TRANSCRIPT OF THE
PUBLIC SERVICE COMMISSION
COMMISSION MEETING

THURSDAY, DECEMBER 12, 2019
90 CHURCH STREET
BOROUGH OF MANHATTAN
10:34 a.m.

Reported By:
Nicole Ellis
HEARING CONVENED AT 10:54 a.m.

PRESENT:

JOHN B. RHODES, CHAIR
JOHN B. HOWARD, COMMISSIONER
DIANE X. BURMAN, COMMISSIONER
JAMES S. ALESI, COMMISSIONER
TRACEY A. EDWARDS, COMMISSIONER
Proceedings

CHAIRMAN RHODES: Good morning.

I call this session of the Public Service Commission to order.

Secretary Phillips, are there any changes to the final agenda?

SECRETARY PHILLIPS: There are no changes.

CHAIRMAN RHODES: So with that, we'll move into the regular agenda of discussion items.

The first item for discussion is item 201, Case 16-M-0618 as it relates to the proceeding on motion of the Commission to seek consequences against Atlantic Power & Gas, LLC for violations of the uniform business practices presented by Bruce Alch, Deputy Director, Office of Consumer Services.

Lucas McNamara, Assistant Counsel, is available for questions.

And as an aid to our court reporter, I'm going to ask that our staff and members, when they speak they begin first with their name, although in the
MR. ALCH: Good morning, Chair Rhodes and Commissioners.

Item 201 imposes consequences against Atlantic Power & Gas, or AP&G, for failure to comply with the uniform business practices and prior commission orders to the detriment of its customers.

The information before the Commission today establishes that on numerous occasions AP&G improperly stopped its customers from leaving AP&G service and taking service from a different energy service company or ESCO.

While the UBP generally permits an ESCO to attempt to reinstate or win back a customer or take any steps to enroll with another customer, the UBP requires that the ESCO obtain specific verifiable authorization from the customer before canceling the pending enrollment.

The typical form of verifiable
Proceedings

authorization is a taped telephone call of the customer confirming that he or she would like to remain with the incumbent ESCO. The confirmation must occur before the incumbent ESCO cancels the customers enrollment with the pending ESCO.

The information before the Commission establishes that AP&G did not properly record or document any customer authorizations before it reinstated the customers at issue, and therefore AP&G did not obtain the required verifiable authorization before it canceled customers pending enrollments with the other ESCOs.

The information before the Commission likewise establishes that on multiple occasions AP&G stopped the customers from leaving AP&G service returning to utility service. Under no circumstances does the UBP permit an ESCO to act to prevent a customer from returning to utility service, and therefore by definition AP&G slammed these customers.
Proceedings

Notably, this is not the first time that AP&G has been before the Commission for violations of the UBP. In 2017, the Commission revoked AP&G's ability to market to or enroll customers for violations of numerous customer protection revisions.

One of the 2017 violations was AP&G's failure to comply with the UBP requirements concerning customer reinstatements, the very same requirements that are at issue today.

Given that this is AP&G's second time before the Commission for violating required business practices and rules to the detriment of several customers, the item before you recommends the revocation of AP&G's eligibility to operate in New York State.

This concludes my presentation on the item. Lucas McNamara and myself will answer any questions you have.

CHAIRMAN RHODES: Thank you very much.
Proceedings

To my eyes, this is clearcut case, clearcut case of behavior -- and actions that violate commission rules as established in uniform business practices, and it's a clearcut case of behavior and actions to harm customers.

And the record is clear and the remedy is clear and I'm going to support this item.

Commissioner Burman.

COMMR. BURMAN: I support the item.

CHAIRMAN RHODES: Commissioner Alesi.

COMMR. ALESI: Speaking about business practices in general, any business that relies on this kind of tactic to gain or maintain a customer base is not only deceitful, but it's doomed to failure.

Sadly, AP&G's customers have had to endure this nefarious business
Proceedings practice, but the good news is AP&G is now out of business.

I'll be supporting this.

CHAIRMAN RHODES: Commissioner Edwards.

COMMR. EDWARDS: I will be supporting it as well. I just have a question.

Has any other company had one infraction already? 'Cause this is their second infraction, right? This was their second infraction? Is there anybody else that's in the category of having one infraction?

MR. McNAMARA: Lucas McNamara from counsel's office.

I believe -- so my understanding is that there are ESCOs in the State of New York that have had penalties imposed on them by the Commission.

Some of those penalties are until the Commission grants you approval to market and enroll again, that opportunity
is prohibited. And then some of those

Proceedings
companies have come back into compliance
and been able to market and enroll again.

So there are things like that in
the past. I don't know of any company in
a similar position to this one, with a
similar prior violation of this nature.

MR. ALCH: The various violations
on several components of the UBP. On
occasion ESCOs have been curtailed from
continuing enrollment, it's a very rare
instance that an ESCO was falling through
as a revocation on their ability to
enroll.

COMMR. EDWARDS: So just as a
follow up, would you be able to provide us
with any company who has a first violation
and has not come back into compliance? So
then if there was another violation, they
would be in the same spot as this company.

MR. ALCH: I can provide a list
of actions that have been taken by the
commission, sure.

COMMR. EDWARDS: Perfect. Thank
you.

Proceedings

CHAIRMAN RHODES: Commissioner Howard.

COMMR. HOWARD: Thank you, Mr. Chairman.

This case has several very troubling aspects to me. First it shows the vulnerability of customers to unscrupulous business practices by certain energy service companies, commonly referred to as ESCOs.

The company in question has serious violations to the universal -- commission's uniform business practice including slamming as well as serious misrepresentations to commission staff.

All these actions combined with the extraordinary bad behavior of one of AP&G's employees more than justifies the action we're taking today.

It is my hope that the Commission's action will send a strong signal to the ESCO community that this commission will not tolerate repeated abuse of energy customers. And I would
Proceedings

hope if deemed appropriate, the circumstances like we're remedying today, referrals may be made to appropriate law enforcement agencies, who may commence either civil or necessary criminal proceedings.

I applaud the staff for the work on this case and encourage any customer of an ESCO or regulated utility if they feel they have been treated unfairly that they contact the Department of Public Service Office of Consumer Services for assistance.

And again, thank you, ladies and gentlemen, this was work well done. Thank you.

CHAIRMAN RHODES: Thank you.

With that, we will proceed to vote on the item.

My own vote is in favor of the recommendation to revoke the company's eligibility to operate as an ESCO in New York State as discussed.

Commissioner Burman, how do you vote?
Proceedings

COMMR. BURMAN: Yes.

CHAIRMAN RHODES: Commissioner

Alesi, how do you vote?

COMMR. ALESI: Yes.

CHAIRMAN RHODES: Commissioner

Edwards, how do you vote?

COMMR. EDWARDS: Yes.

CHAIRMAN RHODES: Commissioner

Howard, how do you vote?

COMMR. HOWARD: Yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Thank you, Luke and Bruce.

We will now move to the second item for discussion, which is item 202, Case 15-M-0127, as it relates to the proceeding on motion of the Commission to assess certain aspects of the retail energy market in New York State, presented by Ashley Moreno, Acting Chief of Administrative Law.

Luke McNamara, assistant counsel;

and Erika Bergen, Administrative Law
Proceedings
Judge; Ted Kelly, assistant counsel; and
John Sipos, deputy general counsel are
available for questions.

And I repeat the same request,
for the benefit of our transcript, please
identify yourself when you make comments
or answer questions, except Ashley Moreno
because you get to begin.

MS. MORENO: Thank you very much.

Good morning, Chairman Rhodes and
Commissioners.

As you're aware, the Commission
has continuously evaluated the retail
energy market since its inception in the
late 1990s, and periodically has issued
orders making adjustments to the market in
the interest of protecting consumers.

At the same time, the
Department's Office of General Counsel has
defended the Commission's authority to
oversee energy service companies, ESCOs,
and the ESCO market in court.

Item 202 before you, would
further strengthen protections for
residential and small commercial ESCO customers, and would ensure that only those ESCOs that will comply with the Commission's rules and advance the Commission's and the State's objectives participate in market.

Mr. McNamara will provide you with an overview of the Department's jurisdiction relative to the ESCO market. And Judge Bergen will provide you with an overview of the administrative process that was undertaken in these proceedings, as well as the primary reforms that we recommend in the draft order.

MR. McNAMARA: Good morning, Chair. Good morning, Commissioners. This is Luke McNamara from the Office of General Counsel.

In the last decade, the Commission began taking significant steps to protect New York State consumers from misleading ESCO marketing and overpriced ESCO products.

In response to these reforms, a
<table>
<thead>
<tr>
<th>Proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>number of ESCOs and ESCO associations sued the Commission in court and challenged the Commission's consumer protection authority.</td>
</tr>
</tbody>
</table>

| During the course of the proceedings that led to today's draft order, the New York courts have resolved two important cases in favor of the Commission. |
| As to the first of these cases, the Commission acted in 2016 to protect low-income New Yorkers by halting ESCOs' ability to charge those customers more than they would have paid had the customers taken full utility service. |
| In November 2018, a unanimous panel of a New York appellate court reviewed the Commission's order and upheld these consumer protections as lawful in all respects. |

| In particular, that court recognized that when ESCOs charged consumers more for the same product that the utility would have provided the |
Proceedings

customers, those actions conflicted with
the original purpose of opening up the
market to ESCOs.

More recently in May of this
year, the New York State Court of Appeals,
New York State's highest court, definitely
rejected ESCOs claims that the Commission
lacked the authority to protect consumers
in New York.

A unanimous panel of that court
agreed with the Commission that the
legislature granted the Commission broad
authority that included the power to
regulate ESCOs access to public utility
systems, the systems at which ESCOs rely
on to conduct business in the State of New
York.

The reforms discussed in today's
draft order fall squarely within the
Commission's authority to protect New York
State consumers, and that authority has
been repeatedly affirmed in the courts,
including by the State's highest court.

Judge Bergen will now provide an
Proceedings

overview of the proceedings and of the
reform set forth in the draft item.

ALJ BERGEN: Good morning. This
phase of the proceedings was commenced in
December 2016 as part of the Commission's
efforts to examine whether reforms to the
retail energy market were warranted.

A notice was issued, a public
notice was issued at that time informing
interested stakeholders that the
Commission was concerned about reports of
customer abuses, as well as the lack of
innovative energy-related products and
services available to mass-market
customers.

The notice stated that an
administrative hearing would be held to
consider, among other things, whether the
retail energy market should be permitted
to continue; whether the rules and
regulations applicable to the market
should be reformed to additionally protect
mass-market customers; and whether new
products could be developed to enhance
Proceedings

energy-related benefits to customers.

Nineteen parties actively participated in the administrative hearing process by submitting testimony, exhibits, and engaging in cross-examination and/or submitting post-hearing briefs. These parties include individual ESCOs, industry trade groups, public interest groups, and staff of the Department of Public Service, the New York State Attorney General's Office, and the City of New York.

Generally, the non-ESCO parties asserted that mass-market ESCO customers have been paying substantially more for electric and gas service than those customers would have paid had they remained customers of traditional utilities.

These parties also generally expressed concerns the ESCOs have not been providing real and measurable value to mass-market customers.

Some non-ESCO parties argued for a complete dismantling of the market while
Proceedings

others argued for substantial systematic reforms to limit the types and prices of ESCO offered products and services.

The ESCO parties, for their part, generally opined that there was little to nothing wrong with the structure of the retail energy market and that the Commission need not implement sweeping reforms.

Some ESCOs did, however, acknowledge that there are a few bad actors in the market and suggested mild to moderate reforms to address that problem, such as more rigorous eligibility criteria or the implementation of financial security requirement.

The draft order before you would strength protections for residential and small commercial customers by, among other things, adopting limitations on the types and prices of products of may be offered to those customers; improving the transparency of information about ESCO products and pricing; and increasing ESCO accountability by enhancing eligibility.
Proceedings

criteria.

With respect to ESCO product offerings, the draft order would permit ESCOs to offer only the variable rate commodity-only products that guarantee savings in comparison to relevant utility commodity service; a fixed-rate product that is limited in price to a 12-month trailing average utility supply rate plus a five percent premium; or a renewable electric commodity that would meet specific standards as outlined in the draft order.

These renewable products would be required to have a renewable percentage mix at least 50 percent greater than is required by the renewable energy standard obligation for that year for each load serving entity including ESCOs; it would comply with the renewable energy standard locational and delivery requirements when procuring their renewable energy credits or entering into bilateral contracts; and it would provide transparent information
Proceedings

and disclosure to its customers.

ESCOs will no longer be permitted
to offer commodity bundles of products and
services that are not energy related.
This prohibition would apply to, among
other things, items traditionally used to
induce customers to enroll with the
customers such as gift cards, frequent
flier miles, and sports teams tickets.

No ESCO, except for Agway,

provided any meaningful information
regarding energy-related, value-added
products or services that they provide to
New York customers. Because there may be
innovative energy-related products or
services that potentially could provide
benefits to mass-market customers, this
draft order would direct staff and
interested stakeholders to explore and
track two of these proceedings which
products and services, if any, can and
should be offered by ESCOs and then report
back to the Commission.

As for Agway, it offered proof
Proceedings regarding its energy guard program, which is a prepaid home heating and cooling system maintenance contract. This draft order would permit Agway to continue marketing that product.

In addition, during the pendency of the track two collaborative, any other ESCO would be permitted to apply to the Commission for approval to provide a sufficiently similar product.

The draft order before you also would increase price transparency for customers. Customers cannot perceive the existence or lack of value associated with an ESCO product if it is not easy to compare ESCO prices to utility prices.

The draft order would direct each utility to work with DPS staff to develop individualized plans toward implementing an unbilled price comparison of ESCOs utility prices, as well as an itemized billing of any non-commodity ESCO charges.

Adding this information to the customer bill will empower customers to
make important choices about their energy provider and products.

The draft order would also increase ESCO accountability by enhancing eligibility criteria. All ESCOs would be required to identify all methods it intends to employ and marketing its services to mass-market customers;

Disclose specific data regarding complaints made in other states about the ESCO and all its related affiliates;

Disclose information regarding any data security breaches the ESCO has suffered in other states;

Specify policies it intends to use to secure data customer;

And disclose its bankruptcy history and other relevant details of its corporate structure and history.

Further, as part of the application process, each ESCO would submit a sworn affidavit or affirmation of one of its officers stating that the ESCO will comply with all applicable laws and
Proceedings

All ESCOs interested in entering into new agreements to provide retail energy services to mass-market customers in New York would be required to submit a new application within 90 days of the issuance of the order.

As specified in the order, eligibility to provide such services will be based on compliance with the enhanced requirements that are intended to improve transparency and accountability on the part of the ESCOs, and to enhance the markets ability to function.

Staff would review the applications and where appropriate recommend that the Commission deny certain applications that do not meet the criteria.

Finally, the draft order would establish further process on ESCO financial surety requirements. It directs staff to collaborate with stakeholders to identify an appropriate form or forms of
Proceedings financial surety and a proposed methodology to calculate the required amount.

Staff would be required to file a report of these recommendations within 120 days of the date of the issuance of the order. The Commission would then determine which type or types of financial surety would be required and how the required amount would be calculated.

In conclusion, we recommend that the draft order be adopted in its entirety. As described, the order would enact significant reforms for the protection of residential and small commercial customers. At the same time, the order would allow those ESCOs committed to furthering the Commission's and the State's policy goals to provide meaningful benefits to its customers.

Thank you. We're available for questions.

CHAIRMAN RHODES: Thank you.

This order to me is a reset,
Proceedings
clearly delineates what is no longer permitted on the clear and foundational principal of protecting customers. And it acts against companies that have acted badly and it acts against their practices. It clearly sets new standards for eligibility of these companies, including sureties, it clearly delineates what's permitted: Variable-rate contracts with guaranteed savings, fixed-rate contracts within the limits, renewable energy contracts that are as described, and certain, at this point only one, energy-value added services.

Clearly provides for transparency and useful comparative information for customers and clearly encourages the development of value-added services. So in my mind, it provides clarity. It provides guardrails for market for the customers. For those ESCOs that are committed to serving customers well and flying straight, it provides clarity. And for those companies that are
Proceedings

not interested in doing so, it also provides clarity that New York State is no longer open for business for them.

Commissioner Burman.

COMMR. BURMAN: Thank you.

So I think I need to do a little bit of level setting and sort of give my perspective, part of that is also to look at what we have before us.

We have in New York approximately 200 ESCOs operating in New York and out of those 200 ESCOs, from the information I've gotten from staff as of September 2019, there's two million mass-market ESCO customers. And out of that two million, 1.4 are on the electric side and 600,000 are on the gas side.

So from my perspective what's really clear is a significant number of customers that we need to make sure when we're looking at this from a transition perspective, from the existing rules to the new rules, what that means for the customers. And part of what that means
Proceedings

for the customers is also looking about how that will be able to be achieved for consumer protection and also enabling folks to have choice and enabling folks to be able to choose an ESCO if they so choose.

And we don't, as we saw from the first item, we don't want bad ESCOs to operate in New York, and it's important from an enforcement perspective that we make that very clear. The first item had a very egregious situation and we've taken action.

I think when we look at that it's also important to see what our enforcement has been since 2009. So since 2009, we've had 20 enforcement actions, according to staff and the research, maybe one or two who got missed, but we've had 20 enforcement actions since 2009. Out of those 20 enforcement actions, 11 of them have been for ESCOs that are not active in New York and have no customers.

So what I call it sort of a pro
Proceedings

forma enforcement action is we're getting them off of our books so they don't come forward and say they want to be active. They have no customers and they are not active.

So that leaves us with nine others. Out of those nine, two of them we reinstated after taking some enforcement actions. And then one we completely revoked their ability. One of those nine is the one that we have before us today where we're completely revoking.

So I think for me some of the perspective I have is that enforcement does work. It is important to have a fair enforcement process and also to make sure that we're rigorous in it.

When we look back at some of the issues that we've had, it's been when we have not really made it clear that we're focused on enforcement, and so some of that even in terms of looking at some of the new requirements, it's really taking a hard look at what we can do from our own
Proceedings

december 12, 2019

I think it's important to look at the new eligibility requirements because I think on their face they are intended to be fair and they are intended to be helpful to an ESCO knowing what the rules of the road are, but also for the customers protection when needed.

And I say "when needed" because there are many very good ESCOs who are operating and work very well with their customers and we need to be excited about that. I think that we would have seen a larger increase of enforcement if there were -- if that wasn't the case.

In many ways, today's first ESCO decision was really an outlier in just the egregiousness of it, but again we'll take action when there's a very egregious need to.

So looking at the ESCO eligibility requirements, the new ones, is really eight:

ESCOs shall identify their
Proceedings

methods used to market to customers;

ESCOs shall disclose specified complaint data that have been made in other states;

ESCOs shall disclose specified security breaches in other states;

ESCO shall specify policies directed at securing customer data;

ESCOs shall disclose bankruptcy history;

And ESCO officers shall affirm that the ESCO will comply with law and regulations.

And then in order to continue -- this is the one that I'm going to drill down on: "In order to continue to enter new agreements in New York, ESCOs must submit updated eligibility applications within 90 days."

Paired with that is the next one which is: "Staff will substantially review eligibility applications and where appropriate recommend to the Commission that eligibility be denied."
Proceedings

I think there is a recognition that we are now going to require staff to substantially review. It doesn't mean that staff wasn't doing their due diligence, but that it is a recognition for the Commission to say this is a requirement and you must substantially review. There has not been a substantial review in a long time and so now that's part of it.

But when we substantially review the eligibility applications, it's not to -- it's really intended to help facilitate those ESCOs who want to thrive in New York with their customers and follow the rules, to really be able to operate in the market. It's not intended to be a way to shutdown good ESCOs that want to do that.

The concern I have is that we may wind up going a little bit backwards to where we were before. As most of you know, I had some serious issues with the process that got us here. It's been a very long one, and it's been one that has
Proceedings

been inundated with missteps on us following the right process and having to sort of correctively take action to fix some of our process missteps.

It's been fraught with all sides not feeling that they can trust one another, and so that has produced a lot of blockage in terms of good collaboration.

In the past, collaborative processes have yielded very good results, especially in the ESCO market. And so it's really important for us to be mindful of that because while we are going forward from a path-forward perspective, we need to keep in mind that we need to let go a lot of the anger that was there because if we work together in establishing the guardrails in a way that helps to flourish the market, it actually can benefit the customers, and making sure that that's our primary motivation.

For me, the ESCOs must submit updated eligibility applications within 90 days. So there that's a regulatory
Proceedings

certainty, within 90 days you must submit. The difficulty is that there's no requirement for when the deadline is for the staff to substantially review and then to bring it back to the Commission on if this eligibility is denied.

And so for me, I really want to understand when we will be seeing that and have a full report about that substantial review. Because it will be difficult if we do one-offs in terms of we see something and we say no, we're going to deny them. But I need to see that there's a fairness and that all of the ESCOs, all 200 or so or maybe new ones, are being looked at in a careful way and that we can judge the denial or the not on what we have before us and understand and make sure that there's no unfairness against one and pushing somebody else that may have the same issues.

So it's really important to me that equity is there.

I understand that while the
Proceedings

eligibility application is being looked at the ESCO can continue to operate; however, the other piece of it is that when their contracts end, what does that mean? So if a contract ends tomorrow, what do they have to do to continue to operate? And my understanding is that they would have to give -- have to get confirmative consent from the ESCO customer to, if they want to move into one of the other pricing product requirements.

So if they want to move into a fixed-rate product priced under trailing average plus five percent, or if they want to move them to a renewable, that they need to get affirmative consent; is that fair?

Is that fair reading of it, not whether its fair.

MR. McNAMARA: So what I would say is that the affirmative consent comes at the time where an ESCO contract changes or a renewal changes based on these new criteria. And first of all, there's going
Proceedings
to be a 60-day lag before the new UBP goes into effect. After which all new ESCO contracts need to satisfy the criteria set forth in the order, and that would include contracts that have an automatic renewal provision at the time where that automatic rule comes up.

If the contract needs to be changed to comply with the new rules, they'll have to get consent from the customer because it's a different contract with new criteria that's compliant with the order.

COMM. BURMAN: And that also means that month to month, so a new contract then would be after the month ends?

MR. McNAMARA: Yes. So when the 60 days occur and the new UBP provisions go into effect, and let's say five days later there's an automatic renewal provision, the contract at that point -- so if it's compliant, it's compliant and the automatic renewal provision can take
Proceedings

effect if both parties want it to.

If it's noncompliant and the ESCO is changing the nature of the offer on the new contract, and that's five days after the 60 days, that new contract needs to be compliant with the order.

So that's how the provisions will roll in customer contracts.

COMMR. BURMAN: I think that's going to wind up being a problem for the customer.

So I think that the flexibility should be, and because if we really want to make this work and especially if we want our goals if -- an ESCO is looking to go to a renewable energy product and that's something that we would be supportive of and it's there, I do think it's something to look at about what you need from the affirmative consent perspective or non-affirmative consent.

I'm going to save some of my comments for that because of the disconnect I see in the CCA process versus
Proceedings

this. I think that for me it becomes challenging when we're looking at the eligibility requirements, which I think are valid and good, and then yet we're not applying it in the same fashion to the CCAs, and we're also not applying it in the same fashion to DERs and others.

So it's, in many aspects, a lot of the issues that are in -- potentially that are in the ESCO market are also ones that we should be grappling with in the DER market, as well as and especially in the CCA where it's an opt-out.

And so for me it leaves me concerned that like before, where we changed the rules without an appropriate flexibility in that fly path from the transition, here we're making very crude cutoffs and also having it in a way that gives very little time for folks to get affirmative consent.

And some of rationale for why the majority allowed the CCA to not get affirmative consent and have opt-outs
could be the very same rationale for why
ESCOs themselves would be allowed to have
that, especially for customers that are
existing. And for me, it's not about the
industry, it's about what works for the
customer.

We've seen from customers who
don't have choice in the gas space, the
loud outcry when folks want certain
things. And so I just -- I'm a little
concerned about what that means, and I
think we should be open to a better
process for that.

MR. KELLY: Ted Kelly. So I
certainly understand concerns about the
transitional period and making sure that
runs smoothly.

I do want to note, the reason we
do think affirmative consent is important
if the contract is changing, and let me
give you an example. And you mentioned if
they want to switch customers who are
currently on, say, a variable-rate product
with no special features that wouldn't be
compliant with the new order to a renewable-source product. It's reasonable that that renewably-sourced product is likely to be at a premium because renewable energy can be more expensive when it's being procured that way, and the goal is to ask for customers who are interested to actually pay a premium to get more renewables built.

So in that case, we think it's important that the customer get affirmatively asked, We'd like to move to this renewable product, it's likely to come at a premium, is that okay?

I think that's why we think affirmative consent is important, and just to kind of talk a little, since you mentioned this, the CCA program. I think that kind of core reason there the opt-out was decided to be appropriate by the Commission is there was a determination that the municipality, which is responsible -- which generally is responsible for issuing franchise and
placement and therefore chose electric companies serves their residents in the first play, that they can be a reasonable proxy for customer consent with the very important ability for customers to opt-out.

So that's where I draw the line here. And just to be clear, in the CCA program, if a contract is ever being changed, first of all, of course the municipality would have to explicitly agree to that. And then second of all, customers would get a renewed opportunity to opt-out, a renewed notification that hey, your CCA contract is changing, do you still want to stay in because of the change are you interested in opting out?

COMMR. BURMAN: Right. And I'm going, for the interest of time, I have raised a lot of issues on the CCA opt-out, and especially because I think there are a lot of challenges.

And so my comments that I've made at several of the sessions related to CCA,
Proceedings

I think are very applicable. Again we're going to get into a little bit on the consolidated billing side.

I'm just raising a red flag to what I see as a problem, and I think that is where we should have more flexibility and work not only with the ESCOs but also with the customers in terms of that engagement in a way that they be more productive and not have the potential chilling effect on the two million customers.

What worries me is that we're going to wind up having to switch, potentially, a lot of customers to the utilities. And while they may be able to take that without any issues, for me, it's about the loss of that market, that at least two million customers currently seem to want, in some fashion, we've not seen a large uptick in complaints from customers that say, we don't want the ESCO. So that to me is concerning.

So I'm going to stop there. I do
Proceedings

think that -- I think it's appropriate on all of the issues that I raised that we look a little bit at it.

The other item that I will raise, just is important to me, in the value added. We have talked since the beginning of REV about value-added products. I think it's really important that we -- and I think it's great that we're starting collaborative on this.

I am worried that we have -- are only allowing at this time one company to have that value-added product, and that we're saying, Well that's the only one that's before us. They are doing a great job and nobody else came up with anything.

I think that part of the nature of the value-added product issues, are that it's very hard even for us to understand what it is that we're looking at and how that fits. But it's really important, it can be really helpful to a lot of our goals, especially as we look to AMI and demand response.
Proceedings

And so for me I would like to make sure that we are truly enabling thoughtful conversation that leads to clear definition of value added but doesn't also chill the ESCOs opportunity to be adding that. And to have it done in a way that is a helpful conversation not one that seems to say, No, we don't like it 'cause you're an ESCO, but go over to the DER space and you'll be fine. That worries me, or go to CCA and you'll be fine. And the rules have to really be appropriate and fair across the board.

I also would like to see, though, that if an ESCO says, Fine, say Agway, the company Agway, has the value-added product that you are good with, that's what they put in their eligibility application, that they are going to do also that doesn't mean they have to wait for approval.

The order seems to be somewhat unclear, 'cause it would seem they have to make a petition to be able to do that which would delay things. And from my
Proceedings

perspective, if we know already that that's something that is appropriate and they showcase that they can do it and also we should be enabling a conversation with what that looks like without stepping into any trade security issues, I think that's something we should be doing, especially if that's been identified as a good one.

I'm going to be voting in part in agreement, but I'm going to be descending in what I think are some poor fails, and also in the step forward, and also because I think that the whole process from the get-go has been fraught with issues and we need to take stock in lessons learning from that so we don't repeat those failures and that we also are helping in that regard.

I really am concerned that we're going to cause disruption to customers and that it's actually going to be a step backwards in some of our goals and that concerns me.

I do want to give a lot of credit
Proceedings

to both ALJs as well as staff, not only
staff that was involved in this, but the
staff behind the scenes that have been
working on the issues.

And I also want to give a lot of
credit for those folks who are trying to
figure out how to serve customers in New
York in a way that helps things.

So thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi.

COMMR. ALESI: Thank you,

Mr. Chairman.

I agree that this does strengthen
protection for residential and small
business customers. It improves
transparency and accountability by way of
enhanced eligibility requirements which
focus on renewable energy credits and
eliminates things like gift cards and
other incentives thereby making their
product offerings more transparent to
customers.

This is a solid recommendation
Proceedings
resulting in significant reforms and I'll be supporting it.

CHAIRMAN RHODES: Thank you.
Commissioner Edwards.
COMMR. EDWARDS: I have no comments, I'm going to support.

CHAIRMAN RHODES: Thank you.
Commissioner Howard.
COMMR. HOWARD: Thank you.

For those who may not know, I've been a keen observer of this for two decades.

I want to begin my comments on the commitment of the trial staff who worked on this order for a job well done, thank you.

For two decades New York State has participated in a grand experiment, utility deregulation and the introduction of market forces to both the wholesale, retail sale of electricity and natural gas.

The expressed purpose of this exercise was to provide economic models
Proceedings that would lower cost and inspire innovation to customers both large and small.

In some cases, the experiment has worked and the wholesale electric market, we've seen economic efficiencies drive down costs to the lower levels than we would have had under the vertically integrated utility model while maintaining exceptional system reliability.

For the large industrial and commercial customers who have sufficient market power, we have seen real benefits to shopping for both energy and energy services.

However, such positive results have not universally come to small mass-market customers, who in many cases, far too many cases, paid more than they would have by staying with their incumbent utility with no customer-side benefits of innovation.

Over this period, many, tens of millions of dollars, was paid by customers
Proceedings

over what they had paid had they not migrated away.

Unlike our most common energy purchase, say for motor fuel, where customers can easily identify the differences in prices or services at the pump or the service station, the current system of ESCO retailers makes it difficult, or in some cases nearly impossible, for customers, particularly those who are not particularly sophisticated, in purchasing energy to see if they are realizing any savings largely due to the lack of transparency in pricing.

Today's actions will do two very important reforms. First, by requiring utilities to provide true price comparisons to ESCO customers, what the ESCO price is compared to what the utility would charge.

Second, it puts the onus on ESCOs to offer additional energy services that provide real value to customers and the
Proceedings

energy systems of our state, thus
potentially, I must say potentially,
fulfilling the promise of ESCOs who
provide customers that would work on both
sides of the customers meter to maximize
customer benefits.

I believe today's commission's
action will go a long way in improving our
retail energy markets for small customers.
But I strongly encourage staff and the
stakeholders to continue to work on this
proceeding as expeditiously as possible
with the same critical eye that produced
today's order.

Again, thank you for the good
work.

CHAIRMAN RHODES: Thank you.

With that, we will now proceed to
vote on the item.

My own vote is in favor of the
recommendation to adopt changes to the
retail access energy market and establish
further processes as discussed.

Commission Burman, how do you
Proceedings

vote?

COMMR. BURMAN: I concur in part
and dissent in part.

CHAIRMAN RHODES: Commissioner

Alesi, how do you vote?

COMMR. ALESI: I vote yes.

CHAIRMAN RHODES: Commissioner

Edwards, how do you vote?

COMMR. EDWARDS: I vote yes.

CHAIRMAN RHODES: Commissioner

Howard, how do you vote?

COMMR. HOWARD: I vote yes.

CHAIRMAN RHODES: The item is
approved and the recommendation is
adopted, thank you.

We'll now move to the third item
for discussion. Item 301, Case 19-M-0463
as it relates to consolidated billing for
distributed energy resources presented by
Ted Kelly, assistant counsel; and Warren
Myers, Director of Office of Market and
Regulatory Economics; and Marco Padula,
Director of Markets and Innovations are
available for questions.
Proceedings

MR. KELLY: Good morning, Chair Rhodes and Commissioners.

The proposed order before you, item 301, directs the investor-owned electric utilities to implement consolidated billing for community distributed generation, or CDG.

Currently while CDG members receive credits on their utility bill based on project generation, CDG developers, who are also called CDG sponsors, must separately bill and collect a membership cost.

Consolidated billing will allow the membership costs to be collected through the utility bill so that customers no longer need to receive two separate bills and so that CDG sponsors no longer need to perform duplicative billing and collections activity.

I'll begin by providing background on the CDG program that passed special consolidated billing and will then describe the major decisions in the
Proceedings proposed order.

In 2015, the Commission authorized CDG in New York State. In the CDG program, a CDG sponsor develops an eligible generation product, usually a solar photovoltaic system, connected to a utility system. CDG sponsors then enroll the group of customers of that utility as project members.

When the CDG project injects electricity into the utility system, the utility applies bill credits to the bills of the members of the CDG project. Generally those members pay the CDG sponsor a separate monthly subscription fee.

In later orders, in the value of distributed energy resources proceeding, the Commission directed the consideration of consolidated billing to reduce project costs and increase simplicity and benefits for customers.

In addition, the Commission directed development of a bill discount
pledge, or BDP, program which would allow low-income customers to use their utility bill discounts to pay for their CDG subscription fees.

On June 18th, 2019, the secretary to the Commission issued a notice seeking comments regarding consolidated billing for community-distributed generation. In addition, on September 11th of 2019, National Grid filed a petition for authority to implement community-distributed generation platform. Comments were also requested on that petition.

The National Grid petition proposed the implementation of a two-part CDG platform. The first part is a consolidated billing program, while the second part is a customer acquisition program for CDG in which National Grid would conduct request for proposals to select several CDG projects, and would then conduct marketing under its brand to enroll customers in those projects.
Proceedings

A large number of comments were received on the notice and on National Grid's petition. Commenters were generally supportive of the implementation of consolidated billing. The joint utilities proposed a specific implementation model, net crediting, which I will discuss shortly.

Commenters on National Grid's proposal were generally supportive of the net crediting model and National Grid's overall consolidated billing proposal but expressed concerns about or opposition to National Grid's customer acquisition proposal.

The proposed order directs implementation of consolidated billing using the net crediting model proposed by the joint utilities and supported by the majority of commenters.

Under the net crediting model, the CDG sponsor would enroll a program in net crediting and would designate a CDG savings rate for that project, the
Proceedings

percentage of the product's monthly value that will be provided to members after the subscription charge is subtracted out.

For example, for a project with a total value of credits generated in a particular month is $10,000, if the developer has set the CDG savings rate for that project at ten percent and that project were evenly divided among ten members, each member of the project, each customer, would receive a $100 net member credit on their utility bill for a total of $1,000 to all customers and credits, while the CDG sponsor would receive a sponsor payment of $9,000 from the utility in the form of a direct monetary payment.

Because this credit would always be greater than zero, the members would be guaranteed to save money or their utility bills each month. To ensure the customers achieve reasonable benefits from CDG membership, it's appropriate to set a minimum CDG savings rate. The proposed order sets a minimum CDG savings rate of
Proceedings

five percent.

All CDG projects including projects already interconnected are eligible to employ the net crediting model.

To avoid unnecessary complications, projects employing net crediting must generally use it for the whole project and must use the same CDG savings rate for all net crediting members of that project.

The proposed order emphasizes that net crediting is an optional program and that CDG sponsors are under no obligation to participate if they prefer to continue to use a separate billing model, and encourages CDG sponsors to continue exploring innovative product options in addition to using net crediting where appropriate.

The proposed order notes that under the net crediting model, low-income customers can receive the same paired benefit of low-income discounts plus CDG
Proceedings

subscription benefits envisioned by the bill discount pledge program. For that reason, it's unnecessary and could create inappropriate divisions among customers implementing separate bill discount pledge programs.

The net crediting model should increase low-income enrollment by reducing or elimination a CDG sponsors reluctance to enroll customers based on credit worthiness issues.

The proposed order does direct staff to continue to monitor the participation of low-income customers in CDG programs and to recommend further actions as necessary to ensure that low-income customers are able to participate in and benefit from such programs.

To recover the costs of implementing consolidated billing, the proposed order authorizes utilities to collect a fee from CDG sponsors participating in net crediting through a
Proceedings
discount rate on the sponsor payment of
one percent.

That is, for that same example
project described before, with a value in
a particular month of $10,000 and a CDG
savings rate of ten percent, the utility
would retain $100 through the discount
rate, reducing the sponsor payment to
8900. The ten customers would still
receive $100 benefit each for the total of
$1,000 in customer benefits.

The proposed order directs a
process for utility filing and
implementation plans and program manuals
with opportunities for input by
stakeholders. At this time, the proposed
order limits consolidated billing of CDG
programs and does not extend it to other
types of distributed energy resources, as
a generally have more complicated benefit
models.

The proposed order recognizes
that a number of customers discuss the
possibility of pairing the community
choice aggregation program, CCA program, which allows local governments to aggregate their citizens energy purchases on opt-out basis with the CDG program, which consolidates billing serving as an important supporter for that opportunity.

The proposed order directs department staff to evaluate the appropriate role of and appropriate rules for pairing CDG with CCA and putting including the rolled opt-out and directs staff to make a recommendation to the Commission relatively early in 2020 for commission consideration so that that can be evaluated in advance of the full rollout of consolidated billing.

With regard to platform two of the National Grid petition, a customer acquisition and turnover management proposal, the proposed order denies National Grid's request to operate that platform.

As a number of commenters argue, National Grid's proposed customer
acquisition activity risks crowding out private market rather than supplementing market activity while correcting for a market failure.

However, the proposed order encourages continued consideration of innovative program proposals including the utilities to increase low-income participation in and benefit from the CDG program.

Today's order provides significant benefits to customers and developers of CDG projects in New York State by reducing the cost associated with CDG projects will result in increased development and therefore increased opportunities for participation in the clean energy.

It will benefit both for more than one gigawatt of CDG currently in operation in late stages of development as well as the further CDG development expected over the next several years as the State pursues a six gigawatt goal for
Proceedings

distributed solar deployment.

As an example of the potential financial benefits, we estimate that a large CDG project will save as much as $60,000 per year. If, for example, all CDG projects currently in service or late stages of development participated, the total savings could be as large as $12 million per year total. And those will only increase as more projects are proposed over the next several years.

The order will also guarantee that the CDG benefits participating customers through the guaranteed savings aspect of the net crediting model and will protect nonparticipating customers by ensuring cost recovery for the program comes from program beneficiaries and by avoiding imposing any new risks on the utility.

Finally, it will substantially enhance the potential for inclusion of low-income customers in CDG programs.

That concludes my presentation
Proceedings

and Marco, Warren and I are available for questions. Thank you.

CHAIRMAN RHODES: Thank you very much, Ted.

I see this is a smart and important bid of cost reduction which simply put is good for our policies and good for all customers.

It does so in a pragmatic and effective way, namely net crediting. It does so with reasonable economics for everybody, including for the providers of those billing services, namely utilities.

It intelligently and properly and usefully makes us available to old, as well as new, projects.

It intelligently incorporates the bill discount program mechanics into this.

And it further encourages innovation, especially that oriented towards low- and middle-income household, and the improvement of access to this kind of resource for those households.

And that leaves the door open, in
Proceedings

a very inviting way, for further innovation, further expansion, including towards paring in the whether and how of CDG and CCA.

I'm going to support this item.

Commissioner Burman.

COMMR. BURMAN: Thank you.

So I looked very carefully as all of the submissions that came in for this.

On the record, there was not one -- almost every submission was for consolidated billing. There was strong support for it.

There was strong support for the majority of them, for the need for consolidated billing with opt-out. In fact, much of the -- many of the submissions really seem to be word for word the same, and seemed to be paired in that they were very clear that to make this work they needed consolidated billing and opt-out.

I'm concerned that that wasn't really fully addressed, and when we do
have it we're going to look at that. But I'm just curious from listening that the majority of folks will now be upset that this order does not -- allows consolidated billing but not, at this point, opt-out.

MR. KELLY: So I hope the majority of folks won't be upset. And it wouldn't be my anticipation, although, of course, I can't predict others reactions.

I will say that some of comments that weren't as focused on opt-out, or weren't focused on opt-out at all, were from large member organization. So for example, the New York Solar Energy Industry Association, and several other industry organizations like that filed comments that were really just focused on consolidated billing and saw it as having great potential without opt-out. And so even though they filed one comment, they were representing many individuals.

I think it is an important opportunity to look at, the opt-out potential, I think that what staff
Proceedings
determined was that we hadn't had a full
opportunity to consider what rules and
customer protections were necessary for
that for this order because it wasn't part
of the original notice for National Grid's
petition, and therefore there was the need
to further look at that.

And so that's why the order
directs staff to take a hard look, to work
with stakeholders and to make a
recommendation to the Commission in a
relatively short timeframe, by March of
2020. And what that will allow is for the
Commission to make its final decision
which would embrace opt-out or not before
any utility actually has consolidated
billing fully up and running.

So if the Commission did
authorize opt-out, it really wouldn't
delay the implementation of opt-out
anymore than it would if we were able to
decide that today.

COMM'R. BURMAN: Part of my
concern is that I don't think it is -- I
think it's appropriate for member organizations to submit, as they see fit, into our dockets and acknowledging where they were based on their members.

But I do think it's incumbent upon staff to also help to pair that in that we understand that we have 20 submissions, but out of those 20, ten of them are members of X organization that's submitting the same comments.

And the reason that's important to me is that we seem to take great pains in other areas with other organizations that we may not necessarily be opposed to to be negative in that they have similar comments from their members and somehow, or from even the legislators sometimes submit, but they don't think that's wrong if they feel comfortable with that.

I think it's something for us, though, to make sure that the rules are the same and that we are carefully evaluating whether an organization, the submissions of that, based on their member
Proceedings

interests.

And I think that's important for us to be clear so that we don't seem to be against it for one other organization or other organizations but okay with it here. And also fully understand, OK, that's a nice pocket that makes sense why we're seeing that.

I am very concerned about the CCA and the opt-out issue and how what I would call CCA opt-out plus with CDG. And I don't think -- and I have -- a lot of my comments went into significant detail on the session so I won't do that now except to adopt them here as well, because I don't think we have done a true review of what's working and what's not.

While we see from the other session item that we are now mandating that staff does a substantial review of the ESCO eligibility applications and really does in a timely fashion, I don't see that we are taking a close look at some of the challenges, positive and
Proceedings

negative, with CCAs. I think it's unfair
to put a lot of the burden on the munis
that are maybe adopting it. Some of large
ones may be able to handle that, may be
able to have personnel who understand
that, not all though.

And I think that we are we're
doing a lot of pushing some of our own
regulatory oversight onto the munis in a
way without fully taking clear stock of
what that means and it's lip service just
to say, Well we explained it to them.

Sometimes when you're explaining
to them also say, and you're going to get
X savings and we're going to give you X
amount of state funding to do this, and
this is the greatest thing, that sometimes
makes it very difficult to fully
appreciate what that means in practice.

And as we see with everything
implementations can itself have
challenges. We don't really have a
tracker for complaints or issues that come
from CCA, in particular, the opt-out. So
Proceedings

a lot of it is potentially word of mouth, sometimes folks aren't even really aware of what they've not opted out of. And I've taken a close look at some of the filings that come seeking approval for notification to the customers and I'm not favorably disposed to a lot of it. And I'm concerned that it's not truly helping in enabling good customer choice and we seem to have the get-around that, well, the munis aren't looking out for them and they made that decision.

It's not a legislatively-enacted program and my concern continues and I think that for me when we look at consolidated billing, I think consolidated billing sounds like a good thing and it can be, but it can be very complicated. It should not just be in a vacuum with CDG, there are many other opportunities that will be there. And my fear is that we will wind up having more cumbersome processes and more costs to ratepayers and others when we seek to put more into the
Proceedings

consolidated billing if we don't take some
time now to look at that.

We're really rushing to push CDG,
CDG could be a good thing just like CCA
could be a good thing, but I'm very
concerned that we are not fully ensuring
that the rules of the road are clear. We
do lip service to saying that we want to
help the low-income customers and this is
a way of doing that. We don't really see
-- and somehow consolidated billing seems
to be the main obstacle to CDG, I don't
think it's as clear as that, in fact I
would argue it's not. It may be for
certain folks a significant issue, but I
think looking at it we really need to be
careful.

Now I do think it's important
that we look at, and we have an EDI
working group here, and that is part of
the next steps; however, for those of you
who are involved in the EDI working group,
it's very technical and it is very good.
But it is also very important that we now
Proceedings

don't just throw into the EDI working
group mix CDG as going to the top of the
food chain in a way that shakes up the
good work. And also from my reading in
looking at the minutes and agendas and the
action items that come out from the EDI
working group over the years, there's been
a lot of good incremental changes that are
helpful and I really caution that we need
to be mindful of that.

We need to be mindful of this as
technical expertise in a way that does not
overlook some of those challenges, and
we're also very careful to be doing this
in a way that is helpful and not a step
backwards.

I am concerned that this item
came so late. It is not unique. It's not
unique to this session with just this item
and it's not unique in general. It is
hard for me as a commissioner to evaluate
and to have some thought processes as to
whether or not this is an overall good
decision when it's given to me late and
Proceedings then with added on changes.

I do think that it was well intentioned, but I think it's also -- it's not just about me and my role and my review, it's also about the other staff who asked to step up and review something that they may not have seen until the week of session.

That is difficult even if they are talking about it, language is important, and that is something we need to be really mindful of and I can't -- I have to make sure that we're fully taking account in a way that I think helps get better products.

To the extent that the item talks about looking at CCA and CDG opt-out later. I want to be clear, the way the language is, it does not seem to suggest that we may take a change to opt-out. So it seems to be suggesting, and it seems to be suggesting from my read, that CDG and opt-out is something we should be moving toward with an alignment to how it would
Proceedings

work well with CCA.

I would offer that it really is an opportunity for us to examine how CCA itself is working well, what changes we may need to make to make it better for customers, and also municipalities that we do a deep dive substantially, not just in isolation but with folks that can really help enable that.

And that we also look at opt-out in general and what that means because again as we saw, we were not allowing affirmative -- we were making affirmative consent on the ESCO item, but as to CCA there's no affirmative consent. And so that concerns me and I don't think the explanation that the munis are the ones that are helping to have those protections in place are at all reasonable.

I just don't see that and I think that we should be looking carefully and matching all of this up in a way that's helpful.

So I do thank you for your hard
Proceedings

work. I also do recognize that some of changes that were made, I think were made because we did have some discussion. So it's not to suggest that you made more changes to isolation, but it shouldn't be and it really needs to be a more thoughtful process.

So we need to figure that out, that's not on you, and your hard work is very much appreciated. So thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi.

COMMR. ALESI: Thank you, Mr. Chairman.

Implementing consolidated billing through the net metering credit model will reduce costs for CDG projects, it will enhance the potential for low-income customers to participate in the benefits.

It engenders a measurable step forward in our pursuit of clean energy generation and I enthusiastically support this very worthwhile endeavor.

CHAIRMAN RHODES: Thank you.
Proceedings

Commissioner Edwards.

COMMR. EDWARDS: Thank you, Mr. Chairman.

I want to thank you for meeting with me on the community solar projects and this model as well.

I understand how this simplifies the billing. I get that, don't have any issue with it. I'm struggling with how this is going to generate more projects in the low-income areas. I'm struggling with that because from a policy perspective I'm all in with doing whatever we can to do generate as many community solar projects as well.

So putting aside the consolidated billing, no problem, I can't make that connection.

MR. KELLY: So first of all, I want to be clear, I'm not talking about geographic areas, this won't have anything to do with where the products are actually --

COMMR. EDWARDS: What we talked
Proceedings

about before.

MR. KELLY: So to the extent that people are interested in having projects built in their geographic area, that's a separate discussion.

In terms of increasing the number of low-income people who get signed up, I think the big potential we see in this order is that right now our understanding is that a lot of CDG sponsors do things like credit checks or want to look at your payment history with utility or something like that.

And the reason for that is they are going to start sending you a second bill every month and they need to be confident that you're going to pay that bill every month or they are going to be the ones who are out money, not getting paid, doing collections activity, find a new customer, and so on.

Under this model, the person the individual who joins, keep paying their utility bill, the utility bill will be
guaranteed to go down, and even if they -- somebody is unable to pay their utility bill or stops paying their utility bill, that will never actually cause payments to the sponsor to stop. The only thing that happens is if the person is -- unfortunately doesn't pay their utility bill for an extended period of time and is shutoff, their service is shutoff, in that case they would be taken off the sponsors role and they'd have to find a new subscriber to replace that person.

But the sponsor no longer needs to worry about -- the vast majority of the time the sponsor no longer needs to worry about whether the person will be able to make a payment on time each month or not. They'll be getting their payment on time from the utility every month no matter what, and therefore they shouldn't care anymore. Our strong hope is that what they say is great, we no longer need to do credit checks, we no longer need to ask about people's payment history, we can
Proceedings

sign them up if they are interested and guarantee savings.

COMMR. EDWARDS: Is there a commitment there that they are going to, in fact, do those things that you're saying?

MR. KELLY: There's not at this time. There's not a specific requirement because it's not -- we've looked at it in past and it's hard to structure and hard to enforce that they have a certain number of percentage of low-income members, but it's something we're going to track very closely.

MR. MYERS: I would just add, this gives -- the cost savings gives them the incentive to stop doing those redundant things.

So it would be, we think, in their best interest to recognize that they don't really have a good reason for requiring those things anymore since they are now getting paid by the utility.

COMMR. EDWARDS: So if there's a
significant savings, say 60,000 using your example to the utility?

MR. KELLY: So the savings would be to the sponsor, and the utility should be about even because 60,000 is after you net out the fact that the sponsor will be paying the utility -- for the case of project that saves 60,000, they are probably paying the utility about 15,000 a month and that covers the utilities costs.

I'm sorry, a year, not a month.

COMMR. EDWARDS: Could we have ordered that in this so that they could eliminate the credit check and whereby making sure that what the intent here actually flows through?

MR. KELLY: I think that's something we could keep an eye on and consider on a going-forward basis if we don't see the kind of progress that we're expecting.

COMMR. EDWARDS: Is that a yes or no? Could we do it here?

MR. KELLY: I'll say it's
something we haven't looked at for this order and I'd be reluctant to without having gotten --

CHAIRMAN RHODES: If I could just step in.

We have this order based on the record. My reading of the record does not show that it would provide the record to support that kind of a decision.

I think I can say the following: There is a CLCPA. The CLCPA explicitly envisions, mandates, an expansion of distributed solar.

It doesn't explicitly say it's going to be CDG, but a lot of it will be, and the CLCPA also specifically mandates that access to the benefits of these clean energy resources, including solar, need to be more meaningfully, and there are numbers behind the word more meaningfully, accessible to low-income.

So that's coming our way, I expect. We'll be able to think about the best techniques to make that happen in
Proceedings

other proceedings.

So I would say let's hold it for another day, but that's not a brushoff, that's simply recognition that that important issue is actually getting its own important attention.

Is that all right?

COMMR. EDWARDS: Well I guess my concern is you're communicating in here that this is going to be, in fact, generate more or should generate more projects, but there's really not teeth in it that says that it will.

So is there a way for us to, I mean, this to me is simplifying the consolidated billing, I'm fine with that. But I'm just caught on the fact that this is what we hope to happen but we don't have anything to say that it's going to. It's -- we're just -- we're hoping that that's what they do.

So is there a way for us to request it and then if they say no then we'll know that we possibly could come
Proceedings

back and revise the order?

    MR. KELLY: It's certainly something that we can request and that we already have the ability to track, whether it actually happens or not, and I think definitely if it doesn't happen in the way that we expect staff would very much be happy to come back with recommendations to revise the order.

    And I think what you suggest saying you can't do credit checks in certain -- you have to agree in order to gain certain benefits not to do credit checks could be one way to do that.

    I think yes, we can request it, the order kind of does request or suggest it right now, and it's something that we absolutely can and will track, keep you updated on and also --

    COMMR. EDWARDS: Can we get a definitive answer whether they'll do it or not?

    MR. KELLY: I understand what you're saying and that there isn't as much
Proceedings

certainty as we would like.

I would say that there were some low-income groups that specifically supported this and said that they themselves see this as something that will increase low-income.

COMMR. EDWARDS: Well good for them.

MR. KELLY: It's not just the industry claiming it, it's some folks on the low-income side saying they think it will happen as well.

I think it's something we can definitely talk to the industry about and come back as necessary to recommend further steps as needed.

COMMR. EDWARDS: So I'm fine with this. So why -- can we just make a followup for maybe the following month to see where we are with it, and if it's not -- if it can't be addressed here, how else is it going to be addressed and what's the timing of that?

MR. KELLY: I'll follow up with
Proceedings

in terms of us following up with you in
terms of talking to the industry and
stuff?

COMMR. EDWARDS: Chair Rhodes,
you all right with that?

CHAIRMAN RHODES: Of course I am.

MR. KELLY: We can certainly
commit to that.

COMMR. EDWARDS: 'Cause I want to
make sure that this actually happens,
that's it.

Hoping is great, I'm hoping, too,
but if they say, great, thanks for your
feedback and we're moving forward, then
what do we do?

Okay, all right. Great, thank
you.

MR. KELLY: Agreed.

CHAIRMAN RHODES: Commissioner
Howard.

COMMR. HOWARD: I will be
supporting this item. However, I do want
to do a cautionary tale on the CCA program
going forward.
At my first commission meeting I expressed my concerns on municipalities buying street lighting apparatuses and equipment, not that the fact that they wouldn't save money and it wouldn't be a gross savings to our system. My worry was the lack of sophistication of the individual municipalities being able to maintain that system going forward and the costs to maintain and that the lights stay on.

My same concern goes to our belief that all municipalities are sophisticated enough and have -- will put enough resource behind their CCA applications to meaningfully go forward or to handle any potential difficulties or unanticipated consequences going forward.

I notice that many of these upstate are more affluent communities who seem to be adopting this model quicker, but as we go to expand this as we hope as a matter of policy and as belief particularly as we move to a different
Proceedings

model of how we buy and procure and use energy, that some entity works with these municipalities or at some point says, in all due respect, Mr. and Mrs. Supervisor or whoever, town board or village, Mayor or whatever, saying, we don't know that you are really capable of doing this to an adequate extent.

And I have great concern on that going forward as these CCA programs proliferate. And I would just hope that we keep a very close eye on that and then work on what happens for the inevitable unanticipated consequences or behavior that may not match our goals.

So again, I have, as we go forward and as we get report back as this goes forward, that is one of my singular concerns.

CHAIRMAN RHODES: Thank you,
Commissioner Howard.

Commissioner Burman, did you have another comment?

COMMR. BURMAN: I just really
need to state that I am concerned that this goes to the very issue of giving us the item so late, but also I don't see it as, well it's not in the record so we can't do X.

In fact, if it's not in record it might be also because we don't have a full enough record or the analysis that needed to be done in evaluating what was on the record, what came in, is not just a check-the-box lip service to now doing that.

This is a real issue. I also have concerns but I don't want it to be that -- part of difficultly for us is maybe this should have been an item that we discussed and then gave you our thoughts on and then come back at the next session, that used to be done historically, and then it is really accounting for what we all are interested in, however we may vote, at least it gives us a fuller understanding of where each of us are coming from and also helps to
showcase that we're not just going forward
despite the fact that commissioners have
raised concerns.

I think it's really important we
hear this because this is going to our
regulatory credibility because for me,
it's also about the regulatory certainty.
Once this order goes out, we're now
enabling those folks who feel that we have
been given a decision that if we change it
it's not going to be retroactive, it may
be going forward in certain ways.

But that's a whole other process
and we are moving a little too fast on
this issue in light of this conversation.
And I don't think citing to, with all due
respect, citing to well we're figure it
out and also saying to the CLCPA is
comfort enough for me especially because
we're supposed to be deciding what it
means and doing the evaluation, not just
in what's given to us but our own critical
thinking in this.

So that's just my perspective and
I'm concerned.

CHAIRMAN RHODES: Thank you.

So we've had a healthy discussion and I think we're in a position, as per process, to call the vote.

My vote is in favor of the recommendation to direct utilities to implement consolidated billing for community-distributed projects with mass-market subscribers as discussed.

Commissioner Burman.

COMMR. BURMAN: I vote no, not because I'm against the CDG or consolidated billing, but because of the concerns that I raised and in light of the conversation here.

Thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi, how do you vote?

COMMR. ALESI: I vote yes for the reason I gave earlier.

CHAIRMAN RHODES: Thank you.

Commissioner Edwards, how do you
Proceedings

vote?

COMMR. EDWARDS: I'm fine with voting yes because this is really about consolidated billing.

My -- it's not a concern, I just want to make sure that we actually have the opportunity to make sure that it does, in fact, generate more projects. And I'm fine with the followup in 30 days to make sure how the best way to implement that, but this is specifically about consolidated billing so I don't want to hold that up, so I'll vote yes in favor.

CHAIRMAN RHODES: Thank you very much.

Commissioner Howard.

COMMR. HOWARD: Yes.

CHAIRMAN RHODES: Thank you.

The item is approved and the recommendation is adopted.

We will now move to the consent agenda.

Do any commissioners wish to comment on or recuse from voting on any
Proceedings

items on the consent agenda?

Commissioner Burman?

Commissioner Alesi?

COMMR. ALESI: Nothing.

CHAIRMAN RHODES: Commissioner Edwards?

COMMR. EDWARDS: We're going out of order? What do you mean, we're going out of order?

CHAIRMAN RHODES: Commissioner Burman is gathering her thoughts and we're just going to go down the commissioners in sequence until we get to her again.

COMMR. EDWARDS: Okay. I have a question.

I have a question on 19-G-0066, 19-E-0065, item number 262.

CHAIRMAN RHODES: For the court reporter, this is Dakin LeCakes.

ALJ LeCAKES: Commissioner Edwards, good morning, it's nice to see you again. I'm the administrative law judge handling the two Con Edison rate matters.
Proceedings

Do you want me to just go over the consent item or do you have a specific question?

COMMR. EDWARDS: I have a question 'cause we were together last night at the hearing, and I just want to make sure that I understand what was last night and then how it relates to this today. Because I see some overlapping dates.

So for this, it says that there is a rate increase total revenue 4.6 percent ending 2019 and then it has monthly bill 7.74 ending 12/31/2020.

But then last night the hearing was beginning January 1st, 2020. So I'm trying to figure out is this -- how is this related or not?

ALJ LeCAKES: So what's going on here is that we've needed more time to consider the rates that are being proposed in the joint proposal to start on January 1st, 2020.

So under the public service law,
Proceedings

the Commission has 30 days once a utility files for new rates to suspend the consideration of the request. After that, they have four months that they can suspend it for and then an additional six months that they can suspend it for.

So that creates what we commonly refer to as an 11-month suspension period. During the course of -- and that's statutory and the Commission has to act within that 11 months or the rates go into effect by operation of law.

The utility, however, is in a position where it can consent to extend that suspension period for any number of days, but traditionally what they do is they ask that they be provided a make-whole. In other words, that the rates, if the Commission decides, after January 1st, 2020 in this case, at the session in January that the rates would be made effective backdated to January 1st and then collected over an 11-month period rather than a 12-month period.
Proceedings

And so because we're reaching the end of that 12 -- and so in this case, what happened was the parties entered into settlement negotiations and the negotiations took longer than they anticipated. Con Edison consented twice to extension of the suspension period, one that would send on initially January 31st, 2020, and one that would end on February 28th, 2020, but requested in each of those consents that they gave that the rates be backdated or made effective as if they went into effect on January 1st, 2020.

So what this item does is it accepts the consent of Con Edison to extend the suspension period by an additional 30 days, 31 days here, to actually, yeah, 31 days to January 31st, so that if the Commission acts in the session on January on the joint proposal that's been submitted to it, rates would be made retroactively effective to January 1st. So the rate year would end
Proceedings

on December 31st, 2020 for the first rate 
year in that joint proposal. Second rate 
year, December 31st, 2021. And the third 
rate year end on December 31st, 2022.

Does that answer your question?

COMMR. EDWARDS: It does.

So what happens though to the 
customers bill? So if this is an 
adjustment and then going back, is the 
customer getting an increase twice within 
the same period?

ALJ LeCAKES: No, what happens is 
they are getting an increase over the 
entire rate year that's prorated over 11 
months rather than 12 months. And so the 
company accounts, verified by Doris 
Stout's accounting and finance folks, will 
look at it and make sure that proration is 
done correctly over those 11 months.

So they only get the single rate 
increase but they'll get their bills in 
January as if the existing rates right now 
are still in effect. So they'll pay some 
amount and if it's a rate increase then
Proceedings
the prorated difference between the amount
that they pay for those January bills and
what they should have paid under the new
rates will then get aggregated and then
prorated over those months.

COMMR. EDWARDS: So this one is
on the agenda is for the prior rate case?

ALJ LeCAKES: It's for the
existing rate case to make sure that the
Commission can act within a sufficient
time that the rates that the company filed
for in January of 2019 don't go into
effect by operation of law, which are much
higher than the rates that are being
proposed in the joint proposal.

COMMR. EDWARDS: Okay. So what
is happening today has nothing to do with
the hearing last night?

ALJ LeCAKES: Right, in the sense
that we are not taking any action on that
joint proposal whatsoever, we are just --
we're providing the Commission additional
time to consider the joint proposal and to
provide me with additional time to
consider the joint proposal so I can give
me recommendations to you timely.

And so yes, you are correct, it's
not taking any action on those actual
rates. It is just providing the
Commission that additional time to
consider that joint proposal.

COMMR. EDWARDS: Okay. And when
will this become -- when will this be on
the agenda, what we did last night?

ALJ LeCAKES: My hope -- well we
have until February of 2020, February
session of 2020, to act on those rates.
Given some of the concerns that have been
expressed and other considerations in the
joint proposal, I would hope that
potentially we could address it in
January, but we do have until February
legally to act on those rates.

COMMR. EDWARDS: And when, since
Con Edison was not present last evening,
when will they receive the information
from the hearing yesterday and previous
hearings? Do they normally attend?
Proceedings

ALJ LeCAKES: They actually did attend yesterday and both hearings, they had staff attorneys who were in attendance both in Yonkers and then last night. Kerri Kirschbaum -- and I apologize I can't spell her last name for you -- was there last night at the SUNY Global Center and one of their attorneys was with us, she was in the back sitting next to the court reporter, yes.

So they are aware and they have the right to show up to the meetings and monitor.

COMMR. EDWARDS: They didn't speak, though, last night?

ALJ LeCAKES: No, they did not.

COMMR. EDWARDS: All right.

Thank you.

ALJ LeCAKES: You're very welcome.

CHAIRMAN RHODES: Commissioner Burman, are you ready?

COMMR. BURMAN: I am, thank you.

I apologize.
Proceedings

So item 369, it's the joint petition for certain amendments to the New York State standardized interconnection requirements and we're modifying the SIR.

I just want to point out two things that are concerning to me. One is that, and we do regularly modify SIR, go through a very -- we have a very good, I think, very good collaborative process with the number of different stakeholders, something for us to examine in terms of are we missing anyone in that? Are we missing looking at that modeling for LIPA PSEG as well?

My concern is that the order says, starts off: "On September 5th, 2019 certain --" and I underscore that "-- members of the interconnection policy working group and interconnection technical working group filed this petition."

It's something that concerns me. We have a lot of different working groups, we have a lot of different ones that are
just solely through the PSC, DPS. But then we have others that agency interworking groups and larger external stakeholders. And many of them do work, many of them do technical reports and it doesn't necessarily come to us, all of it, and we don't have really a good process internally of making sure that we are fully engaged in what comes out of it, what some of the key issues are and whether or not we need to look at it. When I see certain members, part of the thing that I think that makes me concerned is that I want to make sure that we've been given the information on why not all of the members. And in some cases, maybe those are the ones that stepped up, but in others there may be things that were an issue didn't come from a collaborative everybody is on the same page. And so that to me just is important that we fully understand that, because I think that for me if something
Proceedings

is coming to us as a petition from certain members of a working group, if we're identifying them as coming from part of this working group it really should be coming in a different fashion. Maybe it's that staff is bringing it forth and are there some kind of report that explains where folks are on it and a little more background on that because it does concern me.

Otherwise I just see them as the petitioners, whoever they are, are bringing this. It just so happened that the issue came up through the interconnection working group.

I just want to fully understand that. It may not be the case here, but it is something that that's what is a significant issue to me in making sure that if we're going to have the working groups, we don't just get them through a session item, that we really do engage a little more on that rather than just trying to find it in a filing that may or
may not be there.

And then to the extent that this order does reference the CLCPA, I just think it's important that we do a deeper dive, ourselves rather than just kind of like with the state energy plan, where we just reference it in orders as sort of this is why we're supportive of it 'cause it meets the goals of -- we did that for REV too, and just generically I think we need to have a clearer understanding of what that means.

That's 369.

On 370, which is the Citybridge item, I do want to recognize I think there were a lot of folks who have been very engaged in this issue trying to figure out some pathways and solutions.

It is something that I think is thoughtful, I think the order is trying to be very clear. I do recognize that we may have other situations that come down the pipe that don't necessarily fit the core this is what this customer looks like and
Proceedings

so we're putting them here and there.

I think it's really clear what we're doing here and so I feel comfortable with this.

There's a reference in the order that says, it's not -- "the complainant must petition the Commission if it wishes to modify the utilities tariffs. It's not sufficient for the complainant to state in its appeal that it's petitioning the Commission, and a separate proceeding would be needed to allow the Commission to consider indirect possible tariff amendments."

One could read that seeming to suggest that we would be directing them to bring a petition forward. I don't think that's what we intend. I don't think it's a problem to say, it's not its place here but we're not necessarily open to you bringing a petition based on what we've done, and sort of not rather have what I consider unclear pathways.

I think it's incumbent upon us
Proceedings

when we have complaints and we've done it
in others where we can look at the
different complaints that come forward and
some of them may be more global and do
warrant us bringing or having them come
forward as a global petition or global
review.

This doesn't, I think, speak to
that, and so I just want to make clear
because I do think it would probably be a
waste of time, at least as I read it. So
I think it's important for us to just say
that, however hard that may be to hear.

Item 376, which is the value of
DER high capacity factor. So first I
think it's really hard for folks when they
have generic case numbers and we put it up
to have to figure out what is it that
we're deciding. When you go into -- I
cannot, and I'm on the website every day,
I cannot find things. I go into the
generic proceedings or any proceeding and
if there's a lot there, it's really hard.
I have to constantly then ask for someone
Proceedings

to pull all the comments on X petition.
And then it's, I get it but then they
didn't give me the reply comments because
they themselves didn't know to look for
that and then I have to go back.

And I just think we need to
figure out a better system where we're
talking about the use of technology and
the ability to do that, and if people are
needing to figure it out and look fully at
all of them, and when we have it on the
agenda, it shouldn't just be the generic
case number, we should be very clear about
what's before us. Just make it easier for
everybody, especially when sometimes we're
deciding them after many months or years,
we should just refresh people's mind on
what it is. That's just my personal
perspective.

But the bigger issue I have with
this is I read through all the comments or
at least all the ones that I found, and I
think people were they thoughtful and also
not necessarily all who would normally be
Proceedings

on the same page were thoughtful,
especially in particular on the issues of
modifications to the treatment of certain
high-capacity factor GG in the value stack
framework and what the timeframe would be.

I really think we did not truly
embrace, in any real analysis way, the
comments that people made and we just
adopted the timeframe as to what was in
the staff white paper. And essentially
that's the timeframe that we went with and
I think that's very problematic, I think
there should have been a deeper analysis
in the order itself rather than an
attachment of people's comments.

And I think that we should have
been properly briefed in more detail on
that, and also just how folks had strong
comments. And this is not about
supporting industry, in fact, it's about
sort of the core issue of when do we look
at when things are deemed effective. The
staff white paper, staff reports, whatever
it is, it's just the staff white paper and
the staff report. As well written as they may be, to use that as the benchmark seems to indicate that the role of the Commission is not one that has any value and that concerns me.

But when I look deeper at the comments, I was really very impressed by folks concerned about that because to me it was also seeming to send the message if we adopt this that folks cannot rely on utility tariffs, and therefore the change can happen retroactively in a way that's not really been thought out.

We should have caught this from the get-go, that's on us, and because it's on us we need to own that and look at what that means. And while we are trying to fix an issue, we need to be a little more judicious in how that works, and also help so that we are creating regulatory certainty, but more importantly, regulatory credibility in a way that makes folks confident in us truly evaluating and reading the comments and taking into
Proceedings

consideration and having that discussion, rather than just adopting what's in the staff white paper.

So the date of the white paper publication for the cutoff is just not acceptable, so I'm concerned about that.

I'm also concerned that in this item we are looking at changing the definition of renewables based on the CLCPA, and I don't think that we should be deciding critical issues and how they may interconnect with the Climate Leadership and Community Protection Act in a vacuum. And also just picking this and then throwing that there, while I think that that is well-intentioned, I think that it is incumbent upon us to have a little bit more overall detailed review of what it is and look at that.

So I would suggest that folks reexamine the comments that came in on this issue and the thoughtfulness that I think went into them, because I'm really concerned about the chilling effect.
Proceedings

While I understand some of the issues and trying to rectify what we did, we have to own that.

The next one is item 164, which is the National Grid confirm the order of a one commissioner order. I'm going to be voting no. It is with a heavy heart that I vote no, but I am concerned about a broken process.

I need to be clear, I think that we have, and I think that the agreement tries to understand that we have supply constraints. It's not lost on anyone that we do, or at least not lost on me. And there are obligations on the utility and there are also some lessons to be learned in customer engagement.

But there's also lessons to be learned on the regulatory role and what that means. I voted no to the order to show cause because I had seen a pattern where we bring forward orders to show causes and then we go outside of that and go outside of the normal regulatory
Proceedings

processes and have settlement discussions in isolation and then come back with a settlement.

But what has been missed in the opportunity is what's been missed is the opportunity for us to fully understand, with the allegations that are made, what are we finding. In this case, it went further than any order to show cause, and sort of for me causes me to really be mindful of the fact that we seem to have lost sight of what the role of at least this commission is supposed to be doing.

I still want an understanding from the investigation and findings, I still want to understand how it relates to the overall press releases that were issued that talked about that we were going to be looking at market concerns and market conditions and doing due diligence. Publicly we know that we hired outside consultants and we also looked at that.

The gas planning is something that is supposed to be the bread and
Proceedings

butter and it's for us, from an oversight perspective, to also be looking at that. And for me it seems to have flipped the burden solely on now the company to put forward a report, and a lot of the issues that they are being asked to look at are things that would have come out naturally through our own planning, our own engagement with them, as well as other key stakeholders in the state and that somehow concerns me.

The health of the utility is very important. My fears were -- my fears on some of our regulatory actions having an impact on Wall Street where it came to fruition with concerns raised by Moody's, and that to me is really important.

I think it's also important for folks to understand it's not that I care about the fat cats, I've heard that. What it means to me is the health of the utility is vital. The health of the energy network and the grid is really important for customers. And if there is
Proceedings

-- if there are ratings agencies who put a lot of importance on the regulatory structure and they don't have confidence in that, that does not just effect the utility shareholders, that effects their ability to borrow. We've see in negative revenue adjustments how we have to be mindful with that because what that means also in that, in that dip, in that potential negative implications from the ratings, what that means is that it may effect customers in terms of costs for them that they might have to bear, as well as some of the inability for the ability to get and borrow the credit that they need to do certain things that are for the benefit of the customers. And that that will have chilling effect, or could have chilling effect.

And so we should care because it can negatively impact the customers and that is of critical importance and why we need to balance that interest in the company as well as looking at the
Proceedings

interests of the public and the consumers. And it's really vitally important. I don't think that there's as full an understanding of that and we need to do some due diligence in that.

It's important that our regulatory decisions are conducted with the utmost integrity to ensure confidence in our regulatory regime. We do want regulatory certainty, but as I've said before we really want regulatory credibility and we want commitment.

If the regulator is being overlooked and there are no processes that are appearing to be there, it gives folks pause on if we are just checking the box. We need to be very mindful of that even if we may know that we have engaged or not, we need to be really mindful that we layout the critical processes that are in place to ensure transparency as appropriate, and to ensure that our processes are really doing what it needs to do for regulatory certainty,
Proceedings

credibility and commitment.

When I look at the settlement agreement itself, I'm concerned that it does not do a deep enough dive and that it was done without the input of the necessary staff as well as the necessary input from some commissioners or all of us. To the extent that we can be engaged in an appropriate way does not mean that we are micromanaging.

To the extent that it talks about an independent monitor, it does not go into detail on what that would look like, it leaves it to later to figure it out. I think that's really troubling. We should have a discussion on what the bar is, what we want, how that differs or does not from management audits that are statutorily something we need to do.

To the extent of what does this now look like going forward environmentally, economically, and also what that means from proper enforcement, I think it's really important that the
Proceedings

Commission has a voice in that because the Commission would be looking at the voices of all of the necessary folks.

From my perspective by going forward and ignoring the settlement guidelines regardless of whether or not we think that they apply, I think that that is troubling.

The settlement itself talks about 16 NYCR 3.9, confidentiality settlement. Therefore there's at least, in the settlement, an implicit understanding that the settlement guidelines may be helpful.

And so for me we need to have a clearer pathway of when we will be ignoring the settlement guidelines and why. I would push back and say, if we go back to the very order that established the guidelines, I'm going to read from it, I think it helps explain and it really, I think for all of those who may not have looked at it, I think it's really important that people refresh their memories or look at it for the first time.
Proceedings

and look at what it's trying to establish 'cause it raises a lot of the issues that are of concern from engagement and process and what really makes the right settle or where we go to litigation.

"All commission decisions including those pertaining to proposed settlements must be and appear to be just, reasonable, and in the public interest.

"The threshold requirements for any such decision is that it be reached in accordance with applicable procedures.

"A failure to follow those procedures will make the decision less likely to be in the public interest and all but guarantee that it will not be perceived as being in the public interest.

"Procedural soundness of course is necessary, but not sufficient, and the facts that should be considered in the ensuing substantive review do not lend themselves to codification.

"As the comments suggests they include: One, the settlements consistency
Proceedings

with law and with the regulatory economic, social, and environmental policies of the Commission and the State;

"Two, whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes;

"Three, whether the settlement strikes a fair balance among the interest of ratepayers and investors and the long-term soundness of the utility;

"Four, the existence of a rational basis for decision;

"Five, the completeness of the record;

"And six, whether the settlement is contested."

It goes on but I think you get the idea.

It's important. It's a thoughtful commission order that then produced settlement guidelines, and it's something that we look at very carefully and we should take seriously. And to the
extent that there are things in there that we should incorporate as we move forward on our enforcement processes and give that clear pathway, I think it's really important.

I am very happy to see that the challenges with those existing customers who did not get gas, this settlement addresses that, but it doesn't mean that all customers who want gas are going to be addressed, and we're kicking the can down the road and we're pushing the burden onto others.

We need to be engaged in this, it's that important. We need to engage in what all of the different things and the pathways are so that if there are opportunities for other energy efficiency demand response, other things, that we are engaged in that.

But we also need to take note that we have an obligation to make sure that customers who want certain energy are able to get that. We heard that loud and
Proceedings

clear, it is not just that area, there are other pockets, and I really am hopeful that we will roll up our sleeves and get to work and also be open on a lot of the things that we currently are working on and are aware of and continuing.

It's something that I think is really important. I think we're all in it together. I just, for myself, am really concerned that we're sending the wrong signal about the engagement and transparency and we need to do a better job and for that.

And for the process fails for me, it's something that I don't think the settlement has the right information 'cause I don't know whether the result compares favorably with the likely result of full litigation within range, et cetera.

So all of those prongs aren't met, and for that I have to vote no and I have to implore us to figure out internally and externally, better
Proceedings

processes so we can all have appropriate role as necessary.

Thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Howard.

COMMR. HOWARD: I just have one quick comment on item 164.

One of the, I believe, best outcomes of the settlement is the beginning of a collaborative beyond just the Commission and the company. That local governments in particular have an important and necessary role to -- going forward to how we are going to address the issues confronting the eastern part of Long Island, including portions of New York City.

Many of the issues that we're going to decide going forward will require communities to decide what type of character that community will have, what it's economic future will be, and how it will be achieved.

There are other overriding
Proceedings

statutes that now we need to conform to, and that when it is quite obvious -- and I was misquoted several times on this issue -- that when confronted with this issue of the gas moratorium, the immediate response, the immediate response of local government was for a new supply option.

As a matter of fact, this was their singular response. And they now need to engage in this process so we can ensure that folks in the outer boroughs of Brooklyn and Queens and the counties of Nassau and Suffolk can look forward to a future of economic prosperity and growth and within the context of our new environmental goals. But again, they cannot ignore that.

Particularly issues regarding energy efficiency in buildings, that is a local government function. And I must say I will give credit to the City of New York by taking aggressive and meaningful changes to their building and construction codes to provide greater energy efficiency
Proceedings

for buildings, admittedly starting on the
large size, but going forward their
engagement early on in this process I
believe is exemplary and needs to be
applauded.

And I will hope that the
municipalities of Nassau and Suffolk
County understand that they need to take
actions going forward to make a
sustainable economic future going forward.

And again, this is the beginning
of a process, this is not the end of a
process. And to get to where we are
ultimately going to go, there are a lot of
questions that need to be answered, some
of the questions haven't even been posed
yet.

So again, I thank the most -- I'm
gratified that we take an expansive view
of what the stakeholders are and
particularly I would urge the local
governments in these two service
territories, three service territories to
engage completely and understand that
Proceedings

their actions and their opinions will have
a great deal to say about the outcomes of
this. And without their engagement, we
will not get to where I believe everybody
wants to go.

Thank you.

CHAIRMAN RHODES: Thank you.

So we've had some discussion
about item 164 and discussion about
process.

Can I ask you Bob, counsel to the
Commission, whether in your view the
settlement is properly arrived at, whether
it comports with legal and process and
public interest standards. That's sort of
a yes or no question, but you can...

MR. ROSENTHAL: So I'm reminded
of the adage of "Don't make perfect the
enemy of good." And that's what this
agreement really is all about. It is not
perfect, but it is definitely good.

I have entered into and worked on
well over a hundred agreements to resolve
disputes in my career. It's not a real
estate deal, it's not two entities that
are coming to a table that just have to
negotiate on price, but they both really
-- one wants to sell the property and one
wants to buy the property.

The two parties come to table
fundamental disagreements with respect to
facts, with respect to the application of
law to fact, with the application of
policy.

And all of these agreements and
disputes are dealt with in the course of
an agreement. And here in particular
there was an incentive to act quickly,
given the onset of winter. The staff
here, you know, acted weekends, late at
night, to deal with the literally
hundreds, well over a thousand, complaints
that we received.

Cindy McCarren's group, Tammy
Mitchell's group, Mike Reider's group, the
Office of Consumer Services dealt with
consumer complaints for people that were
disabled, from people that were elderly,
Proceedings

from people that were concerned that they
would be homeless.

We worked with National Grid
throughout the process and they were
willing to work with us on this process to
prioritize those people so they would be
connected immediately.

So with all of that said, all of
the provisions here, I'm not going to get
into the nitty-gritty of them or just a
couple of them, I'm not going to get into
the nitty-gritty of negotiations except to
say that like in any agreement, there's a
push and pull on every issue.

With respect to your questions
about SAPA, SAPA is very specific. It
applies to rulemaking and ratemaking, that's
where public comments are required. It
specifically does not apply to an enforcement
action, this was an enforcement action;
therefore, those separate provisions are
inapplicable.

Section one -- Section 25A of the
public service law, is the law that we
Proceedings

were applying in this case, that provision
of law was enacted in 2013. The
guidelines that you talked about were
promulgated in 1992, they relate to rate
cases. This is not a rate case, it's an
enforcement case.

I've told each of you personally,
and I will honor this, we will provide you
with an ongoing list that we will update
on an annual basis -- I'm sorry, a monthly
basis, of all of our enforcement cases.
That's the least we can do and we'll seek
your input on it because we think it's
valuable and we'll do that going forward.

We certainly did brief you on the
National Grid agreement. So let me point
out a few of the very key aspects of this
agreement and why we believe it should --

CHAIRMAN RHODES: So Bob, I just
wanted the counsel's opinion on are we in
a proper space?

MR. ROSENTHAL: And I'm getting
there, sorry about the delay but I'm
passionate about this given the time and
Proceedings

energy that we put into it.

So there are three really important key aspects of the agreement that leads us to believe it certainly is in the public interest.

Number one is the obligation for National Grid to lift the moratorium immediately, which they have agreed to do. They already connecting well over 1,400 customers and have agreed to connect all new customers moving forward until September 1st, 2021.

Number two, the company's agreement to file a report regarding long-term capacity options and taking comments on that report and four hearings to take place in a downstate service area, which we believe will put them on the road to having a long-term policy in place, such that moratorium will be indefinitely lifted.

And three, the agreement to make impact the ratepayers whole. So like every agreement, there's a give and take,
Proceedings

and I'm not going to get into the specifics but we firmly believe that looked at in whole, this agreement is in the public interest, in particular in the best interest of National Grid's downstate ratepayers.

CHAIRMAN RHODES: Thank you.

So I'm going to call an end to the comments and questions and proceed to a vote on the consent items.

My own vote is in favor of the recommendations on the consent agenda.

Commissioner Burman, how do you vote?

COMMR. BURMAN: I vote yes for all the items except for the ones that I identified as concerning.

I am voting no on 164. I take very different legal opinion on many of the issues. It is not a negative on staff, I think staff worked really hard, but as their own press release showed there were a number of folks engaged outside of the Commission that signed onto the press release
Proceedings

and I wasn't made aware of it until the press release was going live, and then my review was after the fact.

It's not about me, it's about what makes sense. Settlement guidelines are not just for the rate case and we really should take ownership on looking at, and even if it may not fit the four corners, if we're using enforcement action as a way of getting around the settlement guidelines and the transparency, it's very distressing.

CHAIRMAN RHODES: Thank you.

SECRETARY PHILLIPS: May I clarify before we go forward, are you then also voting no on item 369, 370 and 376?

COMMR. BURMAN: No, 369, I just made comments on. 370 I made comments on. 376 I'm a no on -- on 376 I concur in part and dissent in part. And 164 I'm a no on.

Thanks.

SECRETARY PHILLIPS: Thank you.

CHAIRMAN RHODES: Thank you, Michelle.
Proceedings

Commissioner Alesi, how do you vote?

COMMR. ALESI: Yes.

CHAIRMAN RHODES: Commissioner Edwards, how do you vote?

COMMR. EDWARDS: So I just want to thank the staff for working on 164 and continuing to work on the results of both National Grid's moratorium and the settlement.

I'm going to say what I said before, I believe that this was a pipeline approval strategy, and while we want to have healthy utilities, we also want to have healthy families, healthy small businesses, and I believe that they improperly denied service to thousands and thousands of people who struggled their hard-earned money to open up pizzerias and close on homes and cook for their families.

And you all are living with the outcome of that still because they are still struggling as a result of what I
believe was a pipeline approval strategy.

There were other options, we know that this is true today because now they are exploring other options including clean energy and other things that could have been done, in my belief, before the implementation of this moratorium.

At the end of the day, I want to thank all of you because this was chaotic and is still chaotic and you all are working very hard to try to, as late as yesterday, receiving complaints from consumers that are still struggling as a result of this.

So it's great that we all have our voices, but it's important for me to end with thanking all of you for working on both the settlement, which you are correct is not perfect, but continue to work with the staff that's in here and outside. This was a tough thing and I want to thank all of you for doing so.

And I will vote yes.

CHAIRMAN RHODES: Thank you.
Proceedings

Commissioner Howard.

COMMR. HOWARD: I'll be voting yes, Mr. Chairman.

CHAIRMAN RHODES: Thank you very much.

Secretary Phillips, is there anything further to come before us today?

SECRETARY PHILLIPS: No.

CHAIRMAN RHODES: Thank you. So I know we've talked about some serious things today, but I want to make one more serious or heartfelt comment, which is: It is holiday season, I wish all of our colleagues, I wish all of our guests happy holidays.

And my one wish is that you can enjoy your time and pay attention to your families and your loved ones and your friends.

Happy holidays. Thank you.

(Time noted: 1:01 p.m.)
CERTIFICATE

STATE OF NEW YORK

: ss.:

COUNTY OF QUEENS

I, NICOLE ELLIS, a Notary Public for and within the State of New York, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of December 2019.

NICOLE ELLIS
Public Service Commission - Commission Meeting
December 12, 2019

D

Dakin (1) 92:20
data (5) 23:10,14,17 31:4,9
date (2) 25:7 109:5
dates (1) 93:11
day (4) 82:4 105:21 132:9 134:17
days (15) 24:7 25:7 31:20 33:25
34:2 36:20,21 37:5,6 91:10 94:2
94:17 95:19,19,20
deadline (1) 34:4
deal (3) 124:3 125:2,18
dealt (2) 125:13,23
decade (1) 14:20
decades (2) 47:13,18
decisive (1) 7:21
December (6) 1:7 17:6 96:2,4,5
134:17
decide (3) 66:23 121:20,21
decided (1) 40:21
decides (1) 94:20
deciding (4) 89:21 105:20 106:17
109:12
decision (9) 30:18 66:15 70:13
72:25 81:10 89:11 117:12,15
118:14
decisions (3) 52:25 114:8 117:7
deemed (2) 11:2 107:23
deep (2) 74:8 115:5
deeper (3) 103:5 107:14 108:7
defended (1) 13:21
definitely (4) 16:7 83:7 84:15
124:22
definition (3) 5:24 44:5 109:10
definitive (1) 83:22
delay (3) 44:25 66:21 127:24
delineates (2) 26:2,9
delivery (1) 20:22
demand (2) 43:25 119:20
denial (1) 34:18
denied (3) 31:25 34:7 131:18
denies (1) 60:21
deny (2) 24:18 34:14
department (3) 11:11 18:10 60:9
Department’s (2) 13:20 14:9
deployment (1) 62:2
deputy (2) 3:18 13:3
DER (3) 38:13 44:11 105:16
deregulation (1) 47:20
DERs (1) 38:8
descending (1) 45:11
describe (1) 52:25
described (3) 25:14 26:13 59:5
designate (1) 55:24
despite (1) 89:3
detail (3) 68:14 107:18 115:14
detailed (1) 109:19
details (1) 23:19
determination (1) 40:22
determine (1) 25:9
determined (1) 66:2
detriment (2) 4:11 6:17
develop (1) 22:19
developed (1) 17:25
developer (1) 56:8
developers (2) 52:12 61:14
development (6) 26:19 53:25
61:17,22,23 62:8
develops (1) 53:5
DIANE (1) 2:5
difference (1) 97:2
differences (1) 49:7
different (10) 4:16 36:12 86:25
129:20
differs (1) 115:18
difficult (4) 34:11 49:10 69:19
73:10
difficulties (1) 86:18
difficulty (1) 88:16
difficulty (1) 34:3
diligence (3) 32:6 111:21 114:6
dip (1) 113:10
direct (5) 21:19 22:18 56:17 58:13
90:8
directed (3) 31:9 53:20,25
directing (1) 104:17
Director (3) 3:18 51:22,24
directs (7) 24:23 52:5 55:17 59:13
60:8,12 66:10
disabled (1) 125:25
disagreements (1) 125:8
disclose (6) 23:10,13,18 31:3,6,10
disclosure (1) 21:2
disconnect (1) 37:25
discount (6) 53:25 58:3,6 59:2,8
63:19
discounts (2) 54:4 57:25
discuss (2) 55:9 59:24
discussed (5) 11:23 16:19 50:24
88:18 90:11
discussion (11) 3:11,12 12:17
51:18 75:4 77:6 90:4 109:2
115:17 124:9,10
discussions (1) 111:2
 dismantling (1) 18:25
disposed (1) 70:8
disputes (2) 124:25 125:13
disruption (1) 45:21
dissent (2) 51:4 130:21
distressing (1) 130:13
distributed (6) 51:20 52:8 53:19
59:20 62:2 81:14
dive (3) 74:8 103:6 115:5
divided (1) 56:10
divisions (1) 58:5
dockets (1) 67:4
document (1) 5:10
doing (18) 27:2 32:5 43:16 45:8
69:9 71:11 72:15 76:14 77:21
79:18 87:8 88:12 89:22 104:4
111:14,21 114:24 132:23
dollars (1) 48:25
doomed (1) 7:21
door (1) 63:25
Doris (1) 96:17
downstate (2) 128:18 129:6
DPS (2) 22:19 101:2
draft (14) 14:15 15:7 16:20 17:3
19:17 20:4 14 21:9 22:4,12,18
draw (1) 41:8
drill (1) 31:16
drive (1) 48:7
due (6) 32:5 49:15 87:5 89:17
111:21 114:6
duplicative (1) 52:20

e

E

E (2) 134:1,1
earlier (1) 90:23
easy (1) 106:15
easily (1) 49:6
eastern (1) 121:16
easy (1) 22:16
economic (6) 47:25 48:7 118:2
121:23 122:15 123:11
economically (1) 115:23
economics (2) 51:23 63:12
EDI (4) 71:20,23 72:2,7
Edison (4) 92:24 95:7,17 98:22
Edwards (40) 2:7 8:7,8 9:16,25
12:7,8 47:5,6 51:9,10 76:2,3,25
79:4,25 80:13,23 82:9 83:21 84:8
84:18 85:10 90:25 91:3 92:7,8
92:15,22 93:5 96:7 97:7 97:17 98:9
98:21 99:15,18 131:6,7
effect (13) 36:3,21 37:2 42:12
113:5,13,19,20
effective (5) 63:11 94:23 95:13,24
107:23
effects (1) 113:6
efficiencies (1) 48:7
efficiency (3) 119:19 122:20,25
2015 (1) 53:3
2016 (2) 15:12 17:6
2017 (2) 6:5,9
2018 (1) 15:17
2019 (8) 1:7 27:14 54:6,10 93:14
97:13 100:17 134:17
202 (2) 12:17 13:24
2020 (11) 60:14 66:14 93:17,24
94:21 95:10,11,15 96:2 98:13,14
2021 (2) 96:4 128:13
2022 (1) 96:5
25A (1) 126:24
262 (1) 92:18
28th (1) 95:11

3
3.9 (1) 116:11
30 (3) 91:10 94:2 95:19
301 (2) 51:18 52:5
31 (2) 95:19,20
31st (5) 95:9,20 96:2,4,5
369 (4) 100:2 103:14 130:17,18
370 (3) 103:15 130:17,19
376 (4) 105:15 130:17,19,20

4
4.6 (1) 93:14

5
50 (1) 20:17
5th (1) 100:17

6
60 (2) 36:20 37:6
60-day (1) 36:2
60,000 (4) 62:6 80:2,6,9
600,000 (1) 27:17

7
7.74 (1) 93:15

8
8900 (1) 59:10

9
9,000 (1) 56:16
90 (5) 1:8 24:7 31:20 33:25 34:2