer costs. And that it's
4 not simply that customers pay the cost of regulatory
5 proceedings, which can at times be substantial. But
6 more significantly according to the report is that
7 frequent rate cases require a utility to focus on the
8 near term and keep it from seeing opportunities and
9 innovation that can lead to bigger rewards over the
10 long term for customers.

11 The evolution of rate making in a
12 multi-year rate case and in the positive benefits of
13 that is not something new to us in New York. We
14 generally supported that. But it is something that
15 is now getting more national recognition of being an
16 important thing to look at especially as we get into
17 performance-based regulation. Why is there an issue
18 with the one year rate case versus a multi-year rate
19 case?

20 Well, from the utility's perspective,
21 there's really six benefits that utilities typically
22 look at. One, there's more predictable revenue for
23 utilities bolstering their financial health. Two,
24 spreading the rate increases over a longer period.
25 Three, more particular ... rates for customers.

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2 Four, stronger performance incentives. Five, timely
3 recovery of costs for new capital projects. And,
4 six, fewer general rate cases over time which helps
5 in reducing the resources that have to go into that.

6 From a public interest perspective,
7 the most positive aspect of multi-year rate cases --
8 rate plans really seems to derive from the idea that
9 a multi-year rate case is better able to help improve
10 utility performance, and that goes beyond just the
11 benefits of a utility's financial health. And
12 there's really, again, six things, six benefits that
13 seem to come through better from a multi-year rate
14 case.

15 One, it helps to enhance utility
16 performance by utilities able to earn its authorized
17 rate of return and the regulator can require the
18 utility to improve cost efficiency over the longer
19 term. Two, it facilitates cost recovery for capital
20 projects and can mitigate a utility's disincentive or
21 perceived disincentive to make socially-desirable
22 investments and has other benefits to customers like
23 spreading capital cost recovery over a longer period
24 of time than what is the traditional practice. It
25 can mitigate rate shock.

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2 Three, an automatic rate adjustment
3 mechanism not linked to a utility's actual cost
4 changes can motivate it to achieve higher cost
5 efficiency. Four, performance metrics to evaluate
6 and take appropriate action can provide utilities
7 with an added incentive to improve their performance
8 in non-cost functions. Five, it gives more price
9 flexibility and allows to giving the utilities the
10 ability to vary their price to different customers
11 based on economic and other circumstances.

12 And, six, it's seen as a fair share of
13 benefits from improved utility performance between
14 the utility and its customers can occur before the
15 next general rate case. Also a multi-year rate case
16 allows us to look at potential add-ons that can be
17 beneficial to customers like a stay out period, like
18 refunds to customers. Like more efficiency and carry
19 over and better utility price flexibility, et cetera.

20 Why do I point this out? Because it
21 is really, really important for us to understand that
22 multi-year rate cases versus one year rate cases does
23 matter. In this case, the one year rate case is
24 really trying to preserve the status quo because we
25 were not able to, even though throughout the order

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2 you will see that there were many synergies between
3 the company and the staff and stakeholders, you will
4 see that there were some issues, especially the
5 accelerated depreciation issue, that did not make us
6 able to come together in a joint proposal and
7 therefore we had to look at doing this in a one year
8 rate case.

9 A one year rate case essentially is
10 teeing up. Shortly thereafter there will likely be
11 an expectation that the -- the company will need to
12 come back in for a new one year rate case as well as
13 since we have out there in the public's sphere the
14 fact that there is a potential acquisition of the
15 company assets by Argo (phonetic spelling). That
16 would -- would likely be us having to decide the
17 Section 70 with the one year -- the new one year rate
18 case.

19 So for me I look at this as
20 understanding that we are preserving the status quo
21 but that this now will directly bleed into all of us
22 having to refocus on a very soon new one year rate
23 case as well as addressing the acquisition of the
24 company assets. So I pause because I do want to make
25 sure that the one year rate cases doesn't become the

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2 norm. And rather we're looking more holistically at
3 multi-year rate cases which traditionally for us in
4 New York as well as now seeing how the trend is going
5 nationally does seem to provide more benefits and --
6 and positive reasons for us to do that.

7 For me I also look at some of the
8 issues in here. We are very focused. This rate case
9 was brought before we truly had a picture of COVID so
10 we are laying out in here some COVID related
11 austerity measures. I do take pause of that knowing
12 that we have the generic COVID proceeding as well as
13 other proceedings where some of these issues may come
14 up. For me I understand that at times a generic
15 proceeding either takes place before or after a -- a
16 rate case and doesn't always line up perfectly.

17 Here doing it as a one year rate case
18 and recognizing the COVID austerity measures, we do
19 put in -- we do put in some wording in here that
20 recognizes that when the new one year rate case
21 happens, some of these austerity measures may not
22 need to be in there. I recognize that Corning did
23 bring up that we are in a better place now with COVID
24 as well as from an economic perspective. But we are
25 not out of the woods yet, and so I do think we tried

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2 to limit the austerity measures understanding it was
3 for this short time period as well as knowing that we
4 would have to address some of these issues later in
5 the COVID generic proceeding. I think that is -- was
6 helpful and I -- and I appreciated staff's diligence
7 in those issues.

8 The troubling aspect is something that
9 I think from my perspective initially I was very
10 concerned about but I came to feel comfortable again
11 in my concurrence on this but from a cautionary
12 perspective. Staff noted that some of the
13 adjustments that we dealt with, especially on the
14 austere -- austerity adjustments, were not
15 specifically addressed during the evidentiary hear --
16 hearings.

17 Staff felt and the draft order tees-up
18 that the commission can address these in the order
19 because they were based on underlying commission
20 policies. Corning was very concerned about that. I
21 very much think generally the best course of action,
22 especially when you are looking at a multi-year rate
23 case as well as looking at all the different issues,
24 is to make sure that our traditional way of
25 establishing a record in a rate case, frankly in any

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2 case, is done in -- in a -- in a way that can really
3 have a lot of accountability and the record can be
4 solid. So I would lean normally towards if it's not
5 in the traditional record and the evidentiary
6 hearing, it is potentially improper to now seek to
7 bring it in.

8 I -- that's part of the reason I
9 concur rather than fully voting for it. It's
10 cautionary to me that this language in this draft
11 order not be misinterpreted, that we can always bring
12 into a rate case things that were not in the record
13 and specifically addressed during the evidentiary
14 hearing and the necessary testimony, et cetera. It's
15 really, really important that folks understand this
16 is limited in our scope and also in the impact that
17 this might have in other rate cases. And not be, you
18 know, get a free pass to not make sure that your
19 record is -- is really strong. In fact it needs to
20 be.

21 The other issue that I think is
22 important at least from my perspective is noting that
23 we looked at the amortization issues and we -- in the
24 order it finds after staff suggests that we should
25 amortize all new deferrals over 10 years to reduce

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2 the revenue requirement. The order finds an
3 appropriate balance between the competing concerns
4 that were expressed over this issue, and that it can
5 be struck by amortizing all deferred regulatory
6 assets including both pension and other post-
7 employment benefit amounts over a 10 year period, and
8 amortizing all deferred regulatory liabilities other
9 than the O.P.E.B. deferral over a 3 year period.

10 The intention behind this is to reduce
11 the increase in the company's revenue requirement and
12 these measures along with the other austerity
13 measures that are in the order are intended to
14 mitigate the increase in the company's revenue
15 requirement and thereby would protect the interest of
16 rate payers in the context of a still ongoing COVID-
17 19 pandemic. So accordingly we essentially delay the
18 company's collection of its regulatory assets as a
19 means of mitigating the revenue requirement increase
20 and the rate case expenses will be amortized over 10
21 years, and that's consistent with the other deferral
22 assets.

23 I take pause on that. I am concerned
24 about that. I'm concerned about what that may mean
25 from a bond-rating perspective as well as the -- what

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2 it may cost and other potential harm on the ability
3 to attract capital and borrow capital at a -- a low
4 cost. So I do -- I will be looking carefully at that
5 and what may happen, however, I recognize that here
6 we're also looking at a straight one year rate case
7 and trying to -- to not overburden the ratepayers and
8 needing to look at how to defer that.

9 But in the new rate case and also with
10 the potential acquisition of a new owner, these
11 issues will be able to be fleshed out more and what
12 the new owner may do in terms of that it can be
13 accounted for in any potential acquisition of the
14 company assets in that. I think that the order tries
15 to strike a very thoughtful balance on the
16 acceleration on depreciation issues. I think it's
17 well worth everyone's reading of the detailed
18 language that's in the order. I will not read it now
19 for expediency purposes.

20 But I will point out that there --
21 there are real concerns here with what this may mean
22 for the implementation of the C.L.C.P.A. Now the
23 company argues that the C.L.C.P.A. mandates that --
24 that mandate the reduction of statewide greenhouse
25 gas emissions by 85% of 1990 levels by 2050. That

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2 that statute effectively shortens the effective life
3 of the company's existing and future investment in
4 and talks about the essential increase and cost
5 effect that will have.

6 The impact of that C.L.C.P.A. on the
7 cost when implemented is really important for us to
8 get a handle on. There are other proceedings not
9 only at the commission but elsewhere that are really
10 looking at this. We really do need to get under the
11 hood on all of those aspects. I did take to heart
12 U.I.U.'s position that the C.L.C.P.A. does not
13 explicitly state that all gas assets will be retired
14 by 2050 nor has it been determined what role if any
15 pipeline infrastructure will play in reaching the
16 C.L.C.P.A.'s goals.

17 I think that there is no disagreement
18 that the cost to do this will be potentially
19 significant. The implementation of the C.L.C.P.A. by
20 the commission will be difficult, complicated and
21 potentially in my mind extremely expensive. And we
22 will need to fully understand that as well as ensure
23 that we are properly managing the oversight of the
24 grid from a reliability perspective. And I -- I do
25 agree with U.I.U. that the C.L.C.P.A. is not a no gas

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2 statute though some may interpret it that way. And
3 it is for us to work through that but not in this one
4 year rate case.

5 Therefore, those issues were not
6 decided here and we backed out some of the requests
7 that dealt with that huge increase which allowed us
8 to come for this one -- to a one year rate case that
9 was not as a -- as harsh on the increase from the
10 rate payers.

11 With all of that, I do want to thank
12 the staff and the A.L.J.s who worked on these issues.
13 I also want to focus on the fact that going into a
14 new rate case, I think there are a lot of lessons
15 that can be learned across the board and also some
16 positive conversation as appropriate that can happen
17 with the company, staff and the other interested
18 parties in the rate case. Again, I do point out that
19 there was a lot of synergies and we're just -- we're
20 not -- folks were not able to get there in the
21 limited time fashion that dictated that we would have
22 to vote on this item without the extension of that
23 suspension period.

24 So with that I will be concurring. I
25 thank you for allowing me the opportunity to speak on

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2 this issue because I do -- it's very important to me.
3 So thank you.

4 CHAIRMAN HOWARD: Thank you,
5 Commissioner Burman. Commissioner Alesi?

6 COMMISSIONER ALESI: Thank you, Mr.
7 Chairman. I have no comments. I'll be supporting
8 it.

9 CHAIRMAN HOWARD: Thank you.
10 Commissioner Burman?

11 COMMISSIONER EDWARDS: Commissioner
12 Edwards here.

13 CHAIRMAN HOWARD: Or excuse me.
14 Commissioner Edwards. I apologize.

15 COMMISSIONER EDWARDS: That's -- that
16 okay. I have no comments. Thank you, Chair.

17 CHAIRMAN HOWARD: Great. With that
18 being said I will call for a vote. Commissioner
19 Burman, how do you vote?

20 COMMISSIONER BURMAN: I concur.

21 CHAIRMAN HOWARD: Thank you.
22 Commissioner Alesi?

23 COMMISSIONER ALESI: Yes.

24 CHAIRMAN HOWARD: Commissioner
25 Edwards? Commissioner Edwards?

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2 COMMISSIONER EDWARDS: Can you hear
3 me? Yes.

4 CHAIRMAN HOWARD: Thank you very much.
5 Thank you.

6 SECRETARY PHILLIPS: Chair, for good
7 order's sake, could you please state your vote?

8 CHAIRMAN HOWARD: Oh, excuse me. I'm
9 sorry. I will be -- I will be voting yes on the
10 item. Thank you. Again, I apologize for breaking
11 somewhat of a stride here but when one goes through a
12 list of people to acknowledge it's always hard
13 because you don't want to miss somebody. And
14 regarding our -- our Indian Point initiative, I also
15 want to thank our -- some other partner agencies.

16 At NYSERDA Janice Dean and Alyse
17 Peterson. And at DHSES -- Elisha Tomko. And, again,
18 thank you for your help.

19 Commissioner Phillips -- Secretary
20 Phillips, pardon me, are there any more items to come
21 before us today?

22 SECRETARY PHILLIPS: There are no more
23 items to come before you.

24 CHAIRMAN HOWARD: Thank you. With
25 that I will adjourn this meeting. Thank you very

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2 much.

3 (Off the record 2:25 p.m.)

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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 60, 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 21st day of May, 2021.

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BECKY FOSTER, Reporter

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