

1 7-14-2022 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5  
6 Thursday, July 14, 2022

7 10:31 a.m. until 1:52 p.m.

8 ESP, Building 3, 19th Floor Boardroom

9 Albany, New York

10

11 COMMISSIONERS:

12 RORY M. CHRISTIAN, Chair

13 DIANE X. BURMAN

14 TRACEY A. EDWARDS

15 JOHN B. MAGGIORE

16 DAVID J. VALESKY

17 JOHN B. HOWARD

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2 (The hearing commenced at 10:31 a.m.)

3 CHAIR CHRISTIAN: Good morning. I  
4 call this session of the Public Service Commission to  
5 order. Secretary Phillips, are there any changes to  
6 the final agenda?

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

9 CHAIR CHRISTIAN: Thank you. Before  
10 we begin, I would like to note that Commissioner  
11 Alesi will not be joining us today due to an excused  
12 absence. And with that, before moving to the agenda,  
13 I'm going to conduct a roll call of Commissioners.  
14 When I call your name, please confirm that you are  
15 present. Commissioner Diane Burman.

16 COMMISSIONER BURMAN: Present.

17 CHAIR CHRISTIAN: Commissioner Tracey  
18 Edwards.

19 COMMISSIONER EDWARDS: Present.

20 CHAIR CHRISTIAN: Commissioner John  
21 Howard.

22 COMMISSIONER HOWARD: Present.

23 CHAIR CHRISTIAN: Commissioner Dave  
24 Valesky.

25 COMMISSIONER VALESKY: Present.

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2 CHAIR CHRISTIAN: Commissioner John  
3 Maggiore.

4 COMMISSIONER MAGGIORE: Present.

5 CHAIR CHRISTIAN: Thank you, everyone.  
6 So now we'll move to the regular agenda. Our first  
7 item for discussion today will be Item 201. Case 22-  
8 M-0159, related to the implementation of a Public  
9 Service Law Section 73. Today it will be presented  
10 by Brandon Goodrich, Christian Bonvin, Mary Ann  
11 Sorrentino and Aric Rider are available for  
12 questions. Brandon, please begin.

13 MR. BRANDON: Good morning, Chair  
14 Christian, and Commissioners. Item 201, presents a  
15 draft order that would adopt the rules and  
16 definitions to implement a new section of the Public  
17 Service Law Section 73, which became effective on  
18 April 21st, 2022.

19 Section 73 requires utility companies  
20 to provide compensation to residential and small  
21 commercial customers, who experienced a "Widespread  
22 prolonged outage lasting at least 72 consecutive  
23 hours without having been resolved by the utility  
24 company."

25 Specifically, Section 73 requires

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2 utilities to provide residential customers a credit  
3 of 25 dollars on their utility account for each  
4 subsequent 24-hour period of service outage for  
5 widespread prolonged outages that lasts longer than  
6 72 consecutive hours.

7 Additionally, Section 73 provides  
8 specific reimbursement requirements for residential  
9 and small commercial customers. A utility must  
10 reimburse a residential customer for spoiled food due  
11 to a lack of refrigeration up to \$235 dollars if the  
12 customer provides an itemized list and up to \$540  
13 dollars if the customer provides proof of loss.

14 A utility must also reimburse a  
15 residential customer for prescription medication  
16 spoiled due to lack of refrigeration if the customer  
17 provides an itemized list and proof of loss.  
18 Finally, a utility must reimburse a small business  
19 customer up to 540 dollars for spoiled food due to  
20 lack of refrigeration, if the small business customer  
21 provides an itemized list and proof of loss.

22 P.S.L. Section 73 Subsection (2)  
23 states that any costs incurred by the utility company  
24 pursuant to Section 73 shall not be recoverable from  
25 ratepayers. And P.S.L. Section 73 Subsection (3),

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2 provides the utility -- provides utilities with the  
3 ability to petition the Commission for a waiver of  
4 the requirements of Section 73.

5 To support such a petition, the  
6 utility has the burden of demonstrating that granting  
7 the waiver is fair, reasonable, and in the public  
8 interest. The statute sets forth criteria the  
9 Commission must consider when determining whether to  
10 grant a waiver for a particular widespread prolonged  
11 outage.

12 These criteria include whether the  
13 company complied with it's submitted emergency  
14 response plan, whether any actions or omissions of  
15 the company contributed to the prolonging of the  
16 outage. The hardships endured by the company's  
17 customers due to the outage, the severity of the  
18 outage.

19 Conditions on the ground during the  
20 outage and the subsequent restoration, balancing of  
21 the equities, and any other criteria the Commission  
22 deems in the public interest to consider. The  
23 statute provides the residential and small commercial  
24 customers can submit their claims of reimbursement --  
25 claims for reimbursement and that the utility can

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2           submit it's petition for waiver not later than 14  
3           calendar days after the occurrence of widespread  
4           prolonged outage.

5                   The utility must reimburse the  
6           customer within 30 days of receipt of the claim that  
7           is the customer's itemized list and/or the proof of  
8           loss. However, if the utility petition for a waiver,  
9           the utility must provide reimbursement within the  
10          time period the Commission identifies in it's  
11          determination regarding that petition.

12                   Finally, P.S.L. Section 73(4),  
13          Subsection 4 provides for the commission to adopt the  
14          necessary rules for implementing the section, as well  
15          as the definitions of widespread prolonged outage,  
16          small business customer, and proof of loss. On April  
17          11th, 2022, staff issued a proposal addressing  
18          Section 73, including recommended definitions for the  
19          identified terms.

20                   The Public Utility Law Project or PULP  
21          and the joint utilities, filed comments responsive to  
22          the proposal on May 20th and reply comments  
23          responding to each other's initial comments on June  
24          13th. The draft order before you recommends adopting  
25          Staff's proposal with modifications to address the

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2 comments of PULP and the joint utilities.

3 Initially, staff noted the statute by  
4 it's language applies to electric and gas investors  
5 in an utility companies. P.S.L. Section 73  
6 specifically refers to utility companies and  
7 therefore does not apply to municipally owned  
8 utilities, nor does it apply to rural electrical  
9 cooperatives.

10 Based on the statutory language, the  
11 following utility companies would be required to  
12 compensate customers affected by widespread,  
13 prolonged outage. Central Hudson Gas and Electric,  
14 Consolidated Edison Company of New York, Orange and  
15 Rockland Utilities, National Fuel Gas Distribution,  
16 New York State Electric and Gas, Rochester Gas and  
17 Electric.

18 The three National Grid Utilities  
19 which are the Brooklyn Union Gas Company, KeySpan Gas  
20 East Corporation and Niagara Mohawk Power  
21 Corporation, Corning Natural Gas, Liberty Utilities,  
22 St. Lawrence Gas and Valley Energy.

23 The draft order defines a "Widespread"  
24 prolonged outage as one that affects at least 20,000  
25 electric customers or at least 1,500 gas customers in

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2 the impacted utility company's service territory.

3 There are a few very small investor-owned utilities  
4 that provide electric or gas service to localized  
5 populations in New York.

6 Because these utilities have fewer  
7 than either 20,000 electric customers or 1500 gas  
8 customers they would never have an outage that would  
9 meet the threshold to be considered widespread.  
10 Additionally, the draft order defines proof of loss  
11 as "Verifiable proof of perishable food and/or  
12 prescription medication spoilage."

13 Further, the draft order provides  
14 numerous ways that affected customers can demonstrate  
15 the loss and the reimbursement amounts. It  
16 identifies electric small commercial customer as a  
17 non-residential customer that receives service either  
18 under a non-billed -- non demand bill rate or under a  
19 demand bill rate provided that the highest metered  
20 demand was less than or equal to 40 kilowatts during  
21 the previous 12 months.

22 It defines a gas small business  
23 customer as a firm non-residential customer who has  
24 annual gas consumption that does not exceed 750  
25 dekatherms a year. The draft order finds that a



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2           utility must provide the \$25 dollar bill credit to  
3           residential customers for each full 24-hour period of  
4           average in excess of 72 hours.

5                   Thus, a utility must provide the \$25  
6           dollar credit to a residential customer who's out of  
7           service for at least 96 hours and a second \$25 dollar  
8           credit to the customer if the outage lasts for at  
9           least 120 hours and so on.

10                   With regard to the utilities ability  
11           to seek waiver of the requirements of P.S.L. Section  
12           73, the joint utilities commented that the Commission  
13           should find that it has the ability to waive P.S.L.  
14           Section 73 Subsection 2, the prohibition on the  
15           recovery of costs if compliance with the section from  
16           customers.

17                   In other words, joint utilities  
18           request that the Commission find that it will  
19           entertain requests for waivers that would allow a  
20           utility to recover the costs of compensation for a  
21           particular widespread prolong outage from it's  
22           ratepayers at large. In reply comments PULP opposed  
23           this request and argued that it contravenes the plain  
24           language of the statute.

25                   The draft order confirms that P.S.L.

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2 Section 73 Subsection 2, expressly precludes cost  
3 recovery from customers. Accordingly, the Commission  
4 cannot grant waivers to P.S.L. section 73 Subsection  
5 2 to allow utilities to recover the costs of  
6 compensation related to a particular widespread  
7 prolonged outage.

8 The joint utilities also requested the  
9 Commission allow the utilities to discontinue  
10 existing average credits included in their respective  
11 tariffs. The joint utilities argued that P.S.L.  
12 Section 73 supersedes these requirements, including  
13 for customers not eligible for compensation under  
14 P.S.L. Section 73.

15 The draft order explains that the  
16 utilities must continue their draft -- their tariff  
17 programs, but customers do not get cumulative  
18 compensation under multiple programs. If a  
19 widespread prolonged outage triggers P.S.L. Section  
20 73, then the customer is eligible for compensation  
21 under P.S.L. Section 73.

22 Receives only the compensation  
23 provided under this section. Finally, the draft  
24 order requires the utilities to submit tariff  
25 amendments consistent with the requirements of the

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2 order to be effective on July 25th, on a temporary  
3 basis. This concludes the presentation. My  
4 colleagues and I are available for any questions.

5 CHAIR CHRISTIAN: Thank you. I  
6 appreciate the presentation today. I want to thank  
7 you and your team for developing this order for the  
8 implementation of this new section of the P.S.L.,  
9 Public Service Law. You know, our goal here is to  
10 provide safe, affordable, reliable service, but in  
11 the event that does not happen it's good to know that  
12 these protections are in place to provide customers  
13 with some recompense.

14 So I want to thank you for developing  
15 this and putting this forward today. With that, I go  
16 to Commissioners for comments. Commissioner Burman.

17 COMMISSIONER BURMAN: Thank you so  
18 much. So I would like to explain why I have serious  
19 concerns. And to do it in a way that folks are open  
20 to hearing it, not just as that was she voting yes or  
21 is she voting no. But really in what makes sense and  
22 how we go forward from here.

23 I have struggled with this item. I am  
24 -- I recognize that when an event happens, what  
25 usually happens after an event is, there's an

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2 immediate cry for action. And that leads to either  
3 regulatory action or legislative action. And from  
4 that, it goes into implementation of whatever the  
5 actions are.

6 And so if you are continuously seeking  
7 to improve in how you are ready for the next event  
8 and preparing whatever action is done, needs to allow  
9 thoughtful implementation in a way that gives us the  
10 ability to continuously improve, prepare for the next  
11 event, address that event, and then do an assessment  
12 of what went right, what went wrong, and how can we  
13 move forward to continuously improve.

14 That's really the essence of what came  
15 about after Superstorm Sandy with the E.R.P.s. And  
16 the need for the Commission to itself approve the  
17 plans that were before us. Every year in December --  
18 December 15th, the companies file their plans, they  
19 get SAPA'd and then staff works with them in a  
20 collaborative way to help revise those plans to then  
21 get them before us to approve, or make modifications,  
22 or deny if necessary, and send back to -- to get re-  
23 done.

24 And it's a continuous improvement  
25 process. It's one that we understand that we need to

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2 be prepared. We need the utilities to be prepared.  
3 And the focus really is on how to do it in a way that  
4 is helpful to the customers and doesn't do it in a  
5 ineffective cost way, so that it is unsustainable.

6 So I look at the legislation that came  
7 out in -- as well-meaning, as done in a way to  
8 address the outcry from past event in customers  
9 wanting to be made whole in some way. This  
10 legislation was really a Part A and Part B. Part A  
11 was dealing with system reliability and storm  
12 hardening. And then Part B is what we have before us  
13 today.

14 Part A had chapter amendments because  
15 there was a recognition that the knee-jerk reaction  
16 to the legislative action wasn't necessarily going to  
17 be able to be done from a technical perspective, from  
18 an expertise perspective.

19 And therefore, there were chapter  
20 amendments that were made to help address that, so  
21 that when it gets to the regulatory stage for  
22 implementation, we can do it in a way that makes  
23 sense and is done with the goal of continuous  
24 improvement and working with the mind -- the focus of  
25 the goal of ensuring customers are not harmed.

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2 Part B, though it is clear to  
3 everyone, it was clear to everyone that there were  
4 technical issues and that it did not necessarily make  
5 sense. There were no chapter amendments to Part B.  
6 It just sat, and then it came for us to do that. The  
7 law passed in June of 2021. It was signed into law  
8 in December 2021.

9 There was time to work through any  
10 amendments necessary. There was time to only do the  
11 Part A section. Part A and Part B were two different  
12 bills that have merged together. In fact, Part B,  
13 which is before us today, came really as a drop down  
14 from another state as, hey, this looks like a good  
15 bill, let's put it here.

16 And perhaps again, well-meaning, the  
17 reality is, is that we know one size doesn't fit all  
18 from utility to utility. And one size doesn't fit  
19 all from state to state. And there are different  
20 mechanisms that we need to look at.

21 In fact, there was really, again,  
22 well-meaning but without the expertise or the  
23 knowledge of the existing processes that were in  
24 place that could be aligned better to ensure that we  
25 were doing this in a way that again, doesn't cause

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2 customer confusion, is actually helpful, and doesn't  
3 somehow make this process unsustainable.

4 When the law was signed in December of  
5 2021, there's an effective date, so that it would go  
6 into effect by operation of law on April 21, 2022.  
7 There are four key sections of the law. The first  
8 section deals with how much money the credit should  
9 be, deals with the prescription, and the food.

10 Section two of the law says, any costs  
11 incurred by utility company per to -- pursuant to the  
12 section shall not be recoverable by ratepayers. And  
13 then section three deals with the process waiver.  
14 And what the demonstration of that will be, with  
15 also, I think, an appropriate number of prongs  
16 including looking whether a waiver is acceptable or  
17 not, any other criteria that the Commission deems in  
18 the public interest to consider.

19 And then section four gives the  
20 authority for the Commission to promulgate  
21 procedures, standards, methodologies, and rules  
22 necessary to implement these provisions and also  
23 says, there are three definitions that we leave to  
24 you, the experts to figure out, which is widespread  
25 prolong outage, small business customer, and proof of

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2 loss.

3 When a law becomes effective, if it  
4 requires as in this case, regulations, unless it says  
5 in the law, discount, disregard, SAPA, then we still  
6 have to do the other things that are in the law  
7 outside of the specific section. We have to follow  
8 SAPA.

9 In fact, knowing that, April 11th of  
10 2022, we issued a notice, SAPA'd for Section 73. We  
11 are not unique. There are many laws on the book that  
12 become effective by X date. But the laws require  
13 regulations to implement, whether it's the Department  
14 of Health, whether it's Department of D.E.C.

15 Whether it's the D.P.S. and P.S.C. and  
16 in fact, we've even seen some cases, where there's an  
17 outcry. Where are the regulations? Where are the  
18 regulations? Where is the order? How are we going  
19 to do this? What's -- what's it going to look like,  
20 cannabis comes to mind to me.

21 So why do I raise this? Because it is  
22 important that we not try to backdate our orders, our  
23 regulations, our rules because of an effective date.  
24 The effective date says, this is when the law takes  
25 effect. However, in this case, especially, it



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2 recognizes expressly, sometimes it's implicit, in  
3 this case it's expressed.

4 You will need to do regulations for  
5 this. That means for us, we have time to work  
6 collaboratively in a way that makes sense for the  
7 customers. And for true effective implementation of  
8 what is being asked of us to do. We SAPA'd it. It  
9 does not mean that we do a, okay, while we're waiting  
10 here, keep in mind, this is what we're thinking  
11 about.

12 We're going to hold you to this during  
13 this time period. Yes, we recognize that during that  
14 time period is the gray area. We're not sure. There  
15 may be an event that happens. We may need to figure  
16 it out. But we still have to, from a due process  
17 perspective, and from an effective government  
18 regulatory process, we still have to do the due  
19 diligence of noticing it, getting comments, thinking  
20 through it.

21 And then when we do our final  
22 regulations, that is the date for the effective date  
23 of the implementation. And our order can even and  
24 within that decide what makes sense. Does it make  
25 sense to put it in place the minute the order is

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2 live? Does it make sense to put it in place after we  
3 look at a technical conference, after we do some  
4 other further things that may need to be done.

5 After perhaps changes need to happen  
6 administratively, we may need to make sure we have  
7 personnel who is staffed up to do certain things,  
8 whatever the issue is. That is our obligation for  
9 effective governmental regulatory processes and  
10 administration. So we take seriously when a law is  
11 done, in that if we are now supposed to be the ones  
12 to effectively implement it, we take seriously that.

13 But we cannot just blindly say, okay,  
14 it was -- the law was effective April 21st, 2022. So  
15 we got to hurry up, we got to hurry up, we got to  
16 hurry up. No, we need to be able to do it in a way  
17 that gives staff and others with the expertise time  
18 to think through this and to do it effectively.

19 So when this part of the order, as  
20 well as Item 377, seeks to bypass that SAPA process  
21 in a way that says during this time, this is what  
22 we're going to do because of the effective date of  
23 the law. I say that's wrong and illogical. And  
24 actually will harm customers, if we start to apply  
25 that to other things.

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2 Because we need to keep in mind, the  
3 very tenet of the process, the due process that's  
4 necessary and also, when we're looking at that,  
5 otherwise, we're going to have laws that become  
6 effective A.S.A.P., even though we know we need to  
7 set up the regulations.

8 And we're going to be doing the same  
9 thing, which is essentially backdating our  
10 regulations in a way that is not helpful to anyone.  
11 So I really feel very strongly about that. I feel  
12 this is a threshold issue, not just for this item,  
13 but for everything that we do going forward, and we  
14 need to recognize that.

15 But frankly, the legislature and the  
16 governor also needs to recognize that because we have  
17 a significant responsibility to the ratepayers to get  
18 it right and not to be focused on trying to hurry up  
19 because of some arbitrary effective date. So for  
20 that, I -- I strongly ask folks to think about that.

21 Again, well-meaning legislation, but  
22 to the extent that the effective date, and then  
23 there's some things in there are not helpful, we need  
24 to be cognizant of that. So now, let's look a little  
25 bit more what I call the chicken and egg scenario.

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2 So we have this, and we have a -- first of all,  
3 threshold issue where it ex -- the law expressly  
4 excludes P.S.E.G. Long Island.

5 Frankly, I think that's something that  
6 we need to address. I think that it's not for the  
7 Commission itself to address, but it is something to  
8 think about. My hunch is that the reason that that  
9 is done is because P.S.E. & G. Long Island has a  
10 contractual obligation with LIPA and therefore, we  
11 can't necessarily intrude upon that.

12 However, it is something that just  
13 sort of sits wrong overall in what that means. So I  
14 point that out, well-meaning but problematic. From  
15 my perspective, this also requires us to look at  
16 whether it is aligned with the E.R.P.s and also the  
17 tariffs. So there is a couple of things.

18 It's clear that the law didn't  
19 necessarily understand our existing E.R.P. process in  
20 the way that would be necessarily helpful. Again, I  
21 come back to, just like we did recently and just like  
22 we're doing today, a collaborative process on the  
23 E.R.P.s has been one that's helpful from a continuous  
24 improvement perspective.

25 The tariff language that's existing

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2 needs to be changed to align with the new law.

3 However, it is bulky and confusing. We try to, staff  
4 tries to thread a needle and does so in a way that is  
5 keeping in mind that the customers should not be  
6 harmed. However, it is going to cause confusion, it  
7 is going to cause a misalignment.

8 And ultimately, we're going to have to  
9 then rectify what this means as it relates to the  
10 E.R.P.s. And as it relates to the tariff language.  
11 And as it relates to let's figure out, is option A  
12 good, is option B good, is option C good. If we  
13 discuss -- if we figure this out for, and it's under  
14 Section 73, does that actually harm the customers.

15 Are we actually now penalizing them  
16 because they're going to be able to -- they're not  
17 going to be able to get as much as they -- as they  
18 might have wanted. So there's a whole host of issues  
19 that I see as all the different fact-based  
20 circumstances are going to come rushing forward to  
21 the Office of Consumer Services and to our emergency  
22 response team in trying to figure out what makes  
23 sense, what doesn't.

24 And a lot of confusion and frankly, a  
25 lot of headache, that could be done in a more

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2 thoughtful way if we were to focus on looking at the  
3 trigger, as the new amendments, the new emergency  
4 response plans are going to get filed in December,  
5 should be incorporating in some fashion, looking at  
6 how to do this more effectively, how to do this in a  
7 way that aligns with the existing processes.

8                   And through that have some ability to  
9 collaborate with staff and with especially O.C.S. and  
10 emergency response. And also looking at it in all  
11 the utilities working together and seeing what are  
12 some of the challenges, what are some of the customer  
13 issues that we're here hearing. What are you seeing  
14 and understand that.

15                   And we do this routinely. Many times  
16 when we look at different, next policy requirements  
17 that we're setting up, it doesn't always align with a  
18 rate case or the next thing we're doing. So we have  
19 to figure out what makes sense from an adjustment  
20 perspective. And then we have to look carefully,  
21 what again is -- is appropriate for the effective  
22 date of that implementation.

23                   I am concerned that some of the first-  
24 blush determinations that are being made as to when  
25 for example, the 14-day time period is triggered

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2 that, that at first blush may seem to make sense.

3 But in application, it is going to be challenging.

4 I'll give one example. I have an 86-year-old mother-  
5 in-law, was proud of that.

6 Being not of her age, not being -- and  
7 if she has -- she has no ability to get text  
8 messages. She has no ability to -- to really be up  
9 on getting notice, if her internet is out, it's her  
10 email that she has. So there's an outage. And let's  
11 say she's out for 5 days. She's coming to my house,  
12 which means I'm going down to Long Island, I'm  
13 getting her, and I'm bringing her up.

14 And I'm not bringing her back down the  
15 minute I get told that her outage is over. We may  
16 decide to have a longer visit. We may decide to, you  
17 know, her to stay until for maybe, you know, 10 days.  
18 All depends on how the visit is going. She is not  
19 going to have any notice that says, by the way, your  
20 14-day clock starts the date of your outage.

21 It's not until she gets back, until  
22 she gets someone to figure out how to reboot her  
23 internet. Until she gets through the mail that's  
24 there and all the other things she has to take care  
25 of. And yet, she's going to find out from her

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2 neighbor that, oh, you didn't submit in the 14 days,  
3 what do you mean, you waited 30 days?

4 You didn't submit? So to me, I think  
5 that we should be looking at this from what makes  
6 sense. The notice during a storm, during an outage  
7 should be about what to do to ensure that your outage  
8 is getting taken care of and that you are safe. And  
9 what is available to you during that, that's common.

10 To have us have to have focus on calls  
11 that come in to O.C.S., and to the utilities, and  
12 emails and whatever else might be out there about  
13 this 14-day notice. And -- and what they need to do  
14 to get a credit is going to be a problem in a major  
15 storm. It is going to have more communication issues  
16 because it is about post-storm stuff.

17 Not during the storm. During the  
18 storm should be about getting out the message on  
19 where you need to go, about dry ice, about all the  
20 things that we are focused on from an emergency  
21 response communication to customers. And in fact,  
22 most of the time the issues are about did you do  
23 effective communication during the storm.

24 So for me, we need to relook at that  
25 14-day trigger, because it is going to be a problem.



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2 And to me, we should be looking at it when we are  
3 looking at the December 15th filing, and what comes  
4 before us going to approve those plans, because that  
5 will help us make sure we are all aligned, and we are  
6 all working together in figuring that out.

7 The next thing is, it says in here in  
8 the law, that any costs incurred by utility company  
9 pursuant to this section shall not be recoverable  
10 from ratepayers. What does that mean? Does that  
11 mean that the administrative overhang that they need  
12 to ensure they have effective communication is not  
13 recoverable?

14 Does that mean that the computer  
15 system upgrades to flag all of this is not  
16 recoverable. Does that mean that the notice and  
17 communication that is done needs to now be figured  
18 out how much of the allocations for the notice you  
19 have during the storm, which also is about the notice  
20 of your potential recovery that you may be able to  
21 have.

22 Does that mean we need to figure out a  
23 percentage that then gets backed out? Does that mean  
24 if they voluntarily agree to pay, even if they don't  
25 think Section 73 applies that that -- that since it's

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2 being -- you're voluntarily agreeing to pay because  
3 of Section 73. Even though now, we would have an  
4 incentive to say Section 73 definitely applies  
5 because we don't want you to get cost recovery.

6 But you're going to have to fight us  
7 from a litigation perspective because you're saying  
8 rather than worrying about whether or not we have to  
9 pay, we're just going to pay. Does that mean if they  
10 have a customer who can't do a proof of loss, but in  
11 good faith, they believe the customer that that falls  
12 into, you didn't show your proof of loss, sorry, even  
13 though we believe you, we can't do this because we  
14 can't get cost recovery and so all these different  
15 mechanisms come into play.

16 And frankly, the cost versus the  
17 expenses versus what do we actually mean that comes  
18 into the section on two sections. It comes into the  
19 section on waivers, and it comes into the section on  
20 the Commission having the opportunity to set up  
21 regulations and orders and procedures that makes  
22 sense.

23 So when this draft order says that, no  
24 because subdivision 2 says no cost recovery, if you  
25 are seeking a waiver, that is seeking cost recovery,

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2 sorry, no cost recovery, doesn't make sense. This is  
3 what I'm going to say. I would rather have the  
4 company say, we are going to pay the customers  
5 because it's the right thing for us to do pursuant to  
6 the intent behind Section 73.

7 However, we're going to seek a waiver,  
8 because we all are in agreement, it's not the fault  
9 of the utility of the outage. It's not the -- and  
10 they're all the different A through G reasons that  
11 are there. So it makes sense for us.

12 Otherwise, we're setting up this  
13 mechanism where we're actually going against the  
14 intent of the legislation because we're saying, you  
15 know what, since you're not even going to have time,  
16 you're going to have to seek a waiver to not pay the  
17 customers. Even if you think that out of that there  
18 might be some percentage of customers that you  
19 definitely have to pay.

20 You're going to have to do then some  
21 analysis on what percentage of the customers come in  
22 and we now have to go through. Did they give the  
23 right proof? Did they not give the right proof? So  
24 in my mind, that whole thing is unworkable from the  
25 perspective of it's going to cause confusion.

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2 We're telling the utilities get out  
3 the notice to tell people, hey, you may get money.  
4 But if you don't think so come and get a waiver from  
5 us over here. And then we're going back and forth.  
6 It's not going to be workable.

7 So we're going to be having to figure  
8 out that customer confusion and then figuring out the  
9 tariffs and then having more personnel and again, all  
10 during this 14-day period. And then we have 45 days  
11 from that if they have a waiver. And it's outside of  
12 the normal processes for SAPA.

13 How do we do that? Where is the due  
14 process? So a company seeks a waiver, normally and  
15 we're supposed to make a determination within 45  
16 days. Normally, we would SAPA that. That means that  
17 the minute the petition comes in, if we want to keep  
18 within the SAPA criteria, we have to immediately SAPA  
19 it, immediately.

20 And then even if we're still working  
21 through and our staff is still working through what  
22 the root cause of the outages were, what the issues  
23 were, confirming how many. We're going to have to  
24 stop that, because we're going to have to be focused  
25 over here on making a quick decision without any

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2 information that -- without all the information that  
3 might be beneficial.

4 That doesn't make sense. I see it as  
5 us needing to do more collaborative thinking on what  
6 makes sense, with the goal of understanding the  
7 intent behind the law and then helping in the  
8 implementation to fix the issues that are going to  
9 trip us up.

10 And the only way we can do that -- and  
11 we have the blessing of the legislature because it  
12 expressly says you have the Commission, please do  
13 this through procedures, regulations, rules, whatever  
14 you need to do. So we have to look at the E.R.P.s.  
15 We have to look at the tariffs.

16 And we have to do all that in a way  
17 that is mindful of what makes sense and how does it  
18 align with our existing processes. In fact, the  
19 other question is, last time there was a storm, the  
20 Attorney General -- major storm, the Attorney  
21 General, used the general business law and other  
22 sections to seek monetary penalties from some of the  
23 companies.

24 This actually now may be requiring us  
25 to say what does that mean because we now have the

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2 jurisdiction. So we lead here. We need to think  
3 about that and what that means, so that we're not at  
4 dual purposes. My thinking is an alternative  
5 approach to how we are thinking in the draft order is  
6 a better way.

7 I would see this as, for me this is  
8 our best thinking right now. We recognize this draft  
9 order that may become final now, is not necessarily  
10 addressing all of the upcoming implementation  
11 challenges. It's also not addressing whether O.C.S.  
12 staff and our E.R.P. staff are going to be able to  
13 manage this while managing everything else.

14 And also, how is this going to work  
15 from all the different problems that I see. So I  
16 would say, this is our proposal, and we welcome folks  
17 coming and looking at it in a -- in a more formal  
18 way. We can do it through the E.R.P.s because  
19 there's a collaborative process and then it gets  
20 SAPA'd before it comes to us.

21 And in the meantime, we all recognize  
22 that there may be an event that happens that causes  
23 disruption, that we recognize that we're in this gray  
24 area. And we're all going to work together to figure  
25 out what makes sense, just like in item 377, where

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2 the utility, rightfully understood, this is a  
3 petition by the New York State Electric and Gas,  
4 asking the Commission for a declaratory ruling in the  
5 wake of the April, 2022 snowstorm in the company's  
6 service territory.

7 And they recognize wait, this may  
8 apply under Section 73, what are we going to do. I  
9 have concerns, even though I well -- I think it is --  
10 it is important. And I think and understand why  
11 NYSEG submitted the request because of the new P.S.L.  
12 Section 73 pro -- provisions and whether or not they  
13 were applicable or live during that snowstorm.

14 However, the threshold issue in my  
15 mind is, they weren't applicable because the  
16 regulations are getting adopted potentially today --  
17 excuse me, the order is getting adopted today. So we  
18 can't backdate our regulations. I have true policy  
19 concerns about the implication of this legislation.

20 And for me, the declaratory ruling,  
21 while it didn't -- doesn't technically legally need  
22 to get SAPA'd this declaratory ruling is saying, hey,  
23 what do you think about how this does or doesn't  
24 apply to Section 73 and tries to essentially track  
25 the provision of the statute to give us some -- a way

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2 forward.

3 The problem is this. We did this  
4 without SAPAing, without noticing, again, I can  
5 understand a declaratory ruling we don't need to.  
6 But not needing to doesn't necessarily mean we  
7 shouldn't. And we put it into a new case number.  
8 It's literally entwined with how we're interpreting  
9 Section 73 in the Item 201.

10 We didn't need a new case number. We  
11 just needed people to be aware that by the way,  
12 there's also this. And it could have gone right in  
13 there in the same case number or at least align so  
14 that people were notified in a way that we could get  
15 some clarity. I believe strongly that we are very  
16 focused both at the staff level and at the Commission  
17 in doing the right thing.

18 And I believe very strongly, that  
19 there are well-meaning folks who because of an event  
20 want to have a solution. We need the flexibility to  
21 be working together to do it in a way that does not  
22 cause more customer confusion and does not cause more  
23 unnecessary focus during a storm on things that are  
24 more post-storm.

25 So for me, I am not going to be voting



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2 for this because I feel very strongly that we need to  
3 be focused on what it means within our existing  
4 framework. And the legislation gives us that ability  
5 to do that.

6 And so I look at what's here, as even  
7 if this passes today, it should still be the tariff -  
8 - tariffs that are going to be redone, need to be  
9 SAPA'd. So we get some more thought on that. And it  
10 also needs to be looked at in what can we do with the  
11 current situation in the E.R.P.s that are to be filed  
12 December 15th.

13 And work out the kinks that are  
14 clearly going to be there in a way that helps us all  
15 move forward. And I look forward to that. So thank  
16 you.

17 CHAIR CHRISTIAN: Thank you,  
18 Commissioner Burman. Commissioner Edwards, do you  
19 have any comments?

20 COMMISSIONER EDWARDS: I just have a  
21 question. So this does not apply to the Long Island  
22 utilities. Is that correct?

23 MR. GOODRICH: Commissioner Edwards it  
24 applies to KEDLI gas utility, but it does not apply  
25 to LIPA because it is not an investor-owned utility.

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2 COMMISSIONER EDWARDS: Because it's  
3 not what, I didn't hear what you said?

4 MR. GOODRICH: It's not an investor-  
5 owned utility. It's not a utility company. It's --  
6 it's a authority. And -- and just to be clear,  
7 that's not --

8 COMMISSIONER EDWARDS: Okay.

9 MR. ROSENTHAL: -- our determination.  
10 That was a determination of the legislature.

11 COMMISSIONER EDWARDS: Right.  
12 Understood, understood. So are we going to be  
13 sharing this information with them as well, so that  
14 they can take a look at what the expectations are?

15 MR. GOODRICH: Yes.

16 COMMISSIONER EDWARDS: Yes?

17 MR. GOODRICH: Yes.

18 COMMISSIONER EDWARDS: Because they  
19 may decide to do, you know, they may decide on their  
20 own to put in place some of these items. That's  
21 really just what my question is. Not that they have  
22 to, but they may choose to, correct?

23 MR. GOODRICH: That will be up to the  
24 LIPA Board and -- and PSEG Long Island, yes.

25 COMMISSIONER EDWARDS: Okay. All

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2 right. Thank you. That was my question.

3 CHAIR CHRISTIAN: Thank you,  
4 Commissioner Edwards. Commissioner Howard?

5 COMMISSIONER HOWARD: Thank you. I  
6 just want to start. I do believe this was well  
7 intentioned. In my two decades in the State  
8 legislature, I helped draft a whole bunch of bills  
9 like this that we believe were well intentioned, all  
10 of which said the penalties would accrue specifically  
11 to shareholders.

12 Sometimes they were good bills,  
13 sometimes they weren't. But they were always well  
14 intentioned. I have a couple of questions. Can you  
15 outline me what the proof of loss procedure actually  
16 is and how would that work for an individual?

17 MR. RIDER: I can -- I can attempt  
18 that. From reading the draft order, the customer  
19 would have to provide an itemized list. And that  
20 itemized list could have pricing information or could  
21 go further and have receipts or -- you know, pictures  
22 and whatnot of -- of the losses to submit to the  
23 utility.

24 COMMISSIONER HOWARDS: So in other  
25 words, I'd have to say, I've got three pounds of

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2 hamburger, it cost me 6 dollars. I have some ice  
3 cream that was 3 dollars, I have whatever. Is that  
4 what you're talking about?

5 MR. RIDER: Yes.

6 MR. GOODRICH: And I think that what  
7 makes it the proof of loss is that they provide some  
8 proof of the -- some proof that they actually  
9 incurred those costs and -- and that it was spoiled  
10 so they could provide photographic evidence of the --  
11 the spoiled food.

12 They could also provide receipts  
13 showing that they did indeed actually, you know, what  
14 they actually paid for, something like that.

15 COMMISSIONER HOWARD: Would the  
16 individual claimant have to attest of the -- the  
17 validity of their claim, meaning, would they have to  
18 swear in that they weren't -- that they're -- what  
19 happens if I cheat. I take pictures of my neighbor's  
20 hamburger and not mine or whatever. So there's no  
21 real mechanism to police this is what I'm saying.

22 MR. ROSENTHAL: Can I just say this?  
23 There are -- this is Bob Rosenthal, are criminal code  
24 --.

25 COMMISSIONER HOWARD: No, I got it.

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2 MR. ROSENTHAL: You can make a false -  
3 - you cannot make a false filing.

4 COMMISSIONER HOWARD: Okay. I got it.

5 MR. ROSENTHAL: That will be a false  
6 filing and it would be a misdemeanor.

7 COMMISSIONER HOWARD: And it would be  
8 up to the utility to prove that that was incorrect?

9 MR. GOODRICH: I mean, they're the  
10 ones who are getting the filing, so yes.

11 COMMISSIONER HOWARD: So in other  
12 words, whether it's the utility would have to say,  
13 I'm not buying this one.

14 MR. RIDER: I mean, there is a process  
15 too for a meeting between the utility and the  
16 customer and utility could explain to the customer  
17 that the documentation is not up to par, request  
18 additional information and try to work through it  
19 with the customer to the extent there are concerns.

20 COMMISSIONER HOWARD: Okay. I believe  
21 this part of the thing is in a technical phrase  
22 clunky, at best in terms of that. The other question  
23 I have is and it's something that we experienced in  
24 New York. The flooding events that occurred  
25 particularly in Queens where many basements and

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2 houses were flooded, and utility service was not able  
3 to be restored because the customer either had not  
4 completed the repairs and/or the City of New York had  
5 not inspected those -- those dwellings.

6 Would that fall into this 72-hour  
7 period or not?

8 MR. GOODRICH: So the -- the statute  
9 provides for the utility to -- to provide  
10 compensation when the utility cannot provide service.  
11 If it is a problem with the -- the end user's on-site  
12 electric service or building in general or gas  
13 service, that gas equipment rather than that is not  
14 the utilities inability to provide service.

15 COMMISSIONER HOWARD: And it was our  
16 experience that some customers had to wait literally  
17 weeks for the City of New York, in particular, the  
18 building's department to certify the work that may  
19 have been done. And again, also those -- that work  
20 particularly in the City of New York needed to be  
21 done by a licensed plumbers and electricians.

22 So merely having somebody fix it was  
23 not going to be sufficient for the -- the building's  
24 department. Is that correct?

25 MR. ROSENTHAL: Commissioner, a lot of

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2 that happened during Superstorm Sandy, you and I were  
3 both here for that.

4 COMMISSIONER HOWARD: Right. But I'm  
5 just talking about the most recent ones so --

6 MR. ROSENTHAL: So no, I mean, the --  
7 the question of whether or not it's an outage is  
8 whether or not the utility is restoring power.

9 COMMISSIONER HOWARD: Right.

10 MR. ROSENTHAL: They restore power to  
11 the end user. That's their obligation, they meet  
12 that obligate -- that's what this law is about. It's  
13 not about what happens behind the meter.

14 COMMISSIONER HOWARD: Right. So some  
15 customers because of damage to their side of the  
16 meter may not going to be ultimately eligible for the  
17 prolong outage reimbursements.

18 MR. ROSENTHAL: Correct.

19 COMMISSIONER HOWARD: You know, I -- I  
20 just want to reference our Isaias order, which we all  
21 should be very proud of that this agency has the  
22 absolute ability, authority, and expertise to do in-  
23 depth analysis of any individual's E.R.P. response  
24 and whether it was wanting. I think this statute  
25 basically ignores that.

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2 Well, doesn't completely ignore, but  
3 again, tries to -- again, it's always related to the  
4 E.R.P. ultimately, but I do believe that that case,  
5 shows that there is a very effective mechanism today  
6 to get money back to customers for -- for utilities  
7 failing to provide adequate service during prolong  
8 storm outages.

9 It's also my assumption that every  
10 time there is a made -- a storm outage, a prudent  
11 utility will ask for a waiver right away. And so  
12 just describe to me during that 40-day period -- 45-  
13 day period will the customer get reimbursement or  
14 will -- will it have to wait until our judgment on  
15 whether or not that waiver was deserved?

16 MR. GOODRICH: So the statute provides  
17 that the utility -- if it doesn't seek a waiver and I  
18 understand where your question goes. But if it  
19 doesn't seek waiver this -- the statute requires that  
20 the utility must provide the reimbursement within 30  
21 days of receiving the claim from the utility.

22 So essentially outage 14 days and then  
23 30 days and utility must provide the -- the  
24 reimbursement. If the utility in that 14 days does  
25 seek a waiver, as you -- you suggest, the statute



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2 provides that the utility does not need to provide  
3 the compensation until the Commission makes -- issues  
4 an order on the petition for waiver.

5 And in that order, the Commission  
6 would state and here is the time period in which you  
7 would -- you have to provide compensation, if any.

8 COMMISSIONER HOWARD: So given my  
9 scenario, where every time there was an outage of --  
10 storm related outage, then I would assume that I'm  
11 asking for a waiver, that -- that just delays  
12 whatever reimbursement may come to that customer by  
13 several -- a couple of months?

14 MR. GOODRICH: That's a fair  
15 assumption, yes.

16 COMMISSIONER HOWARD: Again, I  
17 understand this. I will be supporting this.  
18 However, I think there is an awful lot wrong with it  
19 -- with the -- with the law, I think the law could  
20 have really benefited -- the legislature could have  
21 really benefited from the expertise from this agency,  
22 at a -- at very high level in terms of explaining  
23 current processes.

24 What -- how -- what we've done in past  
25 practices, particularly using the Isaias

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2 investigation, as a model. I think that we -- when  
3 we did the order for that we -- we claimed it to be  
4 the model going forward with a very aggressive and  
5 enhanced investigatory unit that is -- is being  
6 rebuilt as we speak.

7 And -- and -- and again, I think  
8 that's the appropriate way to go. Also my -- from my  
9 personal experiences pretty late from Sandy, Irene,  
10 Lee, and Isaias, these things are -- are beyond the  
11 scope of any corporation, as big as they are from  
12 Con-Ed to whoever to be able to either -- first of  
13 all, predict them, the length and severity.

14 And then as we just experienced last  
15 night, we had -- we had 15,000 outages that nobody  
16 was really expecting, particularly in Ulster County  
17 where over 10,000 people were out. And there will be  
18 people particularly in rural parts of Ulster County  
19 that will go way past 72 hours for restoral because  
20 they live in a very remote rural area and the E.R.P.  
21 calls for reconnecting the most people efficiently in  
22 the quickest period of time.

23 And that the folks at the end, it's  
24 just the nature of their geography. So I find that  
25 also, you know, troubling. And again, we can't

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2 change geography or nature. So again, I think this  
3 is very well intentioned and I do believe we also  
4 potentially could have some litigatory risks  
5 depending on how everybody -- every individual  
6 company might react to this order.

7 But again, there's an awful lot of  
8 process that doesn't -- just people power to do this,  
9 not only on our staff, which we do not -- would have  
10 the adequate resources to do an effective job of  
11 policing, you know, these -- this "proof of loss."  
12 And I don't believe the utilities would have that  
13 sort of resource currently.

14 But I would guess, in a future rate  
15 case, we would see utilities requesting for more  
16 lines to actually implement this. So you know, every  
17 one of these processes takes real human beings to do  
18 and those people need to get hired and paid and they  
19 will ultimately be put in rate base.

20 So again, I think this law would have  
21 been greatly benefited from more input from this  
22 agency. But with that, I probably will be supporting  
23 this.

24 MR. ROSENTHAL: If -- if you wouldn't  
25 mind letting me respond to a couple of things that I

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2 heard from Commissioners Burman and Howard, which is  
3 this question of the draft order doesn't address how  
4 the waiver process would allow you the E.R.P.s.  
5 That's something that, you know, to me goes to the  
6 definition of the waiver and I want to read it, so  
7 that you would understand how it would work.

8 And it's -- it's -- it's going to be  
9 ultimately up to you whether or not it aligns with  
10 the E.R.P., and I don't see any reason why it  
11 shouldn't. But that question is going to be up to  
12 you. And the definition, you know, under Section 73  
13 (3), it says that a utility company can request a  
14 waiver the requirements of the section in which,  
15 "burden of demonstrating that granting the waiver is  
16 fair, reasonable and in the public interest."

17 Well, those terms is fair, reasonable  
18 and in the public service are not defined in the  
19 regulations. You will have to define them and then  
20 you know, as applied situation. And I can easily see  
21 the term public interest being defined in a way that  
22 it ensures alignment with the E.R.P.s.

23 So I'm just putting that out there.  
24 There is a lot of other aspects of that. The reason  
25 I've raised those issues is there may actually be a

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2 challenge to the statute. And there are two types of  
3 challenges that could be raised. One is facial, one  
4 is as applied. It's very hard to meet a facial for -  
5 - the court has a tougher burden for -- for plaintiff  
6 to show to meet a facial challenge.

7 And that's because we don't know how  
8 the term is like fair, reasonable and in the public  
9 interest would be applied by the commission moving  
10 forward. It could apply those terms in a way that a  
11 court would find. You know, what that meets the  
12 constitutional requirements of due process as an  
13 example. And -- and I just wanted to raise that  
14 distinction for you.

15 COMMISSIONER HOWARD: Well, I guess  
16 the proof will be when we get one. But again, just  
17 to close it. It's my assumption that we will get  
18 them every time. And we should be prepared to have a  
19 whole bunch of process here. Thank you.

20 COMMISSIONER BURMAN: So Chair, I'd  
21 like to respond since Counsel was including me in his  
22 response. So I have a couple of -- of thoughts.  
23 First of all, thank you for your -- sharing your  
24 thoughts. The reality is, is that I disagree where  
25 we are saying that the waiver cannot include cost

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2 recovery.

3 I think that goes against actually the  
4 intent of the statute. First of all, it's Section 1,  
5 Section 2, Section 3, Section 4. When you get to the  
6 Section 4 -- excuse me. When you get to the section  
7 on the waiver, it's right after the section that  
8 said, no cost recovery. But the reality is, is the  
9 first subdivision talked about giving money to  
10 customers.

11 So the only waiver then would come  
12 under the draft order is, if the company does not  
13 want to pay the existing customers who have their  
14 request for the credits and reimbursement. So my  
15 issue is is that we are actually setting up a system  
16 where we are telling utilities, fight on the payment  
17 that is there under the intent of the statute was  
18 just to try to get money to the customers.

19 In a sense, the waiver A through G and  
20 yes, I read it very carefully, it's the kitchen sink.  
21 G is the kitchen sink and any other criteria that the  
22 Commission has. We should not be waiting until a  
23 petition that comes to us when we know we're going to  
24 get issues.

25 And we should not be waiting where

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2 then we have a whole host of people that may be  
3 saying, how dare you deny -- how dare you approve a  
4 waiver that is telling us that the utility, even  
5 though they gave us notice that we may get money is  
6 not now having to pay you.

7 My issue is it would actually be  
8 fairer to say the waiver may apply to cost recovery.  
9 Because the reality is is they're saying, look, we  
10 don't necessarily agree here. We have some issues.  
11 We are voluntarily going to pay. We are not going to  
12 fight the folks who didn't show us enough proof  
13 because we perhaps believe that they just couldn't  
14 show us that proof.

15 And so we're going to pay, but we'd  
16 like some cost recovery because as you see from A  
17 through G, all of these reasons apply on why we  
18 should not be forced to pay, but we're paying, and  
19 we're just actually asking.

20 And frankly, it gets to a lot of what  
21 we do with how does that then translate into -- into  
22 the issues there that may or may not be there in  
23 terms of how the company is supposed to move forward  
24 on these issues that are going to take us whole  
25 sidestep in having to setup a whole unit to deal with

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2 this within O.C.S., within E.R., within emergency  
3 response, and within our enforcement.

4 And I -- I just say, we're just -- we  
5 should be open. If you're saying, yes, well, you're  
6 going to figure it out when we get there, we should  
7 be open to saying, you know, what it may -- it may  
8 require that. And by it's -- on its face, the  
9 statute doesn't say in the section, oh no, this  
10 section that says, waiver is applicable, but we  
11 didn't mean subdivision two which says cost recovery.

12 It's just -- it's -- it's -- it's  
13 illogical.

14 CHAIR CHRISTIAN: Thank you. With  
15 that, we'll move on to Commissioner Valesky. Do you  
16 have any comments on this one?

17 COMMISSIONER VALESKY: Thank you, Mr.  
18 Chair. Just a few. And -- and -- and it certainly --  
19 -- my first thought is that there was perhaps a lot  
20 more here that an initial reading of the draft order  
21 would -- would have indicated.

22 That -- that having been said, I'm  
23 also reminded from two of my three colleagues who  
24 have already spoken of the wealth of legislative  
25 experience that happens to sit on this Commission at



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2 this particular point in time, and much of what has  
3 been, and I really appreciate Commissioner Burman  
4 taking us through the passage of -- of -- of the  
5 statute itself, and -- and -- and the process by  
6 which it comes to us for -- for regulatory action.

7 I am left with the -- the -- the sense  
8 that perhaps -- perhaps, again, not something for us  
9 to decide today, but perhaps much of the concerns, or  
10 many of the concerns that have been raised previously  
11 could have and perhaps should have been addressed  
12 through the chapter amendment process.

13 Commissioner I think you indicated the  
14 law was signed in December. We know that it takes  
15 effect on April 1st. But in a sense, that's neither  
16 here nor there. There were no chapter amendments to  
17 the statute.

18 The statute is now in effect, and the  
19 statute -- unless and until a future legislature and  
20 a future governor decides to change the statute, the  
21 statute is what it is to borrow -- to borrow a phrase  
22 and -- and we as a Commission and you all as an  
23 agency are charged with implementing the statute.

24 I just have two -- two questions,  
25 Brandon, and thank you for your presentation and

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2           thank you all for your work on this issue. Two  
3           questions. The first actually, I want to follow up  
4           on Commissioner Edwards's question, actually. And it  
5           goes back to, again I understand the definition of  
6           utility companies and -- and -- and -- and the -- the  
7           definitional aspect of who this law applies to and  
8           who it doesn't apply to.

9                   Commissioner Edwards indicated Long  
10          Island or much of Long Island that is served by PSEG  
11          Long Island and overseen by LIPA is not included  
12          here. Also not included here are rural electric  
13          cooperatives, and municipally owned utilities,  
14          correct?

15                   So the -- the follow-up question,  
16          Brandon to Commissioner Edwards question would be.  
17          Will all of those suppliers of energy be notified of  
18          the statute and could any or all of those entities  
19          voluntarily apply some or all of what is in the  
20          statute, even though the statute does not apply to  
21          them?

22                   MR. GOODRICH: So we can notify all  
23          the -- all the other utilities that are investor  
24          owned utilities, yes. And yes, they could choose to  
25          implement similar programs. I do note that for the -

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2 - we've -- we've -- we've talked a bit about the --  
3 the cost recovery aspect for a municipal utility and  
4 even the rural cooperatives, I'm -- I'm not exactly  
5 sure how broadly geographically dispersed their  
6 particular rural cooperative might be.

7 But you would -- you could end up with  
8 a situation where because there are -- there are no  
9 shareholders. Ultimately, what you're doing is  
10 having the -- the utility give a credit, and then the  
11 -- the customers paying back in -- in rates to the  
12 utility for the credit that -- that the customers  
13 received.

14 And if it's -- you know, if it's a  
15 village's electric company, if it's going to be  
16 widespread, I think we could all imagine a scenario  
17 where it's essentially every customer is out, every  
18 customer gets a credit, every customer has to pay  
19 higher rates to pay for the credit they receive.

20 COMMISSIONER VALESKY: Well -- thank  
21 you. And I understand your point. I think the --  
22 the law again, as it's written, which is the law will  
23 potentially lead to a great deal of confusion. I'm  
24 far more familiar with storms in Upstate New York,  
25 but whether it'd be on Long Island, where if you're a

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2 National Grid, Long Island customer where this law  
3 does apply.

4 You are going to have an expectation  
5 of certain financial relief which is not going to be  
6 the case for -- in the case of PSEG, Long Island.  
7 Upstate, New York, where I'm familiar with, Rural  
8 Electric Co-ops exist in relatively small pockets  
9 within National Grid, Upstate territory, or NYSEG  
10 Upstate.

11 The same level of confusion is going  
12 to exist. Storms are not specific to utilities or  
13 municipalities or rural electric co-op. So I think  
14 from a feedback perspective, for us as an agency,  
15 there's going to be a level of -- potential level of  
16 confusion based on who was eligible for what when the  
17 next such storm comes along and when this -- this law  
18 is triggered.

19 So I just wanted to -- to -- to put  
20 that out there. The other question that I have  
21 specific does also relate to some of the dates here  
22 and it goes back to a little bit of what Commissioner  
23 Burman was saying. So the statute took effect on  
24 April 21st. The implementation of the statute  
25 theoretically happens when those of us here take a

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2 vote, hopefully, momentarily.

3 Were there any events between April  
4 21st and this moment in time? I think I know the  
5 answer, but I wanted to just hear it. I want clarity  
6 because like Commissioner Burman referred to a post  
7 April 19th snowstorm which in and of itself is a bit  
8 odd, but that's -- that's where we are, I suppose.

9 Were there any events that occurred in  
10 this after the law took effect and before these  
11 regulations are adopted? And if so, how is that  
12 being handled?

13 MR. GOODRICH: So there was one event  
14 in April that -- that was talked about that occurred  
15 in NYSEG service territory. And that is the separate  
16 item. Forgive me, I don't recall the number, I think  
17 it's --

18 COMMISSIONER VALESKY: 377.

19 COMMISSIONER BURMAN: 377.

20 MR. GOODRICH: 377, thank you. That -  
21 - that was the subject of a separate petition for  
22 declaratory ruling, and that's being addressed in  
23 that item.

24 COMMISSIONER VALESKY: Can -- can  
25 someone just -- I -- I just don't have that in front

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2 of me. Can someone -- can someone just address what  
3 that -- how that item will address that issue? I  
4 know that you weren't prepared necessarily to address  
5 that item, but --

6 MR. ROSENTHAL: Sure. I can address  
7 that. So the storm occurred -- my memory is from the  
8 order of three days before the effective date. And  
9 so the -- the petition for declaratory ruling asked  
10 for a determination that the -- the law not apply to  
11 the storm. The -- the ruling finds that the law does  
12 apply to the storm because the outages lasted into  
13 the effective date.

14 And the -- it's not the question in  
15 Section 73 isn't when did the storm occur, it's when  
16 did the outages occur? And it doesn't have to be  
17 storm related outages. It can be non-storm related  
18 outages. However, the -- the ruling is is that there  
19 -- there were no -- the outages did not go beyond 72  
20 hours beyond the effective date and therefore, you  
21 know, subdivision 1, which applies to the  
22 reimbursement provisions don't -- weren't implicated.

23 COMMISSIONER VALESKY: Okay. Okay.  
24 Thank you for that explanation.

25 MR. GOODRICH: I would just add that

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2 NYSEG because some customers did experience an outage  
3 that lasted longer than 72 hours though it started  
4 before the effective date. NYSEG is providing a --  
5 the \$25 dollar credit to those customers who had an  
6 outage extending longer than 72 hours, even though no  
7 customers had an outage that extended 72 hours from  
8 the effective date of the statute.

9 COMMISSIONER VALESKY: Okay. That's  
10 it, Mr. Chairman. Thank you.

11 CHAIR CHRISTIAN: Thank you,  
12 Commissioner. Commissioner Maggiore?

13 COMMISSIONER MAGGIORE: Thank you,  
14 Chair. I don't have any questions, but I am going to  
15 explain my vote. I intend to vote yes. The way I  
16 see this -- this -- this item is consistent with the  
17 law. And therefore, I'm going to vote yes. I don't  
18 think that the P.S.C. has the ability to change the  
19 law.

20 And the challenges with implementing  
21 it are incumbent upon the language of the law and not  
22 the order before us. So in -- in my view, our -- I  
23 think that this proposal merits approval. So I'm  
24 going to vote yes.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. So with that, I will take a call for  
3 vote.

4 SECRETARY PHILLIPS: Chair, just  
5 before you go do the call, I just want to note that  
6 there was some discussion that included references to  
7 Item 377, but that this vote is solely on Item 201.

8 CHAIR CHRISTIAN: Correct. Thank you  
9 for that. Okay. So the vote for this is for Item  
10 201 alone. My vote is in favor of adoption of the  
11 language as discussed for P.S.L. Section 73.  
12 Commissioner Burman, how do you vote?

13 COMMISSIONER BURMAN: I vote no,  
14 consistent with what I said at the session and my  
15 alternative approach, I think is the better  
16 implementation strategy. Thank you.

17 CHAIR CHRISTIAN: Commissioner  
18 Edwards?

19 COMMISSIONER EDWARDS: I vote yes.

20 CHAIR CHRISTIAN: Commissioner Howard?

21 COMMISSIONER HOWARD: Yeah, I'm -- I'm  
22 going to be voting yes, but I have great trepidation  
23 about how this ultimately will be dealt with in the  
24 future.

25 CHAIR CHRISTIAN: Commissioner



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2 Valesky?

3 COMMISSIONER VALESKY: I vote yes.

4 CHAIR CHRISTIAN: Commissioner

5 Maggiore?

6 COMMISSIONER MAGGIORE: I vote yes.

7 CHAIR CHRISTIAN: Okay. Thank you,  
8 everyone. The item is approved, and the  
9 recommendation's adopted. Okay. Our second item for  
10 today is Item 301, case 18-E-0138 related to the  
11 utilities' electric vehicle managed charging  
12 programs. This will be presented today by Zeryai  
13 Hagos, Aric Rider, Lindsay Weiner, Mary Ann  
14 Sorrentino, and Stephanie McDermott are available for  
15 questions.

16 With that, Zeryai, please begin when  
17 you're ready.

18 MR. HAGOS: Good morning, Chair  
19 Christian, and Commissioners. Today I will be  
20 presenting Item 301 in case 18-E-0138 proceeding on  
21 the motion of the Commission regarding electric  
22 vehicle supply equipment and infrastructure.

23 The draft order before you adopts the  
24 managed charging filings made by the utilities on  
25 December of 2020. In April of 2018, the Commission

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2 initiated this proceeding to remove obstacles to  
3 electric vehicle adoption in New York State and  
4 directed the Department of Public Service staff to  
5 expeditiously issue a white paper addressing any  
6 issues pertaining to the light duty sector.

7 In July of 2019, the historic Climate  
8 Leadership and Community Protection Act, which I'll  
9 refer to as the Climate Act was signed into law  
10 codifying the nation-leading clean energy and climate  
11 goals, which include an economy wide 40 percent  
12 reduction in greenhouse gas emissions by 2030, and  
13 net zero greenhouse gas emissions by 2050.

14 As the largest source of New York's  
15 greenhouse gas emissions, the transportation sector  
16 will need to undergo a dramatic transformation  
17 towards zero emissions vehicles such as battery,  
18 electric, and plug-in vehicles.

19 Analysis presented to the New York  
20 State Climate Action Council on October 1st of 2021,  
21 included estimates that the greenhouse gas reduction  
22 goals of the Climate Act will result in between 1.8  
23 and 3.4 million zero emissions vehicles on the road  
24 by 2030.

25 The July 16th, 2020 E.V. Make-Ready

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2           order which authorized up to 701 million dollars in  
3           incentive programs for the deployment of E.V.  
4           charging infrastructure along with several other  
5           programs also directed the utilities to submit  
6           filings proposing managed charging programs that will  
7           provide mass market customers with an alternative to  
8           the currently available E.V. time-of-use rates.

9                   The Commission noted that the E.V.  
10           time-of-use rates had limited enrollment levels and  
11           more needed to be done to encourage off-peak  
12           charging, which includes programs like the managed  
13           charging proposal presented in this order, draft  
14           order today included.

15                   The December 2020 utility filings were  
16           submitted by each of the investor-owned electric  
17           utilities proposing a variety of managed charging  
18           program designs. Department of Public Service staff  
19           convened a virtual tech -- technical conference on  
20           March 17th of 2021 to gather stakeholder feedback and  
21           discussion regarding the utility proposals.

22                   In response to feedback during the  
23           technical conference, National Grid, NYSEG, and  
24           Rochester Gas and Electric filed revisions to their  
25           filings in June of 2021. And National Grid

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2 subsequently filed an additional revision in May of  
3 2022. In total, 14 sets of writ -- written comments  
4 were received, representing 17 entities.

5 I'm now going to provide a brief  
6 overview of managed charging including program  
7 designs, enabling technologies, and benefits of such  
8 programs. Managed charging approaches are generally  
9 grouped into two categories, passive programs and  
10 active programs.

11 Passive programs, which are also --  
12 also referred to as behavioral programs require  
13 drivers to schedule charging times or manually  
14 respond to communications from the utility. Examples  
15 of passive programs include time-of-use rates or  
16 credits that mimic time-of-use rates, or demand  
17 response programs.

18 Active programs, which can also be  
19 referred to as direct load control, generally follow  
20 the same price or grid signals as passive programs,  
21 but the utility or an aggregator control the charging  
22 times directly.

23 With active programs, drivers can set  
24 a few preferences about their charging needs and the  
25 utility or aggregator will schedule the charging

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2 times around those preferences, choosing the optimal  
3 time for the grid. This could include charging to  
4 absorb excess renewables available to the system or  
5 to avoid the system peak.

6 Utilities must establish communication  
7 with the E.V. or charging station in order to  
8 implement managed charging programs. The  
9 communication is necessary to ingest the measured  
10 E.V. charging that takes place during the eligible  
11 times defined by the managed charging program, or to  
12 actively control when the charging occurs.

13 The visibility and/or control are  
14 generally established through certain advanced  
15 utility meters, charging stations that have network  
16 connectivity, and internal meters through the onboard  
17 telematics system of the vehicles themselves or  
18 devices that are attached to the vehicle, or charging  
19 stations that are capable of transmitting the  
20 charging information back to the utility.

21 The benefit cost analysis study or  
22 B.C.A. that is referenced in the E.V. Make-Ready  
23 order estimated the societal benefits of  
24 transportation electrification through 2030 to be  
25 approximately 2.8 billion dollars.

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2 The B.C.A. also included a behavioral  
3 modification scenario that assumed widespread  
4 adoption of managed charging and the societal  
5 benefits under the behavioral modification scenario  
6 are as high as 5.1 billion dollars.

7 Looking beyond 2030, staff worked with  
8 NYSERDA, the joint utilities, and consultants to  
9 produce a high-level estimate of the avoided  
10 distribution system upgrades that could be achieved  
11 through managed charging through 2050 and across the  
12 investor-owned utilities.

13 These are of course, the  
14 infrastructure investments that directly impact  
15 delivery rates and the avoided distribution system  
16 upgrade costs driven by managed charging were  
17 estimated to be as high as 13.4 billion dollars by  
18 2050.

19 The sizeable benefits associated with  
20 well-run managed charging programs coupled with  
21 limited enrollments in the existing whole home time-  
22 of-use rates are the primary justification for the  
23 investment in these programs today.

24 All of the 14 commenters either  
25 supported the utility proposals, or provided

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2 recommendations for various program design  
3 modifications, technical standard -- technical  
4 standards, excuse me, and administrative changes.

5 One clear area of feedback that is not  
6 well addressed in the utility proposals is that many  
7 commenters expressed support for non-residential,  
8 commercial, or medium and heavy-duty managed charging  
9 programs and requested that such programs be created  
10 alongside the residential programs that are before  
11 the Commission today.

12 The initial E.V. Make-Ready order,  
13 however, directed the utilities to propose mass  
14 market focused managed charging programs. And  
15 furthermore, the justification was to provide an  
16 alternative for the whole home time-of-use rates that  
17 are currently available, which apply to the  
18 residential service classes.

19 Furthermore, staff notes that there is  
20 an active proceeding that is developing a commercial  
21 E.V. charging tariff or cost relief program for  
22 commercial E.V. charging applications in case number  
23 22-E-0236. Managed charging is a form of operating  
24 cost relief programs, and the rate design proceeding  
25 is the appropriate venue to consider such programs.

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2 Staff worked closely with the  
3 utilities to refine the proposed program designs and  
4 respond to stakeholder feedback. The utilities  
5 proposed a variety of different program designs in  
6 their filings which includes 5 passive managed  
7 charging programs and 4 active managed charging  
8 programs.

9 Central Hudson, Consolidated Edison,  
10 NYSEG, Orange and Rockland, and Rochester Gas and  
11 Electric all proposed passive managed charging  
12 programs where the drivers who enroll will receive  
13 kilowatt hour monthly or event-based bill credits or  
14 rebates for charging off peak or responding to demand  
15 response events.

16 In the case of Consolidated Edison,  
17 the utility proposal and draft order continues the  
18 existing passive program that was originally approved  
19 and later extended in the 2017 and 2019 rate cases.  
20 Given the success of the existing Consolidated Edison  
21 program measured by the healthy enrollment levels in  
22 the range of 15 to 20 percent of the E.V. drivers per  
23 year, there's good justification to continue this  
24 program as E.V. purchases are expected to increase in  
25 the coming years.



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2 Central Hudson proposed an active  
3 managed charging concept in addition to the passive  
4 program where future Non-Wires Alternatives or N.W.A.  
5 programs would consider managed charging alongside  
6 other N.W.A. eligible technologies, focusing  
7 recruiting efforts in areas where there is potential  
8 to defer grid upgrades.

9 National Grid proposed a flat monthly  
10 fee for unlimited charging in exchange for active  
11 management of when the charging occurs.  
12 Additionally, National Grid proposed to expand the  
13 online marketplace and to create turnkey installation  
14 services where National Grid would pair customers  
15 with qualified electricians who will complete the  
16 installation of the charging station, including  
17 making their at-home parking space ready for  
18 charging.

19 NYSEG and Rochester Gas and Electric  
20 proposed an active program which provides customers  
21 with incentives that increase based on the amount of  
22 charging flexibility granted to the company. This  
23 monthly incentive adds to the credits that are paid  
24 for -- for participation in the passive programs.

25 Staff placed a strong emphasis on the

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2 design elements that would lead to higher enrollment  
3 levels and consumer protections. In order to  
4 maximize enrollments, staff worked with the utilities  
5 to develop final eligibility requirements that allow  
6 for both network level two chargers and onboard  
7 telematics with a preference for the latter.

8 Many vehicle manufacturers today are  
9 beginning to allow consumers to connect their  
10 vehicles directly to utilities to enable  
11 participation and managed charging programs through  
12 the onboard telematics systems.

13 Staff believes connectivity through  
14 onboard telematics has the potential for significant  
15 cost-savings in the long run since this method does  
16 not require the utility or the customer to purchase  
17 additional hardware in order to participate. Because  
18 customers don't need to take the added step of  
19 purchasing specific hardware that is required for  
20 participation in the program.

21 Staff also believes that telematics  
22 could lead to higher enrolment levels. Another area  
23 where staff suggested a consistent approach across  
24 all programs is the enrollment incentive levels. For  
25 the utilities that plan to offer enrollment

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2 incentives, this order caps the budget at \$150 dollar  
3 per vehicle for active programs and \$25 dollar per  
4 vehicle for passive programs.

5 As enrollments increase, these upfront  
6 incentives can eat into the benefits of the off-peak  
7 charging, and we hope these non-value-based  
8 incentives can be phased out as the programs become  
9 more popular with drivers.

10 Regarding the metering accuracy of the  
11 various devices that could be considered for  
12 eligibility in managed charging programs, staff  
13 focused and conducted -- conducted extensive research  
14 of the network level two chargers and the vehicle  
15 telematics systems, including investigating how other  
16 states have considered and addressed metering  
17 standards.

18 At this time, no state has developed  
19 and made permanent metering standards for these  
20 technologies. Staff notes that the technology is  
21 developing rapidly. And in order to continue to  
22 pursue significant -- consistent significant  
23 opportunity for customer benefits through these  
24 programs, staff has outlined a required approach to  
25 developing these standards alongside the rollout of

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2 programs.

3 Within a 180 days of the order  
4 approval, the JU must propose testing methodologies  
5 for equipment made eligible through the program. The  
6 proposal will be evaluated by the technical standards  
7 working group which is currently evaluating standards  
8 for public charging stations funded through the E.V.  
9 Make-Ready program.

10 With some interim milestones, the  
11 technical standards working group must file proposed  
12 standards for these alternative metering technologies  
13 for the consideration by the Commission by October of  
14 2024.

15 The draft order further directs the  
16 utilities to work with staff to develop a dispute  
17 resolution framework that will, at minimum, outline  
18 the process the utilities will follow to help resolve  
19 billing and metering concerns.

20 Finally, the draft order includes a  
21 not-to-exceed budget for the administrative costs and  
22 upfront enrolment incentive costs which totals 98  
23 million dollars across the 6 investor-owned utilities  
24 through 2025. It's important to note that the  
25 majority of the costs underpinning these budgets are

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2 variable, meaning the costs will only be fully  
3 incurred if enrollment is strong.

4 The costs will be recovered by the  
5 E.V. Make-Ready programs surcharge which is used to  
6 recover the Make-Ready program costs and the costs  
7 will be allocated to the service classes of  
8 participating customers which for all utilities, but  
9 Con Ed will be the residential service class at this  
10 time.

11 The draft order does not approve  
12 budget for participation incentives. The Commission  
13 will have the opportunity to review those incentives  
14 in a future tariff filing that will detail how the  
15 incentives and credits are set.

16 The draft order does, however, require  
17 the participation based incentives would be cost --  
18 be cost based, meaning the credits or incentives that  
19 are paid to enrollees will not exceed the difference  
20 between the default rate the customer is enrolled in,  
21 and the off-peak time-of-use credit.

22 This concludes my presentation. Aric  
23 Rider, Lindsay Weiner, Mary Ann Sorrentino, Stephanie  
24 McDermott, and I are available to answer any  
25 questions. Thank you.

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2 CHAIR CHRISTIAN: Thank you, Zeryai.

3 Excellent presentation. You know, the variety of  
4 programs and approaches embedded in the order is  
5 encouraging because I -- I think it recognizes that --  
6 -- that a one-size-fits-all approach isn't going to  
7 meet the needs -- the diverse needs of the drivers  
8 and transportation providers in New York State.

9 In many ways, this order builds off  
10 much of the Commission's recent work advanced through  
11 reforming the energy vision. You know, specifically,  
12 the mix of passive and active programs, I think was  
13 made possible through some foundational investments  
14 brought forth through that process.

15 Investments made by utilities to  
16 deploy smart meters, to collect more granular  
17 customer data, and the impact of that data on their  
18 systems, and make further investments in staff and  
19 equipment that would further enhance their ability to  
20 manage and analyze that deluge of data that's now  
21 available.

22 What's clear to me through this order  
23 and what's before us today would not be possible  
24 without these and other past actions. So I want to  
25 thank you for your presentation, and I look forward

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2 to reviewing the progress over time that these  
3 utilities will make and seeing how the programs  
4 evolved to meet our customer needs as those evolve.

5 So thank you for your presentation  
6 today. Commissioner Burman?

7 COMMISSIONER BURMAN: Thanks for your  
8 presentation. It seemed like you should have  
9 PowerPoints for it. And so I guess I just really am  
10 looking at this from the perspective of where do we  
11 sit now. And can you also talk a little bit about  
12 Item 369 which is also, in my mind, connected because  
13 of -- related to E.V.s and even though that's on the  
14 consent agenda.

15 So you can just kind of look at it and  
16 also focus on the midpoint review that's -- that will  
17 go on with that.

18 CHAIR CHRISTIAN: May I ask that we  
19 save that for the consent agenda and focus the  
20 conversation on this item just to expedite the  
21 process, please? Okay.

22 COMMISSIONER BURMAN: Sure. Okay. So  
23 be ready to answer that question then at that time.  
24 So for me, I -- I am just sort of struck by -- first  
25 of all, I can tell how much work you and the staff

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2           has done on these very important issues and  
3           challenges. Obviously, we're still looking at what  
4           this means and the impact from the increase of E.V.s  
5           electrification transportation in general.

6                   I do point out that the Northeast  
7           Power Coordinating Council has been very -- as I'm  
8           sure you know, is very involved in these issues, and  
9           in fact, recently had a D.E.R. V.E.R. forum. And for  
10          me, it was impactful in that they were looking at the  
11          evaluation of the impacts of electric vehicles on the  
12          transmission system.

13                   And really kind of getting into the  
14          weeds a little bit on what that would look like, you  
15          know, just for example, Hydro Quebec expects the  
16          number of electric vehicles in their service  
17          territory to increase to a level between one and 1.6  
18          million by the year 2030.

19                   And they have actually developed a new  
20          software application which is intended to stimulate  
21          the impact of all D.E.R.s including electric vehicles  
22          and solar on the transmission system. And doing so,  
23          the application performance simulation covering up to  
24          three days of winter peaks or summer lows each at  
25          five minute interval time steps.



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2 So for me, I am interested in our own  
3 analysis and what we're doing in terms of looking at  
4 that impact of electric vehicles on the transmission  
5 system and doing it from a probabilistic metric  
6 versus determinative perspective. And -- and kind of  
7 making sure that we are properly looking at advanced  
8 forecasting and modeling.

9 Some of the issues obviously are  
10 related to the disaggregation of E.V. load from other  
11 loads, and that's going to become increasingly  
12 important as the E.V. load grows, and then the  
13 capacity that's built in.

14 And -- and then also, you know, when  
15 we're looking at grid infrastructure planning for  
16 E.V.s and what many are calling, the electric highway  
17 in which charging stations can be located in cluster  
18 locations on highway sites in close proximity to  
19 existing transmission lines, and that's to tap into  
20 providing large amounts of clean energy.

21 These planning models and then what  
22 that means is really important as I'm sure you know.  
23 So I just point it out because, especially as we move  
24 forward and have larger penetration, we are going to  
25 need to look at it in a way that makes sure that we

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2 are fully preparing.

3 You know, there was even one from that  
4 forum, there was even a focus on transportation  
5 electrification that was focused on major concerns,  
6 driving consumer considerations like travel distance,  
7 charging time, charging infrastructure, price point,  
8 vehicle options, technology, evolution and trust, and  
9 technology and transition.

10 And then it was focused on if we do  
11 this, what's the potential negative impact to the  
12 bulk power system. And some of the things that take  
13 away were rapid or unexpected changes in load  
14 consumption, including the concept of unplanned panic  
15 charging.

16 Then also ramping needs to manage  
17 critical charging hours, especially in anticipation  
18 of daily solar drop off, constant power load  
19 characteristics leading to grid unfriendly  
20 characteristics, fault ride through behavior and  
21 recovery characteristics, system restoration, and  
22 Blackstart plans, including unexpected load steps  
23 during Blackstart resulting in large swings of  
24 voltage and/or frequency.

25 And then participation in D.E.R.

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2           aggregation leading to displacement of the bulk power  
3           system and other essential reliability issues and  
4           other possible impacts such as power quality,  
5           harmonic, and control interactions. So I guess I'm  
6           just sharing this and pointing it out in that I do  
7           see, while we're looking at this, and -- and sort of  
8           the -- I think right approach in terms of how you're  
9           looking at it.

10                   I do think that we also need to get  
11           under the hood as a -- as a Commission and working  
12           with our different partners on all of these things  
13           that are, you know, going to have impact and the  
14           preparation and what that means.

15                   And the modeling is key and modeling  
16           again in -- in a way that isn't just driving what we  
17           want the result to be, but actually helping to  
18           identify the areas that we need to be carefully  
19           addressing, so thank you.

20                   MR. HAGOS: I didn't hear a question  
21           there, but I'd like to respond in one way, which is,  
22           I think staff fully recognizes the need to get more  
23           sophisticated, you know, with the utility planning.  
24           We have the coordinated grid planning process which  
25           is now underway between the utilities, which is

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2 integrating into the NYISO's outlook process or  
3 examining ways to have a more cohesive and integrated  
4 approach across the State to include factors, such as  
5 transportation electrification.

6 And in addition, staff really  
7 recognizes that there is a lot of investment in  
8 intellectual property and program development  
9 necessary to actually achieve some of the benefits  
10 that you mentioned, Commissioner Burman.

11 But I think one foundational element  
12 that is -- none of it will be possible without is,  
13 convincing drivers to connect to the utility and  
14 enroll in these kinds of programs in the first place.

15 And so another great element of the  
16 proposal before you today is that it starts that  
17 process of getting the utilities to learn how to  
18 engage these drivers in a utility program and  
19 building, you know, the steps need -- necessary to do  
20 more advanced treatments with these -- these types of  
21 D.E.R.s in the future. So anyway, I think that's one  
22 thing we're really optimistic about with the state of  
23 the current proposed projects.

24 CHAIR CHRISTIAN: Thank you for that  
25 Zeryai. Commissioner Edwards?

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2 COMMISSIONER EDWARDS: I don't have  
3 any questions. It's great work. Thank you.

4 CHAIR CHRISTIAN: Thank you,  
5 Commissioner. Commissioner Howard?

6 COMMISSIONER HOWARD: Thank you.  
7 Zeryai, I think we probably spent hundreds of hours  
8 of now talking about this and other issues related to  
9 E.V.s, and I can't thank you enough for the work on  
10 this. I know, this was a difficult order to birth  
11 that had -- that we're striking a bunch of brand new  
12 ground both on technology, consumer behavior, and  
13 grid planning. We're all trying to do  
14 simultaneously. So to that extent, good work.

15 And one of the things that, as you  
16 know, we've discussed before is this issue of -- on  
17 the issue of the active systems and particularly  
18 those that rely on onboard software. You know, we  
19 now are approaching, you know, 20 or 30 different  
20 O.E.M.s out there building E.V.s for personal use.  
21 And all of which probably have different technologies  
22 and software's that are unique to the -- to that  
23 O.E.M.

24 I, and we also talked about this and  
25 to the extent we can work particularly with the

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2           federal government as we go forward, we need national  
3           standards. We need, you know, when you go to --  
4           we're in a -- we're in a border state so when you go  
5           to Massachusetts you want to know that the standards  
6           that we have here are the same ones there and the  
7           like and then whether I buy a General Motors product  
8           or a Hyundai product or whatever, that they're all  
9           going to work the same.

10                   And particularly, I think that's going  
11           to be particularly difficult in the early parts. And  
12           this gets to Aric's problem, will be dispute  
13           resolutions, because Lord knows, software always  
14           works the right way every time, and that rarely is  
15           the case.

16                   And particularly these, from the  
17           O.E.M.s, these are brand new products. They've never  
18           been built before in mass before, so that issue of  
19           the early stages of this mass deployment are going to  
20           be very critical. Because bad customer outcomes will  
21           set the entire E.V., you know, effort moving  
22           backwards. So I think that's going to be very, very  
23           important.

24                   And I do believe New York probably  
25           will be leading the way because of this order and the

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2 ensuing rulemakings that -- and it's always tough  
3 going first. I got that. But again, I think it's  
4 going to be one of the critical aspects of this.

5 In terms of how E.V. charging writ  
6 large, there is a right way to do this and there is a  
7 wrong way to do this. This Commission for decades,  
8 as a matter of policies, how do we reduce the peak,  
9 how do we reduce the peak. The peak is difficult and  
10 it's enormously expensive to maintain.

11 So the idea of moving as much as we  
12 can particularly in the early stages of  
13 electrification to off peak use is the only logical  
14 way to go forward. I know there is another order  
15 coming dealing -- in the future, dealing with a  
16 recently enacted statute. Dealing that I believe  
17 takes the State in the entire opposite direction.

18 That does not recommend -- recognize  
19 the economics of peak and how much it cost and how  
20 much system needs to be developed and how expensive  
21 that last increment of electricity is needed to meet  
22 those peaks. I have great -- I can use the phrase  
23 again, trepidation, when that comes, I think it was  
24 wrongheaded to think that we could turn that on a  
25 dime.

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2 And remember, I think it's very  
3 important for people to remember that we all pay for  
4 the peak. And if you don't pay for the peak, that  
5 means I pay more for the peak. And that's just the  
6 nature of regulatory economics. So and again, I  
7 think the other part of this, and this is where we  
8 can most try to engage and really work with  
9 utilities.

10 Utilities, the O.E.M.s and those that  
11 market E.V.s, to say buy your E.V., saves you money,  
12 it's good for the grid, it's good for us, and this is  
13 why you do it. I think that we, in our own  
14 experience with early adopters, when they find out  
15 that this type of charging saves you money will be a  
16 big inducement to -- to doing it.

17 And I do think it's just on the  
18 positive thing. This is an employment measure. It's  
19 going to put a lot of electricians to work in  
20 people's garages. I know that -- that we are working  
21 very hard on multifamily, how we're going to deal  
22 with multifamily charging and the like. But again,  
23 the -- the real goal here is as many E.V.s on the  
24 road as possible as quickly as possible.

25 And if that goes primarily -- and for



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2 the early adopters to being customers who have their  
3 own single family or dwellings or their own garage  
4 where they can effectuate this, so be it. But again,  
5 we have to get the -- we have to walk before we can  
6 run. And quite honestly, the number of E.V.s on the  
7 road today, we're sort of crawling.

8 One of the things that also is very  
9 clear in terms of broad -- the broad State goals in  
10 terms of E.V.s are -- and period, there's just not  
11 going to be enough cars manufactured between now and  
12 2030 to even come close to this. And that has  
13 nothing to do with anything that happened here.

14 The global supply chain is just so  
15 enormous and anybody who's trying to buy an E.V. or  
16 even an I.C.E. car right now understands you're not  
17 going to get one for a long time. So I think we're  
18 going to have to rethink those goals in terms of the  
19 reality of what is going to be available in the  
20 marketplace.

21 The second part is everyone is very  
22 anxious on -- on medium and heavy-duty vehicles  
23 because particularly in many communities they are  
24 absolutely the driver of bad air and localized health  
25 effects. But again, they're going to be much more

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2 difficult, much more difficult.

3 Not only because of the individual  
4 sizes and the amount of electricity needed to service  
5 them, but how we're going to deal with fleets that  
6 need to run all day long every day and how we do that  
7 efficiently. I think that's going to be very tricky.  
8 And I look forward to that proceeding and goes forth  
9 forward.

10 Additionally, I also think that will  
11 be one of the things that will absolutely need non-  
12 ratepayer dollars to make work. I note with great  
13 interest, the legislature mandated every school bus  
14 in New York State going to be electric by a certain  
15 day. Well, that's great. You buy the buses but  
16 where did you do on the how do we charge them.

17 And by the way, how do we deal with  
18 the utilities who have to figure out they're going to  
19 have to provide an adequate amount of energy to these  
20 charging stations to make them work. So there are  
21 real consequences to everything. And as many things  
22 here, it's not a single cost driver but multiple cost  
23 drivers on any one of these initiatives.

24 So that that's one of these things  
25 I'll be very cautious on, but again, I cannot say

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2 enough about you and your team working on this  
3 because it is the right thing to do. And better, a  
4 little slow and done well then rushed and done  
5 poorly. So again, congratulations.

6 CHAIR CHRISTIAN: Thank you,  
7 Commissioner. Commissioner Valesky?

8 COMMISSIONER VALESKY: I have no -- no  
9 question, sir. I thank you for the great job.  
10 Really well done. Thanks.

11 CHAIR CHRISTIAN: Commissioner  
12 Maggiore?

13 COMMISSIONER MAGGIORE: Thank you for  
14 the presentation and great work. I think this is a  
15 forward-looking order. And I'm just, this is just a  
16 reflection that I have on how fast the world is  
17 changing. I harken back to a well-received, well-  
18 regarded documentary I saw back in 2006 called Who  
19 Killed the Electric Car.

20 The premise of which was that it was  
21 so universally accepted that the technology was dead  
22 and not going anywhere. That it was worth doing a  
23 documentary about. And that wasn't that long ago.  
24 And I think the world is changing very fast.

25 And I, you know, I appreciate this,

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2           this order that's anticipating the direction that  
3           we're moving in as a society which I think is a good  
4           one towards the conversion towards electric vehicles.  
5           And there's a lot of work left to be done. But the -  
6           - the rate of change is -- when we step back is  
7           actually moving quite -- quite fast. So thank you  
8           very much for the presentation.

9                   CHAIR CHRISTIAN: Thank you,  
10           Commissioner. Now, that will bring us to a vote. My  
11           vote is in favor of the utility electric vehicle  
12           manage charging filings as discussed. Commissioner  
13           Burman, how do you vote?

14                   COMMISSIONER BURMAN: Yes.

15                   CHAIR CHRISTIAN: Commissioner  
16           Edwards, how do you vote?

17                   COMMISSIONER EDWARDS: Yes.

18                   CHAIR CHRISTIAN: Commissioner Howard?

19                   COMMISSIONER HOWARD: Yes.

20                   CHAIR CHRISTIAN: Commissioner  
21           Valesky?

22                   COMMISSIONER VALESKY: Yes.

23                   CHAIR CHRISTIAN: Commissioner  
24           Maggiore?

25                   COMMISSIONER MAGGIORE: Yes.

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2 CHAIR CHRISTIAN: Great. The item is  
3 approved, and the recommendations are adopted. Thank  
4 you all. That brings us to our third and final item  
5 for discussion today. Item 302 Case 20-E-0197  
6 related to the request of Niagara Mohawk Power  
7 Corporation for authorization to develop Phase One  
8 local transmission projects.

9 Today's presentation will be provided  
10 by Elizabeth Grisaru, and Andrew Timbrook. Mary Ann  
11 Sorrentino is available for requests. Mary Ann,  
12 you're trifecta today. All right. Elizabeth, please  
13 begin. Thank you.

14 MS. GRISARU: Good afternoon, Mr.  
15 Chairman and Commissioners. Changing gears a bit  
16 here. But I -- I did want to say after listening to  
17 the proceedings today I am once again in awe of my  
18 colleagues and also of the incredible variety of  
19 matters that come before this Commission. It is  
20 truly an honor to work with all of you.

21 So today's draft order and this item  
22 relates to National Grid's proposed Phase One local  
23 transmission projects. And continues this  
24 Commission's ongoing work towards implementing the  
25 transmission planning requirements of the Accelerated

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2           Renewable Energy Growth Act and the recommendations  
3           of the power grid study that was conducted in  
4           accordance with that statute.

5                                   As you probably recall, the  
6           Accelerated Renewable Energy Growth Act directed the  
7           utilities and the Commission to identify the  
8           transmission investments that will be needed to  
9           support the climate goals codified in the Climate  
10          Leadership and Community Protection Act, which we  
11          know as the C.L.C.P.A.

12                                  The power grid study concluded, among  
13          other things, that the State could make significant  
14          progress towards the C.L.C.P.A.'s 2030 renewable  
15          generation goals by prioritizing routine utility  
16          asset maintenance and reliability driven upgrades  
17          that also contribute to increasing the local grids'  
18          capacity to integrate renewable energy sources.

19                                  The Commission acted on this  
20          recommendation in its February 2021 Order in this  
21          same proceeding, which we refer to here as the Phase  
22          One order. There, the Commission defined the  
23          category of projects that satisfied traditional  
24          reliability, safety, and compliance purposes but can  
25          also address bottlenecks or constraints that limit

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2 the deliverability of renewable energy as Phase One  
3 local transmission projects and disting --  
4 distinguished such projects from the upgrades that  
5 are needed solely to support a particular C.L.C.P.A.  
6 objective which the Commission refers to as Phase Two  
7 projects.

8 The Commission directed the utilities  
9 to begin identifying Phase One investment  
10 opportunities in their rate filings as a matter of  
11 their ordinary planning obligations. At the same  
12 time, the Commission recognize that the urgency of  
13 some of the C.L.C.P.A. deadlines might not allow a  
14 utility to wait for its next rate case to seek  
15 approval for a Phase One project.

16 For this reason, in the Phase One  
17 order, the Commission authorized the utilities to  
18 bring urgently needed projects to its attention via  
19 petitions outside the rate case mechanism. The  
20 Commission stated that utilities seeking Phase One  
21 funding through a petition must show that C.L.C.P.A.  
22 deadlines require moving forward with the proposals  
23 outside the utilities normal rate case cycle.

24 So today the order before you is  
25 responding to the first such Phase One petition filed

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2           by National Grid in November, 2021 seeking funding  
3           for a portfolio of local projects that the company  
4           believes will contribute to the State's climate goals  
5           and support the C.L.C.P.A's 2030 renewable generation  
6           target.

7                   With that introduction Andrew Timbrook  
8           will now present details on the filing and the  
9           rulings reflected in the draft order.

10                   MR. TIMBROOK: Thank you, Liz. Good  
11           afternoon, Chair Christian, and Commissioners. On  
12           November 8th, 2021, Niagara Mohawk filed a petition  
13           requesting that the Commission find that the company  
14           should continue to pursue the development of 26 Phase  
15           One transmission solutions presented in the company's  
16           2030 regional plan.

17                   On April 8th of 2022, the company  
18           updated that filing to include one additional project  
19           that was ino -- inadvertently omitted from the  
20           November 8th filing, bringing the total to 27 Phase  
21           One projects.

22                   The company's current rate plan  
23           expires on June 30th, 2024 but includes a nine-month  
24           stay out provision through March 31st of 2025. None  
25           of these 27 Phase One projects were included in the



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2 capital program of the current rate plan nor have  
3 they previously come before the Commission.

4 The petition identifies both expenses  
5 and capital costs the company forecasts by fiscal  
6 year through 2030, by which time it expects all 27  
7 Phase One projects will have been placed into  
8 service. The company estimates the total cost to  
9 develop all 27 Phase One projects through March 31st,  
10 2030 to be \$738 million.

11 During the term of the current rate  
12 plan including the stay out period which runs through  
13 March 31st, 2025 the company expects to spend 38.2  
14 million to complete and placed in service 19 of the  
15 projects which are defined as initial Phase One  
16 projects.

17 The company also forecasts to spend  
18 \$700 dollars million to complete development of the 8  
19 subsequent Phase One projects through March 31st,  
20 2030 with \$110 million dollars in forecast  
21 expenditures through March 31st, 2025 on these  
22 projects.

23 The petition requested a surcharge for  
24 cost recovery of the revenue requirements associated  
25 with 19 initial Phase One projects. The revenue

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2 requirement associated with these projects is  
3 estimated to be \$8.9 million dollars through March  
4 31st of 2025.

5 The company also requested a deferral  
6 of some minor operating expenses associated with the  
7 development of the subsequent Phase One projects,  
8 approximately \$900,000 dollars.

9 After reviewing these requests, the  
10 draft order finds that the projects qualify as Phase  
11 One investments. The projects arise from traditional  
12 infrastructure needs such as maintaining the  
13 reliability or resilience of the local system. Many  
14 of the project costs are related to circuit upgrades  
15 with segments that have been in service nearly 100  
16 years.

17 The urgency of meeting the 2030  
18 deadline supports advancing these projects ahead of  
19 the next rate case. The draft order contains an  
20 appendix which provides a summary of staffs' review  
21 of each project including scenarios for which  
22 congestion and headroom tests were run. Congestion  
23 and headroom tests demonstrate that the company's  
24 proposals will reduce renewable energy curtailments  
25 and increase headroom available to new renewable

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2 generation.

3 The draft order therefore authorizes  
4 continued development of all projects within the 2030  
5 regional plan. With the exception of the Lockport-  
6 Mortimer SMART Valves project, which the order finds  
7 should be classified as a Phase Two project.  
8 Removing this project, which was one of the eight  
9 subsequent projects from the 2030 regional plan  
10 lowers the total cost from \$738 to \$691 million  
11 dollars.

12 Concerning the requested surcharge,  
13 the draft order directs the company to use its net  
14 regulatory liabilities of \$97.7 million dollars to  
15 offset the \$8.9 million dollars in revenue  
16 requirements associated with the initial Phase One  
17 projects over the term of the current rate plan,  
18 again, through March 31st of 2025.

19 This is the approach to cost recovery  
20 proposed by multiple intervenors and its comments  
21 filed in response to the petition. I should note  
22 that in the company's next rate filing, the revenue  
23 requirements associated with these projects will be  
24 rolled into base rates. Staff estimates the ongoing  
25 revenue requirement impact of these initial projects

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2 to be approximately \$4.5 million dollars.

3 The draft order cap the spending on  
4 the subsequent Phase One projects through March 31st,  
5 2025 to the adjusted forecast of \$68 million dollars.  
6 This forecast was reduced from \$110 million dollars  
7 to account for the removal of the Lockport-Mortimer  
8 project.

9 Addressing the deferral request, the  
10 draft order allows the company to defer up to  
11 approximately \$900,000 dollars in development related  
12 expenses for the subsequent Phase One projects. And  
13 finally, the draft order requires the company to file  
14 an annual report detailing actual costs.

15 That concludes my portion of the  
16 presentation. Liz, Bob Rosenthal, Mary Ann  
17 Sorrentino, and I are available for questions. Thank  
18 you.

19 CHAIR CHRISTIAN: Thank you, Liz.  
20 Thank you, Andrew. Andrew I do have one question I  
21 want to clarify. You mentioned earlier that these  
22 items had not previously come before the Commission.  
23 I just want to reiterate that. Is that the case?

24 MR. TIMBROOK: Yes, that's correct.

25 CHAIR CHRISTIAN: But -- and they're

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2 here today, in part, because of the Accelerated  
3 Renewable Energy Growth Act. But in reality, given  
4 their vintage, it was likely, at some point in the  
5 future, they would come before the Commission.

6 MR. TIMBROOK: Yes, that's part of the  
7 definition of Phase One projects is that they're  
8 normal reliability projects. They're just pushed  
9 forward in terms of scheduling to meet the C.L.C.P.A.  
10 guidelines.

11 CHAIR CHRISTIAN: Thank you for that  
12 clarification and application. So and again, thank  
13 you both for the presentation today. You know, the  
14 transmission projects described in the proposal,  
15 again, represents some of the oldest local  
16 transmission assets in New York still in use.

17 And their presentation today is in  
18 recognition of the importance and urgency of taking  
19 actions to identify and deploy transmission  
20 investments in a cost effective and timely manner.  
21 Now, these items are here as a direct result of the  
22 directive of the Accelerated Renewable Energy Growth  
23 Act. And the investments identified will serve to do  
24 just that accelerate the deployment and growth of  
25 renewable energy.

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2 Once complete, the need to curtail  
3 existing renewable energy resources will be  
4 diminished while making room to add additional  
5 renewable resources to the grid. And as an added  
6 bonus, this will reduce congestion in the overall  
7 transmission system and improve reliability to  
8 customers throughout the region. Many of whom as  
9 Commissioner Howard mentioned earlier recently  
10 experienced outages within the last few days.

11 So though the nature of the work can  
12 be described as routine, it is essential to the safe  
13 and efficient operation of the electric system. So  
14 again, I thank you for putting this together and  
15 bringing it to our attention. And Commissioner  
16 Burman if you have any comments?

17 COMMISSIONER BURMAN: Thank you so  
18 much. Andrew, is this your first time presenting?

19 MR. TIMBROOK: No, I actually did the  
20 summer prep item --

21 COMMISSIONER BURMAN: Okay.

22 MR. TIMBROOK: -- in May. Second  
23 time.

24 COMMISSIONER BURMAN: All right.  
25 Great. Second time. Great, thank you. So I'm

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2 looking at this and I guess I have to sort of take a  
3 step back. I have really struggled with this item.  
4 And as many folks know, I've sort of struggled with  
5 overall what are we doing with our clean energy, and  
6 C.L.C.P.A., and the different legislative triggers  
7 that have come from that.

8 Liz, you've been, you know, sort of a  
9 recipient of a lot of my questioning both before  
10 sessions and at several sessions in -- in sort of,  
11 what are we doing, how does this work, and how does  
12 it align in general. And are we doing it because of  
13 the deadline set up in C.L.C.P.A., or other  
14 legislative triggers, or are we truly sort of kind of  
15 being mindful.

16 And then how does it relate in, you  
17 know, when we do these -- these projects and other  
18 things, how does it relate to the other things that  
19 are going to come and sort of the, you know, making  
20 sure that we have a full picture of the pie and what  
21 that looks like.

22 So for me, the way I understand it is  
23 this, the Phase One order, and -- and Liz, you said  
24 some of this and I just, the Phase One order  
25 recognizes the potential need to allow cost recovery

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2           for projects needed to meet the C.L.C.P.A. deadlines,  
3           right. So and understanding that it may not fall  
4           into a utilities' current rate plan.

5                   The Phase One order identified  
6           information that must be included in a petition if  
7           you were going to see cost recovery outside of the  
8           rate plan. And so, the -- as a threshold matter,  
9           staff has found and presented this draft order that  
10          says yes, National Grid satisfied all of the prongs  
11          that were there for the criteria for Phase One, which  
12          meant that they established that the proposals  
13          projects qualify as Phase One projects, that the  
14          imminence of the C.L.C.P.A. deadlines justified the  
15          approval to develop such projects outside the context  
16          of the rate case filing.

17                   And it requires utilities providing  
18          justification for this prioritization of the project,  
19          including an explanation as to why other capital  
20          spending can't be reduced to accommodate the proposed  
21          project. And requires the petitioner to include rate  
22          case quality data to support the project.

23                   So that was sort of the okay, it's  
24          outside of the rate case. It'd be better if it was  
25          in a rate case. But these are the different, you



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2 know, things that need to be done, if it can't for  
3 whatever reason, because of priority need to do that.

4 What that means specifically for  
5 National Grid is the projects for which revenue  
6 requirements are being approved for recovery, the  
7 initial Phase One projects are rolled into base rates  
8 in the next rate case subject to prudence review. Is  
9 that -- is my understanding correct on all of this?

10 MS. GRISARU: Yes, that is correct.

11 COMMISSIONER BURMAN: Okay. So I --  
12 I, in -- in a sense, if I was just looking at this in  
13 isolation and saying, does this match, is this good,  
14 how does it line up with the law with Phase One  
15 order, with all the different things, and if there  
16 were no other ones that were going to come from,  
17 perhaps later from the company or perhaps from other  
18 -- from other companies, I might say, okay. I can --  
19 I can support this.

20 The trigger for me in why my concerns  
21 which I've had and continue to grow which leads me  
22 today to have to vote no, is that this is the first  
23 petition which is seeking our Commission's specific  
24 authorization that's come before us as a result of a  
25 Phase One order.

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2 And I am really concerned about the  
3 treatment of these projects outside of a rate filing  
4 and specific to the ones before us today. Now, I  
5 will just say, I understand reliability is paramount  
6 all of that.

7 A lot of these, you know, we're  
8 talking about vintage. They're -- they're not the  
9 oldest. And there is also, you know, there is also  
10 some planning that needs to happen when you enter  
11 into a rate case that prioritizes. And if these were  
12 that important, these projects, that they weren't  
13 that important to be introduced in the rate case.  
14 And then just recently happened.

15 And I can understand but these were,  
16 you know, when they file the rate case and when they  
17 process the rate case, the C.L.C.P.A. was there. We  
18 understood the -- the issues. We understood at the  
19 time of the filing. We understood going through it  
20 and frankly we understood the new transmission issues  
21 and the lines that were going to be needed.

22 And the parties agreed to -- all the  
23 parties in a collaborative fashion, agreed to a  
24 three-year rate plan and agreed to capital projects  
25 and the plan. And also, you know, that's how it came

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2 about through a joint proposal. And yet, here we  
3 are, unilaterally or bilaterally because it's us and  
4 the company sort of overlooking all of that.

5 So for me, even though the Commission  
6 requires that each petition in this case include rate  
7 case quality support and justification for  
8 prioritization of the project. It recognized that  
9 these projects will not require the utilities to  
10 reduce rate case approved capital spending to pursue  
11 any of the proposed projects.

12 So I totally get that staff did a  
13 thorough job reviewing these projects. I very much  
14 appreciate that. I appreciate the due diligence and  
15 the thoughtfulness that went into reviewing these.  
16 But I am not satisfied that this is the best way to  
17 approach authorizing new capital projects.  
18 Regardless of how the costs are recovered during the  
19 remaining rate case.

20 Even we're here, customer credits are  
21 being used to eliminate any immediate bill impacts  
22 that allows these projects to set it. It allows the  
23 project to set a new higher rate base starting point  
24 for the company's next rate filing than the one that  
25 was considered when we approved the rate case -- the

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2 rate plan only six months ago.

3 And I underscore here we have customer  
4 credits to offset the bill impacts. We are not sure  
5 if we will have customer credits or enough of them in  
6 the other rate cases to offset that. So that's a  
7 problem by itself. It's a problem by itself that  
8 only six months ago, we were looking at this and now  
9 we're here looking.

10 The bigger concern I have is how these  
11 projects impact the capital project plans the  
12 Commission approved by adopting the joint proposal in  
13 January. Had these projects been considered during  
14 that twelve months that rate case was under  
15 consideration by the active parties, by the A.L.J.s,  
16 and then they came before us the priorities for the  
17 projects included in that joint proposal may have  
18 been different and have resulted in some projects not  
19 being pursued at that time.

20 So I am left feeling like what does  
21 this mean, what's the message we're sending, and what  
22 should we do in addressing this. I have real  
23 concerns about how rigorous the -- rigorously the  
24 accounting for today's projects will be kept separate  
25 from the accounting for the rate case projects.

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2 That's really important to me.

3 And I have concerns with how the  
4 company may reprioritize funding among both sets, and  
5 whether that is truly coming before us. That action  
6 can have detrimental results on ratepayers if not  
7 done right. And just as an example, the rate case  
8 requires a reconciliation and repayment to customers  
9 of any unspent capital project funds over the three  
10 years of the rate plan.

11 And I'm not sure that we, the  
12 Commission will be able to determine whether expenses  
13 for the Phase One projects might be used to ensure  
14 that the company hits a three-year expenditure target  
15 and that would deprive customers what otherwise could  
16 have been an I.O.U.

17 And I'm also concerned that staff is  
18 going to have to do a lot of due diligence review  
19 work in trying to thread this needle that I feel  
20 might cause -- you just need more manpower. You need  
21 to be able to work to -- in a way that actually makes  
22 us all feel that we're rowing in the same way.

23 And again, I'm not sure that we can  
24 say looking at this, that this is the right way. In  
25 fact, while expenditures may be accounted for in

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2 general on a project-specific basis. There are costs  
3 that are common among the entire capital project plan  
4 and are difficult, if not impossible to separate  
5 among individual construction projects.

6 So I view this as an amendment to the  
7 joint proposal, allowing the capital plan without  
8 actually amending anything in the joint proposal or  
9 existing rate plan. That makes me extremely  
10 uncomfortable. Even if we have the ability to do  
11 that legally, I'm not sure it's the right way,  
12 especially when we had parties agreeing to the three-  
13 year rate plan.

14 And now, we are bilaterally or  
15 unilaterally doing it differently. And for me, I, it  
16 -- it weighs on me, especially as this is our first  
17 one. And I -- I say for the parties that are on  
18 record as supporting this and there are numerous  
19 ones. And for the other companies and for the  
20 company today that's going to have to tackle these  
21 issues and similar issues.

22 And also, again, the customer credit  
23 issue is a safe -- saving grace here for us. It will  
24 not be perhaps in others. You've got to pay  
25 attention to the concerns raised here, not just

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2 whether I voted for it or I didn't. There are real  
3 legitimate concerns that have to be factored in and  
4 for the prudence and for us to have full faith in  
5 what we're doing.

6 It is incumbent upon on all of us,  
7 even the parties that say that they are supportive to  
8 understand the underlying concerns are valid, and we  
9 can't just push them away. So thank you.

10 MS. GRISARU: If I could talk a little  
11 bit about some of the -- some of your points which  
12 are important. But -- but we have several  
13 Commissioners on this committee who were -- who were  
14 not present. Not present at the creation, so to  
15 speak.

16 And I think the context and history  
17 are important to understanding how -- why this  
18 petition is here and -- and what a narrow -- what a  
19 narrow exception it is to the -- to the rule that  
20 this Commission established for Phase One projects.

21 When this Commission took up the power  
22 grid study recommendations and identified this  
23 category of Phase One projects in February of 2021,  
24 the Commission identified a new category of  
25 transmission investment that had not existed prior to

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2           February of 2021 and directed utilities to begin  
3           planning and identifying for these kinds of  
4           investments.

5                   Which the utilities up until that  
6           point, have not done because they were not required  
7           to identify local transmission investments that  
8           contributed to C.L.C.P.A. guidelines deadlines. It  
9           was not part of their planning obligation, prior to  
10          February 2021.

11                   And I think that's probably why in the  
12          mix of capital programs that were part of the last  
13          Grid rate case, these -- these projects were not  
14          there. Because planning for C.L.C.P.A. investment  
15          was not a component of the utilities planning  
16          obligation before that date. So we recognize we  
17          invented something new to address C.L.C.P.A. in  
18          February of 2021.

19                   We instructed the utilities or you  
20          instructed the utilities to begin to use the rate  
21          case mechanism henceforth, as the default mechanism  
22          to include Phase One projects in that mix of proposed  
23          capital investments along with the purely reliability  
24          or the purely vintage, maintenance based investments  
25          to begin offering up those Phase One opportunities to



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2 use so that you could make judgments going forward on  
3 the whole -- on the whole bucket of potential local  
4 transmission investments, including those that had a  
5 factor contributing to C.L.C.P.A.

6 We created a new -- new category to be  
7 included in the rate case assessment and to be  
8 included in your evaluation of the utilities capital  
9 priorities from that day forward. However, the Phase  
10 One order recognized, we have not asked people to do  
11 this before. We may be missing something because we  
12 don't -- don't have the information about what  
13 projects contribute to C.L.C.P.A. and we have  
14 C.L.C.P.A. deadlines that are fast approaching, as we  
15 all know.

16 And therefore, the Commission said, we  
17 will create a mechanism whereby those utilities who  
18 have not been doing this kind of planning to date.  
19 We will allow utilities to bring forward to us via a  
20 petition, any specific Phase One projects, now that  
21 we've created that category of investment, to bring  
22 forward specific Phase One projects that they believe  
23 are integral or essential to the achievement of  
24 particularly the 2030 C.L.C.P.A. deadlines.

25 So absolutely the default, the

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2           preference expressed in that order was, this is a  
3           category of investment that should be reviewed, along  
4           with all other categories of investment in the rate  
5           case context, however, as a transition mechanism we  
6           wanted to give the utility some way to bring to your  
7           attention the -- the necessity -- the necessity of  
8           considering funding projects that were directly  
9           related to the statutory deadline.

10                   Because there had been no way prior to  
11           then for the utilities to tell you that. So the  
12           petition mechanism is intended to provide for that  
13           safety valve. I don't actually expect us to see --  
14           this is the first, yes, and -- and the draft goes in  
15           some detail in trying to, you know, reiterate for  
16           stakeholders and utilities of what the requirements  
17           are to come forward under this exception to the -- to  
18           the normal rate case process.

19                   We have another one in-house, as you  
20           probably know from AVANGRID. But my expectation is,  
21           I don't -- I don't think that we're going to see very  
22           many Phase One petitions outside of the rate case in  
23           the future because your direction was integrate this  
24           part -- this type of planning into your ordinary  
25           planning process. It's now part of your obligation.

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2 Bring those opportunities to the Commission along  
3 with everything else in the rate case, that's the  
4 preference.

5 So I think what we're looking at here  
6 is a transitional step. And as I said, a kind of  
7 safety valve for the utilities to tell us where we  
8 might be in danger of missing a statutory deadline,  
9 which we otherwise would not know about, because  
10 these types of projects have not been in their  
11 planning wheelhouse prior to, you know, early last  
12 year. So I hope that context is helpful.

13 COMMISSIONER BURMAN: Yeah. It is  
14 very helpful. I do think that my concerns are still  
15 extremely valid and extremely valid as it relates to  
16 how we are treating the future with the capital  
17 projects and the accounting that's going to have to  
18 go in, as well as frankly, we have -- I look at it  
19 and say, this is essentially amending the joint  
20 proposal and the existing rate plan, it makes me  
21 extremely uncomfortable doing that, and we just  
22 approved it.

23 And at that time, we knew that this  
24 would be coming in. And even if it might have been,  
25 we're not sure all that other thing, it's still, we

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2 all were cognizant that we were going to have to look  
3 at these down the road. And for me, it just leaves  
4 me extremely uncomfortable, and extremely  
5 uncomfortable about the treatment of these projects  
6 outside of the rate case, and then what it means in  
7 especially in with the customer credits for other  
8 customers, excuse, other companies. Thank you.

9 COMMISSIONER CHRISTIAN: Thank you,  
10 Commissioner. Commissioner Edwards? Commissioner  
11 Edwards, I think --.

12 COMMISSIONER EDWARDS: Did you hear  
13 me?

14 COMMISSIONER CHRISTIAN: Yes, we can  
15 hear you now.

16 COMMISSIONER EDWARDS: I do not have  
17 any questions, thank you.

18 CHAIR CHRISTIAN: Thank you,  
19 Commissioner. Commissioner Howard?

20 COMMISSIONER HOWARD: Yeah. I have a  
21 few questions. In terms of cost recovery, these  
22 projects will be exclusively paid for by grid  
23 customers?

24 MS. GRISARU: That's correct.

25 COMMISSIONER HOWARD: And I know that

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2 this is in terms of the confidence that we think  
3 these are the right projects, because I know, you  
4 know, I noticed they did twenty-seven. We all liked  
5 all twenty-seven. We didn't say, well, this one  
6 might not be so good and --.

7 MS. GRISARU: And actually we -- we  
8 did kick out one.

9 COMMISSIONER HOWARD: Okay. But to  
10 move it to Phase Two.

11 MS. GRISARU: Yes.

12 COMMISSIONER HOWARD: Not to say it  
13 was not a prudent expense.

14 MS. GRISARU: Right.

15 COMMISSIONER HOWARD: So you know,  
16 that -- that -- that confidence that we need to place  
17 in your guys' judgment, in terms of these evaluating  
18 these proposals from the utility that these were the  
19 right ones. You know, this is also, I believe, in  
20 context of particularly Upstate utilities really  
21 playing catch up on their basic job was to provide a  
22 safe and reliable transmission system. And that goes  
23 back a long time.

24 And I will submit that these, delaying  
25 these normal processes had been a way to, you know,

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2 ameliorate greater rate increases, even though we  
3 knew that there is a lot of bad infrastructure out  
4 there, they probably needed to be repaired, but it's  
5 not quite dead yet.

6 So this, and how we put this, these  
7 Phase One things are supposed to be two things.  
8 They're supposed to be the normal course of business,  
9 plus a factor to do something that in essence was  
10 basically connecting new -- new renewable resources  
11 that some of which are planned. Some of which we  
12 think are going to happen. Some of which we may  
13 think are going to happen, won't happen.

14 So again, this is anticipating other  
15 aspects of particularly dealing with large scale  
16 renewables in the grid service territory. So we're  
17 trying to do everything in -- in one thing. Because  
18 if this is going to do two things, satisfy C.L.C.P.A.  
19 as well as satisfying the traditional reliable  
20 service, it's a tricky -- it's a tricky judgment.

21 I have another question. I noticed  
22 that we cap the amount of CapEx that can be done for  
23 these projects, correct?

24 MS. SORRENTINO: We cap the CapEx only  
25 for the subsequent Phase Two projects. The initial

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2 phase -- sorry, subsequent Phase One projects.

3 COMMISSIONER HOWARD: Okay.

4 MS. SORRENTINO: The initial Phase One  
5 CapEx is not capped.

6 COMMISSIONER HOWARD: So this is a  
7 question and I've been asking it to staff and -- and  
8 a lot of external things. We all know that there is  
9 serious supply chain inflation. The commodities that  
10 you need to do for transmission, steel, copper,  
11 aluminum, a whole variety of -- of things.

12 Do we have any idea or as the company  
13 shared what they believe the current cost to build  
14 something versus what they may have thought even a  
15 year ago to build these same assets?

16 MS. GRISARU: Commissioner know the --  
17 the estimates that the company submitted with its  
18 petition, obviously, predate the current, you know,  
19 current commodity conditions. I believe we generally  
20 anticipate that utility cost estimating particularly  
21 at a fairly early stage in -- in project design can,  
22 you know, can vary a great deal from the final.

23 So there is a lot of -- there is  
24 uncertainty in the estimates anyway. But we happen  
25 to be in a period of -- of high commodity cost. I

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2 can't tell you whether by the time these dollars are  
3 actually spent, whether the commodity costs pressure  
4 that everyone is feeling today will impact the actual  
5 costs. I don't know that.

6 COMMISSIONER HOWARD: Well, what  
7 happens if in fact these projects as they construct  
8 cost significantly more than was estimated, what --  
9 what happens then?

10 MS. GRISARU: Well, I think I would --  
11 I would say the same thing happens as happens in the  
12 case of any capital investment that exceeds the  
13 estimates on which the capital budget was approved.  
14 And maybe Mary Ann can speak to that.

15 MS. SORRENTINO: Yes, so for the  
16 initial Phase One projects, they're only subject to a  
17 prudence review. And the -- as you know, the  
18 spending for the subsequent Phase Two projects is  
19 capped at the company's estimates. So that cannot go  
20 beyond what they had forecast through the end of the  
21 rate plan with a nine month stay out period.

22 COMMISSIONER HOWARD: What happens if  
23 the company comes back and says, we'd love to do  
24 those projects, those Phase Two projects based on  
25 what we thought our cost estimates were, but we now



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2 know that that's not the case. What happens then?

3 MS. SORRENTIONO: So at that point, it  
4 would really become a rate case issue. And I think  
5 that it would have to be addressed in the company's  
6 rate filing. There are no -- there is no -- there is  
7 nothing in the draft order that provides funding  
8 beyond the March 31st, 2025 date.

9 COMMISSIONER HOWARD: So if the -- on  
10 the next group of projects, the second part of Phase  
11 Ones comes back with significant cost increases, will  
12 the company be obliged to come back to the Commission  
13 to ask for greater revenue requirement, or will that  
14 be done strictly in the next rate case?

15 MS. SORRENTIONO: So the way that I  
16 would think about that is both of those would come  
17 back to the Commission's --.

18 COMMISSIONER HOWARD: I'm sorry. I  
19 can't hear you.

20 MS. SORRENTIONO: The way that I think  
21 about that is both of those would come before the  
22 Commission, because the revenue requirement for the  
23 period starting April 1, 2025, is something that the  
24 Commission would have to make a determination on.

25 COMMISSIONER HOWARD: Yeah. I --.

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2 MS. GRISARU: Can I -- Commissioner,  
3 can I just add, again, for context. This group of 19  
4 initial phase, you know, 19 sounds like a big number  
5 of projects, but they're actually relatively small.

6 COMMISSIONER HOWARD: No, I know the  
7 list of --.

8 MS. SORRENTINO: And the -- the, you  
9 know, the forecast on those projects is 38 million,  
10 which in -- in Grid's capital budget, I'm not sure  
11 what that represents, but I don't think it's --.

12 COMMISSIONER HOWARD: But it's not  
13 quite a rounding error.

14 MS. GRISARU: -- particularly large.

15 COMMISSIONER HOWARD: But it's --

16 MS. GRISARU: Not quiet a rounding  
17 error but.

18 COMMISSIONER HOWARD: But again, as I  
19 -- what I'm going to say is I think that going  
20 forward, we're going to have to be very cognizant,  
21 because we have not, I don't think, dealt with it  
22 straight on, on what supply chain inflation is going  
23 to mean to our entire project, you know, whether it  
24 be Phase One, Phase Two, tier four, offshore wind  
25 integration, you name it.

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2 What we think it costs two years ago,  
3 is not the number it's going to cost today. And I  
4 think that we will be coming back. And I would hope  
5 that we'd be able to at least try to get a handle on  
6 what that core utility inflation is because we spend  
7 money every day. And just anecdotally things like  
8 pole-mounted transformers doubled in price within the  
9 last two years.

10 So just that's just one example of a  
11 capital budget that is going to not be what it was.  
12 You know, and I'm particularly and I think Grid will  
13 look, I believe, modest compared to AVANGRID's  
14 number. That's my belief today, but we will see as  
15 that goes forward.

16 But I also want to remind everyone  
17 that whatever these costs may be absorbed currently  
18 in the rate case and there is enough regulatory asset  
19 to pay for them, this is not done in a vacuum. We  
20 still have tier one expenses coming in. We have tier  
21 three, tier four, Phase Two expenses that we don't  
22 know what they are.

23 We have potential offshore wind  
24 integration, dealing particularly with a very large  
25 billion dust -- dollar project in New York City.

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2 These things, they sound modest, but don't think that  
3 that's all you're going to pay for transmission.  
4 Because there's a lot of other money that you're  
5 going to have to pony -- that customers will have to  
6 pony up to make these capital expenses.

7 And again, I just want to be assured  
8 that we're all comfortable that these are the right  
9 ones. You know, I got that many of them are very  
10 modest, certainly in the first group. But again,  
11 exercising that judgment and particularly how we deal  
12 in our next case, dealing with that very old 100-  
13 year-plus infrastructure, is that going to be  
14 addressed, you know, as well as as the other new  
15 initiatives are there.

16 So again, I think this is relatively  
17 affordable in the short term. But my real concerns  
18 are unexpected expenses going forward. And -- and  
19 then how we put these Phase One expenses in context  
20 with all the other orders that are coming dealing  
21 with transmission in particular. So that's -- that's  
22 my comments.

23 CHAIR CHRISTIAN: Thank you,  
24 Commissioner. Commissioner Valesky?

25 COMMISSIONER VALESKY: I have no

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2 questions. Liz, I do just want to say as one of the  
3 Commissioners who was not here in February 2021, I do  
4 appreciate your history lesson in -- in responding to  
5 Commissioner Burman. It definitely put some really  
6 important context around -- around this item, so  
7 thank you very much for that.

8 CHAIR CHRISTIAN: Thank you.  
9 Commissioner Maggiore?

10 COMMISSIONER MAGGIORE: Thank you.  
11 Thank you for the presentation. As a -- almost as a  
12 side note, I -- I too would rather something like  
13 this be part of a rate case. I understand and find  
14 compelling the reason why it's not in this particular  
15 instance that this is -- will be atypical.

16 I'd like -- I don't have any  
17 questions. I would like to comment on what I view as  
18 the context in which we are considering this item  
19 today. Climate change is a global issue. And  
20 ideally, our national response should be coming from  
21 the federal government.

22 With the Supreme Court's ruling in  
23 West Virginia versus the E.P.A., limiting the  
24 E.P.A.'s ability to address the problem, we are once  
25 again reminded that we're not going to get the type

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2 of leadership from the federal government that we  
3 need, and that responsibility falls to the states to  
4 act.

5 Recently, I saw some media coverage of  
6 the Rocky Mountain Institute's assessment of state  
7 leadership on the climate issue. I'm not considering  
8 the report or reporting on the report in deciding on  
9 how to vote on this particular issue. However, I  
10 note that the report concluded that, despite climate  
11 policies already in place, New York still has  
12 substantial work to do.

13 And additional enabling legislation,  
14 regulation and funding will be critical to meeting  
15 the C.L.C.P.A. targets, which is as you mentioned are  
16 fast approaching. This is to say that we are not  
17 where we need to be at this exact moment in time to  
18 meet the demands of our own law.

19 The report was explicit in that the  
20 modeling that was used to reach its conclusions went  
21 into assessing where New York stands in relation to  
22 our climate goals do not account for policies that  
23 are not yet fully implemented. Again, I'm not  
24 considering this report in deciding how to vote here.

25 But as a general matter, I think the

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2 reason we have to consider climate action items on  
3 almost a monthly basis is that our work is not yet  
4 complete. I have repeatedly made the point that  
5 there are more equitable ways to finance the  
6 conversion of our energy economy towards renewables,  
7 than working the cost into energy bills.

8 For this reason, I agree that we  
9 should shine a light on the costs. I do think it's  
10 especially important that this Commission do so  
11 because unlike some of our partners in government, we  
12 do not have to respond to electoral pressures.  
13 Nobody wants to raise rates, but also nobody wants to  
14 raise taxes or take other actions that have  
15 pocketbook implications.

16 I do think we should be having a  
17 broader discussion on how to pay for the transition,  
18 but the transition remains necessary. And so for  
19 that reason, I'm going to cast a yes vote on this  
20 item. Thank you.

21 CHAIR CHRISTIAN: Thank you,  
22 Commissioner. And so that will bring this call to a  
23 vote. My vote is in favor of the recommendation to  
24 approve the Phase One projects as we've discussed.  
25 Commissioner Burman, how do you vote?

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2 COMMISSIONER BURMAN: No.

3 CHAIR CHRISTIAN: Commissioner  
4 Edwards?

5 COMMISSIONER EDWARDS: Yes.

6 CHAIR CHRISTIAN: Commissioner Howard?

7 COMMISSIONER HOWARD: Yes.

8 CHAIR CHRISTIAN: Commissioner

9 Valesky?

10 COMMISSIONER VALESKY: Yes.

11 CHAIR CHRISTIAN: And Commissioner

12 Maggiore?

13 COMMISSIONER MAGGIORE: Yes.

14 CHAIR CHRISTIAN: Thank you. The item  
15 is approved, and the recommendations are adopted.  
16 Now, before I move to consent agenda, it is 1:10  
17 p.m.. I'm going to suggest we all take a five minute  
18 break and return at 01:15. Thank you.

19 (Off the record; 01:10 p.m. to 01:16  
20 p.m.)

21 CHAIR CHRISTIAN: Welcome back,  
22 everyone. We are now moving to the Consent Agenda.  
23 Do any Commissioners wish to comment on or recused  
24 from voting on any items on the Consent Agenda?  
25 Let's begin with Commissioner Burman?



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2 COMMISSIONER BURMAN: Thank you so  
3 much. So just 263, 264 and 361. I'm going to talk  
4 about from a transparency issue. When we look at the  
5 preliminary agenda and the final agenda, these are  
6 listed as generic proceedings. I have raised these  
7 both internally and externally before.

8 It is difficult for me that we  
9 continue to have preliminary agendas and final  
10 agendas that do not identify exactly what the generic  
11 proceeding that's before us is looking at. And it  
12 would not give up any information on how we're going  
13 to vote. So for example, 263 which was the generic  
14 ESCO Proceeding, and as it is a rehearing  
15 reconsideration of smart energy.

16 There would be no reason that we could  
17 not have brackets that say rehearing reconsideration  
18 of smart energies petition. As well as for 264,  
19 which I will talk about later subsequently, there is  
20 no reason that that generic procedure could not have  
21 in brackets, green gas waiver petitions.

22 And for 361, which is the generic  
23 proceeding for the existing energy emergency response  
24 plans. There is no reason the brackets could not say  
25 ConEd revised 2021 E.R.P. item. And I say that only

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2 because it is frustrating to me. And it is  
3 frustrating to those who are parties to proceedings  
4 to know especially when we have large dockets that  
5 have many different things in there.

6 And I don't see this as anything  
7 controversial. And it really does need to change  
8 because it is problematic. And it does follow our  
9 D.P.S. transparency plan if we are trying to be more  
10 responsive to our stakeholders and be clear in what  
11 we're actually -- we have before us today. With that  
12 being said I'm now going to go on to the other items  
13 on the consent agenda.

14 Item 161, which is the -- which is us  
15 authorizing the company to recover costs related to  
16 Phase One of the Southeast Suffolk Project through a  
17 surcharge. I am going to be voting for this. I do  
18 want to just point out, you know, for me, this is a  
19 reliability issue. And it is something that I think  
20 we should be getting under the hood on -- on other  
21 reliability issues that are necessary for us to move  
22 quickly on as well. And this underscores for me,  
23 this has been a lot of process and will continue to  
24 be and we need to be looking at how to expedite while  
25 giving all parties an opportunity to participate as

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2 appropriate.

3 We do need to look at the importance  
4 of these reliability issues. The other issue I do  
5 have in here, and this is why I'm concurring, not  
6 voting yes. It mentions in here, both the  
7 C.L.C.P.A., and Climate Action Council as well as,  
8 the Utility Thermal Energy Network and Jobs Act.

9 I see no reason why the -- the  
10 paragraph that -- that has a reference to Utility  
11 Thermal Energy Network and Jobs Act is in there.  
12 It's extraneous to the actual order. It doesn't  
13 change the underlying determination, but that act  
14 just recently got passed.

15 It's fine if we want to mention it as  
16 a, you know, as an aside, but in the order it's not  
17 based on anything that's in the record. And in fact,  
18 we as a Commission have not been fully briefed on  
19 that new law and the implications, both positive and  
20 potentially negative that may come from that. And  
21 it's important for us before we just throw it into a  
22 existing order that we fully understand what it is  
23 that it is, rather than just saying it. So that's  
24 just my two cents on that.

25 On 164, I just want to underscore that

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2 I think this is a very important item, going to be  
3 supporting it. I am glad to see that we are starting  
4 to be forward thinking on renewable natural gas.  
5 There is a number of things that we do need to really  
6 get under the hood on, especially dealing with some  
7 of the technical and regulatory as well as other  
8 issues that will come. And I think it's something  
9 that's really important, so I appreciate that.

10 Item 264, which is one that deeply  
11 troubles me, and I'm going to be voting no on. So  
12 for me, I have carefully reviewed all of the  
13 underlying history. I'm actually well versed in it.  
14 I won't bore you with exactly how deep I could go.  
15 But for me, it is important to give some context  
16 here.

17 We had a number of different ESCO  
18 orders, resetting orders. And -- and most of it  
19 predates almost everybody but me on the Commission.  
20 In January 25 -- January 25, 2021, there was an order  
21 that gave the ESCOs a waiver for one year, a --  
22 certain ESCOs waiver for one year to offer natural  
23 gas commodity services.

24 That's with carbon offsets or recs,  
25 and these are a.k.a. what we -- we commonly refer to,

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2 as well as the parties, as green gas products. So  
3 this in the order itself, it was only to those mass  
4 market customers that were already receiving the  
5 products.

6 And the order itself specifically said  
7 that the theory was essentially that the Commission  
8 would have these issues dealt with in the Track Two  
9 Collaborative Proceeding, the green gas products  
10 issue as well as other issues. And so we gave a  
11 waiver, understanding that these would be dealt with  
12 in the collaborative.

13 The history of how we deal with things  
14 has always been through collaborative proceedings.  
15 And it is mindful of that, and so that was the  
16 undertaking. This Track Two Proceeding was let --  
17 was left for staff to work with the parties to get  
18 off the ground and in a timely fashion address  
19 numerous issues.

20 Frankly, from -- from a lot of, you  
21 know, looking at the filings as well as seeing some  
22 of the different proceedings and technical  
23 conferences, the green gas issue was not the highest  
24 priority and was not something that was laser focused  
25 until nearer to the end of when the waivers were

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2 coming due.

3 In fact, I raised during that time  
4 period at a couple of different sessions, the lack of  
5 Track Two movement on green gas, as well as other  
6 things and have continued to talk about that. At the  
7 end of the one year waiver, the ESCOs and I'll just  
8 say, the waiver was limited. And it didn't let other  
9 ESCOs who wanted to participate in the market do so.  
10 It was limited to only those who were currently  
11 participating.

12 So we already said no, you know, in  
13 sort of getting under the hood, we pushed it aside  
14 for others. So it really was limited to a small  
15 group of ESCOs. Anyway, at the end of the one year  
16 waiver ESCOs as many parties routinely do, including  
17 staff requested via the secretary to the Commission  
18 an extension of the waiver -- waiver since they were  
19 still in the collaborative phase in the Track Two and  
20 it was still ongoing. In fact, staff acknowledged  
21 that it was ongoing, it was that they -- it was in  
22 there and had not yet been dealt with.

23 Inexplicably, the waivers were denied  
24 via the Secretary, and then there was an  
25 understandable outcry from the parties on this issue,

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2 that it seemed arbitrary and capricious to deny, that  
3 it went against in their mind the January 25th, 2021  
4 order which I agree with and the intent behind that,  
5 which was to address it in the collaborative, and to  
6 have it come before us.

7 And again, like many things that we  
8 set with a timeframe, you know, best intentions to  
9 get it done within the year, but then other things  
10 took priority. And it was not -- you can't just  
11 blame it on the ESCOs that it was their fault.  
12 Especially, because the -- the -- for me, I know that  
13 I had personally raised this issue as well.

14 Anyway, Counsel then further, in my  
15 opinion, inexplicably said, don't worry, said it a  
16 little bit more formally than that, but don't worry,  
17 we're not going to take any enforcement action  
18 against you, the ESCOs, even though you're now not in  
19 compliance with the Commission orders, and then did  
20 so -- did that enforcement don't worry letter twice.

21 And it never came to the Commission  
22 though there were petitions it never came to the  
23 Commission until today, for determination on the  
24 petitions for the extension of the waivers until now.  
25 I will point out, no one has formally opposed the

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2           waiver extensions. And in the meantime, the  
3           Collaborative has continued.

4                   And just recently, there was a  
5           petition that was filed on the green gas proposal.  
6           And so that is now getting staff, but if it's not  
7           already, and then we will -- we will have it come to  
8           us, perhaps in short order. And instead of us  
9           saying, okay, this makes sense, we're going to keep  
10          this waiver -- these waivers in place.

11                   And by the way, the petitions for the  
12          green gas, 6 out of the 7 companies as well as more,  
13          but 6 out of the 7 companies that have existing  
14          waivers are on the petition as petitioners with the  
15          green gas proposal. So they are putting forward  
16          their best effort through the collaborative that been  
17          work through with staff, their best proposal that  
18          thing is going to get SAPA'd.

19                   So what we're -- what do we do, we now  
20          -- now somehow deciding that we're going to take up  
21          these petitions for extensions of the waiver, because  
22          the deadline is such. Counsel is not extending it to  
23          meet till we decide it and say, hey, we got to do  
24          this quickly because we want to decide the green gas  
25          proposals.



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2 Instead, the draft order now says,  
3 guess what, we're going to deny your waiver  
4 extensions, because gas prices are high, and we care  
5 about customers. Again, no one is opposed on record.  
6 And I haven't heard anything about any customers who  
7 are saying that they are upset with the -- their  
8 existing status quo, and we're going to get to it in  
9 the green gas proposal.

10 So for me, this does not make any  
11 sense. It's illogical. It's based on no rational  
12 basis in the record. We can't just cite to gas  
13 prices as high as now another reason to deny the  
14 waiver when we never really looked at that as the  
15 initial, if you go back to the January 25, '21 order.

16 And in fact, it is something that if  
17 that was the case, we would have done this, you  
18 wouldn't have granted the -- the extension of the  
19 waiver in your enforcement -- we're not going to take  
20 enforcement action letter. So I just feel this is  
21 really seems discriminatory.

22 And it's actually going to cause  
23 problems for customer confusion. Why? Because  
24 within the -- the order, we are saying, okay, you  
25 have 120 days to kind of do this and get them off of

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2 that, et cetera. We couldn't decide the green gas  
3 proposal.

4 So we're going to notice them now that  
5 hey, you know, stay on or don't, but we got to get  
6 off because we no longer have this waiver. And then  
7 what, in 45 days, maybe a little longer, maybe around  
8 the same time, we're going to say, oh wait, now, the  
9 Commission has acted, and this is the new regime for  
10 green gas, whatever that is.

11 So it seems we're actually not being  
12 helpful, and we're causing more sort of confusion.  
13 And we're also causing sort of a disruption because  
14 the utilities are going to have to also prepare for  
15 anyone that may be coming off of that, and then maybe  
16 not because we may be doing something different.

17 So as far as I'm concerned, we as the  
18 Commission should be doing the right thing and  
19 saying, you know what, this makes sense for us to  
20 ensure that we take up the green gas proposal, as  
21 soon as the SAPA is -- is done, as soon as we quickly  
22 and -- and expeditiously, but prudently review  
23 whatever comments come in.

24 And we should be looking to make sure  
25 that we, in the meantime, are understanding what some

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2 of the challenges are with green gas, not just with  
3 ESCOs, but also with utilities, and perhaps examine  
4 what all of that looks like with the focus on  
5 ensuring that we are doing the right thing for  
6 customers. So I'm going to be voting no on 264.

7 369 is the ConEd E.V. I had asked  
8 when we were talking on 301 for the Zeryai to give an  
9 update. Zeryai, I'm going to save you the time. You  
10 don't have to do it now. It really was related in my  
11 mind. I talked to you about that. I was going to put  
12 these together because it was to really kind of make  
13 the connection of looking at items not just in  
14 isolation and siloed, but how they're building upon  
15 each other and how we need to connect the dots.

16 And so for me, that was something that  
17 would have been helpful, especially on my comments  
18 with -- with the other item that you know, I raised  
19 in the Northeast Power Coordinating Council. So I'll  
20 just save you the time.

21 372, which is the LS Power rehearing.  
22 I'm going to be voting no, consistent with my voting  
23 record before. I will point out that I do recognize  
24 that the cost sharing and recovery agreement and the  
25 related New York I.S.O. tariff amendments were filed

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2 at FERC.

3 And that it's -- it's really -- you  
4 know, in -- in compliance with the May 12th, 2022  
5 order that the Public Service accepted -- Public  
6 Service Commission as a majority, accepted the draft  
7 documents as compliance filings and the utilities  
8 then developed these and filed the draft documents  
9 with the P.S.C. to comply with the attached Phase Two  
10 order et cetera.

11 For me, what's important is that we as  
12 a Commission need to have internally more  
13 communication on things that are happening and the  
14 interrelation between FERC and us as a State  
15 Commission. And also engage, because a lot of the  
16 arguments that are being made here are arguments that  
17 are being made by LS Power, but also by other  
18 parties, whether they support or don't at FERC.

19 And we should really, you know, have a  
20 much more -- a larger voice in how that all relates  
21 in a way that I think can be helpful to the overall  
22 objectives. I'm going to skip for a moment. Just  
23 377 I am voting no. I did mention that when we were  
24 talking on 201. So I do want to make sure that I say  
25 that.

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2 The last item that I'm going to be  
3 speaking about is Item 376. I am going to be  
4 concurring with reservations. And I think it's  
5 important that folks understand that. This is where  
6 the Commission, the draft order is approving the  
7 funding request from ConEd and the draft tariff  
8 amendments in part that relate to the innovative  
9 pricing pilot, and we're doing so for another two  
10 years.

11 And then we're denying ConEd's  
12 proposed tariff amendments to modify the price  
13 guarantee for low income and concerned customers from  
14 quarterly to an annual reconciliation. So why I'm  
15 concerned is really sort of -- my focus here is this  
16 was back in and again, except for I think me and  
17 maybe Commissioner Alesi, we were the only two  
18 Commissioners.

19 Yes, we were the only two  
20 Commissioners that actually approved the initial  
21 pilot, the innovative pilot, and that was back in  
22 2018. And at that time, it was, you know, kind of to  
23 look at how can we do this, it should be a good  
24 program. We were trying to reach -- they're trying  
25 to reach low income customers and the concerned

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2 customers.

3 And it was for a -- it was very  
4 different than anything we've done. It was very, in  
5 some ways, could be potentially very complicated for  
6 staff, for the company, and for the potential  
7 customers. But we were looking at ways to come up  
8 with different solutions.

9 And actually, the company back in  
10 2018, wanted to propose that the filing -- that  
11 essentially the pilot would continue, if I remember  
12 this right, continue unless it was determined that  
13 the pilot should be discontinued. So basically, if  
14 they don't come to us, they're good to go.

15 And that we, I remember at the time in  
16 2018, saying that's completely silly. And we needed  
17 to have, and the order express very clearly that it  
18 was a pilot, and therefore, as this is a pilot, is it  
19 important that there be a definitive end to it. And  
20 so that is -- and then, we continued on, actually, we  
21 had some other orders that made some further  
22 refinements to it et cetera.

23 And now, we're here today, looking --  
24 they're looking to expand the program and to continue  
25 it. And technically, it doesn't make the pilot

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2 permanent. It extends the pilot for two years and  
3 expands it to the rest of the service territory.  
4 However, the order doesn't have that same language  
5 that made me comfortable in 2018.

6 The order here essentially says, the  
7 customers can continue if they choose to remain on  
8 until the Commission takes up the pilot program.  
9 How's that going to happen? Where is the track for  
10 that? Do we take it up the minute the pilot is  
11 supposed to end? Do we take it up in a year from  
12 now? Do we take it up two years from then?

13 Do we say, you know what,  
14 Commissioners are happy with this item, let's just  
15 keep letting it roll and not take it up. Does it  
16 have to be a petition from the company? Does it have  
17 to be a petition from declaratory ruling from, you  
18 know, somebody saying please decide this?

19 We need a mechanism that says this  
20 pilot is on our radar. We are not going to be  
21 disruptive while we are looking to decide kind of  
22 like what we're doing here with completely different  
23 from the ESCOs where we're saying, even though we're  
24 about to have a proposal that's going to decide, you  
25 know, whether or not you can continue in green gas in

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2 whatever fashion that is, we're going to stop it  
3 cold.

4 Here, this order essentially doesn't  
5 give us true mechanism for when exactly it will come  
6 to us in a timely fashion for us to decide. This is  
7 important to amend, continue, or just straight out  
8 get rid of the pilot or change it to, you know, a  
9 permanent and fold that in. That concerns me.

10 And it's important enough because we  
11 do need to track our pilots like we need to track our  
12 rep demo projects that I -- you know, feel very  
13 strongly that we need to have a much more holistic  
14 look in a formal process that looks at that. And so  
15 for me, that is something that is concerning.

16 The other thing that concerned me is,  
17 the whole time that -- when we first started the  
18 2018, when it came to us for decision in 2018, not  
19 one party put in comments except for, in 2018, E.D.F.  
20 And E.D.F. said, we kind of like this, but we need a  
21 little bit more, you know, bells and whistles here  
22 from ConEd, you know, to understand this, but we like  
23 what we're seeing.

24 Obviously, we understand that  
25 according to ConEd, which is probably true, is that



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2 COVID sort of derailed a lot of that, totally get  
3 that. The problem is we're now approving going  
4 forward on a pilot. E.D.F., has no voice here. I've  
5 no idea if they were asked, are you good with this?

6 We have no, you know, no customer. We  
7 have no U.I.U. We have no -- nothing from PULP.  
8 It's -- if we're really caring about whether this --  
9 like what's the issue? And the only thing we can  
10 look to is their report structure that was actually  
11 put in by the Commission because initially the  
12 company wasn't interested, didn't have that and we  
13 put that in for accountability.

14 So for us, when you go to that report,  
15 you actually can't use that data to understand about  
16 the program because the data itself may -- there may  
17 be really no real good analysis, because the chilling  
18 factor that happened with COVID.

19 But again, we're approving an  
20 innovative pilot program without actually  
21 understanding what it is, and actually going into  
22 detail for those Commissioners who weren't here in  
23 2018. And actually, perhaps reaching out to  
24 interested parties to say, hey, what do you think  
25 about this? What should we do?

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2 Maybe we should do something  
3 different. Maybe we should give more support. Maybe  
4 we should, you know, kind of look at it and really  
5 understand it. And here, the other underlying factor  
6 is when you look to where it is for the request to  
7 extend and for more money, it is not in a petition  
8 itself, it's in a report.

9 So if you are a diligent person, when  
10 you're looking at things that you may want to track,  
11 you may discount a report -- that's their annual  
12 report, it's nothing. You actually may discount if  
13 it said, petition. It may actually be a different  
14 trigger for, hey, do we need to look at this. It's  
15 not just their normal reporting.

16 And I think that's really important  
17 because I think in a vacuum, us deciding this without  
18 getting more information and having a conversation, I  
19 think it could be a great program. I think it's  
20 something that we should -- we should, you know, look  
21 at. So I'm going to vote, yes.

22 I have real concerns about the due  
23 diligence of how we're tracking this. And we  
24 shouldn't be having items that come before us that  
25 are asking us to, you know, extend something without

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2 making sure that we've reached out to the necessary  
3 stakeholders. And even if the necessary stakeholders  
4 say, yeah, we're not interested, but you know, fine.

5 It's information we should know, not  
6 just guess at, I have no idea. And -- and my other  
7 issue is, we got to have a mechanism for this pilot  
8 to actually timely come back to us. And in the  
9 meantime, during this two years cycle, we should be  
10 having information on how's it going, what are the  
11 issues, and what are we seeing, because it's like all  
12 the other programs, we need to know what the  
13 information is. So with that, thank you very much.

14 CHAIR CHRISTIAN: Thank you,  
15 Commissioner. Commissioner Edwards?

16 COMMISSIONER EDWARDS: Well on the --  
17 the only thing I'd like to make a comment on is 376.  
18 So while I am respectfully disagreeing with  
19 Commissioner Burman on the piece that the pilot  
20 started before our tenure. There are many things  
21 that have started before our tenure, and it's our  
22 obligation.

23 I know I have done this, and I'm  
24 confident that my colleagues have done the same. We  
25 read all the information, and we make the best

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2 judgment based on the information that we have  
3 provided. So we wouldn't be able to make comments on  
4 anything waiting for our tenure to start. We do have  
5 to look at the historical record and talk to the  
6 staff.

7 So I don't have an issue with that.  
8 That being said, I do agree with Commissioner Burman  
9 on the comments on community and what their thoughts  
10 are in relationship to the pilot. So what I would  
11 ask is, I have no issue voting and I'm going to vote  
12 in favor of it as well.

13 But I do think that there should be a  
14 checkpoint, you know, if it's -- if it's 6 months, if  
15 it's 3 months, whatever staff think is appropriate,  
16 and have ConEd proactively ask. And yeah, so let'  
17 gets some feedback on how the pilot is going, if  
18 there are some adjustments that could be made. I  
19 think that that's fair.

20 So that will be my comment on -- on  
21 376. I don't have any issues on the rest of the  
22 agenda. Thank you.

23 CHAIR CHRISTIAN: Thank you,  
24 Commissioner. Commissioner Howard.

25 COMMISSIONER HOWARD: Yeah. One

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2 comment. I will be voting no on Item 372. It is  
3 less that I agree with the petitioner's position on  
4 the authority of this Commission to allocate cost for  
5 transmission. It's just I don't like our policy on  
6 how we're allocating the costs with a load share  
7 ratio financing.

8 So I will be voting no. I do -- I  
9 will note that in this -- in this order, it does make  
10 reference to a lot more process down the road as we  
11 go, as we particularly in evaluating individual Phase  
12 Two transmission projects. So again, it's still a  
13 lot of process left, but I will be voting no.

14 CHAIR CHRISTIAN: Thank you,  
15 Commissioner. Commissioner Valesky?

16 COMMISSIONER VALESKY: Just one item.  
17 I am pleased to see item 164 before us today. This  
18 is NYSEG's petition that if approved would allow them  
19 to receive renewable natural gas from a dairy farm,  
20 the Marks Dairy Farm outside of Lowville, New York,  
21 which is in Lewis County. Pleased to see that the  
22 Commission taking -- taking this up. I think R.N.G.  
23 biogas has an important potential future as we move  
24 forward.

25 And this is -- I think it's not only

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2           is important for this specific project, but it also I  
3           think sends an important message to the dairy  
4           industry, which has gone through some -- some really  
5           difficult times, in terms of ways that they can take  
6           on environmentally important projects and things that  
7           make a significant difference to them from an  
8           economic perspective as well. So I'll be happily  
9           supporting item 164 and supporting the entire agenda.  
10          Thank you.

11                   CHAIR CHRISTIAN: Thank you,  
12          Commissioner. Commissioner Maggiore?

13                   COMMISSIONER MAGGIORE: Thank you,  
14          Chair. I'm going to explain my vote in two items.  
15          The first is 161. I am going to vote yes. I read  
16          many of the public comments. Many or most of which  
17          are -- are very negative. There is one issue that  
18          was raised on the record by some of the public  
19          comments that I'm particularly concerned about which  
20          is that the infrastructure project in question will  
21          allow for the expansion of gas usage.

22                   However, I'm going to vote for this  
23          item anyway because the infrastructure is already  
24          built, it is necessary for reliability. It will  
25          result in less leakage. And it will not inject more

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2           gas into the system. Also, this project was  
3           initiated before we passed the G.P.P.

4                   I would also note that, you know,  
5           based on the potential unpopularity of this item, yet  
6           the necessity of it. I think this is another example  
7           of why the Public Service Commission is designed to  
8           be an independent body because elected officials  
9           might have reached a different conclusion.

10                   The second item that I'm also going to  
11           vote yes on but have some reticence about is 164. My  
12           -- my concern is that we might be putting the cart  
13           before the horse or moving forward on an item having  
14           to do with R.N.G. before we know what the Climate  
15           Action Council is going to do with R.N.G.

16                   I'm going to vote yes, because the  
17           approval of this item will result in less greenhouse  
18           gas than rejection of this item would result in. But  
19           again, I am a little concerned that the State's  
20           policy has not yet been set. That's said, I will be  
21           voting yes on all items on the consent agenda. Thank  
22           you.

23                   CHAIR CHRISTIAN: Thank you,  
24           Commissioner. This will bring us to a call for a  
25           vote. My vote is in favor of the recommendations on

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2 the Consent Agenda. Commissioner Burman, how do you  
3 vote?

4 COMMISSIONER BURMAN: On 161, I  
5 concur. On 264, 372 and 377, I vote no.

6 CHAIR CHRISTIAN: Thank you.

7 SECRETARY PHILLIPS: Wait, wait.  
8 Clarification. On 376, are you concurrence?

9 COMMISSIONER BURMAN: No, I said I was  
10 voting with it, but when I spoke, I was voting even  
11 though I had concerns.

12 SECRETARY PHILLIPS: So yes?

13 COMMISSIONER BURMAN: Correct.

14 SECRETARY PHILLIPS: Thank you.

15 COMMISSIONER BURMAN: I'm only  
16 concurrence on 161. And I'm on 264, 372 and 377 a  
17 no, and I thank you for asking for clarification.

18 SECRETARY PHILLIPS: Thank you.

19 CHAIR CHRISTIAN: Thank you.

20 Commissioner Edwards?

21 COMMISSIONER EDWARDS: I vote yes.

22 CHAIR CHRISTIAN: Commissioner Howard?

23 COMMISSIONER HOWARD: I will be voting  
24 yes on the agenda except for Item 372, where I'll be  
25 a no.



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2 CHAIR CHRISTIAN: Thank you.

3 Commissioner Valesky?

4 COMMISSIONER VALESKY: I vote, yes.

5 CHAIR CHRISTIAN: And Commissioner

6 Maggiore?

7 COMMISSIONER MAGGIORE: I vote yes.

8 CHAIR CHRISTIAN: Thank you. The  
9 items are approved, and the recommendations adopted.  
10 Madam Secretary, is there anything else further to  
11 come before us today?

12 SECRETARY PHILLIPS: There is nothing  
13 further.

14 CHAIR CHRISTIAN: Thank you very much.  
15 And with that we adjourn. Have a pleasant day, have  
16 a good weekend.

17 (Off the record)

18 (The proceeding concluded at 1:52  
19 p.m.)

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2 STATE OF NEW YORK

3 I, ANDREW BELAIR, 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 145, is a true record of all proceedings had at  
8 the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 18th day of July, 2022.

11

12

13 ANDREW BELAIR, Reporter

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