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PSC Monthly Meeting - 1-24-2017

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Tuesday, January 24, 2017
10:34 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS

AUDREY ZIBELMAN, Chair
GREGG C. SAYRE
PATRICIA L. ACAMPORA
DIANE X. BURMAN

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2 (The meeting commenced at 10:34 a.m.)

3 CHAIR ZIBELMAN: Good day, everyone. So
4 I'm going to bring the session of the Public Service
5 Commission to order.

6 Are there any changes to the agenda,
7 Secretary Burgess?

8 SECRETARY BURGESS: Good morning. There
9 are no changes to the final agenda.

10 CHAIR ZIBELMAN: So we're going to begin
11 today, actually, with Item 401, which is the Joint
12 Proposal for the Suez Water New York. And we have a
13 number of people presenting today. Primarily, it will be
14 Administrative Law Judge Michelle Phillips, but we have
15 Mike Rieder, who is our Chief of Gas and Water Rates, Tim
16 Canty, Chief of Water Policy in the Office of Accounting
17 and Finance, Doris Stout, our Director of the Office of
18 Accounting, and Peter McGowan, Chief Policy Advisor are
19 all available and -- and for questions.

20 So Judge Phillips, good morning and please
21 begin.

22 A.L.J. PHILLIPS: Good morning, Chair and
23 Commissioners.

24 You have before you a draft order
25 establishing a multi-year rate plan in the Suez New York

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2 Water Rate case. The proposed multi-year plan is based,
3 in large part, on a Joint Proposal that was submitted by
4 Suez and DPS Staff. However, the multi-year rate plan
5 that is described in the order differs in numerous
6 respects from that Joint Proposal. Therefore, the draft
7 order also contains an alternative 1-year rate plan that
8 would be adopted by the Commission should Suez decline to
9 unconditionally accept the proposed multi-year rate plan.

10 While this is a rate case, it is mostly
11 about water supply. Water supply has been and is a
12 critical issue for Rockland County. And so you'll hear a
13 lot of discussion today about the Haverstraw Water Supply
14 Project, conservation and efficiency planning, and non-
15 revenue water efforts. Before turning to the Joint
16 Proposal, which I do want to go through very quickly and
17 then also to the multi-year rate plan that's outlined in
18 the order, I would like to discuss procedural history of
19 this case.

20 On February 26th, Suez filed a 1-year rate
21 case that would establish new rates that would take effect
22 on February 1st of this year. In that initial rate
23 filing, they proposed to increase their annual revenues by
24 \$11.6 million, or 13.7%. The equity ratio would have been
25 50% and overall return on equity would have been 9.3 under

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2 their proposal.

3 Although it was a 1-year rate case, several
4 components of the rate filing were supposed to be
5 implemented over several years. These multi-year
6 components include a water conservation plan, efforts to
7 address water leakage, and the request to begin
8 recovering, in rates, expenditures associated with the
9 Haverstraw Water Supply Project.

10 Numerous local parties requested and were
11 granted party status in this proceeding. And several of
12 those parties, along with Department Staff, filed
13 testimony in July as part of the litigated phase of this
14 proceeding. The DPS Staff filing, among other things, was
15 also a 1-year rate case with the revenue increase of \$4.27
16 million, or 5.1%, with an overall return on equity of
17 8.5%, an equity ratio of 47% percent, and disallowance
18 recommended of over \$1 million of the Haverstraw Water
19 Supply costs. And the recovery of that adjusted level
20 would be over 15 years instead of 20, as proposed by the
21 Company.

22 The main issues addressed by other parties
23 in their filings were Suez' conservation plan, their
24 efforts to address non-revenue water, especially leak
25 reduction and increasing the pace of main replacements,

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2 and the appropriate rate treatment of Haverstraw -- I'm
3 sorry -- the cost associated with Haverstraw.

4 Shortly after the Company and other parties
5 filed their rebuttal, settlement discussions ensued and
6 were held in July and August. And a Joint Proposal was
7 submitted on September 2nd.

8 At this time, I do want to turn to slide 2
9 of the presentation. And you'll note there that the Joint
10 Proposal that was submitted called for levelized increases
11 on a 3-year plan of approximately \$5 million per year or
12 roughly 5.6% per year, on average.

13 Signatories were the Staff and the Company,
14 and then later Rockland Business Association, and Jan
15 Degenshein, who is both a pro se individual, who is also
16 affiliated in the past with the Rockland Business
17 Association. And briefs -- however, briefs in opposition
18 were filed by numerous parties and I've listed them on
19 slide 2.

20 Again, there was a lot of interest in this
21 case. And so the Commission held an additional public
22 statement hearing in order to solicit comments and to hear
23 from people concerning the proposals in the Joint
24 Proposal. Approximately -- at the public statement
25 hearing, about 50 or so people spoke on the record. And

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2 in response to the notice that was issued, we have
3 probably received in excess of an additional 200 comments,
4 either in e-mail, written, or some by phone, as well.

5 If you turn to slide 3, the major issues
6 that are contested by both the Intervenors and the
7 commenters include the Haverstraw recovery provisions,
8 there's significant opposition to that; conversation
9 planning, there's a recognized need that that needs to be
10 robust and strong; non-revenue water, it's recognized that
11 there needs to be significant and aggressive leak
12 reduction. Several commenters also questions water
13 quality and water service provided by the Company. And
14 finally, some requested some of the rate design changes
15 that were proposed in the J.P.

16 I'd like to turn to slide 3 -- oh, sorry --
17 4. So now I'm going to talk about the major provisions
18 that were in the J.P. starting with the conservation and
19 efficiency program.

20 That program was filed in response to a
21 call by the Commission as part of its order approving
22 Suez' abandonment of the Haverstraw Water Supply Project.
23 The conservation and efficiency plan is designed to
24 achieve a range of 1 to 2 million gallons per day in
25 savings, using rebates and other incentives, along with

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2 workshops and training education and a tiered
3 conservation-oriented rate structure.

4 In order to ensure the success of this
5 program, it also includes a mechanism that provides for
6 positive and negative financial incentives. As indicated
7 on this slide, as well, the J.P. included a plan designed
8 to reduce non-revenue water, leakage due -- I'm sorry --
9 to address non-revenue water by reducing the amount of
10 leakage that would consist of increasing the transmission
11 and distribution main replacement to 1% per year by 2020,
12 subject to spending caps, the rollout of advanced metering
13 infrastructure and the implementation of district metering
14 areas.

15 If you could turn to the next slide,
16 please. With respect to Haverstraw Water Supply costs,
17 the J.P. provides for recovery of an amount that reflects
18 total Staff adjustments that were made both as a result of
19 the surcharge case and in this case that in total amount
20 to almost \$8.2 million, which is about 13% less than was
21 requested by the Company. And they would be allowed to
22 recover those costs over 15 years, using -- with a return
23 on investment that's calculated using full rate of return.

24 If you could turn to the next slide,
25 please. The J.P. also provides a process for creating a

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2 low-income rebate program. That would be a component of
3 the overall conservation and efficiency program. It would
4 continue a service -- a customer service performance
5 incentive mechanism using an existing survey. It would
6 promote conservation efforts by replacing seasonal rates
7 with the conservation oriented inclining block rates. And
8 it provides for the institution of a drought rate that
9 would be triggered when the County of Rockland Health
10 Department or any other dully authorized government entity
11 enacts mandatory county-wide water use restrictions due to
12 a drought.

13 The J.P. would also establish a system
14 improvement charge. This is designed to provide the
15 Company with flexibility to undertake significant
16 necessary construction projects that have been identified
17 as part of this rate case, but for which the in-service
18 dates are not fixed.

19 If you could please turn to the next slide.
20 Because the J.P. covers a multi-year period, it also
21 includes revenue production costs and property tax
22 reconciliation mechanism that would provide for the
23 recovery or refund of variances between actual and
24 targeted levels of metered revenues, production costs, and
25 property taxes. It includes a return on equity of 9%, an

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2 equity ratio of 46%, and an earnings sharing mechanism.

3 If we could proceed to the next slide.

4 This slide simply demonstrates the levelized increases per
5 year, overall amount each year, and the percentages, which
6 are on average, as I may have already said, -- 5.6%.

7 If you'd please turn to the next slide.

8 This slide highlights the major drivers or reasons why the
9 increases are needed. And as you'll see, Haverstraw is a
10 significant portion of that, the cost associated with it,
11 net plant and related depreciation, M and S fees, the
12 conservation program, and sales revenues. And there are
13 some offsetting costs, but not enough to offset an
14 increase in total that are indicated on this chart.

15 I guess I would like to just note, before
16 we turn to the next slide, when setting rates for water
17 service, the Commission's task is to ensure that the
18 utility furnishes facilities and provides service that's
19 safe and adequate and at a cost that's just and
20 reasonable. And when reviewing a J.P., the Commission
21 must determine, among other things, whether the rate plan
22 presented by the signatories meets that standard and
23 achieves a reasonable balance among the protection of
24 ratepayers, fairness to investors, and the utility's long-
25 term viability.

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2 Based on the evidence that was presented in
3 this proceeding and with this standard in mind, we
4 recommend that the rate plan should be modified with
5 respect to the provisions that are indicated on the next
6 slide. As you'll see, they address the Haverstraw Water
7 Supply Project provisions, the conservation and efficiency
8 program incentive, certain elements of the non-revenue
9 water provisions. It addresses issues on low income by
10 making some requests or recommended modifications to the
11 rebate program and discount -- and including a low-income
12 discount program, which is not in the J.P., slight
13 modifications to the system improvement charge, adding
14 provisions to address water quality, which were not
15 addressed in the J.P., and providing for a more definitive
16 date for providing the next service classification study,
17 recommending that certain documents, mainly the annual
18 notification of rights and responsibilities, termination
19 and disconnection notices be translated upon request when
20 needed, and finally a net plant reconciliation mechanism,
21 which also was not included in the J.P..

22 So overall, these are designed to
23 strengthen that balancing and hopefully approach a more
24 reasonable outcome.

25 So, as I promised, we're again going to

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turn to the Haverstraw Water Supply Project because that is a big component. And I just wanted to talk a little bit about the history of that project. In 2006, there was substantial local concern regarding supply, which led to the P.S.C. directing Suez to develop a major new source of supply.

Over the course of time, there was a changing in the timing of need for a major new long-term supply source. And after an extensive review and process by the P.S.C. in 2 cases, the P.S.C. ultimately determined that, in fact, circumstances had changed. Specifically, demand had been reduced.

This led them to conclude that the Haverstraw Water Supply Project could be abandoned, that Suez was not imprudent in pursuing or selecting the Haverstraw Water Supply Project, and that Suez could ask for recovery of its prudent expenditures, which at the time of the order, December 15, were approximately \$3.97 million -- I'm sorry. That would be nice. \$39.7 million.

So really, the -- I'm sorry, turning to the next slide. Really, the issue that remains in the rate case is what is the appropriate prospective rate treatment of those costs? Parties were heard on that issue and allowed to argue that there should -- what the Commission

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2 should do with respect to prospective rate recovery. And
3 I will note there were some minor additional costs between
4 December 15 and the rate case that parties were also
5 allowed to be heard on.

6 After a significant amount of process and a
7 lot of testimony and briefs on this issue, Staff and the
8 Company recommended that there be return on this
9 investment using our what we call normal rate based
10 treatment, which would be allowing them to recover it with
11 a weighted average that reflects an amount that considers
12 the long-term debt rate and the 9% ROE.

13 Intervenors -- and I will summarize this.
14 We're focusing more on what -- I guess the return on this
15 investment, that aspect. There were some parties that I
16 think went even beyond that, saying there should be no
17 recovery. We're focusing on return-on because I think
18 that's -- I guess we don't want to consider things that
19 probably are not reasonable and would not be appropriate
20 to consider in that they would significantly harm
21 potentially the Company's bond ratings and its financial
22 liability, but -- so the Intervenors' positions were a
23 lower debt rate.

24 We've considered all of these things. We
25 do have to consider the credit quality and customers and

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2 reach a reasonable balance. The Commission has discretion
3 in that regard. And here, taking all of those factors
4 into consideration, we're recommending an overall rate of
5 return using an ROE that is at the lower range of
6 reasonableness and using that blended with long-term debt
7 rate to come up with a lower return on this investment
8 than is proposed in the Joint Proposal.

9 If you could, please, turn to the next
10 slide? It's going to be critically important to the
11 success of this Company and to water -- addressing water
12 supply issues that the conservation and efficiency program
13 be strong. The mechanisms that were proposed here have a
14 target of 1 to 2 MGD. There was significant argument
15 about what the baseline was. This target focuses on -- on
16 measurable activities and results that we can verify.

17 Other conservation is expected. And
18 indeed, we continue to hope that there will be
19 complementary local ordinances, for example, that will
20 also help achieve maximum conservation. And we know that
21 the success in getting to the higher end of this range is
22 going to require significant customer participation.
23 However, we heard the concerns about this needing to be a
24 critical and successful endeavor.

25 And therefore, we're recommending that the

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2 incentive around it be strengthened so that on the lower
3 end, we make sure that they don't fall below 1 MGD by
4 increasing the negative part of that incentive to start at
5 .9 MGD, instead of .8, as provided in the J.P. And on the
6 top end, the last 10 basis points that would be earned
7 under the J.P. could have been earned for a less than .1 -
8 - full .1 increment over the 2 MGD. We think, in
9 fairness, it should be also a full .1 MGD to get that last
10 10 basis point range that would get you to 63.

11 We also heard significant concerns, given
12 the importance of this issue, that there should be more
13 periodic check-ins. So we recommend a 3-year milestone
14 that's based, in part, on a ramp-up suggestion in the
15 testimony of the Sierra Club and Municipal Consortium
16 witness, Jonathan Kleinman.

17 The next slide, NRW, again, there was a lot
18 of testimony and concern around this issue. And I think
19 when you get to -- through all of the briefs and through
20 everything that happened at the hearing, most of the
21 parties agree that there should be some sort of incentive
22 mechanism and they agree that the ultimate target should
23 be somewhere between 15 to 18% non-revenue water.

24 The Company, in its brief, pledged to
25 reconcile their production-related costs, which are

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2 energy, chemicals, and waste residuals, to an actual -- or
3 to an NRW level of 18% regardless of what the actual level
4 is. That, in and of itself, if it's used, creates that --
5 an incentive that has both a positive and negative aspect
6 to it when you impose it.

7 The slide indicates roughly what that would
8 consist of. To the extent the Company is over 18%, when
9 you use that reconciliation level, it could be up to an
10 18-basis-point adjustment using the test year levels.

11 If they are able to succeed in getting
12 below 18%, they would accrue savings. And this, we think,
13 benefits both shareholders and ratepayers because the
14 ultimate -- it's consistent and in line with the ultimate
15 goal and it protects customer -- ratepayers from excess
16 costs when and if NRW levels exceed 18%.

17 If you could, please, turn to the next
18 slide. I wasn't going to say a lot about these except
19 that we do have some of these recommendations address what
20 I would call gaps in the J.P. Those include, for example,
21 the discount program for low-income customers, water
22 quality requiring -- reporting and monitoring. This is
23 also designed to be -- to have the Company be more
24 responsive to customers when they have issues concerning
25 smell, taste, odor of their water. That would include a

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2 quarterly reporting requirement, as well as a more
3 immediate report within 30 days as to the efforts that
4 they're talking to address those types of issues and
5 create more accessible means for their customers to get in
6 contact with them and notify them of these types of
7 issues.

8 Translation issue, again, that's a gap
9 measure. And the net plant reconciliation mechanism was
10 something that was not included in the J.P.

11 The low-income rebate program, we're
12 recommending that they be directed to and study a direct
13 install program as part of that to -- and that also
14 responds to some of the concerns about taking full
15 advantage of the flexibility of the conservation and
16 efficiency program that's in the J.P. And to the extent
17 this could be cost effectively implemented, it would allow
18 for that.

19 If you could go to the next slide. This
20 slide basically highlights, again, the differences based
21 on the recommendations that are in the draft order between
22 a 3-year J.P. case and a 3-year draft order case. And
23 you'll see that, cumulatively, over the 3-year period, it
24 leads to a reduction of almost a million dollars.

25 One of the issues that we did not recommend

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2 to change to was the rate design. And the main reason for
3 that, you'll see by looking at both slide 17 -- the next
4 slide. As you'll see, the single family, when you combine
5 it with multi-family customers, comprise 75% of this
6 company's customers. So by having a conservation oriented
7 year-round rate that would apply to these customer classes
8 and focus in on their discretionary water use, it's
9 completely consistent with the goal that we're trying to
10 achieve here, which is to reduce -- sorry -- incent
11 conservation.

12 And if you look at the final slide, 18, it
13 shows that -- what the typical customer bill impacts would
14 be under the proposed conservation oriented rate.

15 At this time, I do want to return to
16 something that I noted at the outset. I believe that we
17 indicated, at the very start, that there are quite a few
18 changes that are recommended in the draft order.

19 And so the process that's set forth in that
20 order is to have an alternative in the event that Suez
21 does not unconditionally accept these proposed
22 modifications, which would be a 1-year rate case with the
23 revenue requirement set at \$6.47 million. However, the
24 types of reconciliation mechanisms that obviously would be
25 appropriate in the multi-year case would not be continued

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2 as part of that 1-year case.

3 So there would be no earnings sharing
4 mechanism, for example, and no reconciliation for things
5 such as property tax or net plant additions. The system
6 improvement charge would operate only to the extent
7 necessary to accommodate the conservation and efficiency
8 program and incentive mechanism. And we would recommend
9 that this alternative 1-year rate plan be placed into
10 effect on a temporary basis until we could have further
11 process that would -- would result in a permanent rate
12 order.

13 I do want to note that it is very likely
14 that if this avenue is pursued, the ultimate ROE that
15 would be adopted would -- generally is updated when you're
16 doing a litigated proceeding. We expect that it would be
17 higher. There would be additional rate uncertainty if we
18 go with the 1-year rate option. And I don't think that
19 there would be that long-term opportunity that you have in
20 a multi-year rate plan for both the Company and its
21 customers and local municipalities to focus on what is a
22 critical issue here and that is addressing the water
23 supply issues and concerns.

24 At this point, this concludes my
25 presentation and we are available for questions.

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2 CHAIR ZIBELMAN: Thank you, Judge Phillips.

3 That was an excellent summary of a very
4 complex case. So I appreciate all the work that I know
5 you and the Staff have put into helping us get through
6 this.

7 Let me just start. I know that all my
8 fellow Commissioners have a lot -- you know, a lot of
9 concern about this matter, and I want to give everybody
10 enough time. So I'm going to try to be brief in my own
11 comments.

12 The -- you know, ultimately the Commission
13 is always concerned with respect to the reliability of
14 water supply, just like we're concerned about the
15 reliability of any of the services that we oversee. We're
16 also, in the case of water, of course, particularly
17 concerned not just about safety, but also about the health
18 of the community. And we're also concerned about the
19 price that people pay, as well as the reliability of the
20 Company.

21 And so, in fact, price has sort of an
22 effect of both the efficiency of the Company in delivering
23 services, but also the financial health of the Company
24 because if companies are financially unhealthy, investors
25 see more risk, they charge more money, which ultimately

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2 then means rates are higher. So it's important not just
3 for the shareholders of the Company, but the ratepayers of
4 the Company that we maintain a financial health of the
5 utilities that we oversee.

6 I want to, in this case, you know, again,
7 thank the people who have been involved in this
8 proceeding. The issues that have confronted us with
9 respect to Rockland County Water have been very
10 significant. It's been a matter of concern both for this
11 -- sitting Commissioners today, as well as previous
12 Commissions. It's been a longstanding issue, particularly
13 the concern around the adequacy of water supply, something
14 we worry about a lot.

15 I also want to note -- I think
16 Assemblywoman Cornell is in the audience. I want to
17 appreciate her coming today, as well as other members of
18 the Rockland County Task Force, and people who have been
19 involved in this proceeding. I know that this is an issue
20 that is very significant for the community. We have
21 appreciated the efforts that people have made to be
22 involved in our proceedings and the seriousness in which
23 they've taken this. We take it seriously, as well. And I
24 know my fellow Commissioners have been in attendance at
25 the public hearing, but this, as a matter, has been a

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2 great concern.

3 As well as I appreciate the work of the
4 Company because I know that that's -- this has been an
5 issue that they've been trying to tackle, as well as to
6 gain the confidence of the community they serve.

7 With that then, let me just start as to why
8 I'm in favor of not accepting the J.P., which is a very
9 unusual step for this Commission. We typically encourage,
10 in these complex matters, for parties to work together.
11 We often find that creativity and problem solving occurs
12 in a format where there's settlement where people --
13 there's a give and take. That often means that not every
14 -- nobody gets everything they want, but in composite you
15 get an outcome that drives us in the right direction.

16 And I know Staff -- our Staff, in
17 particular, along with the Company's, but particularly our
18 Staff often has the burden that they don't get to pick and
19 choose the issues they want to get involved in. They have
20 to get involved in every issue. And so when they're
21 involved in these proceedings and trying to put together a
22 settlement, they either -- they have to look at the whole
23 package. That's a luxury that they don't -- that they
24 have or if they would say probably somewhat of a burden
25 that they have because other parties get to pick and

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2 choose their issues and can say, well I agree on that, and
3 I disagree on that. We can't do that.

4 So I know, for us, when we -- because our
5 staff works very, very hard to put together these
6 settlements, they're like a really delicate recipe, and
7 all the ingredients have to work together. When we act to
8 undo pieces of it, it makes it difficult in the future for
9 Staff to actually engage in settlement discussions because
10 people will worry, then, do you have the votes of the
11 Commission behind you?

12 So in this case, it was really a difficult
13 decision for the Commission to think about this because we
14 knew this was hard fought and a lot of things -- a lot of
15 ink on paper or a lot of taps on keyboards to try to get
16 us where we are. But with that, I think that this is a
17 really difficult case. And one of the advantages that the
18 Commission has because we're not in the settlement
19 discussions, we have that ability to look objectively at
20 these proceedings and make a determination on the entirety
21 of the record and maybe away from the emotion of the back-
22 and-forth that goes as to whether or not the J.P. landed
23 exactly where we wanted it to be.

24 And I would say 99% of the time, the Staff
25 gets it right. We spend a lot of time talking to them.

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2 They know exactly where our minds are they are able to
3 gauge very accurately where the Commission is going to
4 want to land on a position.

5 In this instance, I think that the -- that
6 the nature of this proceeding, the difficulty that we have
7 in Rockland County in addressing the questions of water
8 supply adequacy, and the question of rates, and the issue
9 around Haverstraw, has certainly led me to agree that we
10 needed to make some modifications. And so for that
11 reason, I am going to vote in favor of the modified J.P.,
12 which is, again, I just want to stress, is a very unusual
13 step for us to take in a complex rate case like this.

14 And then I want to go through why I think
15 the modifications we're looking at are appropriate in this
16 instance. And then I'm going to turn it over to my fellow
17 Commissioner.

18 So one is in terms of the Haverstraw Plant.
19 Now, you know, the fact is -- is that the Commission did
20 ask the Company to look at a supply source. We were very
21 concerned, in 2006 timeframe, that we were going to run
22 out of water. And that is obviously a big concern.

23 Things change -- facts change. That happens a lot in our
24 proceedings. And so historically, the Commission has
25 always looked at abandoned plant as something that is used

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2 and useful. We have case law about this.

3 And it really is a practical issue for us
4 because, if you think about it, anytime an organization
5 that is not rate regulated like our organizations are,
6 will look at an investment in a project and then just
7 subsequently decide an investment doesn't make sense and
8 they abandon it, those costs end up in the price
9 somewhere. We hear about it in pharmaceuticals all the
10 time. They abandon a product. It's not like the price
11 doesn't show up. It shows up in another form.

12 In our cases, because we regulate on cost,
13 there is no way to do that, but it would be foolhardy for
14 us to simply say to a utility, we're going to tell you to
15 go do something and then if things change, lots of luck,
16 you lost, because they're never going to do anything
17 again. So we need to make sure our companies can have our
18 trust -- we're trustworthy, and they understand when --
19 particularly when we're looking at a world of innovation
20 and technology, that we're looking for people and we're
21 not -- and as the law requires that this is plant that
22 gets to be recovered.

23 And so for -- you know, and this is an
24 issue, frankly, and I don't want to revisit it, but it was
25 an issue that the Commission considered. We went through

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2 a prudency proceeding. We looked at the expenses. If I
3 recall, we had a very significant reduction in the allowed
4 expenses. So we've gone through all this.

5 The issue in this rate case was really the
6 treatment of expenses that the Commission had previously
7 approved for rate recovery and how -- and the amount we
8 would allow recovery of. So in the case, what happened in
9 the J.P. is -- is that the return that was going to be
10 allowed on the Haverstraw Plant is consistent with the
11 overall return, which is consistent with the mechanism of
12 we're looking at the ROEs, really, across the board. It's
13 the same formula.

14 But because, again, of this other issue in
15 terms of rates and the size of the amount of the abandoned
16 plant, I do think it was important for us to take a look
17 at whether the return on this particular asset should be
18 at the level that we're allowing on other assets. The law
19 gives us some level of discretion. I think we talk about
20 -- in the order we talk about, in fact, other agencies
21 particularly FERC will often look at ranges.

22 And -- but I think in exercising that
23 discretion, it's very important that the Commission,
24 itself, acknowledge and recognize that we don't want to do
25 things that harm the financial integrity of the Company

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2 because, again, that will just yield higher rates in the
3 future.

4 So for that reason, I'm supportive of
5 reducing the return down to a lower level for the project.
6 I think that's a balance of our concerns about the impact
7 on customers, but also recognize that this is an asset for
8 which the Company is entitled to a return.

9 Now the level that the order sets, I would
10 acknowledge is probably the lowest level that is
11 reasonable, given the fact that we don't want to
12 negatively affect the bond ratings. So it's -- but so
13 it's maybe not as far as some Intervenors would want, but
14 I think it would be certainly inappropriate for us not to
15 take a long-term view of this and recognize that what we
16 do today can impact the health of the Company in the
17 future, which would then impact the rates in the future.

18 So I'm comfortable in being at the low
19 level, but I don't think we should go any lower as to what
20 is reasonable under the circumstance in terms of the range
21 that we've looked at.

22 The other area is the area of conservation.
23 And I think we can't stress enough that we have to be
24 maximizing everything we're doing in this region and this
25 community around conservation. That's for the Company to

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2 take a look at aggressive action. And I think what we've
3 modified is to make sure that we have good touch points,
4 so we see that we're achieving what we need to -- where we
5 need to go.

6 It's also looking at non-revenue water and
7 making sure we're aggressive around leaks. It's also in
8 terms of rate design. One of the things, though, that is
9 missing, and I really hope we can move this forward, is
10 the issue of municipal code changes. And I know there's
11 action that's going on today, but frankly, you know, to
12 saddle ratepayers -- water ratepayers with all the cost of
13 conservation and trying to get there simply on the backs
14 of ratepayers is probably not going to be sufficient in
15 this case, nor is it fair.

16 One of the things we know is that code
17 changes can be the most lowest cost and effective way of
18 getting conservation. So I hope, and I would urge
19 everyone to say what we need to do is work as a community
20 with the water company and the local municipals, as well
21 as the State to get to where we need to go in conservation
22 because what we've done here is done everything we can on
23 a cost effective side, but we want to basically leverage
24 those ratepayer dollars by looking at code changes so we
25 can get to where we want to go. And, you know, I think we

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2 will all sleep better at night knowing we're maximizing
3 what we can do on conservation, but we can't get there on
4 the utility alone.

5 So I really want -- I hope, after this,
6 people can get together and start working on the other
7 side of this equation.

8 The other thing is I want to stress it's in
9 this -- these changes is the question of water quality.
10 There's a lot of concern about smell and health of the
11 water. That is obviously a significant concern. We've
12 all had experiences now in seeing what happens to
13 communities. I had -- there is no -- nothing in the
14 record to suggest that the quality of the water has a
15 health issue. But that doesn't necessarily address
16 people's concerns when smell and color are not good
17 because it gets people worried about what else is there
18 and are we there.

19 So obviously monitor the health in terms of
20 the chemical component is an issue that's non-
21 jurisdictional with this agency. It's more the Department
22 of Health and EPA, who take -- and the DEC, but we are
23 concerned that the Company do everything in its power to
24 make sure that the community is satisfied that the Company
25 is doing everything in its power to ensure the health of

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2 the water. And that's the reporting and taking care of
3 these other issues so that people are aware and that the
4 Company is aware and concerned. And I think that's a very
5 important part of the change that we're looking at.

6 There are a number of other changes in the
7 order. I think, again, Judge Phillips did a superb job of
8 going through them, and I don't want to repeat them. But
9 the point here, and I just sort of want to leave it on
10 this, is that the way this works from a procedural
11 standpoint is that we can accept the J.P. If we don't
12 accept the J.P., then we need to do something else.

13 And so that means what we suggest is
14 putting in a temporary rate. But it really is up to the
15 Company to accept these modifications. We -- I'm really
16 hoping that they do that. I think that it's the best
17 thing for both the Company and the community. I think
18 having a long-term rate plan where people can get on it
19 and start looking at conservation and working on these
20 issues is really critical.

21 I am also concerned, because we are seeing
22 interest rates go up, is that if we do put in a 1-year
23 rate case, we will see higher rates of return, which will
24 basically not help what we want to do, which is put as
25 much money as we can into conservation and so that -- so

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2 having a levelized rate in the rate plan is a good idea --
3 is -- is the best way forward.

4 So I urge the Company to take a look at
5 what we're doing. I think it results in a fair result and
6 allows us all to sort of move to the future. And I hope
7 that this future also includes work in the local
8 communities to work with the Company to get where we want
9 to go on conservation and combine that with these code
10 changes, which I think are going to be critical if we're
11 going to be successful.

12 So with that, I will take other questions
13 and comments.

14 Commissioner Sayre, do you want to begin?

15 Thanks.

16 COMMISSIONER SAYRE: I agree with the Chair
17 and everything she just said. This is the hardest case
18 for me on the agenda today. It's really mostly about the
19 originally proposed and subsequently abandoned desal plant
20 at Haverstraw. There's a settlement in front of us. But
21 unlike the Con Ed settlement that we are going to be
22 considering later today, most of the parties are opposing
23 it.

24 I'm sorry that more parties could not reach
25 a resolution. I recognize that Staff and the Company and

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2 two other parties were able to reach concurrence. But for
3 me, that's not enough of a critical mass for me to be
4 comfortable at the outset that the settlement is probably
5 in the public interest. There are many good proposals in
6 the Joint Proposal, but given the opposition, I'm just not
7 ready to give it as much weight as, for example, the Con
8 Ed Joint Proposal.

9 In my experience in private industry, in
10 contentious cases in front of this Commission, we
11 frequently have the choice of rolling the dice with the
12 Commission, as we called it, or slogging our way through
13 to complete or nearly complete settlement. In my
14 experience, we got better results when we went through the
15 process to get a settlement because we ended up with
16 something we could live with, even though it wasn't
17 necessarily something that we particularly liked.

18 But in this case, I'd say effectively most
19 of the parties have chosen to roll the dice with the
20 Commission. That's fine. That's entirely their right.
21 But now it's our job to make the decision. We're making
22 it now, and I anticipate that nobody is going to like it
23 very much.

24 You've heard it explained very well by
25 Judge Phillips. We're declining to revisit our previous

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2 decision that the Company acted prudently in pursuing the
3 desal project and incurring costs in furtherance of it.
4 20-20 hindsight is terrific.

5 If the perfectly reasonable estimates back
6 in 2006, when the project started, the water supply on one
7 hand and water usage and demand, on the other hand, had
8 come through, in my view Rockland County would be in a
9 whole lot of trouble right now, very close to a a serious
10 water shortage in the next few years, and people would be
11 crying out for new sources and supply.

12 But as it turned out, the demand -- on the
13 demand side, there was less usage than anticipated, mostly
14 due to the economic downturn that started in 2008. And on
15 the supply side, the droughts we were afraid of have not
16 materialized yet. So that's why we directed the Company
17 to stop work on the project, but this was hindsight, not
18 something that we or anybody else knew at the outset of
19 the project.

20 My message to Rockland County is the same
21 as the Chair's. You're not out of the woods. I was at
22 the public statement hearings a couple of years ago in
23 this case, the ones that ran until 2:00 in the morning.
24 And I heard loud and clear statements from both elected
25 officials and members of the public that Rockland County

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2 can conserve its way out of any need for a major new water
3 supply source like the desal plant. That may be the case
4 -- I hope it's the case, but there hasn't been an
5 ordinance yet, and I'm not sure exactly how much
6 conservation is taking place and how much more will be
7 achieved.

8 So like the Chair, I would like to urge in
9 the strongest possible terms that the county, the
10 municipalities, and interested members of the community to
11 work on strong and enforceable conservation policies. And
12 I urge you to work with Suez in doing so. I think you'll
13 find you can work with them. I think you're going to get
14 a lot farther in solving Rockland County's water needs by
15 cooperating and negotiating than litigating. And I really
16 think you can work together.

17 But all that being said, we have to decide
18 what to do with this rate case. I've already said we're
19 not going to revisit our previous decision. Based on our
20 settle policy, that means that Suez is entitled to a
21 recovery of its prudently incurred costs, even though the
22 project has been cancelled, because of the changes in
23 circumstances.

24 We've already disallowed, in the course of
25 these proceedings, substantial amounts of the claim costs,

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2 cut down the amount to be recovered by roughly 13% from
3 the initial request. We're also deciding to spread the
4 recovery of these costs over a period of 15 years, which
5 is what the Joint Proposal recommends.

6 So the big rate making question in this
7 case is what allowance, if any, we're going to give the
8 Company on those costs while they're being in the process
9 of recovery. A Joint Proposal would give recovery at the
10 overall weighted cost of capital. The opposing parties
11 argue for a lower recovery all the way from 0 to the cost
12 of short-term debt without any allowance for equity.
13 We're reaching a decision in between those extremes.

14 We'll allow a return on the funds,
15 including the long-term cost of debt and a return on
16 equity, but as the Chair said, we're allowing a return on
17 equity significantly lower, even though it's within the
18 reasonable range then the return that we're allowing on
19 the rest of the assets, assuming that the Company allow --
20 accepts the modifications to the Joint Proposal.

21 At this point, I'd like to say that, for
22 me, my decision that its proper to reduce the equity
23 return on the desal project costs is based on the unique
24 facts of this particular case. Other facts could lead to
25 other results. Particularly important to my decision, in

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2 this case, is the fact that the modified Joint Proposal,
3 if accepted by the Company, has an upward incentive, that
4 the Company can earn by achieving the maximum amount of
5 water conservation.

6 The potential earnings incentives for
7 conservation and efficiency is fairly close to the impact
8 of the downward equity adjustment for the desal plant
9 costs. And I am considering these two issues as two sides
10 of the same coin. We need to address Rockland County's
11 water supply issues on both the supply side and the demand
12 side, and we need to look at both sides at the same time.

13 There are many good things in the Joint
14 Proposal, including, in particular, the conservation and
15 efficiency incentives. The proposed order makes a lot of
16 adjustments to the Joint Proposal that, in my view,
17 improve the incentives and make them stronger. And we're
18 adopting, as the Chair and Judge Phillips have said, many
19 of the suggestions that have been raised by the
20 Intervenors. In particular, I'll mention PULP's proposal
21 of starting to develop a low-income program.

22 And we're extremely concerned, as the Chair
23 has said, about the reported instances of poor water
24 quality. Although, there doesn't appear to be any health
25 issue at this point, we are requiring in the order for the

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2 Company to work with Staff and other interested parties.

3 Please work with the Company to nail down exactly what and
4 where these problems are and file a report with us that
5 identifies the root causes and solutions.

6 Because we're making such significant
7 changes in the Joint Proposal, we're giving the Company an
8 opportunity to accept or reject the changes. If the
9 Company accepts the changes, then we have a plan, and
10 we'll move forward on that basis. I hope they will.

11 If the Company rejects the changes, then we
12 don't have an agreement in front of us that we're prepared
13 to accept. So we will establish, in that situation,
14 temporary rates subject to refund or recoupment in either
15 direction and the parties will go back into a litigated
16 rate case of some sort, procedure to be set in the future.

17 The order sets out what the temporary plan
18 will be if we go back into litigation. But I'll note, as
19 the Chair has, that the return on equity on assets other
20 than the desal plant, in the event of temporary rates,
21 would be significantly lower than the rate of return on
22 equity that the Company would receive under the Joint
23 Proposal as modified by the Commission. But those
24 temporary rates would lead to only a 1-year plan and
25 likely very significant increases in the future, possibly

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2 the need for yet another rate case, back to back, with the
3 one that would have to be held in the event of temporary
4 rates.

5 So I warned you earlier. Nobody is likely
6 to be very happy with our decision. It's not an easy one.
7 We're doing our utmost to achieve a fair and reasonable
8 balance that's in the public interest. And, in fact, if
9 everybody turns out to be unhappy with it, I'll personally
10 take it as an indication that we probably came close to
11 the right balance of results for all the parties,
12 including the shareholders, the ratepayers, and
13 Intervenors.

14 But however we go forward with this case,
15 the water supply issue has not been solved. Please work
16 together. You're going to get some more industry coming
17 into Rockland County that uses water. It hasn't happened
18 yet. It was forecast to happen. But it's likely to
19 happen. And sometime in the future, the rains may stop
20 coming.

21 There's some issues that we can do here at
22 the Commission by creating utility-based conservation
23 plans, but there's some problems that need to be solved
24 locally. And I sincerely hope you will proceed to do so.

25 That's all I have.

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2 CHAIR ZIBELMAN: Thank you.

3 You know, the sound of one hand clapping.
4 This is the sound of a Commission begging. Say -- I also
5 want to acknowledge and welcome Senator Carlucci, who's
6 also here. I appreciate you coming today. This is
7 obviously an important matter for all of us.

8 Commissioner Burman, do you want to
9 proceed?

10 COMMISSIONER BURMAN: I'll defer first to
11 Commissioner Acampora.

12 CHAIR ZIBELMAN: She's asked to go last.

13 COMMISSIONER BURMAN: Well, I actually --
14 my comments are reflective of what we're hearing today
15 because I do have some comments so.

16 CHAIR ZIBELMAN: Could you proceed with
17 your comment and then if you have responsive --?

18 COMMISSIONER BURMAN: Yeah. So right now,
19 my comments are that I'm taking in all that the
20 Commissioners here are saying, and looking, and have some
21 questions for Staff, likely afterwards. And then I will
22 formulate my thoughts in succinct comments.

23 So thank you.

24 CHAIR ZIBELMAN: Do you have some comments?

25 COMMISSIONER ACAMPORA: First, I have a

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2 question.

3 Judge, could you please go over the low-
4 income program as proposed in the J.P.?

5 A.L.J. PHILLIPS: Actually, the low-income
6 discount program is a new provision. There was not a low-
7 income discount proposal in the J.P.

8 COMMISSIONER ACAMPORA: And do we have any
9 particulars as to, you know, what will be the low-income
10 discount program, considering there never was one before?

11 A.L.J. PHILLIPS: I don't think so. It's
12 one --.

13 CHAIR ZIBELMAN: If I recall -- yeah,
14 LuAnn?

15 MS. SCHERER: The proposal is to have a
16 collaborative process to develop a proposal and bring it
17 back -- a filing would have to be made to the Commission
18 within nine months and the Commission would then vote on
19 it.

20 COMMISSIONER ACAMPORA: Okay. I just
21 wanted, you know, to just go through what the procedure
22 would be in order to institute a low-income program, which
23 I think is really important. It's something that we go
24 over in all rate cases.

25 And I really would be remiss if I did not

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mention the participation of someone who's no longer here at the Commission. And that's our former executive deputy, Judy Lee, who really, I think, did a yeoman's job of again, trying to bring parties together. And really this is about bringing people together. This has been 11 years of really struggling with a very, very tough issue.

And, you know, I have attended those public statement hearings, too. And it's really uplifting when you hear the interest of the public in the county who have said for many years that they felt they could conserve and they could solve this problem.

But, you know, we're here at a point right now where all the years of finger pointing and people blaming one another has really not taken us to where we need to go to resolve this issue. And I think that the groundwork that has started between the Company and all the interested parties still has to continue. And as was said very eloquently by Commissioner Sayre and our Chair, local ordinances that are enforceable really do need to be passed in order to make the conservation efforts work. That, to me, is extremely important.

And I've been here long enough to know that, as was mentioned before, that modifying a J.P. is not often done, but because we have such interest in this

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2 matter and, of course, I've always taken an interest in
3 the water matters and, you know, I certainly agree with
4 the public deserves to know with what they're ingesting is
5 safe and is not going to do harm to them or their
6 families.

7 And so I believe that this is a point of
8 interest that -- making sure that we are checking with the
9 Company every 3 years to make sure that everything is
10 right. And as I hope most of the public knows, while
11 we're here at the Commission and we look at the rates, we
12 share responsibilities with other sister agencies, the DEC
13 and the Department of Health, also, in these matters.
14 And, of course, there are the county health departments,
15 too, that I know are interested in making sure that water
16 is safe. It's a huge issue and very important issue.

17 So as we vote on this today, yes, it was
18 agonizing. It's been very hard, but again, it's time to
19 move forward. It's time to work together. And so much
20 more can be accomplished when people work together to try
21 and reconcile the differences than it is than just calling
22 each other names and finger pointing at this.

23 So I will be voting in favor of this
24 modified J.P. and hoping, as has been said previously,
25 that people do come together, stay together, and make this

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2 a workable solution because no one knows what the future
3 has. And there may be rain and there may not be rain.

4 And we know that the Company, I'm hoping
5 continues to try to communicate and work as a partner with
6 the community. That was something that was lacking in the
7 past. And I'm hoping that it will continue to work at
8 better relationships with the constituencies that they
9 serve.

10 CHAIR ZIBELMAN: Thank you.

11 First of all, thank you for acknowledging
12 Judy's work. And I know that the Task Force and -- also
13 has met many times. So it's been hard fought, and I think
14 that people are committed.

15 One of the things that's not in the order,
16 though, that I would like us to get a report on -- and
17 Peter, you and I have chatted about this. I think it's
18 going to be important that we have a renewed baseline of
19 where we are in terms of the analysis that's been done as
20 to what are we in the comfort zone of having adequate
21 water. And Mike, I know your staff can work on this.

22 And I think that what we need to do is set
23 up a process so that there's periodic reporting back to
24 the Commission. I don't think we want to wait. And if,
25 seasonally, we're seeing directionally that it's not going

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2 in the right direction, I think that's something the
3 community is going to want to know, as well as in terms of
4 the actions that are taken. So this -- you know, I know I
5 don't want to beat a -- beat this argument too much, but
6 we are very, very concerned about the supply issue. And
7 this is not something that we think can -- you know, let's
8 let it go and in 10 years we'll look back and see if we
9 were right.

10 I think we have to be constantly on this,
11 and seeing if this is -- we're getting the effects that we
12 want. Otherwise, we really do need to look at alternative
13 plans.

14 So I would urge -- I would ask -- actually
15 direct Staff to work together and let's get a reporting
16 going on so that we stay on top of this.

17 Commissioner Burman, you had some
18 responsive comments?

19 COMMISSIONER BURMAN: Thank you.

20 So on the last point that you raised about
21 the reporting and looking at that, how does that fit into
22 the actual order and shouldn't it be part of the order?
23 What happens if it's not on track? How does that affect
24 the rates and others on that? Is there some action that
25 we take on that? How does that work?

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2 CHAIR ZIBELMAN: In my mind, just -- but
3 I'll let -- it's not -- it's not in the order, but I think
4 this -- we can direct the staff to do this kind of
5 analysis. And if the evaluation indicates a concern that
6 we're not on track, the Commission can take action on its
7 own.

8 So it doesn't have to be necessarily in the
9 order. It's just part of our ongoing supervisory
10 responsibilities to, you know, keep them on track and keep
11 us informed.

12 Is that -- Peter, Paul? I'm seeing nods.

13 MR. AGRESTA: Yeah, that's fine, Chair.

14 COMMISSIONER BURMAN: Okay. The other
15 thing is you had mentioned that there was, going on today,
16 something related to the municipal code changes. And I'm
17 not sure I have that in the record. I'm just trying to
18 understand what that is, specifically.

19 CHAIR ZIBELMAN: Yeah. Peter brought
20 something to my attention.

21 Peter, do you want to --?

22 MR. MCGOWAN: Yes. I'm understanding that
23 there is activity going on at the state level to update
24 codes and some step may have occurred, which may lead to
25 further updating and making more efficient the statewide

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2 plumbing codes, which would be good. But it hasn't
3 happened yet. And that's one of several things that could
4 be done at the local level to improve water conservation
5 efforts.

6 COMMISSIONER BURMAN: Okay. I'm guess I'm
7 just confused because I'm looking at it from the -- what's
8 in the record. And so that information -- I'm just trying
9 to figure out how that dovetails and is it actually in
10 line or are we looking at things that maybe we should have
11 the benefit of more of a statewide focus, that then we
12 understand what the actual policy is? I'm just trying to
13 understand that.

14 MR. MCGOWAN: I think what the Commission
15 is doing today is taking an important first step on the
16 road to improving conservation. That's an essential first
17 step. Other steps, if they come along, will be absolutely
18 supportive and complementary to the Commission's actions
19 today.

20 COMMISSIONER BURMAN: Okay. But we're not
21 necessarily recommending, as a body, any municipal code
22 changes or mandates that wouldn't be in our purview;
23 correct?

24 MR. MCGOWAN: The Commission has previously
25 indicated that it is looking for local ordinances to

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2 complement the overall effort to improve conservation. So
3 that's something that the Commission has been saying for
4 the past year. And I think I'm hearing several
5 Commissioners say that again today. And it's something
6 that's reflected in the order.

7 COMMISSIONER BURMAN: Okay. I'm just
8 trying to make sure exactly what we're doing, whether
9 we're looking at something voluntary or mandating. So
10 thank you.

11 When I look at this, I am concerned. And I
12 look at my role as a Commissioner from an oversight
13 perspective focused on the water quality, water supply,
14 water safety, cost to the ratepayer, conservation
15 measures, and necessary infrastructure upgrades that need
16 to happen to make all of those things flow seamlessly.

17 I am very cognizant of the fact of what can
18 be a chilling effect if there is a Joint Proposal that is
19 put forward to us, and we then make modifications, whether
20 up or down to it, because we generally don't do that, and
21 it may cause people to rethink when they go into
22 settlement discussions, whether they are coming to the
23 table to try to resolve things, or are they going to wait
24 and roll the dice, I think as one Commissioner said, you
25 know, with the Commission.

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2 And I'm not sure, and I grapple with that
3 in what that means. And that's why, as some may know, I
4 always ask, when we are looking at a Joint Proposal, what
5 our legal authority is and as it relates to a Joint
6 Proposal.

7 And here -- and I just want to make sure
8 that I'm clear. We have several different, I guess,
9 opportunities or pathways before us. We could accept
10 outright the Joint Proposal with no modifications. We
11 could accept the Joint Proposal with modifications upwards
12 and additional or we can accept modifications of the Joint
13 Proposal downward. Or we can have some fashion, a little
14 bit of both where there's some additions and there's some
15 changes or deletions.

16 We can also not accept the Joint Proposal.
17 And that's where I'm confused. When we don't accept the
18 Joint Proposal, what are the options that are available,
19 just forgetting about modifications off the table -- not
20 accepting the Joint Proposal and not looking for any more
21 modifications. What does that mean?

22 CHAIR ZIBELMAN: Paul, do you want to go
23 through it? I'm not sure -- if you can explain that?

24 MR. AGRESTA: Okay. So when a company
25 files for a rate case, there's a suspension period in

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2 effect. And if the Commission takes no action before the
3 end of suspension period, the rates proposed by the
4 company go into effect. So if the Commission was to not
5 accept the Joint Proposal and take no action whatsoever,
6 the rates that the Company originally filed for would go
7 into effect.

8 It wouldn't be a multi-year rate case; it
9 would just be a one-time thing. That would result in even
10 higher rates than any of the proposals that are before you
11 today.

12 Here, since the Commission is proposing a
13 modification, it is also giving the Company an opportunity
14 to accept what they're doing or, in the alternative,
15 accept rates on a temporary basis, which the Commission
16 has set forth -- will have set forth in the order.

17 And if that happens, the rates will go into
18 effect on a temporary basis. There will have to be
19 further hearings to ultimately decide the permanent rates.
20 And under the statute when you create temporary rates,
21 they are subject to refunds and reparations, which means
22 that if the ultimate rate decision is the rate should be
23 lower than the temporary amount, the customers have to pay
24 that money back to the Company. If they're higher, then
25 the higher rates have to be collected and more money given

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2 to the Company.

3 We try to avoid temporary rates as much as
4 possible because it has a bad impact on the Company on its
5 ratings and uncertainty and all kinds of things. It's
6 also risky because nobody knows what interest rates are
7 going to be 6 months from now when you get around to
8 making a decision.

9 Stability is not the friend of ratemaking
10 process -- or instability is not the friend of rate making
11 process. So we try to avoid that if we can. And we're
12 hoping that the Company will accept the plan as modified.

13 CHAIR ZIBELMAN: Can I just -- just so --
14 because I want to make sure this is clear.

15 Any modification of a J.P. -- so it's not
16 just a rejection -- a modification, positive, negative, is
17 a rejection, whether we call it a rejection or not. And
18 the company has the ability to either accept it or not.
19 If a company does not accept J.P. changes that we would
20 make in an order, and we -- then the next thing that
21 happens, either the -- then the Commission really hasn't
22 acted because they haven't accepted the J.P. So either
23 the original filing goes in place unless we put in a
24 temporary rate.

25 So by putting in the temporary rate, we

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2 avoid the risk that the Company rejects the J.P. changes
3 and their original filing goes into place, in which case
4 probably our next step would be to call them in for a rate
5 case and start a proceeding under our volition.

6 So in the end, we're going to end up in
7 litigation in 2017, probably one way or another if they
8 don't accept the J.P. But we have to -- but it's not just
9 the rejection. It's any modification.

10 MR. AGRESTA: Administrative litigation.

11 CHAIR ZIBELMAN: Administrative litigation.
12 Yes. Yes -- yes, to be clear. We'll be back -- they'll
13 be back in front of us. But I think that the important
14 point is I just want to make the stress. This is not any
15 modification ends up in the same spot. The Company has to
16 accept it because they signed onto a settlement so they
17 gave up some rights, and they have to accept the
18 modification. Otherwise, we're back to the original
19 point.

20 MR. AGRESTA: That's right.

21 COMMISSIONER BURMAN: Okay. Thank you. I
22 think it's important to clarify all of that so that folks
23 understand sort of the process.

24 When we have accepted or when we have
25 modified Joint Proposals before, what has been the process

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2 in doing that? Has it been the same process as this,
3 where we modify it here for the first time or is there
4 another step where we've modified it and sent it back for
5 comments? Or is it just that we, as a Commission body,
6 determine that we're going to modify that?

7 MR. AGRESTA: If this had been presented to
8 us as a Joint Proposal 4 months ago, and you had an
9 additional 4 months before the suspension date, it would
10 have been possible to put a hold and send it back for
11 additional process before you had to make a final
12 decision. But here, you're at the end of the suspension
13 date, and you don't have that opportunity.

14 COMMISSIONER BURMAN: Okay. Unless the
15 parties agree to or the Company had agreed to.

16 MR. AGRESTA: Well the Company would have
17 to agree to extend the suspension date, but all of the
18 numbers indicate that the Company does need a rate
19 increase of some type. And so it would not be in the
20 Company's financial interest to do that, and I doubt they
21 would do it.

22 COMMISSIONER BURMAN: Okay.

23 MR. AGRESTA: I wouldn't do it if I was
24 them.

25 COMMISSIONER BURMAN: I'm asking these

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2 questions because these are the questions that people will
3 ask, and I think it's important that we fully understand
4 some of the ramifications. And in a minute, I'm going to
5 ask Doris some financial questions related to the Company.

6 But before I get to that, I do want to ask,
7 you know, when we -- the Commission, as a body, had
8 established the Task Force or, through the order, we
9 talked about establishing a Task Force and working with
10 that Task Force, I do know -- and kudos to Judy Lee and
11 other Staff who were involved in working with that Task
12 Force. And the Company had gone done several times and
13 worked with them.

14 What is now the current role of the Staff
15 involved in working with the Task Force and the
16 Commission? Formally or informally or both?

17 CHAIR ZIBELMAN: Peter, do you want to take
18 that?

19 MR. MCGOWAN: Yes. The Commission did not
20 establish the Task Force. The Task Force was established
21 by the county. The Commission -- the Department has
22 visited. The Chair actually went down and participated in
23 a Task Force meeting.

24 So the Task Force is a creature of Rockland
25 County, and the Commission has encouraged the Company and

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2 others to cooperate with the Task Force, and the Task
3 Force continues its efforts of seeking solutions for
4 Rockland County.

5 COMMISSIONER BURMAN: Okay. Thank you for
6 clarifying that.

7 So in the order that we had done, where we
8 mentioned the Task Force, there was some directive
9 language to Staff.

10 MR. MCGOWAN: I don't recall. There might
11 have been, but I don't recall what it is.

12 COMMISSIONER BURMAN: Right. Whether it
13 was in the order or at the session, we had direction --
14 directives on that. So I'm very cognizant of the fact
15 that what might appear like now we're sort of stepping
16 away from some involvement in that, and I don't believe
17 that that -- I don't believe that that -- that that is
18 clear, exactly what that means.

19 And the reason I ask that is that we were
20 very -- and again, maybe I'm remembering it wrong, but I
21 thought we were very impassioned at the session where we
22 talked about the Task Force. We talked about the Staff
23 going down and working with the Task Force in the
24 companies. And I think that we still have that same
25 passion.

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2 And so I'm trying to make sure that, while
3 we are focused on the need for the county officials, town
4 officials, other elected and appointed officials, locally,
5 as well as the ratepayers and other folks who may be
6 involved in those efforts, that we make sure that we also
7 are involved in whatever is the appropriate role for us in
8 looking at that, especially if we're going to be focusing
9 on the conservation efforts, as well as -- again, this
10 goes back to the different issues with supply and cost,
11 safety, and quality. And while some of those issues may
12 be non-jurisdictional to the extent that we also
13 holistically look at what we are all doing, also at the
14 state level I think is important.

15 So I don't have a full answer on exactly
16 what the right approach is, but I do want to make sure
17 that what I do believe all of us are interested in is
18 safe, reliable, and clean water, that we take a look and
19 make folks understand that our oversight role will be one
20 that we will continue to enforce and continue to pay
21 attention to.

22 I was really, you know, blessed when I went
23 to the public statement hearing to see really such a
24 outpouring of folks who were from the community come and
25 talk about their concerns. And so for me, it's important

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2 that, you know, part of the reason that I try to go to
3 public statement hearings and bring back the information
4 to others, as well as when the other Commissioners go to
5 public statement hearings, is really to understand what
6 we're looking at and what the impact may be.

7 I am mindful that I am drinking bottled
8 water. That's a luxury that I have. And in some areas
9 it's not a luxury, but it's a necessity. And so I am glad
10 that when we look at these issues that are first and
11 foremost is safety. And the Chair eloquently mentioned
12 how other entities we work with, DEC, EPA, DOH, on those
13 issues to ensure, first and foremost, that we are taking
14 care of all of our water quality and supply issues.

15 And so I guess I'm struck with a Joint
16 Proposal with significant modifications. And if I felt
17 that there would be the majority of folks feeling that
18 these modifications were good -- there are probably some
19 that, you know, both sides go back and forth. But what
20 I'm hearing is that likely not everyone will be happy.

21 And or actually likely, nobody will be
22 happy. And I -- that's just something that, for me, is a
23 problem because it means that we've looked at a Joint
24 Proposal and made modifications that doesn't actually have
25 the majority, and possibly nobody, liking them. And

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2 that's really sort of my tension, which is why I listened
3 to the other Commissioners to try to figure out what the
4 pathway is.

5 And I welcome my other Commissioners'
6 thoughts on sort of the pathway forward with my concerns,
7 if you have any thoughts?

8 CHAIR ZIBELMAN: Thank you. If I -- just
9 before. My recollection -- not my recollection, I know
10 what we did, is that there was a Water Task Force and we
11 felt that it would be very important for staff to meet
12 with the Task Force and to know what was going on and to
13 help move things. And I don't think it was an order, but
14 it was something I know I met with the Task Force myself
15 here, and then we met in Rockland County.

16 And so there was not a requirement in the
17 order, but just that we wanted Staff involved -- as the
18 conservation plan was being developed, that they be
19 involved in it. And subsequently, Judy Lee and Bruce Alch
20 and Kevin Manns, I think, were heavily involved in going
21 to meetings to see -- to help and be constructive to help
22 move things along.

23 So it wasn't a requirement. I think,
24 moving forward, it's going to be important that Staff
25 continue to stay up on what's going on, on the

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2 implementation of the conservation plans. But at this
3 juncture, you know, what we want is -- because we
4 obviously have limits on Staff time -- is not just to
5 attend meetings, but to really, you know, provide advice
6 or keep us informed. They're our eyes and ears in these
7 situations and so I would expect that to continue.

8 In answer to your question, I don't know if
9 everyone is going to be unhappy. I think there are a lot
10 of things that we're making changes on that I'm hoping
11 that people will say thank you, you listened to us, you
12 understood our concerns and you took action in response to
13 our concerns. But more importantly, you know, as much as
14 I, like anyone else, want people to walk away happy, I
15 really think our job here is to do the right thing by
16 customers.

17 So if that makes a hard decision and hard
18 decisions often lead to someone being not particularly
19 happy and wishing we -- they had done something different,
20 that's sort of what we get paid for is to make difficult
21 decisions in difficult times.

22 I think this is a really, really difficult
23 case. We -- none of us want to ever increase rates unless
24 we're really putting in capital. That's always hard.
25 None of us like to chastise companies. None of us like to

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2 tell Staff you didn't get -- hit it out of the ballpark.

3 So these are all things that, sort of, we
4 have to do from time to time in order to do the right
5 thing. This was something I think we all spent a lot of
6 time thinking about and really pushing on have we done
7 enough, can we do more? And I think in this instance, we
8 had to -- we not only listened, but just not listening, I
9 think it's our job to see are we hitting this where we
10 need to go.

11 So I want to make it clear. This --
12 because the Joint Proposal was not signed onto by all the
13 parties, in my mind it meant that, rather than as
14 Commissioner Sayre said with the Con Ed, that we looked at
15 it and said we realized there was a lot of give and take
16 and we don't want to upset all the various give and take.
17 In this instance, we're essentially treating it like a
18 rate case.

19 We're applying our own judgement and making
20 a determination of what we think is the right outcome
21 based on the record and based on the fact that this is our
22 expertise. And so while I'm hoping people will see that
23 this was a difficult case, and we've made some real
24 strides and we're on the right path, ultimately, you know,
25 that's why we get paid the big bucks, which we really

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2 don't get paid, but that's why we're here.

3 COMMISSIONER BURMAN: Thank you.

4 That, I think, is very helpful for having
5 sort of a dialogue that really tries to get at the heart
6 of what we're doing. I will point out that on -- in the
7 order, my page 91, but it might not be -- it may not be
8 the actual page 91 because it's -- I'm not sure I have the
9 -- I'm just making sure I'm looking at this right.

10 There's a sentence in here that I had
11 shared with Counsel that I had concerns with. It says --
12 and I thought it was getting taken out. In short, we
13 agree with Staff that while all parties want to act with
14 the best available data, the perfect cannot be allowed to
15 become the enemy of the good. The perfect cannot become
16 allowed to become the enemy of good. I don't understand
17 that sentence in this order. And I'm concerned about what
18 that means. I did raise this, and I thought it was
19 getting taken out.

20 I just want to, again, as I expressed, for
21 me, orders and language should be tight. And I'm
22 concerned about that and what that may mean because it may
23 mean different things to different people. And I'm just
24 wondering if there's any thought to this and if we could
25 have some resolution on this sentence since we're all

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2 here?

3 CHAIR ZIBELMAN: This is the first I'm
4 hearing it since I'm not participating --.

5 MR. AGRESTA: Well, this is not a legal
6 issue. In common parlance, that sentence means that you
7 shouldn't wait around for another 10 years, trying to come
8 up with the perfect solution, when you have a good
9 solution that you can implement now. And whether it's key
10 to the order or not is for the Commissioners to decide.

11 CHAIR ZIBELMAN: What page are we on?
12 Page?

13 A.L.J. PHILLIPS: Actually on page 92.

14 MR. AGRESTA: Yeah, it concerns rate
15 design.

16 A.L.J. PHILLIPS: Right. On page 92, the
17 second full paragraph, approximately midway through.

18 COMMISSIONER BURMAN: I am disheartened
19 that it's the first time you're hearing about this because
20 I don't think it was -- I think it was pretty clear that
21 this was -- this sentence was a big issue for me. I also
22 --.

23 MR. AGRESTA: I didn't say it was the first
24 time I was hearing about this.

25 CHAIR ZIBELMAN: I said it was the first

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2 time.

3 COMMISSIONER BURMAN: I'm not saying you.

4 MR. AGRESTA: I said it's not a legal
5 issue.

6 CHAIR ZIBELMAN: I guess --.

7 A.L.J. PHILLIPS: I will confirm that it
8 was exactly what, as General Counsel Agresta indicated,
9 simply a statement that we do need to move forward. We
10 have sufficient data for moving forward on that basis.
11 However, if the other Commissioners don't object, we can
12 remove it. It's not of legal consequence.

13 CHAIR ZIBELMAN: I mean I --.

14 MR. AGRESTA: I'm not sure we understand
15 what the objection is.

16 CHAIR ZIBELMAN: Yeah.

17 MR. AGRESTA: You said you had an
18 objection, but I haven't heard what the objection is.

19 COMMISSIONER BURMAN: As I explained, I
20 believe strongly that orders should be very clear and in
21 plain reading. And when I look at this sentence -- let me
22 read it. In short, we agree with Staff that while all
23 parties want to act with the best available data, the
24 perfect cannot be allowed to become the enemy of the good.

25 CHAIR ZIBELMAN: I guess I interpret that

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2 language to simply say -- to be what it is, which we
3 always want data to be as good as possible. The fact that
4 we can't achieve perfection doesn't mean that it's
5 insufficient to act on. It's a common parlance around,
6 you know, not trading the perfect -- not looking for the
7 perfect and trading the good.

8 So I'm comfortable with what it is. I'm
9 also comfortable in striking it because I don't think -- I
10 think we could just simply say we agree with Staff that
11 all parties want to act with the best available data, full
12 stop, and go on and add another sentence. But I don't
13 know it's necessary.

14 So let me -- do you want to make a motion
15 to strike that sentence?

16 COMMISSIONER BURMAN: Well, I'm more
17 concerned that this is one of other issues that I had
18 raised, which I thought was going to be taken care of
19 before public session. And so my concern is that I raised
20 this only because I was -- I don't think anyone in the
21 room would disagree I was pretty adamant on this issue.
22 And I believed that there was going to be a sharing of my
23 concern on that issue.

24 So I can let it go. I don't need to make a
25 motion at this time. However, I want to be very clear,

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for me, it is very important that when we read orders, they are very clear and succinct and not having to explain what the meaning is or figure out what the actual intent is.

So especially when we have changes to a Joint Proposal and especially when there are many parties who are involved who will want to understand it, and especially when it is of no legal consequence, we should be very clear on things that don't necessarily need to be in there or could be written in a tighter way.

And the perfect cannot be allowed to become the enemy of good, I -- when I read it, I was very unclear where this came from and also what exactly we were trying to get at. The explanation on what it means at this time is sufficient, but -- and again, I'm not going to continue harping on the issue, however, to the extent that folks should hear what my position is on order and language, so that we're clear.

The other issue I have, when I look at this, is I just want to go over -- and this is -- I think it's a technical issue that LuAnn can answer. And then I don't think we got back to Doris on the financial. So I didn't forget about you.

And I will leave it to the Chair to decide

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2 who should answer this, but I just want to understand the
3 low-income aspect and the next steps in that. And I know
4 that in the order it says a low-income program for the
5 Company was not developed in the context of the rate case.
6 So I just want to understand what we're doing because this
7 is the first low-income aspect in a water case, if I'm not
8 mistaken.

9 CHAIR ZIBELMAN: Michael or LuAnn, which
10 one of you?

11 MS. SCHERER: I can do it.

12 So yeah, there's a proposal in the New York
13 American Water Rate Case, which you'll be deciding on in a
14 couple months. And some of the Intervenors asked that a
15 proposal in the Suez Case be created based on the United
16 Water -- New York American Water Proposal.

17 Instead, they didn't create it during the
18 rate case process. So what we're proposing or what the
19 order states is that a collaborative process will be
20 convened and the parties will work towards -- one of the
21 biggest issues is how to income verify customers, and we
22 think there's some create ways of doing it. So we're
23 hoping that we can work towards the least expensive
24 process for income verifying customers for the program.
25 And the proposal will be submitted to the Commission in a

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2 form of a petition. And the Commission will decide on it
3 within 9 months of the order.

4 COMMISSIONER BURMAN: When you say the
5 proposal will be submitted -- and I'm sorry. I want to
6 make sure I understand this. When you say the proposal
7 will be submitted as a petition, who will be submitting
8 that petition?

9 MS. SCHERER: I assume Suez. They will
10 work with the parties to come up with a low-income
11 proposal and they will submit a petition to the Commission
12 outlining what the proposal is. It will be SAPA'd and the
13 Commission will vote on it.

14 COMMISSIONER BURMAN: So will there be a
15 case number open beforehand and that anyone who wants to
16 be involved in it would know? And will Staff be involved
17 in that process?

18 MS. SCHERER: I think Staff will be
19 involved in the process. In terms of the case number, I'm
20 not sure a new case number is necessary, but definitely
21 when the petition is filed, we will seek comments on the
22 petition.

23 COMMISSIONER BURMAN: And will there be
24 notice to folks? I'm just trying to --.

25 MS. SCHERER: We can create a notice and

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2 issue it at the same time.

3 CHAIR ZIBELMAN: I think we'll follow
4 whatever procedure we have to follow under SAPA.

5 MR. AGRESTA: Yeah. It would require SAPA
6 notice and notice in the State Register.

7 COMMISSIONER BURMAN: I understand we may
8 follow the minor requirements for SAPA. What I'm trying
9 to get at and really make sure is that we're very clear
10 that we're directing, for the first time ever, a low-
11 income aspect that was not part of the rate case
12 initially. So to the extent that in other cases we opened
13 a generic proceeding on low income where low-income
14 aspects are usually done in rate cases, and we've dealt
15 with those low-income aspects in separate rate cases, and
16 then there was a generic proceeding not on water, but on
17 other utilities, electric and gas, that was looking at
18 what the policy would be. And since we also have a
19 pending American Water case that has aspects of low-income
20 in that, I want to clearly understand.

21 Are we setting policy that translates into
22 the American Water Rate Case? And to the extent that
23 people who may be interested, including, potentially,
24 other ratepayers and other communities and also what this
25 may mean in terms of if it does transcend into other

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certain areas of water cases, that we understand there is or is not a specific docket set up before the petition is made, or is the opportunity to look for when that petition comes.

CHAIR ZIBELMAN: I think, from my perspective, what we're doing and what we would be voting on today is a decision for Suez to work with Staff and the parties involved in this proceeding to develop a low-income offering for Rockland County Suez system. It's not a generic proceeding. It wouldn't affect other communities.

Obviously, the Commission could always, in the future, make a determination that the outcome of this process has revealed a very good process for offering of a discount for low-income and make them decide to expand it to have broader application. But that would be a subsequent decision.

I think what we're voting -- I think that today, given the fact that we haven't done this in water previously, although it is in the American Water case that's not in front of us yet, my recommendation and reason why I'd like to do it this way is that it helps in this because it's a live issue. It will help define it. And then we can always make a determination later to open

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2 up a more generic proceeding.

3 But I would counsel against doing that
4 today. I think we need to get something done here. And
5 it would be done faster if we do it within the context of
6 this particular company and this community. So I would
7 not support a generic opening at this stage.

8 MR. SAYRE: I would agree. I think we'll
9 get a report. We'll get a proposal. We can check mets at
10 that point and decide what we need to do.

11 A.L.J. PHILLIPS: And if it helps, there is
12 an ordering clause that is limited to Suez Water New York
13 being directed to provide this proposal. So it is limited
14 to this case and this Company.

15 MR. AGRESTA: Which makes it then a
16 compliance filing for which it's appropriate to keep this
17 case open until that comes in. And when it's filed,
18 anybody who is a party will receive an electronic notice
19 that the petition came in, as well as we would then
20 generate a SAPA notice in the State Register.

21 CHAIR ZIBELMAN: And to me, there was a
22 difference in the electric proceedings and gas
23 proceedings. They all had low-income provisions. The
24 concern we had there is there was inconsistency and there
25 weren't good lessons learned and it was difficult because

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2 we were litigating this in every case. And actually, the
3 Intervenors requested a way of not having to litigate the
4 policy in every case.

5 So while I'm not suggesting we're taking
6 starting on the new path, we were more mature in terms of
7 where we were. So it made sense to think about is there a
8 better approach. In this instance, I think there's an
9 immediacy and a desire to act more quickly, and I don't
10 think we're ready yet to start thinking about generic
11 policy in terms of water.

12 COMMISSIONER BURMAN: Okay. Thank you for
13 that clarification.

14 I do have a question now that Judge
15 Phillips has raised on the ordering clauses. There is a
16 number of ordering clauses that direct the Company to file
17 a report and to consult with Staff. There's also an
18 ordering clause 11, which directs the Company to file its
19 proposal of low-income discount plan within 9 months of
20 the issuance of the order.

21 I just -- because I don't think, while it's
22 in -- I think it's in the body of the order, though I am
23 making clear that it is or is not -- I don't think it
24 notes in the ordering clauses that then that would be put
25 out for comment and come back to the Commission to decide

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2 what is appropriate.

3 MR. AGRESTA: It doesn't need to be in the
4 ordering clause.

5 COMMISSIONER BURMAN: And so I just want to
6 make clear then what the process is in terms of once
7 that's filed and what comes back to the Commission or not?

8 MR. AGRESTA: If the Commission is going to
9 take any action at all, they have to proceed pursuant to
10 the State Administrative Procedure Act, which requires a
11 notice. And we don't generally put into our ordering
12 clauses everything that's already required by state law,
13 so.

14 COMMISSIONER BURMAN: The reason I ask this
15 is that there has been differences of opinion under
16 different counsels, as well, in terms of whether the
17 ordering clause that says file means that then you file
18 and report and the Commission does or does not have to
19 take it up, and when you have an order -- when I'm looking
20 at it and there's certain aspects.

21 I just want to make clear -- again, it goes
22 back to the language in the order. I want to make clear,
23 in this case, are we saying that this low-income process,
24 before it is finalized and the Company has to do it and
25 the ratepayers have to pay for it, is it going to come

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2 back to the Commission for a vote?

3 MR. AGRESTA: The way this order is
4 written, the ordering clause, which on my draft is number
5 12, about the low-income discount plan, that would not be
6 something that could take effect without Commission
7 action. So it would have to go back to the Commission and
8 there would have to be notice.

9 A.L.J. PHILLIPS: And I would also point to
10 the discussion. The very last sentence explicitly states
11 a proposal shall be submitted for Commission approval
12 within 9 months of this order.

13 CHAIR ZIBELMAN: That was my understanding
14 when I read that sentence that's what would happen.

15 MR. AGRESTA: And there's also a rate-
16 making aspect to it, as well. They would have to submit
17 the cost of the program for recovery as part of the
18 filing. So it's all very clearly intended to go back to
19 the Commission for a vote after notice.

20 COMMISSIONER BURMAN: Thank you.

21 I would just say while it may not need to
22 be in the ordering clauses, the ordering clauses are
23 something that we can all know are not just dicta or, you
24 know, information in there and that people -- sometimes
25 people just look to what the ordering clause is. And to

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the extent that an ordering clause makes it clear what does or does not come back to the Commission, because in other orders sometimes when the ordering clause says file, you have to look to see if it is in the order or if it's not in the order, where the file does not come back to the Commission.

And so I just want to be clear, and while it may not need to be in the ordering clauses, as one Commissioner, I would rather have it very clear in the ordering clause, which one of these different ordering clauses comes back to the Commission or not, so we don't have to go through an order and figure out what it may or may not mean to everyone, even if it seems clear to everyone but me.

The other thing is -- that concerns me is we have different ordering clause numbers right now. So I clearly have the wrong order.

MR. AGRESTA: Not necessarily.

MR. ZIBELMAN: Paul may have the wrong order.

MR. AGRESTA: My book may be the wrong one.

COMMISSIONER BURMAN: I don't know which is more upsetting then, Counsel.

MR. AGRESTA: And I don't monitor my book

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2 all that carefully. So it's more likely you have the
3 right one.

4 COMMISSIONER BURMAN: All right. So can we
5 make sure that Commissioner -- here I am talking about
6 myself in the third person. Can we make sure that the
7 order that we're going to be voting on is the right one
8 that I have? Do you want me to hand it to you or Judge
9 Phillips?

10 CHAIR ZIBELMAN: I think that --.

11 COMMISSIONER BURMAN: It's what you sent to
12 the Commissioners.

13 CHAIR ZIBELMAN: Then that would be the
14 accurate one. It may have been that Paul's book was not
15 updated. So that's just --

16 COMMISSIONER BURMAN: Okay.

17 CHAIR ZIBELMAN: -- a technicality.

18 All right. Do you have further because I'd
19 like to move to a vote? We've got a big agenda.

20 COMMISSIONER BURMAN: Yes.

21 Ms. Stout, I'd like information on what
22 this means, the financial impacts and looking at it from
23 the perspective of doing this. What would, as
24 Commissioner Acampora generally asked you, what would the
25 street say on this?

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2 MS. STOUT: So it's very hard to figure out
3 what the street might say on the Suez New York Case
4 because Suez is part of an international conglomerate.
5 Suez New York is not rated by bond rating agencies. So
6 you have to go to its parent company to get a bond rating.
7 So it's kind of hard to assess exactly how they might
8 react to a Suez New York decision here.

9 That being said, when we made the
10 recommendation to adjust the return on Haverstraw, we did
11 an analysis of what the impact would be on the credit
12 quality metrics of Suez New York. And we found that the
13 adjustments that we made would still allow it to maintain
14 the credit quality of investment grade company, consistent
15 with what it was before making that adjustment, because
16 all of those metrics fall in ranges. And we found that
17 the adjustment to the Haverstraw -- we did not change
18 those metrics.

19 So that being said, there's a lot of other
20 things that go into bond ratings, assessments of the
21 regulatory environment and the like. And I can't say
22 exactly what the determination would be here, but I think
23 we have structured this, as Commissioner Sayre mentioned,
24 to reflect the uniqueness of the situation, that this is a
25 very large asset in the context of Suez, as compared to

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2 other instances where we have allowed the full return.

3 COMMISSIONER BURMAN: Okay. Thank you very
4 much.

5 I have no further questions. I do want to
6 thank all the folks that have been involved in this and
7 especially A.L.J. Phillips, who I know has really looked
8 at a lot of the issues and has really done a yeoman's job.
9 And to the extent that I'm cognizant that we have a lot of
10 work ahead of us, and as the Chair focused on, directing
11 Mr. McGowan to follow up on items, I look forward to the
12 continued focus on this and appreciate.

13 Thank you.

14 CHAIR ZIBELMAN: So any further comments
15 from any of the Commissioners?

16 All right. Thank you all for your
17 attention and your comments on this.

18 I'm going to move to a vote then.

19 All those in favor of the recommendation to
20 adopt a multi-year rate plan, subject to the unconditional
21 acceptance or the 1-year rate plan in the event that the
22 multi-year plan is not accepted as described, please
23 indicate by saying aye.

24 COMMISSIONER ACAMPORA: Aye.

25 COMMISSIONER SAYRE: Aye.

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2 CHAIR ZIBELMAN: Aye.

3 COMMISSIONER BURMAN: And I concur in
4 limited fashion based on my comments at session.

5 CHAIR ZIBELMAN: So there being no
6 opposition, the recommendations are adopted.

7 Thank you, all. Thank you. Excellent job,
8 Staff. Thank you.

9 CHAIR ZIBELMAN: It's 20 after 12. I'm
10 going to guess these next items are going to take quite a
11 bit. Let me ask does anyone want a break? You guys good?

12 Okay. Then we will move forward. Those in
13 the back of the room, you can take breaks as you will.

14 Before -- while -- while we're changing, I
15 do want to, again, express my appreciation to the people
16 from Rockland County for being here, today. And we
17 certainly appreciate your attendance, your help, and the
18 fact that while it's very clear you're interested in this,
19 your maintenance of decorum of our meeting.

20 So thank you all very much for being here
21 and safe travels back on this snowy, snowy day. We're not
22 adjourning, so -- but thank you and good to see you.

23 Second item for discussion today is Item
24 201, and that's the Joint Proposal for Con Ed's rates.

25 It's presented by Mike Worden, who is the Director of

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2 Office of Electric Gas and Water and Administrative Law
3 Judge Ben Wiles. John Scherer, who's our Deputy Director
4 of the Office of Accounting, is also here for questions.
5 And I think that's it. Oh -- and Marco Padula is also
6 here for questions.

7 We also have a companion item, 201-B. And
8 because they're closely related, I might want to -- I
9 think we're just going to go 1 to 2 and then we'll vote on
10 both -- both, separately.

11 Okay. Mr. Wiles -- or Judge Wiles or Mr.
12 Worden?

13 A.L.J. WILES: Mr. Worden.

14 CHAIR ZIBELMAN: Judge Worden or Mr.
15 Worden?

16 MR. WORDEN: Mr. Worden, today.

17 CHAIR ZIBELMAN: Okay.

18 MR. WORDEN: Thank you.

19 I'm just going to give a brief overview and
20 then I'm going to turn it over to Judge Wiles. So Item
21 201-A addresses Con Ed gas and electric rate case. What
22 you have before you today recommends that you adopt a 3-
23 year Joint Proposal that is brought to us by Staff and a
24 number of different parties. So this is part of the 99%,
25 which you normally would take and approve, going forward.

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2 One of the benefits of having this 3-year
3 rate plan on the heels of a previous 3-year rate plan for
4 gas and a 2-year rate plan for electric, followed by an
5 extension for electric, is that many of the issues that
6 were faced are traditional issues that we had a good
7 handle on. And, therefore, they are much narrower maybe
8 then they had been in the past.

9 Items such as rate of return, depreciation,
10 taxes, sales, and infrastructure, those items probably
11 didn't take as much effort in this case as they might have
12 taken in a case like the KEDLI and KEDNY rate cases last
13 month that hadn't been in for a long time.

14 And because of that, this 3-year J.P.
15 offers stability. We had stability over the last 3-year
16 period. Now we'll have stability going forward for
17 another 3-year period. And another piece of good news in
18 that is that it allows the parties to focus some efforts
19 on moving forward.

20 So, the parties in this case, in addition
21 to addressing those key ratemaking issues, which do have
22 to be addressed, we're able to address some other key
23 elements that are more forward looking. Prime amongst
24 those is the gas safety issues associated with leak-prone
25 pipe. So, there's some elements in here that are

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2 accelerating the leak-prone pipe -- leak-prone pipe
3 replacement. The low income has been integrated into this
4 order. So, the low income from the gas -- the order that
5 recently came out, and LuAnn will be here to answer
6 questions later on if you have questions on that, but we
7 are going to advance that in the Joint Proposal. And we
8 are also going to be able to address issues on energy
9 efficiencies and earnings to the adjustment mechanism.

10 So -- so, the latter three items are areas
11 that we probably have been able to advance as much had we
12 been at a typical 1-year litigated rate case.

13 So with that picture looking forward, I'm
14 going to turn it back to Ben. He's going to walk through
15 the mechanics of the increase.

16 CHAIR ZIBELMAN: Thank you, Mike.

17 Mr. -- Judge Wiles, please proceed.

18 A.L.J. WILES: Okay. Let's try this.

19 CHAIR ZIBELMAN: Right.

20 A.L.J. WILES: My notes say the first thing
21 I'm supposed to acknowledge is good morning, Chairman.
22 But I'm going to try and do better on the rest of the
23 presentation.

24 CHAIR ZIBELMAN: Okay.

25 COMMISSIONER BURMAN: Just good morning

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2 Chairman, not the rest of the Commissioners?

3 A.L.J. WILES: No. Well, I got them in
4 here, too.

5 COMMISSIONER BURMAN: Okay.

6 COMMISSIONER SAYRE: Good afternoon, Judge
7 Wiles.

8 A.L.J. WILES: Okay. Great. As Mike
9 Worden said, I'm going to describe really the rate case-
10 specific aspects of what we're dealing -- what the order
11 deals with.

12 The -- so, the presentation I'm giving is
13 one for -- for an order to resolve 2 cases brought by Con
14 Edison in New York, one to raise its electric rates and
15 the other to raise its gas rates. These rates were last
16 addressed 3 years ago in a multi-year settlement that
17 addressed electric, gas, and steam rates, all 3 together.

18 In that settlement, gas rates were set for
19 a 3-year term. The third year of that plan, the gas rates
20 plan, ended in December 2016, which was last month. The
21 electric rate plan, which was adopted at the same time,
22 was a 2-year plan. The second year of the plan concluded
23 in December 2015. That plan, however, was extended for a
24 third year so that the electric and gas plans expired at
25 the same time and could be addressed at the same time in a

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2 new filing. And that's the filing we're looking at now.

3 Con Ed -- Con Ed made this filing to begin
4 these cases in January of 2016, January 29th. In the
5 filing, Con Ed sought a \$498 million revenue requirement
6 increase for electric and a \$125 million revenue
7 requirement for gas.

8 After the filing was made and up to the
9 present time, 38 entities, some individuals, some not-for-
10 profit, some authorities, some businesses, have identified
11 themselves as parties in DMM. After the case was filed,
12 these parties proceed, through discovery, to conduct -- to
13 conduct their own investigations into the Company's claims
14 that the proposed rate increases were warranted.

15 This period of discovery was lengthy, but
16 it concluded with the filing of Staff Intervenor testimony
17 on May 27th of 2016, and the filing shortly thereafter of
18 rebuttal testimony on June 17th.

19 At about the same time as the filing of
20 rebuttal testimony, the parties recognized it might be
21 possible to settle these cases and they began what was a
22 lengthy series of negotiations to identify the terms of a
23 Joint Proposal which would attract a broad-range of
24 support from the active parties.

25 Settlement process concluded with the

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2 filing of a Joint Proposal on September 19th. And it this
3 proposal, the one from September 19th, which Staff
4 recommends that the Commission approve without
5 modification.

6 After the Joint Proposal was filed on the
7 19th of September, the parties filed statements in support
8 and in opposition. And an evidentiary hearing was held on
9 the Joint Proposal in New York City, on November 2nd and
10 3rd.

11 I'm on my third slide. Thank you.

12 The -- for both electric and gas, the term
13 of the rate plan is 3 years. And as you are probably, no
14 doubt, aware, most negotiated rate plans current -- are
15 currently 3 years long, a length, which leaves the Company
16 with -- and Staff with a quiet period between 2 -- between
17 the intensity of 2 formal rate cases.

18 The rate -- the 3-year term, as proposed by
19 the Company's filing, would begin on January 1, 2017, and
20 end on December 31, 2019, obviously, 3 years later.
21 During the settlement discussions and to provide more time
22 reach agreement on a Joint Proposal, the Company agreed to
23 a 1-month extension of the suspension period.

24 As implemented, this extension was
25 accompanied by a make-whole provision. The make-whole

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2 does not alter the 3-year term of the rate plan, which
3 begins on January 1st, 2017. Rather, it provides the
4 Company with the revenue recovery -- excuse me -- it
5 provides the Company with the revenue recovery for -- of
6 the first year of the rate plan in the 11-month period,
7 which begins on February 1st, 2017.

8 As this slide notes, 22 parties signed the
9 proposal. The number of parties participating and the
10 number that signed the agreement are an excellent
11 illustration of the breadth of involvement by interested
12 parties and of the diversity of viewpoints that
13 participated and ultimately which recommended the terms of
14 the Joint Proposal to the Commission for approval.

15 Next slide. Thank you.

16 This is the first chart, which I'm trying
17 to show on here is the rate -- revenue requirement as it
18 was developed during the case. The top line and in the
19 middle, 498 is the Company's original request. Next step
20 down is the result that was achieved in negotiations and
21 was memorial -- would be memorialized in the Joint
22 Proposal.

23 I should also point out the column --
24 column 2, but the \$38 million rate credit is an -- it's an
25 element of both -- not -- the rate credit is an element of

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both the rate case -- gas case and the electric case. This is the electric rate credit. And it was a credit -- a temporary credit provided in 2016, so that rates would not have to be adjusted in 2016. But in connection with dividing that credit, the Commission at that time also approved rates that would go into effect -- will go into effect in -- when the credit expires, which is January of 2017.

So on the Joint Proposal, horizontal, is \$195 million of the increase that's in the -- in that Joint Proposal first-year increase. That's the increase associated with the cost of doing -- doing business, cost of providing service. The \$48 million is the cost or it's really the effect of the discontinuation of the temporary rate credit. So the 2 have to be added together.

The result reaches the bottom line, which is like the middle line except it shows a levelized rate increase, \$199 million, in each year.

Next slide. The key financial parameter is probably the most influential, actually, of these factors on the result we just looked at is the agreement reached on ROE was -- and in the -- the agreement reached is an -- on a 9% ROE. And that is true applied in both electric and gas. The effect -- the -- I should say the 9% ROE is

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2 commonly -- has been commonly used in -- you've seen it in
3 several, very recent, rate cases. And so it's not
4 surprising, although it's very influential. The Company's
5 proposal was for 9.75% ROE and the value of those 75
6 places point difference is approximately \$116 million.
7 And for gas, the difference is associated with
8 approximately \$30 million.

9 While ROE is a very significant portion of
10 the increased revenue requirement, there are other drivers
11 for this rate plan.

12 Next slide. And this slide attempts to
13 capsule -- encapsulate or display several different things
14 at the same time. The black line, the heavy black line
15 across the -- horizontal black line is the -- is 0.
16 That's what -- all the boxes for expenses that are below
17 the black line are places where there were savings and the
18 pressure to increase the revenue requirement was
19 diminished.

20 The boxes above the black line are places
21 where the -- there was -- places which produced an impact
22 intended to raise rates. So you can compare those
23 elements -- you can identify in each one which are the
24 major driving elements and which are -- have less of an
25 impact. And you can compare left to right to see how the

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2 Company's plan, as it was originally formulated in
3 rebuttal, and what were the significant elements of that,
4 you can compare that on the right to the same boxes, which
5 the Joint Proposal reflects.

6 CHAIR ZIBELMAN: Just -- just because this
7 is a little bit complicated. So basically, what this is
8 showing is that when -- when you compare to the Joint
9 Proposal compared to the Company plan, rate of return and
10 then other. So I assume that's some expenses and
11 depreciation expense are the primary drivers of -- of the
12 Joint Proposal coming out with a lower overall revenue
13 requirement than was seen in the original filed plan. Is
14 that correct?

15 A.L.J. WILES: Yes.

16 CHAIR ZIBELMAN: So that's -- that's how
17 you look at these 2 slides. Thank you.

18 A.L.J. WILES: We don't have a slide for
19 it, but similarly in the rate year 2 and rate year 3, the
20 increases in the rate year -- those rate years are
21 attributable to some of the same characteristics, new
22 plant investments, depreciation expenses, and taxes.

23 Next slide. This is the slide for the gas
24 rate plan. Here, instead of a \$47 million rate credit,
25 there's a \$41 million rate credit. The Company's proposal

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2 is the fourth column, top number, which is 125 million.
3 And the Joint Proposal, 2 lines down, the bottom line
4 result, the \$36 million increase was agreed in the Joint
5 Proposal. The little idiosyncrasies in the middle box,
6 the minus 5 million, reflects the fact that Staff when it
7 examined the request for a gas rate increase, actually
8 determined that the structure of assumed expenses would
9 justify a rate decrease.

10 So in the Joint Proposal, the agreement was
11 on a \$5 million rate decrease -- revenue decrease and
12 that's why the -- the minus 5 is joined to the 41 to
13 produce a net result of 36 million.

14 The difference between this -- one -- the
15 difference between this and the electric is that in this
16 case, there is no levelization, the first-year increase is
17 quite a bit lower than years 2 and 3, and years 2 and 3,
18 themselves, are pretty much the same number so the parties
19 never -- decided that they wouldn't need to recommend the
20 levelization.

21 I think, next slide. This is the stacked-
22 up bar chart for gas and corresponds -- and provides the
23 same explanations that they want -- that we showed you for
24 electricity rate.

25 For gas, the rate year 1 drivers are the

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2 rate base additions, unrelated depreciation, the increase
3 in O and M expenses, these are offset by items below the
4 line for higher sales revenues and regulatory
5 amortizations and a lower rate of return.

6 Right. Next slide -- the next slide is
7 over to you.

8 CHAIR ZIBELMAN: Okay. Mike, thank you.
9 Judge Wiles, thanks.

10 Mike proceed.

11 MR. WORDEN: Okay. Thank you.

12 One thing that Ben said that I would --
13 might contradict is there -- there's no quiet period --

14 CHAIR ZIBELMAN: Yes.

15 MR. WORDEN: -- after the 3-year rate plan.
16 We go into other stuff and -- and, in fact, relative to a
17 rate case, we -- we are constantly -- Staff is constantly
18 in -- in communication with companies about their
19 infrastructure projects and all the accounting aspects of
20 their work, so.

21 CHAIR ZIBELMAN: You mean you're not
22 sitting around with your feet on the desk?

23 MR. WORDEN: I am, but the others aren't.

24 CHAIR ZIBELMAN: Yes, but everyone else is.

25 Yes.

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2 MR. WORDEN: So I -- I mentioned earlier we
3 developed some metrics for energy efficiency and EAMs.
4 This is an outgrowth of the Track Two order that came out
5 last spring from the Commission. We developed 2
6 efficiency-related EAMs. 2 are programmatic EAMs, which
7 were an outgrowth of -- of programs that were previously
8 in place and modified for this rate case going forward,
9 one for energy efficiency and one for peak load reduction.

10 And then, as part of the working group
11 effort, we developed 3 further outcome-based EAMs, one for
12 energy intensity, which again was consistent with the
13 Track Two order, one for DER utilization, and another one
14 for customer load factor.

15 And I will point out this was -- there was
16 a lot of discussion and a lot of work that went into
17 developing these metrics and developing, not only the
18 targets, but the incentive mechanisms associated with
19 them. And Staff really, and the Company and the parties
20 deserve a lot of credit for working to pull this off and
21 make it work. And I think they've done that.

22 I would note that the city objects to some
23 of the components on the output-based metrics. One
24 metric, in particular, they -- in particular, they don't
25 think the -- that NYPA should have to pay for this. We

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2 would counter -- advisory staff would counter and say well
3 NYTRIC -- NYSEC -- NYPA uses the T and D system, then you
4 know at -- at some point, everybody has to pay for a
5 certain level of this -- reductions that we're trying to
6 make.

7 NYPA raised some other questions about
8 double counting. The city raised -- the city raised
9 questions about double counting for the energy intensity,
10 in particular, but what happens there is we have targets
11 for -- stretch targets that go well beyond what the
12 dollars that they get for the regular energy programs.
13 And that's why advisory staff feels strongly that -- that
14 we should move forward these metrics as they propose.

15 There will be a collaboration group to
16 continue work on these metrics, going forward. So we look
17 forward to them continuing their work and likely they will
18 come back to the Commission with further -- further
19 request for action.

20 We continued work on stand-by rates.
21 Stand-by rates is an area that we've been working on for,
22 it seems like forever, but at least the last 10 years,
23 probably more like 15 to 20 years. So there are a number
24 of parties that were very, very interested in stand-by
25 rates and what could be done to -- to make enhancements to

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2 those rates.

3 So that was another strong working group
4 where there are a lot of very diverse opinions on what
5 should be done. The group was -- come up -- able to come
6 up with some compromises that allowed them to make some
7 improvements to the stand-by rates. One option allows a
8 10-year exemption for an expanded list of qualifying
9 technologies. So this is for CHP projects with specified
10 emissions. So these are going to be cleaner units, but
11 they're going to get more options in terms of stand-by
12 rates.

13 We also provide an exemption for certain
14 battery storage installations.

15 The reliability credits is -- are replacing
16 the performance credits. The performance credits were
17 focused more on distributed generation. The reliability
18 credits are focused more on a holistic behind the meter.
19 So, if a customer can manage its load better, in addition
20 to having distributed generation, he can get a reliability
21 credit.

22 There was some -- some parties that had
23 some concern about the reliability credit, in that the
24 time period coincides with the definitions of summer
25 period that the -- the NYISO uses, which is September

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2 30th. We feel strongly that it needs to do that because
3 we -- we can't have multiple different periods that
4 different parties are using because then we'll get out of
5 sync with each other. And we need to keep these parts in
6 sync. The -- the distribution system needs to maintain a
7 -- a synchronization with -- with the wholesale system.

8 On the low-income program -- I'm not going
9 to read this to you, really. I'll go through just a
10 couple of points, but I will point out that it's
11 consistent with the recent Commission Order. The
12 estimated cost of the programs is 55 million for electric
13 and 11 million for gas. Some of the elements you've seen
14 before in the previous order that you had, but it adds
15 Medicaid recipients to the list of qualifying customers
16 for electric. These were already included for gas. And
17 expansion of the file matching program. So it supports
18 the municipal costs and there's some other elements that
19 you can read there, so -- continuation of the reconnection
20 fee waiver. If you have specific questions, I'm going to
21 defer to LuAnn for those.

22 One more slide is the gas safety. Again, I
23 mentioned at the outset we were able to expand the gas
24 safety mileage rates. So the mileage rates for leak-prone
25 pipe are up to averaging 85 miles and -- over the 3 years.

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2 So over the last 6 years, we've changed the leak-prone
3 pipe from being replaced in 35 years, to now being
4 replaced over a period of 20 years. So that's a
5 significant improvement.

6 We've tried to do that in -- in a manner
7 that reflects and respects the cost recovery elements, but
8 also keeps in mind customer rate impacts. So it's very
9 important to balance those 2 aspects and keep rate in --
10 increases to a manageable level.

11 And finally, we've made some modifications
12 to the -- the liability and safety surcharge mechanism.
13 So it's a -- a new mechanism, actually, here. And we've
14 tightened other mechanisms up so that, going forward,
15 we'll have a better representation of the new numbers and
16 we won't have as many questions when the Company files the
17 reports on those.

18 So that's really our report on this item
19 and we're happy to answer any questions, both Ben and I.

20 CHAIR ZIBELMAN: Okay. First of all, thank
21 you and thanks both Judge Wiles and -- and Mike Worden,
22 for your presentation today. It's very helpful.

23 Before we move to questions, though, I am
24 going to move to the next item, which is Item 201-B so
25 that we can kind of take them up in discussion. But

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2 obviously, reserve your questions and we'll -- we'll be
3 back.

4 So Marco, please proceed.

5 MR. PADULA: Thank you.

6 Good morning, Chair Zibelman and
7 Commissioners.

8 Item 201-B is a draft order, addressing the
9 filing by Consolidated Edison Company of New York, seeking
10 approval of a proposed shareholder incentive related to
11 its targeted demand management program. Such filing was
12 made in compliance with the Commission's December 2015
13 order, which adopted the TDM program, allowing the Company
14 to engage in non-wire alternative projects which replace
15 or defer the need for transmission and distribution system
16 infrastructure through the use of customer-sited
17 distributed energy resources or load reductions.

18 Separately, under the terms of the Joint
19 Proposal in the Con Ed rate case, which you are
20 considering as Item 201-A, the Company will replace the
21 TDM program with a generic NWA-related provisions in the
22 Joint Proposal and have the opportunity to earn an
23 incentive for NWA projects pursued during the term of the
24 rate plan subject to the terms and conditions approved in
25 this proceeding.

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2 Con Edison seeks and pursues cost-effective
3 NWA projects that would allow for the delay of traditional
4 capital infrastructure investment that would otherwise be
5 needed to accommodate the growth and peak electric demand
6 in various areas of the Company service territory.

7 The Company's filing proposed a shareholder
8 incentive that would provide 50% of the present value of
9 net benefits resulting from the NWA projects pursued. The
10 draft order adopts Con Edison's proposed incentive
11 mechanism with modifications, the most significant of
12 which is to allocate 30% of the net benefits to
13 shareholders and 70% to ratepayers.

14 The mechanism includes a multi-step process
15 for determining the final incentive that would reward the
16 Company for maximizing customer benefits and minimizing
17 the costs required to achieve such benefits. Under the
18 process an initial shareholder incentive would be
19 determined as a 30% share of the net benefits calculated
20 on a detailed benefit cost analysis.

21 To spur the Company to manage and reduce
22 the costs of the NWA project throughout the
23 implementation, the Company would share the difference
24 between the total cost assumed in the initial net benefits
25 calculation and the actual total cost of the NWA project

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2 once completed.

3 Therefore, the final shareholder incentive
4 would equal the sum of the initial incentive plus 50% of
5 the cost overruns or underruns of the NWA project. The
6 final incentive will be subject to both a floor and a cap,
7 such that the final incentive shall neither be less than
8 \$0, nor greater than 50% of the initial net benefits.

9 Overall, the mechanism represents a
10 financially meaningful incentive opportunity that should
11 encourage Con Ed to pursue innovative portfolio level
12 approaches to implementing NWA projects while producing
13 significant net -- net benefits to customers while
14 reflecting the financial risk required of Con Edison's
15 shareholders.

16 Finally, the draft order requires several
17 checkpoints throughout the process, including the filing
18 of operating and accounting procedures, as well as
19 implementation plans and benefit costs analyses for each
20 NWA portfolio.

21 This concludes my presentation.

22 CHAIR ZIBELMAN: Thank you, Marco.

23 So I think the -- the way that makes sense
24 is I'm going to -- I'll -- I'll comment first on the
25 proposed Joint Proposal and then on the modification for

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2 the TDM, essentially, the -- Item 201-B. And I intended
3 to kind of discuss them in combination because they are so
4 related, but then we can vote separately.

5 So on -- on terms of the Joint Proposal,
6 you know, again, I -- I think these are -- it's really
7 good to see the work that's been done in this case. And I
8 -- I think in terms of the revenue requirements, as Judge
9 Wiles says, is fairly much on the fairway of what we're
10 looking for in consistency, around depreciation rates and
11 taxes and rate of return.

12 And I appreciate all the work that parties
13 have done to arrive at a revenue requirement that I think
14 makes sense for the 3 years and takes into account our
15 concerns around reasonable rates, as well as rate
16 stability. So I -- I feel very comfortable that we are in
17 a -- a good spot.

18 What I'm particularly of -- excited about
19 in terms of this -- this proceeding and -- and the Joint
20 Proposal is that the significant steps that we are making
21 that's embraced in the rate plan around modernizing the --
22 the system, as well as modernizing how we are approaching
23 the -- the retail markets and the step changes in the
24 utility business model. So taking both the EAM and the
25 changes that we're making to the non-wires alternative

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2 incentives.

3 I mean one of the things that I think the
4 Commission noted very in -- in the Track Two order, if
5 we're going to ask utilities to change their business
6 models and really start looking at alternatives to making
7 investment in plant and really start thinking about the
8 system-wide efficiency, the economic changes associated
9 with really changing the business model also have to be
10 economically rewarding and they have to be significant.

11 If it were very small changes, then it
12 would continue to require our -- you know, to -- make
13 those kind of model -- model changes would not be of -- of
14 interest to the Utility and we simply wouldn't see the
15 change. That's -- that is what we saw historically. And
16 so being -- really stepping out and making significant
17 changes and giving the utilities an opportunity to really
18 align their interests with consumer interests and really
19 promote distributed energy resources and energy efficiency
20 as a component of their business requires really a change
21 in regulatory approach.

22 And I think that the EAMs in this rate case
23 really make a very significant step forward in -- in terms
24 of that. So I -- as well as the change in the non-wires
25 alternative. It, also, I think, reinforces our view that

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2 while we think it's fair for the utilities to have an
3 earnings component associated with looking at alternatives
4 that really reduce their rate base and -- and rate growth
5 with aligning with their customers, those earnings really
6 ought to track with the risk they're taking. So to the
7 extent they're taking on more shareholder risks, there are
8 more opportunities for the shareholders.

9 And that -- and I think that the approach
10 that we're making it -- addresses that concern. With
11 that, though, there also needs to be a maturity of the
12 market. So I -- I do want to note, Mike, you referenced
13 it as the concern about the changing of the date for the
14 DER performance from September 15 to September 30th. That
15 may seem like a small point, but it's actually a fairly
16 significant statement by the Commission.

17 We want people to invest in distributed
18 energy resources to realize we're moving into an era where
19 we're going to depend on those resources for reliability.
20 And the reason why we use September 30th as a date in the
21 power grid is not simply just because it seemed like a
22 good date in the calendar. It's really predicated on when
23 we could have heat waves. And so even though we
24 technically think of July and -- and -- and August,
25 really, as our peak months, we can peak in September,

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2 particularly when people are back from vacation and it's a
3 hot day and the weather goes up and all those things
4 happen. That's why we need these.

5 We need people to adjust their businesses
6 if they're going to be in the business and helping us
7 maintain the reliability of the system to really recognize
8 that we're going to be counting on you to the -- to
9 September 30th. So having that uniformity isn't simply a
10 regulatory convenience. It's a recognition that we're
11 trying to mature the market and realize these are real
12 resources that the utilities have to be able to depend
13 upon and we're going to hold folks accountable to -- to
14 meeting those needs.

15 So I -- I think that it -- it was
16 mentioned, but I think it's an -- an important point.

17 I also think the -- the other aspect, in
18 terms of equitable charging, you know, that's the other
19 thing that we're beginning to talk about. We always talk
20 about cost allocation equity in terms of the -- among
21 various share -- consumer groups. We have a new consumer
22 group now, i.e., the prosumer, people who put in these
23 assets. And as we take a look at value of distributed
24 resources, it's very important that we have equity among
25 participants and non-participants and then recognizing

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2 that the costs that we're going to be putting in to drive
3 this efficiency should be share in an equitable way. So I
4 -- I think that's also very critical.

5 It's a -- and, again, another level of
6 maturing -- of moving and saying distributed energy
7 resources are not ancillary, they're going to be a big
8 part of our system and we need to apply principles of
9 fairness among all customers when -- when we both charge
10 for and value these resources. So I think all of these
11 happen.

12 Now, if you ask me, if I could have been in
13 the room, I would have liked all of the EAMs to be
14 determined, but I recognize these things take time. These
15 are hard issues. They're generic for us. We can't even
16 look at other states and say well how are they addressing
17 that because a lot of the stuff is happening for the first
18 time in New York.

19 So I -- I'm looking forward to the further
20 development and -- and while I wish it would -- we -- we
21 could be approving all of them, I recognize and appreciate
22 the fact that we're going to have to continue to work at
23 it. And all of these things are going to be matured over
24 time. This is a -- a market. Markets take time. You're
25 going -- we're going to learn while we're doing it.

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2 And so as Commissioner Acampora always
3 notes, it's important that we remain flexible in knowing
4 that -- that we need to make progress, but also be
5 recognized as we also need to make adjustments. So those
6 are, I think, very good aspects.

7 The other pieces of the rate plan, I'm --
8 I'm excited to see is the work on gas infrastructure
9 replacement. The Commission made a determination, a
10 couple years ago, that it -- it just -- the timing -- the
11 time it was taking us to replace leak-prone pipe was just
12 not sufficient. I think the Staff and the companies have
13 a made a huge amount of effort and we're -- we're on a
14 trajectory now that's much better. We also made a just --
15 raised a concern about not slowing it down. So I think
16 the -- the recovery mechanism makes sense.

17 The other aspects of the case that I think
18 are of note is certainly the work on standby rates. I
19 think we have a -- you know, the idea of being able to
20 look at DER, the flexibility that we're providing in
21 rates, and the encouragement for a pilot that really lets
22 us start looking at these resources, something that I know
23 the -- the -- the development community in New York City
24 was really interested in doing and I'm hoping that we see
25 this now, is -- is a very exciting part of -- of this rate

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2 case.

3 And then, the other element that I'm really
4 pleased to see is the methane detection pilot program. I
5 -- you know, I -- I've been really excited about the idea
6 that we may actually now, in 2017, be able to start
7 thinking about how we can stop relying on noses to smell
8 gas and actually use technology that can make it much
9 safer for consumers. I'm pleased. I know that National
10 Grid is looking at this. I'm pleased that Con Ed is. And
11 I think, with these two large companies really starting to
12 solve this issue, we can make real progress in this
13 technology. So I am really glad to see that as well.

14 So we often talk about revenue
15 requirements, but it's all the other elements of rate
16 cases that really help change it. I think that this
17 proceeding really sets a -- a really good path, forward.
18 There are other pieces on it, I know, in terms of AMI and
19 -- and data. I mean the breadth of this case, it's a -- I
20 think the order is 120 or 130 pages. Whatever it was, I
21 was -- it took a really long time to -- to go through it.
22 But it's -- it's -- really all the elements are there and
23 I just -- I think it's -- it's really a great day that
24 we're going to be moving forward.

25 So, I'm very supportive of the J.P. and --

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2 and thank everybody for their engagement.

3 With that, let me turn it over to others.

4 Commissioner Sayre?

5 COMMISSIONER SAYRE: Well, the resolution
6 of this case, as Mr. Worden said, is a good news story, I
7 guess, to the extent that you can say the resolution of
8 any rate case is good news. After the extensive
9 negotiations that we've heard about, we had 22 parties
10 signing on. Those 22 parties had extremely widely varying
11 interests and viewpoints and we don't have any party
12 that's opposing the settlement as a whole. That's
13 wonderful work by the parties. Nobody really rolled the
14 dice.

15 In a large rate case like this, the 3-year
16 plan lets us levelize the rates, feathers in the rate
17 impact, gives the customers and -- and the utility
18 predictability and -- and stability.

19 But I definitely agree with the Chair that
20 on the electric side, the most significant area of this
21 Joint Proposal is that it is a big step on the way to
22 implementing REV. I think most experts in the utility
23 field agree with the Commission, that the distribution
24 grid needs to be modernized to integrate distributed
25 energy resources of all kinds to be more resilient, to

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encourage clean energy, to make more efficient use of the generation and transmission resources that we already have, and to foster energy efficiency, just to name a few of the goals of rev.

Our REV orders only give a framework and policy guidance on this process. And it's in cases like this where the rubber meets the road and real progress is made. So I commend the parties and especially Staff for the hard and difficult work that they put into the proposed plan. This is how progress happens. And I expect that we will see similar progress in future rate cases that come up before the Commission.

I also agree with the Chair that the -- the most significant part of the -- the Joint Proposal on the gas side is gas safety. It's wonderful that we're taking advantage of low commodity prices in order to accelerate the process of leak-prone pipe replacement and it's great to be using new technology and -- and detect leaks sooner because they're always a problem.

In 201-B, the petition to implement REV-related non-wires alternative projects, they're doing what we asked them to do. They are finding innovative solutions that reduce or delay the need for new investments in traditional infrastructure like substations

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2 and lines. Con Ed's proposal establishes a mechanism --
3 an incentive mechanism for these projects as we directed
4 them to do that includes benefit cost analyses and a
5 sharing of savings.

6 The Staff recommendation, which I support,
7 approves the overall structure, but makes some adjustments
8 to the sharing mechanism. The order cuts back a little on
9 the benefits to the shareholders and allocates a little
10 more to the ratepayers. And it also adds some checkpoints
11 and filing requirements to the process to ensure that
12 benefits are actually being realized. And, finally, it
13 harmonizes this process with a rate case order.

14 I think with this, we have a good plan
15 going forward and it's consistent with our overall policy.
16 That overall policy is that we're asking utilities to make
17 major modifications to the way that they look at projects.
18 Traditional ratemaking gives utilities incentives to just
19 simply throw money into the investment pool, add
20 investments to satisfy system and customer needs. That's
21 the way the process has been set up for 100 years.

22 We're asking them to change that and find
23 innovative ways to save some of these costs. And, in my
24 view, it's very reasonable and appropriate to allow the
25 utility to retain some of the benefits from the cost

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2 savings as long as the ratepayers get the lion's share,
3 which is what the Staff proposal does here. Everybody
4 benefits when it works and I think it's working here.

5 CHAIR ZIBELMAN: Thank you.

6 Commissioner Burman?

7 COMMISSIONER BURMAN: Thanks. I'll save my
8 comments after Commissioner Acampora. I'll defer to her
9 first. Thank you.

10 CHAIR ZIBELMAN: Commissioner Acampora?

11 COMMISSIONER ACAMPORA: Hello, Doris.

12 MS. STOUT: Hello.

13 COMMISSIONER ACAMPORA: Would you mind
14 giving us your expert thoughts on this particular rate
15 case and the ROE of 9?

16 MS. STOUT: Surely.

17 So, unlike other recent cases like Suez
18 that we just talked about where I have to hypothesize what
19 the reactions might be, Con Ed is widely followed by the
20 investment community. So I'm actually able to say what
21 analysts have actually reported about their opinions about
22 the J.P. and note that all of the benefits in our multi-
23 year rate plans.

24 Many analysts commented on the J.P. when it
25 was signed in September. Their comments were, generally,

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2 positive. They found the 9% ROE in line with their
3 expectations and other New York cases, even though it was
4 still low relative to ROEs granted across the country.

5 Further, the analyst reports positively
6 noted that the J.P. provides annual rate increases that
7 support rate-based growth and that the J.P. continues
8 various true-up mechanisms that reduce risk and support
9 the Company's ability to earn that ROE.

10 Analysts specifically recognize the
11 earnings opportunities provided in the J.P., if Con Ed is
12 able to capture the positive incentives under the EAMs.
13 And one even noted that those EAMs represented a
14 reasonable step toward innovate ratemaking.

15 These largely positive statements were
16 tempered by some cautious remarks relating to Con Ed's
17 diversification efforts and potential fallout from the
18 Harlem gas explosion, which we're still working on. And -
19 - so, overall, I think, the street view of this J.P. is
20 positive.

21 COMMISSIONER ACAMPORA: Thank you.

22 First of all, Judge, you did an excellent
23 job.

24 And Mike, I'm sure you are not sitting all
25 the time with your feet up on the desk.

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2 As everyone knows, and it can't be stated
3 enough, the kind of work that goes into delivering a rate
4 case to us. Fortunately, this one wasn't as contentious
5 as the one we just previously did. But all rate cases
6 bring out people who have concerns. And certainly, this
7 Commission has always been concerned about walking that
8 fine line and balancing between working with the Company
9 and protecting ratepayers.

10 And it is good to have a 3-year rate case.
11 And I know it doesn't give you any pause for rest, but I
12 think it shows people who look at what we do in New York,
13 that the consistency of having a multi-year rate case
14 works to a benefit. It really does.

15 There are many things in this rate case
16 that I do like. And I would have to say I do appreciate
17 the fact that the Company has shown leadership with moving
18 forward with REV. I think that's really important. And,
19 I'm pleased to see, again, the expansion of fixing leak-
20 prone pipes. As we all know, things are not easy to do in
21 New York City and we want to make sure that this
22 continues. I think that's very, very important.

23 And, as far as 201-B, again, I think it's
24 important to move on those NWA projects. And so I will be
25 voting in favor of both these items.

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2 CHAIR ZIBELMAN: Thank you.

3 Commissioner Burman?

4 COMMISSIONER BURMAN: Thank you.

5 The integrity and reliability of our
6 system, whether it's electric, gas, or water, is
7 paramount. When I look at a rate case, I go through the
8 process of what's being done and how does this relate to
9 ongoing proceedings that we're doing, and what's the path
10 forward for not only regulatory certainty, but stability
11 for all those who are involved, not just the utilities,
12 but the customers, and what's the path forward for helping
13 with our economic development as we look at our aging
14 infrastructure, and are we planning not just for the --
15 you know, tomorrow or -- or the next 3 years, but really
16 the future ,and taking a pause to look at all aspects and
17 see is it reasonable.

18 And there is a reasonable balance that
19 needs to be looked at, not only for the ratepayer who
20 wants a safe and reliable service, but at reasonable
21 costs. And looking at what that means and for us in our
22 job as oversight, we need to kind of look at all the
23 different aspects and how it transcends.

24 I also tried to look at each order in terms
25 of other things that we may have decided. Where I,

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2 necessarily, might not have agreed with the majority or I
3 may have agreed with the majority, but taking pause to see
4 is that aligned now in this rate case and, if not, and
5 let's say, for example, I have disagreed, whether it's
6 abstaining because it's consistent with my voting, or
7 concurring in limited fashion, or dissenting, I try to
8 look at what the path forward is for all of us to really
9 have some certainty. And, again, getting back to the
10 integrity and reliability of the system is most important.

11 I think that, from that perspective, there
12 have been times where, when I look at something, I realize
13 that, you know, the -- the certainty is in the orders that
14 have been done, even if I disagreed to now know that this
15 aspect is moving forward and that aspect of it and maybe
16 my position on it at the time that I voted is moot.

17 However, what I also go back and look at,
18 is it moot because we have failed to act, is it moot
19 because there are other things that have come up, other
20 issues that may make it moot and substantively, I may
21 agree with that. And so I try to take stock of then how
22 does that fit into the particular order that we're looking
23 at and what is the pathway forward.

24 In here, there are really many, many good
25 things, things that I can fully embrace and support. And

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2 it's again -- it's a balancing act of looking at the Joint
3 Proposal and deciding is all of this, as -- as a whole,
4 best for the public interest. And that's really what my
5 job and my role is as a Commissioner, or at least the way
6 I view my role and -- and having oversight and drilling
7 down when need to and pulling back and not -- not drilling
8 down and leaving it to others, if that's necessary, but
9 also to continually check and reevaluate and ask the
10 questions.

11 The -- some of the concerns that I have
12 with this order or this draft order relates to mentions of
13 other orders that are still not final, per se. They're
14 petitions for rehearing or reconsideration or
15 clarification or declaratory judgments, asking on, you
16 know -- on some aspect that we've done. And those are
17 still lingering.

18 So for me, some of that aspect then means
19 what does that mean because if and when we do decide to do
20 those petitions for rehearing, reconsideration,
21 clarification, are the parties in those orders where they
22 have a record that may be somewhat stale or dated, is it
23 stale or dated, but still relevant? Or is it stale and
24 dated and they no longer have those positions because,
25 like me, they have moved forward, you know, or -- or had

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2 to embrace other aspects to get to the path forward.

3 So I take pause in that one of the reasons
4 that I can't fully embrace this Joint Proposal is the
5 concern that, by doing this, some of the issues that may
6 still be out there and needing clarification on -- in the
7 Track Two order and, frankly, the low-income affordability
8 order, which has a pending petition for rehearing and
9 Track Two order has, as one Commissioner said at session,
10 has 100 policy decisions in it. I've only been able to
11 find 99, I think, so, I'm not really sure what that one is
12 that I'm missing.

13 But to the extent that -- what I then am
14 trying to figure out is when those decisions are made, how
15 does that impact this rate case? And frankly, it doesn't
16 impact it until the next rate case. And so it concerns me
17 because that's also why, when we do generic proceedings,
18 I'm always asking what's the -- the sweet spot to match up
19 the generic proceeding or an individual proceeding or
20 policy decision that is getting decided in a rate case
21 that may not match up and then by the time you get to the
22 next rate case, that policy decision or the generic
23 proceeding may actually be moot or more confusing or
24 doesn't transcend into the next one.

25 And so I really ask the question for all of

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2 us to really take pause of what things are out there that
3 are pending and how, especially, because there's so many
4 different proceedings -- how do they all match up.

5 I have, frankly, a hard time following when
6 I'm only looking at it and I only should be looking at the
7 record that's before me in a particular case. But trying
8 to understand what it means and the impact it has on other
9 cases.

10 Frankly, the orders sometimes don't have
11 where it says -- you know, it never says Commissioner
12 Burman dissented or Commissioner Burman abstained. So I
13 have to then go back and make sure that I'm recalling it
14 right that I abstained or I dissented or I concurred in
15 limited fashion.

16 And it doesn't say in the footnote and a
17 petition for rehearing is pending. So it doesn't tell the
18 full story if you're just looking at the one order or
19 relying on that as precedent for why we're deciding
20 something in a rate case or in another order.

21 So I take this opportunity, really, to say,
22 we should all kind of look at where we are and the path
23 forward and look at this rate case as an opportunity on
24 that, but also to say what does it now mean for some of
25 the things that are still out there that need to be

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2 decided or you may need to go back and look at what you've
3 said, whatever party, if you're involved in other things -
4 - what you've said in other rate cases -- excuse me -- in
5 other proceedings that may no longer be or let us know
6 that that -- formally, that that is actually still your
7 position and explain to, you know, everyone, so that
8 everyone is on the same page because one of these orders
9 or one of these proceedings may pop elsewhere and we need
10 to be able to make sure we are holistically looking at all
11 of these different things.

12 We are, right now -- you know, I -- I -- as
13 we sit here, there are folks out there taking care of our
14 storm issues, hard-working people in utilities and in
15 other, making sure that customers have their power, and,
16 if not, restoring it. And I'm mindful of the fact that we
17 do a good job working together in those situations in
18 making sure that the integrity and reliability of our
19 system is there, not just for now, but for the future.

20 And that's really our role.

21 So, I embrace, as a whole, the 201-A. I --
22 I concur in limited fashion to the extent that there are
23 aspects of it that I -- I do not agree with from other
24 orders that have not had finality in that proceeding.

25 And in 201-B, I have one actual question, I

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2 think, Marco, you're the right person. Is in the -- to
3 the extent that the TDM reporting, there's quarterly
4 reporting, what's the next steps now for reporting in the
5 -- in this aspect and what we're doing in it?

6 MR. PADULA: There's reporting provisions
7 on the N -- related to the NWA provisions in the Con Ed
8 Joint Proposal that essentially mirror what's in the --
9 what was in the TDM program.

10 COMMISSIONER BURMAN: Okay. Great.

11 And, in that, I abstain in -- from my past
12 history and my voting record on that aspect of it. I
13 think there's a lot there that is affecting other items
14 that are still policy decisions that still have not had
15 finality. And we will work through that.

16 But I don't want my comments, concurring in
17 limited fashion or abstaining in light of my voting
18 history to be a distraction from the work that we have to
19 do and the fact that we all need to work together to have
20 robust dialogue and discussion on how we can all have --
21 and continue to have a safe and reliable system that works
22 for all of us.

23 Thank you.

24 CHAIR ZIBELMAN: Thank you.

25 Say, one thing I -- I wanted to mention, we

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2 did in -- in terms of the electric rate case, the economic
3 savings associated with the rate of return changes, about
4 160 million -- it's 116. I also want to note, not -- for
5 -- for the record here, even though it's not the record in
6 this case, as a result of the work of the DPS Staff, as
7 well as other of our sister agencies, including NYSERDA
8 and DEC, last week, we had a FERC decision which modified
9 how the New York ISO is implementing its capacity program
10 in New York. And that also is going to reduce supply
11 costs in New York by -- on the realm of about 160 million,
12 in terms of capacity pricing.

13 So I -- I think that -- that's a good new
14 story because combination of this will certainly mitigate
15 the rate impact effects, but there's also, I think,
16 further indication of the fact that our feet are often not
17 up. They're sort of pedaling quickly, trying to make the
18 good things happen.

19 So I want to applaud the work of not just
20 the DPS Staff, but all the energy agencies in the state in
21 pursuing this as well as the ISO. I guess they're on the
22 other side of this issue, but certainly on the state side.

23 With that, let me move to a vote.

24 So the second item for discussion was 201-
25 A, which was the Joint Proposal for Con Ed rates presented

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2 by -- Con Ed rates. And so all those in favor, let me
3 stumble through this, I'm getting light-headed.

4 All those in favor of the Joint Proposal,
5 please indicate by saying aye.

6 COMMISSIONER SAYRE: Aye.

7 COMMISSIONER ACAMPORA: Aye.

8 COMMISSIONER BURMAN: And I concur in
9 limited fashion based on my comments at session.

10 CHAIR ZIBELMAN: So hearing three ayes,
11 including mine, aye, the J.P. is accepted, the
12 recommendations are adopted, and we'll -- and so we'll go
13 forward.

14 Item -- the third item, is 201-B, which is
15 the petition of Con Ed for implementation of projects and
16 programs that support the Reforming the Energy Vision.
17 And so all those in favor of the recommendations in that
18 item, please indicate by saying aye.

19 COMMISSIONER SAYRE: Aye.

20 COMMISSIONER ACAMPORA: Aye.

21 COMMISSIONER BURMAN: And I abstain
22 consistent with my voting history.

23 CHAIR ZIBELMAN: Okay. Aye for me. So
24 that's three ayes and so the recommendations are adopted.

25 Thank you all very much for great, great

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2 work.

3 So we'll move -- I'm going to take a ten-
4 minute break. I need a ten-minute break.

5 Thank you.

6 (Off the record)

7 CHAIR ZIBELMAN: Okay. We're going to get
8 started. The next item for discussion is Item 301, which
9 is the Joint Petition for Modifications to the Standard
10 Interconnection Requirements and Application Process.
11 Mike Worden is going to be present this today.

12 So Mike, good afternoon.

13 MR. WORDEN: Good afternoon, Chair Zibelman
14 and Commissioners.

15 Item 301 address queue management plan -- a
16 queue management plan for cost sharing mechanisms for
17 distributed generation.

18 As you know, last spring and early summer,
19 because of many of the policies -- positive policies that
20 you directed to be implemented to enhance renewable
21 distributed generation, the Department created the
22 Interconnection Technical Working Group and the
23 Interconnection Policy Working Group to address challenges
24 that were created by the large influx of distributed
25 generation projects throughout New York State.

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2 While these working groups are led by DPS
3 and NYSERDA staff members, they were really made up of the
4 utilities and the developer community. The proposal
5 before you today is the product of a collaborative effort
6 started in July 2016 that show how -- shows how this
7 market is maturing. It offers an important gating
8 mechanism to reduce barriers to the DG interconnection
9 process.

10 The stakeholder's goal in developing this
11 proposal was to eliminate the log jam in the
12 interconnection queue that was created in late 2015 and
13 through April 2016, when over 2,000 applications for
14 commercial and community solar projects were proposed.

15 So prior to this time, many of the
16 projects were under 300 kW. Since the time in 2015, we
17 started seeing a lot of projects that were in the 2-
18 megawatt range and, in fact, I would say well over half of
19 these 2,000 projects are on the order of 2 megawatts.

20 The main components of the queue
21 restructuring plan are as follows. First, developers are
22 called on to demonstrate that they have consent of the
23 property owner to develop their projects. This step
24 eliminates instances where more than one developer has
25 filed an application for a project at the same site.

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2 Believe me, they do exist.

3 The next step is for the utilities to
4 then republish the entire queue after dropping projects
5 that don't meet the property owner requirement. The
6 utilities will publish the queue within 60 business days
7 after the Commissioner approves the order in front of you
8 today, assuming you approve it.

9 That publication then triggers the
10 next set of actions by developers. Projects that have
11 been fully studied for interconnection, that is those that
12 have already received the results of a detailed
13 engineering study, are required to move on to construction
14 or withdraw from the queue.

15 Developers who want to stay in the
16 process will have to sign an interconnection contract and
17 pay their interconnecting utility 25% of the estimated
18 costs of any system upgrade necessary to accommodate the
19 interconnection.

20 The oldest projects in this group have
21 30 business days from the publication of the queue to make
22 their decision. So this is for projects that have been
23 through the engineering study phase. They'll have thirty
24 days to make a decision on whether to move forward or not.

25 Others that have received engineering

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2 studies more recently, or are under study now, will have a
3 total of 60 business days to make their payment or
4 withdraw.

5 The last group of projects, projects
6 that have only had a preliminary review, have to decide
7 whether or not to proceed to a full engineering study.
8 Our queue data suggests that this is a large group of
9 applications. To handle the volume in an orderly way, the
10 plan sets up a series of decision rounds in which
11 successive subgroups either pay for the CESIR study -- the
12 -- the engineering study commonly referred to as the CESIR
13 study, or withdraw from the process.

14 Essentially, we'll create a waterfall.
15 Once Project A makes a decision, Project B gets put on the
16 clock. It's much like a NBA draft or something like that.
17 This is our version of it in regulation.

18 The plan gives utilities the
19 flexibility to schedule the engineering studies according
20 -- or -- the studies according to their available
21 resources and requires them to publish information each
22 month about the queue and the study schedules.

23 So the queue information is currently
24 out there, but as this process moves forward, there will
25 be continually refreshing the queue status so other

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projects can see what might be ahead of them in the queue.

Once the engineering study is scheduled, the interconnecting utility will have 60 business days to complete it as is provided for in the Commission's interconnection rules. As projects come through the engineering process, strict deadlines will apply to keep them moving towards construction. The plan also includes provisions for allowing extensions of deadlines for projects in a locality that has enacted a local moratorium on solar development.

The other major element in the plan that's in front of you today is an interim proposal addressing the high costs of some of the types of distribution upgrades necessary to connect, primarily focused on substation equipment work. Under the existing rules, the first project to trigger the need for this work bears the full cost. Under the proposal, this allows the first project to -- to -- to pay the full costs, but then seek reimbursement from subsequent projects for the benefit of the upgrade. For -- this is for upgrades that cost \$250,000 or more.

SolarCity put forth a proposal in its comments whereby it would allow a sharing of the costs on a substation basis in New York State amongst various

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2 parties that would come forward. We think that idea and
3 other ideas have merit. However, this idea was put forth
4 by the developers, themselves, working with the utilities
5 in this collaborative effort.

6 We think that the stakeholder group
7 should continue to define further efforts that could
8 refine the process going forward. But for the purposes of
9 today, it's more expedient to put forth this interim
10 measure on cost sharing.

11 Finally, some provisions in the plan
12 will apply to new application projects. Principally, this
13 is a property acknowledgment form. So any future projects
14 the -- the developer will have to have a form that
15 acknowledges the application and demonstrate that is has
16 site control so that we don't get a duplication of
17 projects.

18 So it's fairly simple, but it's fairly
19 complicated at the same time. So when you read the order,
20 it's -- it can seem complicated, but it's fairly
21 straightforward to move projects, make them make
22 decisions, give them the information, then make the next
23 one make decisions, give them the information.

24 So that completes my remarks. If you
25 have any questions, I'm happy to answer them.

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2 CHAIR ZIBELMAN: Okay. Thank you,
3 Mike. Thank you for this item.

4 So first of all, appreciative of the
5 fact that this work -- not just work of NYSERDA and the
6 Staff, our -- our liaisons, you know, was, was really good
7 work. And I think the fact that we're talking about a
8 proposal that was arrived at through the Technical Working
9 Group that includes both the developers and the utilities
10 gives me kind of all good, warm feelings because in other
11 states they're so -- these are warring factions, and in
12 New York we, we really are seeing an -- a different
13 approach to this market in the fact that people get
14 together, have discussions, understand each other's
15 concerns, and arrive at solutions. So I think this is
16 good.

17 I think this is also a very important
18 vote for us today relative to the development of the
19 distributed energy resources in this industry. As we all
20 know, the issue of queues and the amount of projects in
21 the queues are really confounding a lot of development.
22 And a process to clean these queues out and make sure that
23 projects that really are ready to go forward, can go
24 forward and they're not behind other projects and that
25 there's a way to -- now a mechanism to share costs, I

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2 think are all going to be very important to -- to progress
3 the industry in New York.

4 That being said, I think Mike, you
5 noted it. You know, there was -- SolarCity had another
6 proposal. I think it's good that we consider it, but I
7 don't think we -- it was simply not mature enough for us
8 to act now. And I think it was very important that we act
9 today.

10 So you know, I look forward to hearing
11 about that proposal as it develops and I think that as we
12 develop the value of DER in other proceedings, we're going
13 to continue to see evolutions on how best to -- to mature
14 this market. But this is a very important step, so I
15 intend to vote for the SIR recommendations.

16 Any questions or comments for Mike on
17 these?

18 Commissioner Sayre?

19 COMMISSIONER SAYRE: Just a comment.

20 It is a good news story. The queue's
21 long. That means we've got a lot of potential clean
22 energy coming down the pike. The rest of the good news is
23 that even though the queue has been intractable, the
24 parties have figured out a way of dealing with it, at
25 least initially, on a going-forward basis, so we can break

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2 the logjam.

3 Again, as in previous cases where --
4 where we came up with settlements, I commend the parties.
5 A lot of -- a lot of progress has been made here by, by
6 people working long hours to thrash out their considerable
7 initial differences. It's not easy and it's not cheap for
8 the parties, but I think it's a good way to regulate.
9 Better than having lawyers file extreme positions and
10 leaving it up to the Commission where things are going to
11 end up.

12 It's another case where the parties
13 here decided not to, as I've put it in my earlier comments
14 roll the dice with the Commission. And I think they ended
15 up with a result that's probably better than the result
16 that would have obtained had they required us to make all
17 of these decisions without the benefit of the give and
18 take that occurred during the negotiations.

19 I expect that most if not all of the
20 parties are not completely satisfied and not completely
21 happy, but it looks like they have ended up with something
22 that's, though not entirely to their liking, something
23 they can live and work with. That's good to go forward
24 with and I support the item.

25 CHAIR ZIBELMAN: Commissioner Burman?

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2 COMMISSIONER BURMAN: Does
3 Commissioner Acampora want to say anything or --?

4 COMMISSIONER ACAMPORA: No. I think
5 I'd like to hear what you have to say.

6 COMMISSIONER BURMAN: Okay. Great.
7 Thank you.

8 So I have reserved my right
9 afterwards, after all Commissioners have spoken, if
10 there's something that I want to comment on -- because, I
11 think it's important for us to have dialogue among the
12 Commissioners to further understand our positions.

13 So I just have a couple of questions
14 and then I just want to go through, sort of, my thought
15 process here in this order. There's a filing from Central
16 Hudson on January 20, 2017. To the extent that it's
17 incorporated in the order, I just want to make sure that
18 we're all on the same page of what we're doing as it
19 relates to that January 20th letter. I have it here. I
20 don't -- I'm just making sure we've looked at it, it's
21 substantive, and how it -- it is -- is incorporated in the
22 order or not.

23 MR. WORDEN: I -- I don't have the
24 letter in front of me.

25 COMMISSIONER BURMAN: Okay. Has

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2 anyone -- I mean, I just -- to the extent that it's
3 responsive, it's reply comments, I believe, to SolarCity's
4 petition of the Interconnection Policy Working Group, you
5 know, it kind of illustrates at least their position and
6 I'm just making sure that it's reflective of what we're
7 actually doing or not as it relates to that aspect of --?

8 MR. WORDEN: So Central Hudson was one
9 of the key utilities leading the effort to develop the
10 cost sharing mechanism. They were very much in favor of
11 the cost sharing mechanism that was filed. They were one
12 of the joint filers. There were several utilities and a
13 number of developers that were signatories.

14 I believe Central Hudson has not
15 bought into necessarily what SolarCity is proposing at
16 this time. In the conversations we've had subsequent to -
17 - to the date on that letter, the -- this is actually in
18 the Policy Working Group. The Policy Working Group has
19 agreed that they will continue to discuss cost sharing and
20 look for other mechanisms and they will consider the Solar
21 -- the SolarCity proposal and other proposals that others
22 might put forth.

23 So this proposal on cost sharing --
24 there's a lot of consensus this is not the best thing, but
25 there's also consensus this is the best thing we can get

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2 at right now.

3 COMMISSIONER BURMAN: Uh-huh.

4 MR. WORDEN: And that's why it's
5 crafted the way it's crafted.

6 COMMISSIONER BURMAN: Okay. Thank
7 you. That's helpful.

8 You know, I try, when I look, again,
9 looking through the record, to see where we are, some
10 things don't necessarily fall into the draft order. So to
11 the extent that it may need to be matched up, I just want
12 to make sure before I vote, that I know exactly where we
13 are and how it may or may not relate to something, or if
14 we've considered it. So thank you. That's very helpful.

15 When I look through this order, I -- I
16 am mindful -- I was mindful -- I am mindful of my comments
17 that I did in Item 15-E-0557, which is related to the
18 Matter Proposed Amendments to the New York State
19 Standardized Interconnection Requirements for Distributed
20 Generators 2 megawatts or less, which was issued effective
21 March 18th, 2016. And I think it's relevant, especially
22 since we're looking at the issue of the SIR and, and what
23 we're doing with the queue.

24 To read my comments that I -- that I
25 stated, which is attached to the order in -- at -- at the

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2 very end, after the exhibits, as reflected in my comments
3 made at the March 17th, 2016, session, I abstained from
4 voting on this item. In 1999, New York first adopted
5 uniform interconnection standards. Since that time, the
6 standard interconnection requirements have been amended
7 several times.

8 In 2009, there was significant
9 revisions made to the SIR. Thereafter, there were some
10 minor revisions to reflect changes to the net metering
11 laws that took place. In March 2013, more amendments were
12 made to the SIR to help expedite the interconnection
13 application and review process and to align with changes
14 made to the net metering laws in 2012.

15 And in February 2014, we had even more
16 amendments to, again, reflect updates to net metering and
17 remote net metering laws under New York State Public
18 Service Law Section 66-J and 66-I. The most recent SIR
19 amendments -- at the time that I wrote this -- were in
20 July 2015.

21 Understanding this dynamic and ever-
22 changing but necessary amendments to reflect current law,
23 ensuring seamless, expedited process and provide a more
24 ordered streamlined and robust system, it would seem, at
25 first blush, correct to make these changes today. In

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2 fact, I wholly embrace many of the concepts and understand
3 the driver seeking such immediate changes.

4 We have heard loudly from interested
5 parties about the real need to have the SIR process and
6 technical rules kept up to date with the heavy increased
7 volume of interconnection requests.

8 I believe that the order here attempts
9 to, in good faith, make such interim modifications to the
10 SIR, but I am mindful of the -- the realization, that like
11 other prior orders that I have raised caution and, in some
12 cases, disagreed in part of whole with the majority's
13 approach, this, too, is one that I can't vote with the
14 majority at this time.

15 We need to more holistically look and
16 analyze, A, with more deliberative thought about
17 unintended consequences, and B, via a real drill-down of
18 all of the outstanding pieces directly and indirectly
19 related to the SIR that make up the energy world we are
20 confronted with now and into the future.

21 That does not mean to wait and wait
22 and not take action. In fact, I very much personally
23 struggle with one of the necessary interim actions that
24 must be taken while we collaborate further. This order
25 may, in fact, be the right interim step, but I am not

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2 convinced from the record that it is. In fact, there is
3 no dispute that our work is not done.

4 While we all realistically understand
5 additional work is needed and improvement efforts will be
6 significant, I am not convinced that enhancing and
7 speeding up the interconnection process, via this order
8 today, is justified at this time. I need more careful
9 discussions around what ultimately is the right balance,
10 including a detailed technical analysis of the
11 applications pending, and those that will come, and how we
12 will handle these on the system.

13 I desire to understand more
14 holistically how we are substantively addressing the
15 outstanding net metering and other interconnection issues,
16 including concerns for our abilities to successfully
17 transition to full achievement of our laudable REV goals.

18 Here I side with abstaining on this
19 item at this time, which is generally consistent with my
20 previous public positions conveyed during our Commission
21 session. So in conclusion, I very much appreciate that
22 we're at a critical juncture and I look forward to the
23 important next steps as hand -- at hand.

24 So that was at -- in March of 2018
25 (sic). There's been a lot of really good work that's been

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2 done. I think some of the comments that I had at session,
3 folks were mindful of when they undertook the
4 collaborative process in the working group, in looking at
5 the queue.

6 When I look at the -- the draft order
7 that we have before us, it does have in here the reference
8 to 15-E-0557 SIR and the March 18th, 2016, order. So it
9 is relevant and on point with going back and looking at
10 that.

11 It does not show that I abstained and
12 had a written abstention at the very end, after the
13 exhibits, but it does show -- or it does show that that is
14 relevant to this order.

15 As I look in the file, the public file
16 on 15-E-0557, it shows that on April 18th, 2016, SolarCity
17 moved for petition and rehearing, I believe, on that. And
18 we reflect that in a footnote, to some extent by -- by
19 going to ordering page twenty-five in the footnote in this
20 order.

21 So that bucket is still out there in
22 resolution and it seems like we're moving the SolarCity
23 issues into what we believe is the more appropriate bucket
24 to address, not here, but we're giving it an opportunity
25 later.

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2 The other orders that are referenced
3 in here is 15-E-0754 -- or, excuse me -- the Value D Staff
4 Report issued October 27th, 2016. It also references 15-
5 E-0082, which is the community net metering order, which
6 as -- as I see the file, it appears, has several pending
7 petitions and matters before it. And 15-E-0082 also has -
8 - believe -- looks like October 16th of 2015, a petition
9 for reconsideration was also issued.

10 And then I look to 16-E-0497, which
11 has -- also some -- was -- was mentioned and also is
12 relevant and at session we talked about -- last session,
13 which was in -- actually, two sessions ago, November 17th,
14 2016 -- are some of those farming net metering issues
15 being dealt with in the working group. It seems like it
16 is being done outside of that. And also 14-E-0151, the
17 Hudson Valley order.

18 Actually, there were several orders
19 under 14-E-0151, and again, it's referenced in here
20 12/15/2014, January 8th, 2015, February 27th, 2015. It
21 was combined with 14-E-0422, which was -- was looked at in
22 April 16th, 2015, and December 15th, 2016. This raised
23 the cap at that time to 6%.

24 What is not mentioned in this order is
25 15-E-0407, which had an order October 16th, 2015, where

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2 the cap was lifted. I dissented, had written comments,
3 written dissent. And November 16th, 2015, has been --
4 since November 16th, 2015, a petition for rehearing is
5 still pending. They're also --.

6 CHAIR ZIBELMAN: Commissioner Burman,
7 can I? I'm sorry. I'm -- I'm not following where you're
8 going with --

9 COMMISSIONER BURMAN: Bear with me --

10 CHAIR ZIBELMAN: -- relevancy?

11 COMMISSIONER BURMAN: -- as I go
12 through this because I think you'll understand as I read
13 my comments.

14 And 15-E-0267, which deals with the
15 remote net metering and had an order October 16th, 2015.

16 So when I -- and again, as I explained
17 in the Con Ed rate case, as I do with all orders, when I
18 get a draft order and there are other orders that are
19 cited in there, I go back and I look at what that order
20 said, make sure that it matches up with the language in
21 the draft order, and also see if there is any more
22 activity, and how it relates the current order, and what
23 the status of that prior or current proceeding is.

24 And it's very important for me to look
25 at how we operate as a whole. Folks have known, in almost

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2 every net metering order I discuss, that I'd like -- from
3 the very beginning, I've discussed looking at it from a
4 holistic perspective, looking at what we're doing as a
5 whole and not doing piecemeal.

6 There have been times that I have
7 voted in agreement, wholly with the majority,
8 understanding the need for a specific issue to be
9 addressed, and moved forward, though I have made it clear
10 that I would like to have it an overall holistic approach.

11 In my dissenting comments on 15-E-
12 0407, which really was before we got into the SIR working
13 group process, which I would like to take some credit for
14 having raised that we needed more of queue management
15 focus, I said, as reflected in my comments made at the
16 October 15th, 2015 session, I dissent. I strongly believe
17 in the vision of New York's Reforming Energy Vision. I
18 understand we need to work together to enable self-
19 sustaining clean markets at scale, to build a cleaner,
20 more resilient, and affordable energy system. The
21 achievement of our goals will not happen overnight. I
22 believe that the majority opinion is made in a good faith
23 effort to have stability while still working on achieving
24 our REV goals. In fact, the majority position of not
25 disrupting the distributed generation development efforts

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2 is one I can support.

3 I'm also in agreement that REV should
4 ultimately decide alternatives to net metering. However,
5 we are in disagreement on what to do during this
6 transition and if this decision actually achieves, for the
7 short and long term, a more stable, sustainable energy
8 system.

9 Moreover, I do not believe that this
10 decision today is a true transitional approach. In fact,
11 the decision may invite uncertainty and confusion in the
12 implementation of net metering and unintentionally cause
13 long-term harm to the goals we are trying to achieve.

14 I then went on -- I won't go further.
15 I do think it's on point. And for me, the focus that I
16 have is I have a problem here when we look at this order,
17 where I can see, solely in this environment, yes, it makes
18 sense to have these queue management changes, to help that
19 process.

20 But ultimately, the elephant in the
21 room that we're not addressing is that we need to look
22 underneath that process and decide, even if it goes
23 against where I'm at, and I'm comfortable with that if we
24 have had a discussion -- we need to decide in a timely
25 fashion those items where folks -- not just me saying I

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2 disagree -- but those folks -- what -- whoever the parties
3 are, have -- have found some reason that they seek
4 petition for rehearing, reconsideration, clarification,
5 declaratory judgment, whatever it is, in a timely fashion
6 so that they can see what it means then, just like me,
7 when I look at this -- what does it mean in this next case
8 and proceeding and order, and where is the finality.

9 Because by the time we get to this
10 Case 15-E-0407, which frankly, I think is one -- one of
11 the most critical issues to address, especially because I
12 raised in my dissent that I had thought that we were
13 overstepping the statutory authority that we had been
14 given and I was concerned about that. I didn't say we
15 were. I said I was concerned. And so for me, what I
16 would like to see is finality in some fashion in some of
17 these -- what I perceive as big, major issues that will
18 have dramatic effect and show what we should be doing,
19 going forward, so that we can have resolution to that.

20 For me, I am happy and blessed that
21 the queue management system is one that seems to be
22 working well. Parties seem to be bringing their issues.
23 It's getting addressed. Staff is working diligently and
24 very hard on those issues. And I would -- I -- I think
25 it's a great collaborative effort.

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2 However, there are certain items that
3 get discussed or don't get discussed in that, that the
4 Commission, as a body, should be addressing and making
5 sure that there's regulatory certainty and also the path
6 forward.

7 I'm mindful of the fact that we have
8 many different things that are out that people are trying
9 to juggle and figure out how it fits. And I, myself,
10 struggle as a Commissioner, myself, knowing which one
11 actually is relevant and timely and how does it relate if
12 what we do changes or -- or doesn't get decided and may
13 pop at another time and we're not aware of it and what --
14 what that impact is.

15 So I can support, in limited fashion,
16 this. I think these changes, like with the other -- with
17 the other changes that had been proposed, are something
18 that we should be looking at. How can we make things
19 better? How can we make the process better?

20 I did, at the time, at the session on
21 the SIR amendments, raise issues on terms of how this all
22 fits in the state resource planning, the state energy
23 plan, looking holistically how the -- the queue and the --
24 the -- the -- the amount coming in, how does that work for
25 the reliability integrity of the system and how can we

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2 move forward.

3 And again, my overall ultimate goal is
4 making sure I do what I need to do as a Commissioner to
5 have oversight in the integrity and reliability of the
6 system. And I think those are the things that I'm
7 concerned about.

8 So I share this, while it may be a
9 little longwinded, to the extent that I do think it's very
10 important at the end of the day, we remember the integrity
11 and reliability of the system is paramount. And planning
12 for our future is necessary to get there, which is all
13 part of what we're doing as Commissioners.

14 So I thank you and thank you for
15 allowing me to -- to speak on this issue, which I think is
16 very significant.

17 CHAIR ZIBELMAN: So I just want
18 respond briefly, because -- and I -- I would have to say
19 that this brings to mind a French saying, (speaks in
20 French), which loosely translated means the perfect is the
21 enemy of the good.

22 So that's -- that's a Voltaire
23 statement that Commissioner Sayre found for me.

24 But -- but really, what it -- what
25 we're talking here is that we're progressing towards

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2 market. And I -- I -- I wish we were all smart enough to
3 say what is this market going to need to look like in 2020
4 or 2025 when we have immense amount of DER, we have
5 transactions, we have tools, we are able to measure with
6 precision down to the millisecond, and what's this all
7 going to look like?

8 But, unfortunately, we are building
9 that market. And -- and in building a market my
10 experience at PJM, my experience at Excel (phonetic
11 spelling), my experience at Viridity, and my experience
12 here is that you have to increment. And so what the
13 Commission has done on the SIRs was we issued a set of
14 rules that the parties told us were the first set of
15 gating issues that they needed to have addressed and we
16 addressed them.

17 Recognizing at that time, so I -- and
18 I appreciate that you were appreciative of that, but I
19 don't think it was just your dissent. We all said that --
20 that we all knew that this was a developing set of rules
21 asked because the issues were complex and we wanted to do
22 -- which is really Problem Solving 101 -- chunk it down
23 into the projects and you could solve it at once and then
24 you move on to this next level of issues.

25 We are now at the next level of

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2 issues, which the parties in this process who are, you
3 know, in business to do this, have said these are the next
4 level of issues we really need you to resolve in order for
5 us to -- to move forward.

6 So I -- I -- I guess, I -- I -- I
7 really do disagree with you in all seriousness, to the
8 extent that we're saying well, let's get the whole picture
9 because we can't start to solve the problems unless we
10 know the whole picture.

11 Frankly, the whole picture is -- is --
12 is a bit, you know, not in great clarity yet because the
13 problems are -- are large. We're not quite sure where
14 things are going to tack, but we know what -- what we need
15 to solve for the immediate future. And that's, I think,
16 the appropriate way to go about this because this is
17 where, in fact, you -- it may be that the good is the
18 perfect. In other words, solving the issues that you need
19 to solve in order to make progress, is exactly where you
20 want to be.

21 And so I -- I don't -- I just -- I
22 fundamentally disagree with your approach about we can't
23 start to solve anything until we know everything, because
24 we will never know everything. It's always going to
25 continue to evolve as we move forward.

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2 I think the approach this Commission
3 has taken to try to understand what's primarily concerned
4 and then move it is -- is the right way. And so I -- I
5 also -- so -- so to that, I -- I just -- I simply disagree
6 with your philosophy on regulation and I certainly
7 disagree with your philosophy of how markets need to get
8 developed because I've seen mistakes made where people
9 were sort of trying to solve issues. They didn't quite
10 understand the issue yet, and then they made the wrong
11 decision and they have to re-track.

12 I think this is a much better way to
13 build a market. And what we need to do is be able to be
14 flexible and nimble enough to solve things as they appear,
15 rather than waiting. And you know, my concern would be,
16 quite frankly, if we all abstained, and we all dissented,
17 we would've made no progress to now.

18 So I think that fact that we're voting
19 on things and moving them forward, is -- is critical. We
20 can always amend, but simply to wait, I think is actually
21 a mistake for the progress that we need to make.

22 COMMISSIONER BURMAN: And thank you
23 very much. I think those comments are very helpful.

24 It's clear that you misunderstand
25 exactly what I see as my role as a regulator. My role as

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2 a regulator is to ask the tough questions, to make sure I
3 understand, and to make sure we are focused on the short-
4 and the long-term and how it all relates.

5 There is great regulatory uncertainty.
6 And when we look to -- one of our goals should be to have
7 regulatory certainty, to have people understand, and to
8 have stability in that, and to be able to make --

9 COMMISSIONER BURMAN: So --.

10 COMMISSIONER BURMAN: -- decisions --

11 CHAIR ZIBELMAN: Okay.

12 COMMISSIONER BURMAN: -- and so --.

13 CHAIR ZIBELMAN: So then --

14 COMMISSIONER BURMAN: Excuse me.

15 CHAIR ZIBELMAN: -- now, let me ask
16 you a question then.

17 COMMISSIONER BURMAN: In the --.

18 CHAIR ZIBELMAN: Commissioner Burman,
19 how would abstaining today provide regulatory certainty
20 for the people who have to make business decisions
21 tomorrow?

22 COMMISSIONER BURMAN: First --.

23 CHAIR ZIBELMAN: If the Commission
24 were to agree with you and we all said no, what would
25 happen?

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2 COMMISSIONER BURMAN: Well, first, I
3 didn't say how I was voting. I have an abstention, a
4 dissent, and I can pull up -- I have several other times
5 where I have concurred and several times when I have
6 agreed with the majority.

7 The reality is -- is that just because
8 I may not agree with the majority and I may offer thoughts
9 in a public session that help to clarify where -- where I
10 sit, and also what it may mean and it -- frankly, to say
11 that we're dealing with what the parties want, the parties
12 are not the ones choosing what we're dealing with. They
13 are in a working group. They're in 2 working groups in
14 this aspect. There's many other different ones. And they
15 are dealing with different issues and trying to juggle and
16 understand.

17 So it's helpful, I think, in some
18 ways, to have a debate and a dialogue and to make sure
19 that we're clear in what it is.

20 When I was talking on Item 401 and I
21 asked in the order what it means to say the perfect cannot
22 be allowed to become the enemy of the good, I was actually
23 given a different answer and told that it was clear. It
24 was related to the data aspect and it was very different
25 than now a policy statement that you're -- that you're

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2 saying that's different in REV.

3 So from my perspective, what I am
4 trying to do is to make sure that I fully understand, work
5 through the challenges, and in fact, at times, I think
6 that there are things that I may say -- or my thoughts may
7 actually help.

8 The queue management system, the
9 standard interconnection issues, some of those things came
10 from what I said not only at Session, but to Staff working
11 on the issues. And so to the extent that it actually may
12 have helped, because we can all benefit from taking a look
13 at what we're doing process-wise and substantively, and
14 making sure that we're all on the same page, and if not,
15 questioning it.

16 There's nothing wrong and there's not
17 -- it doesn't mean that you're right and I'm wrong. And
18 it doesn't mean that we're even in disagreement. What it
19 means is that we're trying to understand what it is that
20 we're actually doing. We're not just charged with blindly
21 saying yes because it makes it easier at session.

22 So I respectfully think that my
23 comments at session, to the extent that they may be
24 helpful, it is what it is. And to the extent they're not
25 helpful, that's your -- your -- your, you know, desire to

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2 -- to not listen to what I'm actually saying.

3 But I am very comfortable in making
4 sure we ask the questions. What are we doing? How does
5 it relate to other proceedings? And how does it relate to
6 how to make things work better for our state? And again,
7 the integrity and reliability of the system is paramount.

8 CHAIR ZIBELMAN: So I guess -- just --
9 and then I'll move on to you, Commissioner Acampora.

10 I think we all agree that this is --
11 that around -- about the importance of maintaining
12 reliability of the system and the integrity. I also
13 welcome everyone's comments at session. I also welcome,
14 frankly, when people have questions, to use the briefing
15 opportunities that the Staff does to get your questions
16 answered so that we can -- we can use that and when Staff
17 can have access because having it -- questions just
18 answered at meeting -- at this session is sometimes not
19 the best time because unless Staff knows the question
20 ahead of time, it's -- it's hard to answer.

21 But more importantly, I think the
22 discussion is really important. We -- I don't expect to
23 have uniform agreement. What I believe we need to do,
24 though, and is very important, is that we vote. We either
25 vote yes or we vote no. But if we don't vote -- in other

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2 words, we abstain, then we can't make progress. And
3 that's -- and that's -- that's -- I think was my point is
4 that I -- it's -- disagreement is fine. Voting no is
5 fine. Voting yes is fine. But let's move on things so
6 people get some clarity on where -- where we are.

7 COMMISSIONER BURMAN: And if you don't
8 have the information and you believe that certain things
9 are not being resolved and they're sitting there, then an
10 abstention, because you don't have the correct information
11 -- or any information at times, it is incumbent upon me to
12 look at it and make sure that folks are understanding
13 exactly where I'm at.

14 I don't think on any item, if you go
15 through, I am very, very clear -- sometimes people don't
16 want to listen to it, but I am very clear. My process has
17 been very, very clear. I look at every order and every
18 draft order. Where it talks about a case in there, I pull
19 it up, even if I think I know what it is, and I go through
20 the process. Even if it's a 1999 case, I go through it
21 and just make sure. And then I try to find the pathway.

22 And then I try to see how it fits
23 within what we're doing and whether we can go forward.

24 CHAIR ZIBELMAN: Okay. I think this
25 is -- we can move on.

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2 Let's -- Commissioner Acampora?

3 COMMISSIONER ACAMPORA: Thank you.

4 First of all, let me say my favorite word is always
5 flexibility and you know that over the years. And this is
6 exactly what we're doing again. We're being flexible to
7 meet the needs.

8 So the support of this, I think, is
9 really important. I think it does send a message to help
10 clarify those people out there who do have to make the
11 business decisions. I think that's very important.

12 I have -- I have to say one thing,
13 though, in remarks of my colleague. I have been here for
14 almost 12 years. There is a process here. There has
15 never been a time where I have asked for something that it
16 was not delivered to me.

17 I feel that every time I come to this
18 table -- and we may have a disagreement or a
19 misinterpretation of what we think our personal
20 responsibilities are. But I think my responsibility is to
21 come here with as much knowledge and briefing to be able
22 to make a vote.

23 So I really do take umbrage with the
24 fact that it has been said here today that we are not
25 given information. We are not prepared. There are many

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2 times, over the years, that I have asked for changes and
3 changes have been made. So I -- I feel that I don't want
4 the record to just show that there is a disagreement.

5 My feeling is there have always been -
6 - the Staff has been very helpful and always forthcoming
7 in matters that I may have a question on.

8 And as to whoever the Chair may have
9 been, when I felt I reached a point with the staff that I
10 needed to go to the Chair, that door has been opened also.
11 So I just want to say we come here to vote and people just
12 don't blindly vote yes. It's taken under due
13 consideration.

14 So for that, I will say I will be
15 supporting this item.

16 CHAIR ZIBELMAN: Let's move on.

17 So all those in favor of Item 301 as
18 the recommendation to -- let me see. Am I on the right
19 place? Yes. The petition -- not sure if I am. Yeah. To
20 the Standard Interconnection Requirements, please indicate
21 by saying aye.

22 COMMISSIONER ACAMPORA: Aye.

23 COMMISSIONER SAYRE: Aye.

24 CHAIR ZIBELMAN: Aye.

25 COMMISSIONER BURMAN: And I concur in

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2 limited fashion reflective of the comments I made at
3 session.

4 CHAIR ZIBELMAN: So there'd be three
5 eyes. I did vote, Mr. Agresta, in favor. The
6 recommendations are accepted.

7 And next item for discussion is Item
8 302. And Leka Gjonaj is going to be presenting this.
9 This is with respect to the AC Transmission Proceeding. I
10 hope this is a short item because we're just going to be
11 moving on it, but let's --.

12 MR. GJONAJ: I have about thirty pages
13 here so.

14 CHAIR ZIBELMAN: We -- then you can --
15 we're going to amend the agenda.

16 Go ahead, Leka.

17 MR. GJONAJ: Okay. Good afternoon
18 Chair Zibelman and Commissioners.

19 Item 302 is a draft order addressing
20 AC Public Policy, Transmission Upgrades, and Cost -- Cost
21 Allocation Methodology.

22 As you may recall, the New York
23 Independent System Operator, or NYISO as we refer to them,
24 developed its public policy transmission planning process
25 to comply with FERC's Order 1000 that required, in part,

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2 the development of a planning process for the
3 consideration of public policy driven transmission needs.

4 The NYISO'S public policy transmission
5 planning process consists of 4 main steps, which include,
6 1) the identification of public policy requirements by the
7 Commission driving the need for transmission, 2) The
8 NYISO's solicitation of proposed solutions to identify
9 needs or requirements, and 3) NYISO's evaluation of the
10 viability and sufficiency of proposed transmission and
11 non-transmission solutions to the public -- public policy
12 transmission needs, and 4) upon confirmation of the
13 transmission needs by the Commission, NYISO's evaluation
14 selection of the more efficient or cost effective
15 transmission project to satisfy the need.

16 Item 302, before you today, is at step
17 4 of the public policy transmission planning process.
18 That is confirming that a transmission need still exists
19 and directing the New York ISO to perform its evaluation
20 and selection of the more efficient or cost effective
21 transmission solution.

22 How did we get to this stage?
23 Briefly, in a December 2015 order, the Commission found
24 the relief of persistent congestion across the central
25 east and UPNYSENE, or Upstate New York to Southeast New

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2 York, electronic transmission interfaces would advance
3 public policy. This came to be referred to as the AC
4 Transmission Public Policy Transmission Need, this being -
5 - that being a first step.

6 On February 29th, 2016, the NYISO took
7 the next step and issued its solicitation for projects
8 that would address the needs using the criteria specified
9 in the Commission order. In response to its solicitation,
10 NYISO received proposals from 6 developers who proposed a
11 total of 15 transmission projects and one non-transmission
12 proposal.

13 Based on the criteria set forth in the
14 Commission order, the NYISO prepared a viability and
15 sufficiency assessment for each of the proposed solutions
16 and, following stakeholder review and comments, issued its
17 viability and sufficiency report on October 25th, 2016.

18 NYISO analysis found that 13 of the 15
19 transmission projects were viable and sufficient. It did
20 not, however, find that to be the case for the non-
21 transmission proposal. Further, regarding cost
22 allocation, the Commission's December 2015 order described
23 an allocation method whereby 75% of costs should be
24 allocated on an economic beneficiaries pay approach and
25 25% of those cost on a load ratio share allocation, which

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2 determines the respective shares of Upstate and Downstate
3 entities.

4 The NYISO's cost allocation proposal
5 in this case is based, in large part, on its existing and
6 well-established Carus (phonetic spelling) or economic
7 planning process, would allocate 90% of the cost to
8 downstate load zones G through -- commonly referred to as
9 G through K -- or known as G through K, and 10% to Upstate
10 load zones A through F, a result -- the -- the December
11 2015 Commission order had anticipated.

12 Given that background, today you are
13 confirming that a public policy transmission need still
14 exists for the AC transmission upgrades and directing the
15 New York ISO to complete its final step of evaluating and
16 selecting the more efficient or cost effective
17 transmission proposal to meet -- to meet that need.

18 And finally, once the NYISO makes --
19 excuse me -- once NYISO makes its selection, the winning
20 developer will then file the necessary Article 7
21 application and proceed through the -- the siting process.

22 This concludes my presentation. I am
23 more than happy to answer any questions you may have.

24 CHAIR ZIBELMAN: Great. Thank you.

25 The reason I -- I thought -- and it

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2 was recommended by Commission Burman and -- and
3 Commissioner Sayre to put this on the regular agenda was
4 not so much for the debate, because of the significance,
5 Order 1000 from FERC is a fairly new process. We were one
6 of the first states to take advantage of this in terms of
7 public policy transmission and this is the first meeting
8 that we could've had this on the agenda. And I think
9 Staff worked very hard over the holidays to get it in
10 front of us today so we can act on it quickly.

11 Getting the AC transmission proceeding
12 and moving it along, I think, is very important. Know --
13 we know that the need to -- the desirability of building
14 transmission for public policy, particularly now with the
15 CES, as well as the announced retirement of Indian Point,
16 has become even more relevant to what the state is going
17 to need, moving forward.

18 So I certainly intend to vote for this
19 item and I can take any questions or comments.

20 Commissioner Sayre?

21 COMMISSIONER SAYRE: I don't think
22 anybody really seriously disputes the need for this
23 project. We've had a bottleneck in Upstate New York in
24 the Utica area between Upstate and Downstate for decades.
25 It's been discussed for far longer than I have been at the

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2 Commission.

3 Without this project, we're going to
4 have problems meeting our Clean Energy Standard goal of
5 50% of the state's load met by renewable energy by 2030,
6 because of the simple facts that there's a lot more solar
7 and wind resource capacity Upstate, but we need most of
8 the load Downstate.

9 Now some of the parties have taken
10 issue with the allocations that -- that we've directed and
11 proposed. We're here to discuss and decide that kind of
12 issue and the order right here in front of us does that.

13 I certainly trust that my comments
14 earlier today aren't going to be taken as a policy that
15 everything needs to be settled. It doesn't. We're here
16 to make the difficult decisions as well as make policies.
17 But on this matter, this upgrade has been discussed for a
18 very long time. And I am absolutely delighted to see it
19 moving forward.

20 CHAIR ZIBELMAN: Thank you.

21 Commissioner Acampora?

22 COMMISSIONER ACAMPORA: I have no
23 comment.

24 CHAIR ZIBELMAN: Commissioner Burman?

25 She doesn't have any comment.

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2 COMMISSIONER BURMAN: When we first
3 started this item, it was -- had been started before I
4 came. But my very first time that we discussed one aspect
5 of this, I had mentioned that my son was starting college
6 and that I hoped we would have resolution to this
7 proceeding, not picking winners or losers, just in
8 resolution to the proceeding.

9 He's a junior right now, so unless
10 he's a 5-year, you know, the time is coming. He actually
11 was at the session when I said that, I believe. So just
12 let me know if I need him to extend his time at college
13 so.

14 CHAIR ZIBELMAN: Okay. All those in
15 favor in -- for Item 302 as it relates to the
16 recommendation defined public policy requirement and
17 transmission need, please indicate by saying aye.

18 COMMISSIONER SAYRE: Aye.

19 COMMISSIONER ACAMPORA: Aye.

20 COMMISSIONER BURMAN: Aye.

21 CHAIR ZIBELMAN: Aye. Hearing no
22 opposition, there being none, the recommendations are
23 adopted.

24 Okay. We are going to move to the
25 consent agenda. Do any of the Commissioners wish to

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2 recuse from voting on the items of the consent agenda?

3 COMMISSIONER SAYRE: No.

4 CHAIR ZIBELMAN: No. Any comments on
5 the consent agenda?

6 COMMISSIONER SAYRE: No.

7 CHAIR ZIBELMAN: No. Okay. Let me --
8 Commissioner Burman?

9 COMMISSIONER BURMAN: Just -- the only
10 comment I want to make is that at the December 15th, 2016,
11 session there was an announcement that we were making a
12 change to how we normally organize our agenda and that it
13 was going to be a regular agenda and the regular agenda
14 would consist of matters that are either major decision
15 matters for the Commission or major policy matters that
16 the Chair believed needed and warranted a Staff
17 presentation and further discussion and so they would stay
18 on the regular agenda.

19 And then there was a consent agenda
20 that the Chair indicated consists of matters that all of
21 the Commissioners have agreed to and have indicated they
22 have no further comment or questions, and did not involve
23 major policy changes or anything that warrants further
24 discussion so just going to be taken care of as a group as
25 a voice vote.

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2 And then there would be non-consent
3 agenda, which would consist of matters that normally would
4 be on the consent agenda, but that an individual
5 Commissioner or Commissioners believe indicated they're
6 not in total agreement with, or have additional questions,
7 and while there was not going to be any Staff
8 presentations, they would take additional questions.

9 And I just want to note that I think
10 that the -- the process that was established -- a new
11 process that was established in December 5th -- the
12 December 15th, 2016, session has changed. It's the
13 prerogative of the Chair. I'm not disputing that.

14 I do just want to reflect, though,
15 that when it says consent agenda, that folks should look
16 to the language in the -- in the -- the -- in the actual
17 final agenda, which notes that -- let me get it --
18 consists of items that, because of their nature, can be
19 cited by the Commission on the basis of written reviews
20 and analysis, previously made available to the Commission
21 if not required discussion, and any item on the consent
22 agenda can be transferred to the regular agenda if
23 discussion is required, which is determined by the Chair.

24 And so I never share, before a
25 session, on any item, how I am going to be voting. And --

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2 and it's my prerogative to -- and I think it's the right
3 decision to leave those final decisions to after the
4 session in case the session produces something that would
5 make me change that.

6 So when it says consent, it doesn't
7 mean that that means that I believe that the item doesn't
8 involve major policy changes or that I am in consent to
9 vote yes on the item. However, at this time, I have no
10 comments or question on the consent agenda, but do just
11 want to point out the change so that folks don't think
12 that if there's a consent that that means that before the
13 session, that I'm in agreement with them and will let the
14 Chair know, as I have done, on what items I think, but it
15 is her prerogative to decide what falls in the consent
16 agenda bucket.

17 Thank you.

18 CHAIR ZIBELMAN: Okay. And I -- I
19 invite any comment on the consent agenda, but I did try to
20 -- we -- to make a change, but my fellow -- 2 of the other
21 fellow Commissioners said they thought it was a really bad
22 idea. So that's why we are moving back to our -- our
23 normal way.

24 So with that, all those in favor of
25 the items on the consent agenda, please indicate by saying

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aye.

COMMISSIONER ACAMPORA: Aye.

COMMISSIONER SAYRE: Aye.

COMMISSIONER BURMAN: Aye.

CHAIR ZIBELMAN: Aye.

Opposed?

Hearing none, the consent agenda is approved.

So thank you all very much. And is there anything else in front of us today?

SECRETARY BURGESS: There are no other matters today. The next meeting is February 16th.

CHAIR ZIBELMAN: Okay. Thank you.

We are adjourned.

(The meeting adjourned at 2:32 p.m.)

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STATE OF NEW YORK

I, JANET AXTON, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 162, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 31st day of January, 2017.

JANET AXTON, Reporter

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