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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Regular Meeting of the Public Service Commission

THURSDAY, DECEMBER 13, 2012
10:30 a.m.

Agency Building 3
19th Floor
Albany, New York

- COMMISSIONERS:
- GARRY A. BROWN, Chairman
 - PATRICIA L. ACAMPORA
 - MAUREEN F. HARRIS
 - JAMES J. LAROCCA
 - GREGG C. SAYRE

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D I S C L A I M E R

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1 CHAIRMAN BROWN: Good morning. I would like
2 to call the December 13th, 2012 session of the New York
3 State Public Service Commission to order.

4 Madam Assistant Secretary, are there any
5 changes to the agenda?

6 ASSISTANT SECRETARY LYNCH: No,
7 Mr. Chairman. There are no changes to the agenda.

8 CHAIRMAN BROWN: Okay. Let's move to the
9 consent agenda.

10 Do any of the commissioners wish to recuse
11 or abstain from voting on any of the consent agenda
12 items?

13 COMMISSIONER SAYRE: Yes. Thank you,
14 Chairman.

15 I am recused on item 563 in telecom.

16 CHAIRMAN BROWN: Anybody else?

17 All those in favor of the recommendations on
18 the consent agenda, please say aye.

19 (Response of "aye".)

20 Opposed?

21 (No response.)

22 Hearing none, the recommendations are
23 adopted with Commissioner Sayre recusing from item 563.

24 Let's move to the regular agenda. First

1 item for discussion, item 201, cases 07-M-0548 and
2 10-M-0457, petitions by NYSERDA, New York State Energy
3 Research & Development Authority, regarding energy
4 efficiency portfolio standard budgets and targets and a
5 variety of other things that will be described.

6 This will be presented by Dave Prestemon,
7 Administrative Law Judge in the Office of Hearing and
8 Alternative Dispute Resolution. And Floyd Barwig,
9 Director of the Office of Energy Efficiency and the
10 Environment, is available for any questions that we may
11 have.

12 Judge Prestemon.

13 JUDGE PRESTEMON: Good morning, Chairman
14 Brown, Commissioners.

15 I begin, as I have in previous cases, with
16 the disclaimer that although I may play a judge on close
17 circuit TV, I am not acting in that capacity in this
18 case. I am a member of a large staff team, consisting
19 mainly of staff from the Office of Energy Efficiency and
20 the Environment, who developed the recommendations in
21 the draft order you have before you.

22 The draft order addresses four interrelated
23 petitions filed by the New York State Energy Research
24 and Development Authority, NYSERDA. All of these

1 petitions were either expressly required or authorized
2 by previous orders of the Commission, namely your
3 October 24th, 2011 order approving an operating plan for
4 NYSERDA's technology and market development portfolio,
5 known as the T&MD order, and your October 25th, 2011
6 order authorizing funding for the energy efficiency
7 portfolio standard, often referred to as the EEPS 2
8 order.

9 The most extensive of the petitions filed by
10 NYSERDA addresses the budgets and targets for EEPS
11 programs. In the EEPS 2 order, the Commission
12 recognized that many of these programs had just gotten
13 underway and evaluations of the programs were still
14 being undertaken. It was not feasible at that time to
15 revisit the energy efficiency savings targets for the
16 programs or the budgets.

17 So, you directed NYSERDA to report to you by
18 March 31st of 2012 on any changes they felt were
19 necessary to those targets and budgets, and that is what
20 this petition does.

21 As initially filed, the petition would call
22 for a reduction of 43 percent in the electric energy
23 efficiency savings targets and 17 percent in the gas
24 savings. However, the great majority of the reduction

1 in the electric savings was due to a revision of
2 NYSERDA's so-called point of sale lighting program.

3 That revision was made by NYSERDA in
4 response to a direct requirement by the Commission in
5 the EEPS 2 order. In that order, the Commission was
6 dealing with a concern that had been raised by staff
7 that the POS lighting program had a very high
8 free-ridership problem.

9 That is because the incentives were sort of
10 -- were general in nature. They simply made CFL --
11 compact fluorescent bulbs -- more attractive. Many of
12 the buyers who were taking advantage of those incentives
13 were buyers who had been buying CFL bulbs anyway.

14 As a result, you directed NYSERDA to
15 reorient its program towards newer, more efficient
16 technology, LED bulbs. NYSERDA did that. They made
17 their proposal.

18 But because the LED bulbs are both very much
19 more expensive than CFL bulbs, and very much less
20 accepted, and very much less known, the cost of
21 promoting the bulbs was a great deal higher than the
22 cost of the CFL program. The result was for the same
23 budget the savings target was reduced by 82 percent.

24 That made up, as I say, the bulk of the

1 reduction of the electric savings that NYSERDA was
2 proposing. That revised program drew a lot of criticism
3 in the comments, particularly from the environmental
4 groups.

5 PACE Energy and Climate Center, Natural
6 Resources Defense Council, Sierra Club and the Northeast
7 Energy Efficiency Partnerships all pointed out that
8 there was still a great deal of savings available for
9 compact florescent bulbs, that only about 25 or 30
10 percent of the potential had been achieved in the
11 northeast or in New York. And they submitted some
12 studies to that effect.

13 As a result of that, staff went back to
14 NYSERDA and asked NYSERDA to look at this program to see
15 if it could be improved. NYSERDA did that. They
16 submitted a revised program which would put 75 percent
17 of the emphasis back on CFLs, but it would revise the
18 program so that it would not provide those general
19 incentives that anybody can take advantage of. The
20 incentives now would be provided only for an increase in
21 the sales of CFL, new sales of CFLs.

22 It's called a market lift program, and it
23 directly measures the extent to which retailers increase
24 their sales. So, this substantially alleviates the

1 free-ridership problem, and allows NYSERDA to pursue the
2 opportunities for CFL sales.

3 This eliminated a lot of the reduction in
4 the electric sales so that ultimately, as the order
5 recommends, the approved reduction in the electric sales
6 would be only about 19 percent rather than 43 percent.

7 An obvious question arising from that, of
8 course, is what impact does that have on the
9 Commission's meeting its jurisdictional goal as part of
10 the state's overall effort to meet its 15 by 15 energy
11 savings goal.

12 The order notes that when all of the filings
13 are taken into account by NYSERDA, the utilities, and
14 everything else that has happened, it appears that the
15 Commission would miss that goal by only about 100,000
16 megawatt hours out of a total of 11.2 million.

17 That's only about 1 percent. It amounts to
18 less than half a percent of the 15 by 15 goal. That
19 small amount is well within the margin of error of
20 forecasting over the next three years.

21 And furthermore, and perhaps even more
22 importantly, a lot of that is not really a loss in
23 savings. It's a loss in how we -- it's a perceived loss
24 due to how we keep score in the EEPS program.

1 A good example of that is -- a simple
2 example is, suppose a homeowner replaces a 100-watt
3 incandescent bulb with a 25-watt CFL bulb that produces
4 the same amount of light. You have 75 watt reduction in
5 the demand on the electric system any way you look at
6 it.

7 However, due to the Energy Independence and
8 Security Act at the federal level, 100-watt incandescent
9 bulbs are no longer available. The least efficient
10 alternative that householder could buy is a halogen
11 bulb, which uses about 70 watts.

12 So, for purposes of EEPS, the baseline has
13 moved. EEPS can only claim 45 watts of savings because
14 the next alternative is a halogen. But any way you look
15 at it, the demand on the electric system has been
16 reduced by 75 watts.

17 Many of the environmental groups pointed
18 that out, said that these EEPS programs are changing the
19 market, changing what's going on in the marketplace.
20 And we should make an effort to take that into account,
21 try to evaluate how much of that is helping us towards
22 the 15 by 15 targets.

23 And the order requires that the staff
24 investigate that as part of its already scheduled 2013

1 review of the EEPS programs.

2 I should point out one minor -- one small
3 item that is addressed in the course of the --
4 considering the EEPS targets involves the EmPower
5 program.

6 NYSERDA had requested a reduction in the
7 targets for the EmPower program due substantially to the
8 fact that the referrals from utilities have not been as
9 great as expected. And that was what the program was
10 supposed to be built on.

11 So, this order will expressly require
12 utilities to refer any customer who enrolls in a low
13 income program at the utility to NYSERDA for
14 consideration for involvement in the EmPower program.
15 And at the same time, it addresses some concerns the
16 utilities had about that.

17 There were also some budget shifts included
18 in this petition. They are largely minor, small amounts
19 of money. All of them move money in a direction which
20 tends to increase the overall efficiency savings
21 achieved by the EEPS program. They are an optimization
22 of the use of those funds.

23 The second major petition involved funding
24 for combined heat -- a combined heat and power

1 performance program. In the T&MB order last year, you
2 directed NYSERDA to find funding for 10 million of the
3 overall \$50 million annually that you authorized for
4 combined heat and power.

5 Five million was provided from SBC funds for
6 a combined heat and power program that addressed mainly
7 small, packaged units. The combined heat and power
8 performance program is larger installations.

9 NYSERDA proposed in its petition that the
10 funding over the five years be provided by reallocating
11 \$35.9 million in EEPS funds that were currently
12 earmarked for the electric reduction in master metered
13 buildings program, which supports submetering, and the
14 benchmarking operations and efficiency program, which
15 targets efficiency improvements in large buildings and
16 facilities.

17 Generally, staff agreed that the funds for
18 these two programs would not be usefully expended, in
19 the short run at least, that the funds could be diverted
20 to the CHP program for now, though the order expresses
21 the continued commitment of the Commission to promoting
22 submetering and to the ERMM program.

23 It notes that revised regulations for ERMM
24 are being considered. And this small -- this wording in

1 the draft order may have to be changed depending on what
2 happens later on this agenda. But in light of that, it
3 calls on -- it requires Consolidated Edison to
4 propose -- I'm sorry -- requires NYSERDA to propose a
5 revised ERMM program by June of next year.

6 The balance of the funding required for the
7 CHP program would come from uncommitted EEPS funds,
8 funds that were uncommitted as of December 31st, 2011,
9 bringing the total amount for CHP up to 58 million.

10 The order also approves the project
11 selection criteria proposed by NYSERDA concerning NOx
12 emissions, the efficiency of the project, and so forth.
13 It also directs NYSERDA, in its revised operating plan,
14 which it will have to file within 60 days after the
15 issuance of the order, to demonstrate how its selection
16 of projects will take into account or give some weight
17 to the actual efficiency levels of the project proposed,
18 and to the extent to which the project would help the
19 electric transmission grid by reason of its location.

20 And it directs NYSERDA to take into account,
21 to the extent relevant, any recommendations that may
22 come out of the current Moreland Commission that may
23 bear on CHP siting and selection.

24 One issue under -- with respect to CHP was

1 the impact, possible impact of installations on the Con
2 Edison steam system when a CHP unit is being installed
3 at the facility of a customer who currently takes steam
4 from the system.

5 NYSERDA proposed essentially a criterion
6 that had to do with impact on overall annual steam
7 sales. Con Edison said that the more important
8 consideration was the impact on minimum steam load,
9 which could cause its plants to be shut down, which
10 would be costly and inefficient for steam customers.

11 The order reviews all this and concludes
12 that there should not be any automatic cutoff of CHP
13 programs based on any a priori standard of the impact,
14 but it agrees that the impact on steam load is
15 important, it places the obligation on Con Edison to
16 come forward if it sees a potential detriment to its
17 system and get Commission approval before -- or get
18 Commission consideration of that impact.

19 So, no projects would be stopped in advance
20 by consideration of Con Edison's steam impacts. And
21 also, this only applies to some -- a customer that's
22 already a steam customer of Con Edison. Any other
23 project would be unaffected.

24 Finally, the petitions address the use of

1 the approximately \$57 million in uncommitted funds from
2 EEPS 1, the bulk of that being earmarked for the CHP
3 program.

4 The other two uses proposed by NYSERDA are,
5 first, to provide funding for the EmPower program. In
6 the EEPS 2 order, the Commission extended and expanded
7 the EmPower program, but did not provide full funding
8 for the program because you expected some carryover
9 funds from EEPS 1, and did not want to set a budget
10 until you were aware of how much that was.

11 It turns out it was not enough to get the
12 program through 2012. So, NYSERDA is asking for \$13.8
13 million to be -- of the uncommitted funds -- to be used
14 to provide full funding for 2012 and partial funding
15 into the future years.

16 The petitions also seek the authorization to
17 use \$24 million in the uncommitted EEPS 1 funds to
18 continue funding of workforce development efforts. The
19 Commission approved a workforce development program to
20 be run by NYSERDA back in 2009 with \$6.6 million.

21 That money was to be leveraged by money that
22 was coming available from the federal government and
23 was -- the programs were somewhat slow to get started,
24 but ultimately they achieved their goals and measured in

1 terms of number of training sessions provided.

2 They were anticipating 16,000. They got
3 over 18,000 provided. But now they are out of money
4 this year, and the request for 24 million would continue
5 the program at a level of \$6 million a year for the next
6 four years.

7 Although the programs met their goal in
8 terms of number of training sessions provided, staff
9 felt that this wasn't -- this simple statistic wasn't
10 enough to get a real picture of what these -- this
11 training was accomplishing.

12 As a result, the order directs NYSERDA to
13 work with staff and in its revised operating plan to
14 propose new metrics to give a more in-depth view of what
15 is being accomplished by the programs.

16 The workforce development, I should note,
17 was strongly supported in the comments, particularly
18 from the unions throughout the state, but also a number
19 of organizations that provide training to disadvantaged
20 workers in the state.

21 That is -- that's all there was.

22 CHAIRMAN BROWN: Thank you, Judge.

23 I mean I think the really good news in that
24 whole presentation is that we're on target on the 15 by

1 15 program. Programs are getting us to where we wanted
2 to get and really making a difference. So, that's
3 great.

4 Now, but there were a lot of specifics to
5 this, so are there comments or questions that anybody
6 would like to...

7 Commissioner Harris. You want to defer for
8 a moment.

9 Commissioner Acampora.

10 COMMISSIONER ACAMPORA: Dave, the money
11 you're talking about in the workforce development stuff,
12 was that -- the federal money was TARP money? That's no
13 longer available?

14 JUDGE PRESTEMON: It was...

15 CHAIRMAN BROWN: ARRA.

16 JUDGE PRESTEMON: Yes, ARRA. American
17 Reconstruction and whatever.

18 COMMISSIONER ACAMPORA: I appreciate the
19 fact we had asked for more information. We know that
20 when we started the EEPS proceeding that we had to
21 consider the flexibility of being able to go back and
22 look at certain things. And certainly, workforce
23 redevelopment is an important issue.

24 When I served in the Assembly, I do know

1 that in dealing with the unions that it was an important
2 tool for apprentice programs, and also that we're
3 fortunate that some of the community colleges throughout
4 the state have adopted some of these programs in their
5 curriculum to retrain workers as it deals with energy
6 efficiency and -- Jeff -- geothermal. I can't get away
7 from that.

8 So, I think that with the workforce we would
9 like to see some of those numbers. I think it's
10 important also with the lighting programs, the education
11 component of that.

12 I've said it so many times. You walk into a
13 Home Depot or a Lowe's and the aisle is about a half a
14 mile long and people are just standing there looking.
15 They want to do the right thing, but they need to be
16 educated which of the bulbs, you know, the good energy
17 efficiency, what they're going to get the bang for their
18 buck because there's a lot of choice out there now.

19 So, again, we need to look at these
20 programs. We need to reevaluate them if we have to.
21 But all in all, as the Chairman said, the good news is
22 that we are on target.

23 So, thank you.

24 JUDGE PRESTEMON: And I would note that the

1 revised program does give retailers a great deal of
2 incentive to be standing there giving advice to their
3 customers because they don't get anything out of this
4 program unless they increase their sales of compact
5 fluorescent bulbs. So, that's one of the advantages of
6 the program.

7 COMMISSIONER ACAMPORA: Thank you.

8 CHAIRMAN BROWN: Commissioner Harris.

9 COMMISSIONER HARRIS: I think you've all
10 done a great job with the CHP portion of this and the
11 point of sale lighting. These are tough issues I know
12 you were struggling with and working with NYSERDA for
13 many months. And I think the result is great and
14 spot-on, with the exception of the workforce
15 development aspect of this petition and the
16 recommendation.

17 I agree that the workforce development
18 piece, the bigger piece with our economy and the energy
19 efficiency industry and our targets of 15 by 15 are
20 essential. My problem is this: We funded this program
21 in 2009 for one year with the hopes of leveraging
22 federal funds and to get things started to achieve our
23 goal of 15 by 15.

24 It took -- there was some fits and starts

1 with the program. And we finally have some results of
2 the career pathway and the TT -- I can't remember what
3 it stands for -- those who are already employed, the
4 more sophisticated training programs.

5 The problem I have is I read the process
6 evaluation report and the program report painstakingly,
7 and all the numbers. And it is a great idea, but it's
8 in its infancy with the providers.

9 There are a lot of recommendations for
10 improvements to the program. And I -- my concern is
11 that funding it for four years when we are not
12 stringently looking at implementation of these
13 recommendations might be just throwing good money not at
14 bad, but I want to make sure that these programs are
15 working well.

16 So, my proposal would be to fund it for one
17 year, since they are out of money. Have these providers
18 implement the numerous significant recommendations from
19 the report, and then come back to us. Let us look at
20 how well -- through the metrics that you referred to,
21 Dave -- how well these programs are working, and take it
22 from there.

23 And I know we run the risk of having some of
24 these providers not continue providing these programs,

1 but I think, given the significant amount of money we're
2 talking about, and the significant recommendations that
3 were made to improve these programs, I think it would be
4 more prudent.

5 I also looked at the number of internships
6 and apprenticeships that were provided under the career
7 pathways, and there were very few. And, again, I think
8 we can improve upon that, and I think it's a valuable
9 program; otherwise, we wouldn't have funded it.

10 But I would like to see those
11 recommendations implemented before we fund it for four
12 years and put it in the T&MD portfolio continuously.

13 Also, I would ask that at least the
14 recommendation piece of the report get put into the
15 order as an appendix to give some reference. In the
16 order, 62 pages, the order, and only five paragraphs on
17 workforce development.

18 It's \$24 million that's coming from
19 ratepayer funds. So, again, I would propose that we
20 fund it for one year, and the remaining money we hold
21 for potentially funding any energy efficiency relief for
22 Sandy victims and for ratepayers that have been
23 contributing into these funds, and sort of put it in a
24 separate pot for those victims of Sandy for energy

1 efficiency appliances, or at least, as we review the
2 help petition, the New York Help petition that was
3 filed.

4 That's it.

5 MR. BARWIG: Commissioner, if I might offer
6 some comments.

7 The process evaluation that you looked at is
8 something that's provided early in the development of a
9 program, and it's meant to be rather pointy and critical
10 to provide constructive opportunities to improve the
11 program. I believe this evaluation does that.

12 There are a number of recommendations. We
13 are following through with NYSERDA. I have talked with
14 NYSERDA about that evaluation. Colleen Gerwitz has.
15 Our other staff have. So, we are very intent on
16 improving this program.

17 Looking at experience in other states and in
18 other settings with workforce development, this is a
19 long play. It is not a one-year, two-year program.

20 California's most recent evaluations, they
21 claim that they're getting about a 5 percent improvement
22 in efficiency by getting people to do things right and
23 do it right the first time, but they've been at it for
24 well over a decade.

1 I looked at another example. There's an
2 organization called Advanced Energy in North Carolina.
3 It's a non-profit consulting group. And they worked
4 with some of the very largest builders in the country,
5 the people who were building more houses in Phoenix in a
6 week than we build in New York State in a year. They
7 used to, at least.

8 Their issue was callbacks where it's costing
9 them a lot of money and impacting their profits through
10 callbacks. It turns out a lot of those callbacks were
11 energy related. The uniform blown-in insulation in the
12 attic turned out to be 2 feet thick in one place and two
13 inches in another. The air conditioner wasn't
14 commissioned. The ducts leaked. The controls weren't
15 wired up correctly.

16 And it all came back to a workforce
17 development program. And these big builders found that
18 they could invest in workforce development, training
19 their people to do it right the first time, and improve
20 their profit.

21 So the potential for this to have a very
22 serious impact is real, but it's a long play. That's
23 part of staff's recommendation to move it into the
24 technology and market development portfolio, which is

1 considered a feeder program for EEPS, as opposed to
2 something that's directly and immediately going to
3 produce a result equivalent to a compact fluorescent
4 program.

5 COMMISSIONER HARRIS: If I might.

6 It sounds -- that sounds very noble and it
7 sounds like a great idea, but I just -- at this point,
8 how are we measuring the success of this program?

9 I mean we have -- all we have to work off of
10 is this report right now. And I agree I would like to
11 see this continue in the long term, but at this point,
12 given the scrutiny that we put all the other programs
13 and projects under, I think this deserves -- given the
14 sizable funding that is being requested, I would like to
15 put this program under more rigor.

16 And, again, I would propose one year,
17 implement the recommendations with the expectation that
18 if these recommendations are implemented and
19 improvements are made that we are very inclined to
20 continue.

21 But given the state of the economy right
22 now, and given the needs of New Yorkers, I just -- I
23 think we need a little bit more rigor before we commit
24 four years.

1 CHAIRMAN BROWN: My concern would be if we
2 make it a one-year program and reallocate the funds,
3 it's a one-year program. And that will be looked at as
4 a one-year program. These are commitments and
5 curriculums that need to be developed.

6 That if it's just a one-year funding source,
7 I think there may be some reluctance. So, I'm prone
8 towards longer-term programs and not reallocating the
9 money. I agree with you that there is probably some
10 rigor that could be applied here.

11 What I might offer as somewhat of a
12 compromise, that we come back after on a periodic basis
13 and get an update of where we're at with this. And we
14 could, depending on what we find out, change directions.

15 But I would like to make the commitment to
16 the program so that people will go out there, and unless
17 it fails miserably or fails, that this -- they could
18 have the expectation that this is a long-term program.

19 So that's where I would change it. I would
20 be very hesitant in reallocating the money because that
21 makes it a one-year program. And I don't think a
22 program like this can be successful with just a
23 commitment for one year. It's a longer term commitment.

24 Commissioner Sayre.

1 COMMISSIONER SAYRE: Judge Prestemon, does
2 the Commission retain the jurisdiction, if we don't like
3 the way things are going with this program after one
4 year or two years, to make substantial changes to it?

5 JUDGE PRESTEMON: As far as I know, the
6 Commission always has that discretion. And general
7 counsel is nodding his head, which gives me much more
8 confidence.

9 COMMISSIONER SAYRE: Should have asked you.
10 This job makes me a little more comfortable
11 with a longer program, as long as we get periodic
12 reports and look at this one harder than some of the
13 others.

14 MR. BARWIG: And if I might.

15 The discussions with NYSERDA about the need
16 to improve the reporting to make it more clear, more
17 specific, more directed to how we can determine impact,
18 those are already going on.

19 My sense is NYSERDA has heard the message
20 from the evaluation. They've heard the message from
21 staff, I assure you. And my sense is they're taking it
22 seriously.

23 CHAIRMAN BROWN: So, what we could do is
24 just kind of add that we would like annually, at least,

1 to review the program. And you could figure out what
2 form we would want to get that information and present
3 it to the Commission, but that we would review and
4 evaluate on a periodic basis to make sure that this
5 money is being well spent and accomplishing what it
6 wants to accomplish.

7 COMMISSIONER HARRIS: Mr. Chairman, if I
8 could add.

9 These are leftover, unencumbered funds that
10 we are allocating towards this program. This had -- I
11 mean if we are committed to the continuation of the
12 workforce development program, could we not fund it in
13 the next round of SBC, T&MD budget allocations?

14 CHAIRMAN BROWN: I'm sure we could, but
15 leaving it open whether we will or not makes it a
16 one-year program. That's my concern. We certainly can.
17 We could make it a one-year program and say we could
18 revisit this in a year, but people will look at that as
19 a one-year program because there's no guarantees that
20 we're going to continue it.

21 I would rather go with the approach that it
22 is a four-year program that we'll be reviewing and, if
23 necessary, adjusting if we find out the program is not
24 accomplishing what we hope it accomplishes.

1 I mean either one are valid ways. But my
2 concern is if we just do one-year funding that's -- I'm
3 not sure the commitments will be made to this program.
4 It may be dooming it to failure to some degree.

5 COMMISSIONER ACAMPORA: Mr. Chairman, right
6 now because of Hurricane Sandy there's going to be a
7 long term redevelopment of what goes on in New York. So
8 I think that making sure that we do have a commitment to
9 a longer term will help with the rebuilding and getting
10 people back to work over this long period.

11 We're not going to rebuild all these areas
12 in a year. It's not going to happen. And we have the
13 opportunity through tragedy to look at some energy
14 efficiency measures that can retrain some of these
15 workers to implement energy efficiency in these hard hit
16 areas.

17 So, I really feel that, in the grand scheme
18 of things, \$24 million is not a lot of money to make
19 that kind of an investment and to show that we're
20 willing to retrain people.

21 And we're also looking at making those areas
22 of systems that were impacted and destroyed, make them
23 better, make them more efficient.

24 So, I think it's a good thing to go the four

1 years, but I also agree that it's a good thing to ask
2 for the information and the reports so that we can
3 follow this thing and make sure that it is working
4 properly.

5 CHAIRMAN BROWN: Commissioner Larocca.

6 COMMISSIONER LAROCCA: I apologize if I'm a
7 little confused here.

8 We're talking about not just doing it for
9 one year, doing it for four years, but these various
10 program elements, none of these are brand new, are they?

11 CHAIRMAN BROWN: No. I think CHP has
12 certainly been around, workforce training has been
13 around.

14 COMMISSIONER LAROCCA: So, these are already
15 programs we have been in for some period of time, but
16 the discussion sounds as if it's something we're
17 starting and the concern is to not only do it for just a
18 year, but these -- we've already been in this business
19 with these various programs.

20 COMMISSIONER HARRIS: Workforce development
21 we only funded for one year.

22 COMMISSIONER LAROCCA: When?

23 COMMISSIONER HARRIS: 2009 it was funded one
24 year.

1 COMMISSIONER LAROCCA: You're making my
2 point, which is we're already in it. We're not starting
3 fresh here.

4 So, the discussion about difficulty of
5 saying we're only doing this for one year, we have
6 already said to the world we're doing this multi-year.
7 And now we're here talking about an extension.

8 COMMISSIONER HARRIS: No. Workforce
9 development, though we funded it in 2009, it was only
10 one annual. It just took a long time to get started.
11 So, we've actually only -- it's only been in existence
12 one year.

13 We decided as a Commission to only fund it
14 for one year. And we only have evaluation work one
15 year's worth and it's still in its infancy.

16 COMMISSIONER LAROCCA: I hear you, but the
17 impression we do not want to leave is we're talking
18 about starting fresh here for only a year. These are
19 components that we have been at for a period of time.

20 So, I'm not as concerned perhaps about the
21 universe we're worried about thinking we're only going
22 to be in it for a year. We've already been in it for
23 longer than that. Now, if it took us time to kick it up
24 into gear, and so forth, that's another question.

1 But the larger question is the context here
2 the entire life of these programs or just the most
3 recent annual base? What are we -- David, when you
4 looked at this are you looking at each of these programs
5 from their inception to this point in time when these
6 petitions come in, or just a base of a more recent year?

7 CHAIRMAN BROWN: I'm not sure I understood
8 the question. I don't think the judge...

9 COMMISSIONER LAROCCA: Each of these program
10 elements has their own history.

11 JUDGE PRESTEMON: That's true.

12 COMMISSIONER LAROCCA: Having started at a
13 common point in time or at different points in time.

14 MR. BARWIG: Different points in time. The
15 implementation of EEPS was staged just because of the
16 sheer volume of petitions we were dealing with.

17 COMMISSIONER LAROCCA: Okay. So, as this
18 comes to us now, this four different petitions dealing
19 with different program elements, each has a calendar
20 already of how long it's been around and what may or may
21 not have been accomplished to date.

22 MR. BARWIG: That's correct. In the case of
23 combined heat and power, the history of this was in the
24 SBC program, not EEPS.

1 COMMISSIONER LAROCCA: Understand, but the
2 point is we're not talking about new stuff.

3 MR. BARWIG: No.

4 COMMISSIONER LAROCCA: We're talking about
5 ongoing. And what Judge Prestemon has had to do here is
6 to take all the history to date in evaluating these
7 petitions and making a recommendation about going
8 forward.

9 You look dubious.

10 JUDGE PRESTEMON: Well, yes. But, as I say,
11 this was not like a litigated case.

12 COMMISSIONER LAROCCA: No, I understand
13 that.

14 JUDGE PRESTEMON: We're not making a
15 recommended decision. This is the entire staff that
16 evaluated that. I relied very, very heavily.

17 COMMISSIONER LAROCCA: If I'm
18 mischaracterizing it I apologize, but understanding
19 whatever the procedural format we're in, we're looking
20 at this sort of from the get-go to where we are now and
21 where it will go in each of these elements going
22 forward.

23 JUDGE PRESTEMON: That's true.

24 COMMISSIONER LAROCCA: My first question

1 then is: In that prior history or anything we looked at
2 in this cycle, did the possibility of not going forward
3 in any of these programs receive consideration with the
4 outcome being that that money would instead go back to
5 ratepayers at some point?

6 JUDGE PRESTEMON: Well, yes. The
7 possibility of not funding these programs was certainly
8 considered.

9 Floyd.

10 MR. BARWIG: Certainly on the initial filing
11 on the lighting program there was great dissatisfaction
12 and no inclination to go forward as originally proposed.

13 And what NYSERDA has repropoed, in
14 consultation with staff, is something much more
15 acceptable. So I would say the possibility of not
16 funding a program was definitely on the table.

17 COMMISSIONER LAROCCA: But in this package
18 we would ratify today, bless, there is no
19 discontinuation of any program element that results in a
20 return to ratepayers of the money not spent.

21 This is, by the way, as I understand it,
22 basically reprogramming a lot of money that wasn't spent
23 in other categories. And, again -- it seems to me we've
24 had a history of this -- is not returning that money but

1 finding other opportunities to spend it.

2 MR. BARWIG: I think that's the correct
3 characterization. In the 2011 review we did an analysis
4 of outliers. We looked at those programs that performed
5 extraordinarily well, and the Commission ordered
6 everyone to take a look at those programs and see if it
7 fit their territory.

8 We also looked at certain programs that were
9 performing poorly, and programs were terminated, but the
10 money was not returned to ratepayers. It was
11 reallocated.

12 COMMISSIONER LAROCCA: I would, in one of
13 these cycles, be pleased to see one of the elements be a
14 return element to ratepayers, particularly where there
15 have been either start-up problems, delay problems,
16 performance problems, changes in the alignment of the
17 stars, or whatever results in the failure to deliver a
18 number, that one of the things that gets at least equal
19 billing and equal time in the discussion is that we
20 don't find a new way to spend that money but we give it
21 back to ratepayers, particularly given the condition of
22 the economy.

23 And I often feel that we don't do enough of
24 that. We have no opportunity here, again, to hear a

1 full discussion of the return or not reallocating.

2 The second point I would make is that you
3 describe, or you provide an explanation of the reason
4 for the slowness of outcomes. And it seems to me that
5 since 2008 that is a frequent refrain, that we have to
6 be patient, it takes a long time.

7 As Maureen pointed out, the workforce
8 thing was slow to -- putting aside whatever merits it
9 may or may not have -- may have been conceived in '09,
10 but we're not as far along as we may have thought in
11 '09.

12 So, I continue to have the concern that the
13 pace of these investments is slower than it should be.
14 We need to have more measurable results in a more
15 aggressive time frame.

16 And I'm sorry if I'm a broken record on
17 that, but it seems to me that that comes up every time
18 we look at this. If we do everything that's in this
19 proposal, is it fair to see it as a zero sum outcome,
20 meaning you described 15 by 15 remains, we're on track.

21 So, all of the ins or the outs or the
22 reallocations or whatever, we still haven't lost any
23 ground on the outcomes we're looking for? We still
24 expect to make all of our numbers?

1 MR. BARWIG: Yes, sir.

2 JUDGE PRESTEMON: Well, we expect to make
3 the numbers. To say that we haven't lost any ground or
4 that things haven't changed, that's not true. The
5 original numbers suggested we would make our goals with
6 a considerable surplus.

7 What is particularly heartening about the
8 situation now is we have our very comprehensive
9 technical manual in place for EEPS. We have completed
10 thorough evaluations of these programs to determine what
11 they actually produce per dollar spent.

12 So, now, with our experience of four years
13 of EEPS, when we say it looks like we're going to make
14 our target, we have a much higher degree of confidence
15 than we could have had earlier on. We now are dealing
16 with evaluated programs meeting rigorous technical
17 requirements.

18 COMMISSIONER LAROCCA: It is my hope that
19 all plays out as we expect it to. I think you can all
20 understand the reason for concern, that necessarily we
21 have had to rearrange things.

22 But if you couple that with my earlier
23 concern is one of the things that I would like to
24 rearrange from time to time is we're not getting there

1 in this particular program, or the conception was wrong
2 or the world changed or whatever, why don't we make an
3 effort to return some of that to ratepayers in the near
4 term, particularly in the down economy.

5 JUDGE PRESTEMON: I mean I certainly
6 empathize with the desire to return money to ratepayers,
7 of which I am one, but we provided an amount of money
8 for an objective that we thought was an appropriate
9 amount of money to spend to try to exceed -- achieve a
10 very lofty goal of a 15 by 15 reduction in energy usage.
11 And there's nothing that I have seen that suggests that
12 that wasn't an appropriate amount of money to spend.

13 And the fact that it's taking time, or that
14 some of it didn't get spent as soon as we expected, does
15 not necessarily mean that it was an inappropriate amount
16 of money. We are putting that same money to use for the
17 same purpose with a slightly different -- slight
18 repurposing of the funds for programs that we think are
19 going to contribute even more towards achievement of
20 those goals.

21 COMMISSIONER LAROCCA: Thank you.

22 CHAIRMAN BROWN: Commissioner Larocca, I
23 would also make the case that this program is
24 benefitting consumers. That's the reason we apply such

1 rigorous tests, that we often get criticized for the
2 rigor of our tests, because we want to insist -- total
3 resource cost test and things like that -- that the
4 dollar spent is more than a dollar saved for consumers.

5 And I think the goal of the 15 by 15 means
6 there's a whole lot of infrastructure that doesn't have
7 to be built that would fall on the ratepayer's back.
8 And if we start discovering that we're spending dollars
9 and only getting 25 cents on the dollar, and that's what
10 the evaluation shows, and it has shown that in some
11 programs, we tried to pull the plug on the program.

12 And if there were no place to put the money
13 back into that didn't pass the test, I would argue that
14 we should indeed be giving the money back to the
15 ratepayer and it's a valid concern.

16 Up to this point there's always been enough
17 places that still pass the test that have value, that
18 continues to be worthwhile, but I think your point is
19 well taken.

20 If we reach a point where we don't see that
21 happening, that's the point where we got to say, wait a
22 second, should we be collecting all this money from
23 ratepayers just to get a program that gets a quarter on
24 a dollar.

1 COMMISSIONER LAROCCA: I guess if I were on
2 the other side of this discussion I could always come up
3 with another place to spend the money. And much of the
4 history suggests that they have been pretty good at
5 that.

6 CHAIRMAN BROWN: Probably more needs than
7 there are dollars.

8 Also want to note that there's a requirement
9 in this order, to kind of go back to the workforce
10 development issue, that within 60 days NYSERDA shall
11 submit a supplemental revision to its T&MD plan
12 incorporating the workforce development initiative, also
13 includes revised reporting requirements for the
14 workforce development program and the CHP program, which
15 NYSERDA is directed to develop in consultation with
16 staff.

17 So, to follow up on our workforce
18 development discussion, I would kind of ask in that
19 60-day window perhaps talk to -- work with NYSERDA in
20 developing this reporting mechanism that maybe adds a
21 little more rigor to it that kind of gives us more
22 information just to take care of the concern out there
23 that this program is cost effective. We are spending
24 money wisely.

1 COMMISSIONER HARRIS: And if we could
2 establish upfront expectations, standards, thresholds,
3 that must be met each year by the providers and the
4 program itself, whether it's apprenticeships,
5 internships, additional more rigorous reporting and
6 surveys that are done upfront.

7 And if you don't meet these tests, you don't
8 meet these criteria, and you fail what we would call the
9 TRC tests for other programs, something similar for this
10 program, you will not be funded.

11 I mean, we have to have some rigor for this
12 workforce development to make sure that it's not just
13 assumed that funding will continue so we can -- there
14 has to be met expectations established.

15 CHAIRMAN BROWN: I think developing metrics
16 would be good. I'm not quite sure I'm ready to say
17 every six months they've got to hit that target or the
18 program is ended, but I think the idea of developing
19 metrics and criteria to look at is a good idea.

20 COMMISSIONER ACAMPORA: Maybe enrollment and
21 followup.

22 COMMISSIONER SAYRE: Chairman, I'd like to
23 also make the point that we are going to have a total
24 review of the EEPS program sometime next year --

1 CHAIRMAN BROWN: Good point.

2 COMMISSIONER SAYRE: -- where I look forward
3 very much to a very careful analysis of whether we are
4 spending the right amount of ratepayer money on these
5 programs, whether we need to scale them back, or whether
6 we need to scale them up if that's what's needed to meet
7 the goals, and if that's indeed in the ratepayers' best
8 interest.

9 But it's a ton of money that we are
10 administering here for the ratepayers and we must make
11 sure that we are good stewards.

12 MR. BARWIG: If I might, Commissioner.

13 That is intended to be a review of the
14 Commission's entire clean energy portfolio, not just
15 EEPS, but EEPS in the context of the renewable portfolio
16 standard, T&MD, and how they all interact and support
17 each other and the balance.

18 CHAIRMAN BROWN: Are there any other
19 comments and questions?

20 So I think in the minutes we certainly have
21 sent a couple of signals that we want to send. I'm not
22 sure if it requires any revision of the language because
23 I think that stuff is in there that requires them to
24 come back to us in 60 days with the program.

1 And I think we've sent a clear signal that
2 within that 60-day period we would like to perhaps see
3 some more metrics and some more information about how
4 they're going to provide justification for the
5 continuation of the program.

6 So, with that, we have the series of
7 recommendations. All those in favor of the
8 recommendation as described by Judge Prestemon please
9 say aye.

10 (Response of "aye".)

11 Opposed.

12 COMMISSIONER HARRIS: Mr. Chairman, I'd like
13 to, if I could, just dissent in part.

14 CHAIRMAN BROWN: On the workforce
15 development, you'd like to see a -- so the dissent is
16 basically you would like to see a one-year authorization
17 with renewals.

18 COMMISSIONER HARRIS: I think I would like
19 to just focus on having set criteria for funding in
20 advance of the program being funded for four years.

21 CHAIRMAN BROWN: Got it. Thank you.

22 So, the recommendation is adopted with a
23 dissent.

24 And you can write that up, if you want to,

1 or let this suffice, if you want. It's certainly on the
2 record.

3 The second item for discussion is item 202,
4 in the matter of a temporary waiver and suspension of
5 late payment charges due to payment barriers. Presented
6 by Marty Insogna, Consumer Protection Specialist in the
7 Office of Consumer Policy, and Barry Bedrosian, Chief of
8 Consumer Services, which will be available for
9 questions.

10 I just wanted to start with just a statement
11 before we get going on some of these matters.

12 Today we are taking some actions related to
13 the storm and its effect on bills and billing and late
14 charges and things that we will be talking about.

15 I want to make it very clear what we're
16 doing today and why we're doing it today. We're doing
17 what I would describe as very time sensitive things.
18 Bills are going to be coming very shortly from Hurricane
19 Sandy period. Late payments then might be required.
20 There might be suspension of service.

21 What we're doing today is not indicating
22 this is the whole universe of our investigation of
23 Sandy. It hasn't even begun yet. We have deferred to
24 the Moreland Commission that's doing a very thorough

1 investigation at this point.

2 We will follow that up pursuant to that, and
3 we will do everything appropriate at the point when
4 we've got all the information that we need and we can
5 take and examine all the alternative actions that might
6 be necessary.

7 So I just want to make it clear today that
8 some of these things we're doing today aren't, in
9 essence, huge programs, huge changes, but they're things
10 that we want to take care of now because of the time
11 sensitivity and the immediacy of the problem.

12 So with that, I will -- people can comment
13 on that after we go through these various presentations
14 -- go to item 202. Did I already read this part of it,
15 In the matter of temporary waiver and suspension? I
16 think I did.

17 So, Marty and Barry, please begin.

18 MR. INSOGNA: Thank you.

19 Good morning, Chairman Brown. Good morning,
20 Commissioners.

21 As the Chairman very nicely set up for me,
22 this item continues the Commission's proactive work to
23 protect utility customers impacted by Hurricane Sandy.

24 As was reported to you at the last session,

1 the department has worked out agreements with utilities
2 in the regions affected by Superstorm Sandy to suspend
3 termination of service for customers affected by the
4 storm.

5 Staff has worked with the utilities to
6 clarify and memorialize those agreements, and you will
7 have an opportunity to hear more about that after my
8 presentation. This item addresses the continuation of
9 the waiver of late payment charges previously authorized
10 by the Commission.

11 On November 2nd of 2012 the Commission
12 issued an order which determined that under the
13 extraordinary conditions in effect at that time it was
14 necessary to adapt our procedures on an emergency basis
15 to address certain tariff provisions, under which the
16 utilities would routinely impose late payment charges on
17 customer bills.

18 At the time, Governor Cuomo had declared a
19 state of emergency for every county in the state. The
20 initial order authorized a temporary waiver and
21 suspension of late payment charges for all electric,
22 gas, and steam customers of Con Edison, Brooklyn Union
23 Gas, and KeySpan Long Island, and on an individual
24 community basis for customers of the other electric and

1 gas utilities.

2 The waiver was effective immediately and
3 continues until December 15th; however, the Commission
4 provided that during this period we would monitor storm
5 restoration efforts and determine whether an extension
6 or the suspension of LPCs, or late payment charges, was
7 needed.

8 Many New Yorkers have been severely impacted
9 by Hurricane Sandy. Over a million customers of the
10 investor-owned utilities lost electric, gas or steam
11 services. Thousands have severely damaged or destroyed
12 homes.

13 Even those who never lost service have had
14 to adjust to a major disruption of their ability to
15 complete the ordinary transactions of their everyday
16 lives.

17 Customers lost postal service, telephone, or
18 Internet service, access to banking and payment services
19 that would otherwise be available to them.

20 Many residential customers have experienced
21 economic impacts, such as permanent or temporary loss of
22 work or income, and for payment troubled customers
23 conditions after the storm has passed may continue to
24 make it more difficult for those customers to access the

1 support programs which, under normal circumstances,
2 might be available to assist in maintaining utility
3 service.

4 It appears likely that under these
5 conditions many residential customers may continue to be
6 unable to timely pay their electric and natural gas
7 bills and could be subject to late payment charges.

8 Now, since the initial order was issued, the
9 boundaries of Sandy's impacts have been more clearly
10 defined. The Federal Emergency Management Agency, or
11 FEMA, has identified 13 New York counties as eligible
12 for individual and public assistance. These 13 counties
13 are Bronx, Kings, Nassau, New York, Orange, Putnam,
14 Richmond, Rockland, Queens, Suffolk, Sullivan, Ulster,
15 and Westchester.

16 NYSEG's Brewster division covers a large
17 portion of Putnam and Westchester County, which are
18 included in the FEMA designation, but it also extends
19 into the eastern portion of Dutchess County, which is
20 not included by FEMA.

21 All of NYSEG's Brewster division incurred
22 outages of a similar scope to the other utilities in
23 that 13-county area. So for the purposes of this order,
24 we're defining the affected areas as those 13 counties

1 identified by FEMA, plus all of NYSEG's Brewster
2 division.

3 The draft order directs utilities to waive
4 and suspend late payment charges for all residential
5 customers in the area impacted by the storm from
6 December 15th, 2012 through January 31st, 2013.

7 We also recognize that some residential
8 customers outside this area may also have experienced
9 outages, suffered temporary loss of work or income, or
10 damage to their home, or inability to access support
11 programs. Similarly, non-residential customers within
12 this area may also face such impacts.

13 For those customers, this order would
14 continue the action you took in early November,
15 providing utilities with the authorization to waive such
16 charges through January 31st.

17 Utilities have placed messages on their
18 websites and on their bills to encourage customers
19 financially affected by the storm to contact the utility
20 for assistance.

21 That completes my presentation.

22 I'd be happy to take your questions.

23 CHAIRMAN BROWN: Commissioner Acampora.

24 COMMISSIONER ACAMPORA: Marty, you're

1 mentioning residential customers. Where do we cover
2 small business? And what's being done for other than
3 residential customers? And how do they know how to
4 access that assistance?

5 MR. INSOGNA: The order would give the
6 utilities continuing authorization to waive late payment
7 charges for other customers. It's only directed for the
8 residential class.

9 So, the utilities have indicated to us that
10 they would be willing to work with all of their
11 customers, both non-residential and residential, in the
12 affected areas.

13 They are going to put bill messages on their
14 bills and on their websites to inform customers that if
15 they're having financial difficulties as a result of the
16 storm to get in touch with the utility. To contact them
17 for assistance.

18 So we're confident that with the
19 authorization that this order would provide the
20 utilities that non-residential customers would also have
21 an opportunity to work these out, work these problems
22 out.

23 COMMISSIONER ACAMPORA: Would we be working
24 with the utility and the municipality to make sure that

1 there is some infrastructure there, to make sure that
2 they are addressing these other customer needs?

3 MR. INSOGNA: I'm not sure to what extent
4 the municipalities would be involved. Certainly we've
5 encouraged the utilities to work with the --

6 COMMISSIONER ACAMPORA: Well, we talk about
7 small business loans and economic development monies
8 that may be available to municipalities. I'd like to
9 make sure that also customers who are non-residential
10 would have that availability of information and to be
11 able to take advantage of that.

12 As we well know, so many small businesses
13 were affected by this. People who now are out of
14 business, subsequently their employees have no jobs, and
15 that's a huge revenue loss to the state and a huge
16 impact to individuals.

17 So I think that -- I think I would like to
18 see us following up on that type of area.

19 MR. INSOGNA: Certainly aware that as a
20 result of the storm many federal and state agencies have
21 marshalled their forces to be able to apply assistance
22 to customers in the affected areas. Certainly FEMA, the
23 Small Business Administration, other state and local
24 government agencies, will be involved with providing

1 assistance to customers in the impacted areas, probably
2 residential and non-residential both.

3 Your question probably goes beyond the scope
4 of this item in that it only addresses the late payment
5 charges, but we certainly hope that the utilities are
6 doing the best that they can to make themselves aware of
7 all of the assistance that are available to their
8 customers, because if their customers can access that
9 assistance it not only helps the customer, but it helps
10 them to pay the utility's bills.

11 So, they have an interest in making sure
12 that their customers are aware of and are accessing all
13 the assistance that's available to them.

14 CHAIRMAN BROWN: Commissioner Acampora, I
15 would suggest 203 is also relevant to your point.

16 COMMISSIONER ACAMPORA: Right, exactly.

17 CHAIRMAN BROWN: So why don't -- at the 203
18 we can revisit. These are kind of residential programs,
19 what else I think is going to be your question, what
20 other relief can perhaps be provided to other customers.

21 COMMISSIONER ACAMPORA: Okay, I'll wait.

22 CHAIRMAN BROWN: Thank you.

23 Commissioner Larocca.

24 COMMISSIONER LAROCCA: In the ordering

1 clause number two we say that the utility providing
2 relief shall track the number of customers for whom the
3 waivers apply. Are we not requiring them to report to
4 us on the performance under this order?

5 MR. INSOGNA: We are, Commissioner.

6 The order would require the utilities to
7 track and report. That continues.

8 COMMISSIONER LAROCCA: That's not what it
9 said.

10 COMMISSIONER ACAMPORA: That says show.

11 MR. ELFNER: Commissioner, in our view,
12 directing the utilities to track, and we can request a
13 report at any point.

14 COMMISSIONER LAROCCA: I would just hope --
15 I would -- two words there "and report" would make it
16 crystal clear that we expect to see. As you often do,
17 you might put a time frame on it.

18 Well, time frame speaks for itself, through
19 the 31st of January. We should have a report on what
20 the experience was under that period of time, numbers of
21 customers, whatever the appropriate metric would be.

22 So I would just --

23 CHAIRMAN BROWN: Let me just be formal here.

24 Do any Commissioners have any concerns about

1 adding those two words to the order? If they don't, we
2 will in the final order include "track and report".

3 COMMISSIONER LAROCCA: Track and report.

4 And back to your earlier response to
5 Commissioner Acampora, Marty, the -- I wasn't clear on
6 why we are being mandatory in the matter of
7 non-residential -- in the matter of residential and
8 permissive in the matter of small commercial, or any --
9 I guess any non-residential customer.

10 What you described was a process by which a
11 utility might be responsive in those other categories,
12 but I didn't hear why we are treating the different
13 species differently.

14 MR. INSOGNA: Commissioner Larocca, the
15 Public Service Law and the Commission's regulations and
16 policies generally recognize a difference in the level
17 of protection that's afforded to residential versus
18 non-residential customers.

19 In the present case, given all of the
20 circumstances, we thought it was appropriate to require
21 waiver of LPCs for residential customers but to give the
22 utilities the authorization to do so in appropriate
23 circumstances for non-residential.

24 COMMISSIONER LAROCCA: Just a concern about

1 the vagueness of all that. And I know we don't in our
2 commercial protocols, or at least I don't know what our
3 distinguishing lines are between what we would define as
4 small, and so forth, but I'm thinking of the corner
5 candy store.

6 The steady reporting we've seen now for
7 weeks and weeks and weeks, virtually every small
8 business in the Rockaways was wiped out. And they are
9 mom-and-pops. They are very, very small, by any
10 definition. Not some SBA definition, but a practical
11 definition we would all have.

12 And if most of those are organized as I
13 understand they are, which is they're not particularly
14 organized at all as LLCs or anything like that, that I'm
15 not completely comfortable why or yet hear a convincing
16 explanation of why we would not direct this same level
17 of protection for those customers.

18 MR. INSOGNA: Certainly for the kind of
19 customer that you described, Commissioner Larocca, the
20 small mom-and-pop store in the Rockaways that has
21 severely impacted the area, we have every expectation
22 that the utilities are going to be very lenient in their
23 treatment of those customers.

24 CHAIRMAN BROWN: I think what the

1 commissioner is suggesting, expectations of leniency
2 versus maybe an expectation that they will not charge
3 late fees is kind of two different things.

4 MS. SLOANE: Could I just add?

5 CHAIRMAN BROWN: Please.

6 MS. SLOANE: Just to make it clear that when
7 we did the 90-day voluntary agreements with the
8 utilities that they did agree to suspend late payment
9 charges for residential and non-residential in the
10 affected areas.

11 COMMISSIONER LAROCCA: Do we have a
12 commitment that they would continue that into this
13 extension period?

14 MS. SLOANE: Yes.

15 COMMISSIONER LAROCCA: Do we have it in
16 writing?

17 Let me understand. To be clear, I'm not
18 accusing the companies of anything but good faith here,
19 and they've already demonstrated their good faith.

20 My question is: When we have an authority
21 to direct and now we're very carefully parsing it, I
22 just need to understand why that's the case.

23 CHAIRMAN BROWN: I think you're hitting
24 upon -- I think Marty mentioned there's -- even Public

1 Service Law differentiates residential from others.

2 Is that still -- I mean in the situation
3 like that, "is this appropriate" is a very good
4 question. And if our regulations build upon that, this
5 is a problem. It really doesn't make any difference if
6 it's a residential or your business, you've got a
7 problem. But we might be a little hamstrung by the law.

8 So, I'm kind of looking at Peter to perhaps
9 we need to take a look at what we can do and can't do in
10 terms of other sectors in terms of ordering.

11 MR. MCGOWAN: I think we could, but I think
12 the way we've looked at this is the residential class is
13 an easier class to understand. It's much more sort of
14 narrow -- the people in the residential class pretty
15 much fit a narrow mold. And we wanted to provide them
16 with this protection.

17 The non-residential class is a much less
18 homogeneous group. It's much more difficult to go
19 through definitions. So, we didn't want to miss, in
20 terms of applying a definition, but we did want to
21 provide protections to the non-residential. And
22 therefore, the order is continuing the authority to
23 waive.

24 And the agreements that we have worked out

1 with the utilities have convinced me that the
2 non-residential customers who were affected will get the
3 benefit of this late payment waiver. But it becomes a
4 difficult definitional exercise for us to go through in
5 this order and that's why there's a distinction.

6 COMMISSIONER LAROCCA: I would think the
7 definitional problem is solvable.

8 But notwithstanding that, we do have the
9 authority we're exercising here for residential. And
10 what we are taking account of is their expressed
11 willingness to go beyond that.

12 We don't need to authorize them to do that.
13 They can choose to forgo fees at their own -- are they
14 under a legal obligation to impose such fees?

15 MR. MCGOWAN: Yes. I believe yes.

16 And so, that's why we did the
17 one-commissioner order, to make sure that they were
18 authorized to not charge late payment charges.

19 COMMISSIONER LAROCCA: For non-residential.

20 MR. MCGOWAN: For residential and
21 non-residential.

22 COMMISSIONER LAROCCA: I don't want to take
23 this too far, but I would wonder why we would require
24 them to impose a fee that may or may not be one they

1 choose to impose, as the case here, that we would have
2 to relieve them from the obligation of imposing a fee.

3 I don't even get that.

4 CHAIRMAN BROWN: My guess is it may have
5 something to do with discriminatory actions. I mean, I
6 think one thing we do insist upon from the utilities is
7 kind of consistent treatment of consistent customers.

8 And so, if you leave too much to discretion
9 there might be a concern that there somehow would be an
10 inconsistent.

11 I don't know. I'm guessing at this point.

12 COMMISSIONER LAROCCA: Just one quick
13 question.

14 MR. MCGOWAN: I believe you're right.

15 COMMISSIONER LAROCCA: We're dealing here
16 with electric and gas. Is there any consideration to
17 other services, telecommunications in particular?

18 MR. INSOGNA: No, sir.

19 COMMISSIONER LAROCCA: Leading to the
20 musical question, why, sir? Why not?

21 MR. HUME: What we have found with respect
22 to the Sandy event is that cable operators and telephone
23 companies have been fairly aggressive with their credit
24 policies and also with respect to late payment charges

1 and the like related to customers that were impacted by
2 Sandy.

3 CHAIRMAN BROWN: I think it is a valid
4 question. Commissioner Larocca often comes up with that
5 -- this somewhat inconsistent treatment of different
6 technologies in different parts of the world that we
7 regulate, and I think we have been challenged on this
8 before, and perhaps as a takeaway from the storm we
9 should take a look at perhaps whether those
10 inconsistencies are justified. They may be, but we
11 should at least think it through, I would think.

12 Commissioner Sayre, I know you wanted to say
13 something.

14 COMMISSIONER SAYRE: I do support not making
15 the late payment charge waiver mandatory for all
16 customers in these counties. I just have visions of
17 business owners who were not affected delaying their
18 payments just to improve their cash flow for a few
19 months, and perhaps sticking it either to the utilities
20 or to the rest of the customers, as long as the affected
21 businesses really do get the waivers from the utilities.

22 My question for Peter is: If a customer
23 feels that they have been treated badly, a commercial
24 customer, under the order here that's proposed, and they

1 complain to the Commission that the utility didn't give
2 them a late payment charge waiver but they were severely
3 affected by the storm, what options do we have as a
4 commission to resolve that complaint?

5 MR. MCGOWAN: I think the first level is
6 going to be there will be a complaint which will be
7 resolved by our consumer services office. And I think
8 they will be able to appropriately reflect the
9 agreements that the utilities have made and make sure
10 that they are properly enforced.

11 MR. BEDROSIAN: Commissioner, we have, from
12 each of the utility companies, a definition that
13 attempts to describe affected customers. Those being
14 permanent or temporary loss in income, significant
15 damage or destruction to their home or business.

16 So, just using that simple definition for
17 right now, if the scenario you presented comes forward,
18 we would investigate the situation that that customer
19 experienced and apply this definition.

20 And, if indeed there was a loss of income,
21 for example, that small business needed to close down
22 for four days, there is a four-day loss of income, that
23 obviously is going to affect that business owner's
24 ability to pay his or her bills.

1 So, we would expect that the company would
2 waive the charge. And if they don't, I think we would
3 probably instruct them to.

4 COMMISSIONER SAYRE: Thank you.

5 COMMISSIONER LAROCCA: Mr. Chairman, I have
6 a suggestion perhaps that would close the loop on my
7 concern.

8 In a very important paragraph on page 4, we
9 start with whom we're directing and then we go to whom
10 we are providing authorization to treat.

11 Yet the ordering clause, paragraph two on
12 page 5, is a little bit unclear. It says, "each utility
13 providing relief from late payment charges as
14 directed" -- well, maybe it's not so unclear, applying
15 only to the directing clause.

16 If we could clarify that the report we will
17 receive following the period were to also include a
18 report on the waivers that the companies granted on the
19 discretion we're giving them, that would give us a body
20 of knowledge and experience on how this worked.

21 Here, again, I'm operating from the
22 assumption we have all built into this that the
23 companies are, in fact, living up to what they've said.
24 And they have been doing it.

1 And so, the only thing we would be adding
2 here is that that report deal with both the directed
3 relief and then the discretionary relief. And we would
4 have a full picture of what that performance was.

5 And I would ask that the part that deals on
6 the discretionary part, when it reports on those
7 categories, it be clear about what category. Don't lump
8 it entirely. I would like to see to what extent we're
9 able to see what the small business part of that
10 experience was as opposed to other classes.

11 CHAIRMAN BROWN: And I think, ideally, both
12 positive and negative. In other words, how many people
13 that they waived, and were there any requests that they
14 denied. Not that they were wrong because they denied
15 it, but we should at least know if there was a large
16 universe or it was really just a one off.

17 COMMISSIONER HARRIS: My only concern with
18 that is the after the fact. I mean you're talking about
19 pizza shops, the candy store, the mom-and-pops that have
20 to get denied. Well, by the time we go through these
21 reports and give them relief, it's sort of after the
22 fact.

23 So, I just want to hear just how impossible
24 is it, or how difficult is it, to take that small

1 business -- is there a way to determine which customers
2 are small business right now by the tariff?

3 CHAIRMAN BROWN: And I think the problem is
4 the tariff class. We have tariff class for residential
5 customers. So it's really easy to look at those tariff
6 classes and say those are residential customers.

7 Small commercial users could range from
8 anything from the mom-and-mop store to a small
9 institution, a school, or I mean it could be a dozen
10 different type things.

11 COMMISSIONER HARRIS: How big a cut is it?
12 So, there is no separate class for small business? It's
13 small commercial, and that class is fairly broad?

14 MR. INSOGNA: The utilities differ in the
15 complexity of their service classes. Con Ed has more
16 than a dozen, I think it's safe to say, at least on the
17 electric side.

18 COMMISSIONER HARRIS: Right.

19 MR. INSOGNA: Some utilities might have no
20 more than residential, then small commercial, large
21 commercial. So it could be as few as three, but it's
22 certainly possible to differentiate between the service
23 classes.

24 COMMISSIONER HARRIS: It is possible?

1 MR. INSOGNA: Yes.

2 COMMISSIONER HARRIS: So I guess I'm not
3 entirely convinced that we couldn't provide relief
4 upfront for small businesses at this point. I just
5 would hate to look at this report after the fact for
6 late payment charges.

7 And I have, again, good faith that the
8 companies will do this, but it becomes a little bit --
9 we're placing the burden at some point on these small
10 business owners if they are, in fact, denied or to prove
11 their case.

12 CHAIRMAN BROWN: But that's a tradeoff with
13 Commissioner Sayre's concern, if you make the definition
14 too broad that you end up including people that probably
15 shouldn't properly be included.

16 COMMISSIONER HARRIS: But again, we're not
17 saying -- are we saying -- I understand. I just --
18 putting more burden on these small mom-and-pop pizza
19 shops and candy store owners.

20 CHAIRMAN BROWN: Well, hopefully if they're
21 affected by Sandy and the utilities are dealing in good
22 faith they shouldn't have a problem. That's what the
23 report's for, to verify that fact that they shouldn't
24 have a problem.

1 What we might institutionalize is something
2 if they feel that they are denied that we have a place
3 for them to go. And I know voluntarily, if they happen
4 to find our number they'll call us and file a complaint,
5 but maybe we should be -- a way of being a little more
6 proactive in the bills, if you've got a problem with
7 late payments and you don't feel the utilities treated
8 you fairly.

9 MS. SLOANE: Could I just clarify, though,
10 that the utilities, they don't have to come -- they
11 shouldn't have to come forward in the affected areas.
12 They should already be identified if you look at the
13 definition of what the utilities are saying are affected
14 areas.

15 So, for example, Grid, all KEDNY, KEDLI
16 area, so all non-res in there, all non-res. There's no
17 distinguishing -- they are not distinguishing between
18 small business, large business, whatever. It's a
19 blanket that they're not going to make them pay that
20 late payment charge. It's a blanket waiver.

21 So I think the fact is, what we're saying is
22 if there's someone who's in an area that may be outlying
23 that's been difficult to identify, then you need them to
24 come forward.

1 But I think the utilities at this point
2 should have a very good idea of those businesses and,
3 again, the large class of businesses. Because we're
4 concerned about not only the small businesses, yes, but
5 there are also some larger businesses that may need the
6 waiver of these charges, as well.

7 I hope that's helpful.

8 COMMISSIONER LAROCCA: I would just say to
9 my colleague, I agree with you, Maureen, but I'm willing
10 to recede from my suggestion on the hope that, one,
11 there is good faith and, two, we see a report that
12 justifies that expression of faith.

13 And I want to end with the question I'm not
14 going to ask is: Why do we have different categories
15 for different companies? But that's not the question
16 I'm asking today.

17 MR. INSOGNA: Thank you.

18 MR. MCGOWAN: Can I just suggest a possible
19 edit here. If you have the order, I'm on page 4 and 5.

20 I think I might suggest towards the bottom
21 of page 4, where we say, "therefore, in this order, we
22 further provide utilities with the discretion to waive
23 such charges through January 30 for non-residential
24 customers" -- I would add -- "consistent with their

1 commitments to the department to provide relief to"
2 blah, blah, blah, whatever that definition is -- "within
3 the areas, as well as residential customers outside this
4 area."

5 Then, in order clause two, "require that
6 each utility provide relief from late payment charges as
7 discussed in the body of this order."

8 COMMISSIONER LAROCCA: And then "shall track
9 and report."

10 MR. MCGOWAN: Track and report.

11 CHAIRMAN BROWN: Once again some realtime
12 editing here. Okay. Is everybody okay with that? So,
13 we'll incorporate that.

14 Are there any other comments or questions on
15 item 202?

16 All those in favor of the recommendations as
17 described by Marty and as changed by us, please say aye.

18 (Response of "aye".)

19 Opposed?

20 (No response.)

21 Hearing none, the recommendations are
22 adopted.

23 Next item is item 203, cases 12-M-0533, etc.
24 Petitions for waiver of tariff charges by Con Edison,

1 Orange & Rockland, New York State Electric and Gas, and
2 The Brooklyn Union Gas Company, National Grid, KeySpan
3 Gas East Corporation, all their names. Presented by
4 Doug Elfner, Director of Consumer Policy.

5 Doug.

6 MR. ELFNER: Good morning, Chairman Brown
7 and Commissioners.

8 Item 203 concerns requests by energy
9 utilities to waive certain charges for utility delivery
10 service for customers who were out of service for
11 extended periods of time as a result of Sandy.

12 Customers who were out of service obviously
13 did not consume energy for that period of time and
14 therefore they avoided charges on the supply portion of
15 their bill.

16 On the delivery portion of the bill,
17 customers who were out of service also avoided the
18 volumetric or usage-based portion of delivery charges
19 for the period of time that they were out of service.

20 However, a portion of the delivery bill is a
21 fixed charge, known as the customer charge, that does
22 not depend on how much energy the customer uses. For
23 residential customers, the customer charge represents
24 from 10 to 20 percent of the customer's total bill.

1 For Con Ed, for example, the residential
2 customer charge is \$15.61 per month. For
3 non-residential customers, the charge varies widely
4 depending on the customer's service classification. And
5 for some customers it's more than \$1,000.

6 Utility tariffs require that the fixed
7 customer charge be assessed even to customers who were
8 out of service for prolonged periods of time. Energy
9 utilities that serve customers who incurred prolonged
10 outages as a result of the storm have requested approval
11 to waive a portion of the fixed customer charge to
12 reflect the fraction of the month the customers were
13 without service.

14 For example, customers who were out of
15 service for five days would receive a bill credit of
16 5/30ths of the customer charge.

17 Requests were filed by Con Edison, Orange &
18 Rockland, NYSEG for its Brewster and Liberty divisions,
19 and National Grid for its downstate gas operations.

20 As some context for this item, I'd like to
21 provide a brief overview of the Commission's existing
22 practices regarding waiver of utility tariffs related to
23 the customer charge during service outages.

24 For electric, gas, and steam utilities, in

1 the last two decades the Commission has not provided
2 bill credits due to outages resulting from any storm.

3 The Commission authorized bill credits in
4 that period only on two occasions, neither of which were
5 storm-related. Those two instances are the Long Island
6 City outage in 2006 and the steam pipe rupture in
7 Manhattan in 2007.

8 In both cases there was at least an
9 assertion that the service disruption was caused at
10 least in part by the company.

11 The Commission's action in the Long Island
12 City case is particularly instructive. It's there the
13 Commission explicitly stated that its decision to
14 provide bill credits was limited to the circumstances in
15 that case and that, "storm-related outages generally are
16 of the kind that do not warrant the extraordinary
17 treatment discussed in the order", the extraordinary
18 treatment referring to the credits.

19 On the telecommunications side, Verizon's
20 tariff requires it to provide a credit upon customer
21 request if an interruption continues for at least 24
22 hours.

23 The amount of the credit depends on whether
24 or not the interruption is caused by a condition that is

1 within or outside of the company's control.

2 Returning to the specific petitions before
3 you, Con Edison proposes to calculate the credit for
4 electricity customers who had a service outage based on
5 an average duration of outage in Manhattan of five days,
6 and an average duration of outage elsewhere in its
7 territory of ten days.

8 For residential customers, this amounts to a
9 credit of \$3 for customers in Manhattan, \$6 for
10 customers outside of Manhattan.

11 Con Edison also proposes to provide a credit
12 for steam customers who did not receive service based on
13 an average length of outage of eight days. Con Edison
14 has volunteered to absorb the cost of this proposal,
15 which is approximately \$6 million.

16 Orange & Rockland proposes to provide a
17 similar credit for its electricity customers based on an
18 average duration of outage of five days. The company
19 reports that the vast majority of its electricity
20 customers lost service due to the storm, and it proposes
21 to provide the credit to all customers in its service
22 territory. For residential customers, this would amount
23 to \$3.

24 Orange & Rockland has also volunteered to

1 absorb the cost of this proposal, which is approximately
2 \$800,000.

3 NYSEG proposes a similar credit for
4 electricity customers in its Liberty division, which
5 serves portions of Sullivan and Delaware Counties, and
6 its Brewster division, which serves portions of
7 Westchester, Putnam, and Dutchess.

8 NYSEG calculates a credit based on an
9 average duration of outage of five days in the Liberty
10 division, seven days in the Brewster division. Credit
11 would be \$3 for residential customers in Liberty and \$4
12 for residential customers in the Brewster division.
13 NYSEG has also volunteered to absorb the cost of the
14 proposal, which is approximately \$500,000.

15 National Grid proposes to issue a credit to
16 its gas customers that lost service due to this storm.
17 The credit would be based on the duration of the outage
18 in individual communities, which varied widely.

19 The cost of this proposal is estimated by
20 Grid to be \$250,000. And National Grid has volunteered
21 to absorb that cost.

22 The recommendation is to approve these
23 company proposals. These proposals are intended to
24 address the customer impact that's associated with

1 electricity that was not delivered but that, under
2 utility tariffs, customers would otherwise be required
3 to pay through the fixed customer charge.

4 The credits are not in any way compensation
5 for hardship that utility customers endured as a result
6 of the storm. Instead, they are simply intended to
7 ensure that customers are not billed at this time for
8 utility service that they did not receive.

9 In view of the extraordinary period of
10 widespread, sustained outages that occurred as a result
11 of this storm, waiver of a portion of the fixed customer
12 charge to be funded by utility shareholders is in the
13 public interest, and advisory staff recommends that the
14 Commission approve these requests.

15 We're also continuing to work to obtain
16 additional benefits and protections for utility
17 customers.

18 Going forward, we plan to revisit our
19 policies, including customer responsibility for delivery
20 charges during outages, with a view of improving utility
21 accountability for storm preparation and the restoration
22 performance. And we'll be discussing those issues with
23 you in the near future.

24 Thank you.

1 CHAIRMAN BROWN: Thank you, Doug.

2 I started out this whole presentation with
3 the overview that this is very much a first step in the
4 process and an immediate step. These are petitions that
5 came to us from the utilities that offered to waive some
6 of the fees.

7 Frankly, it's not a whole lot of money for a
8 customer considering what customers went through, but
9 what it does kind of provide is an assurance that, at
10 least for the time generally that they were out of
11 electricity, they're not paying for service that they
12 didn't get.

13 I mean, obviously, they don't pay for the
14 commodity. Their meter wasn't running. They had no
15 electricity. But this makes sure that they're not being
16 charged some sort of fixed fee for the period of time.

17 Now, it's not exact. We can't get every
18 customer down to the hour that they were out, but it's
19 rough justice in the sense that they tried to apply it
20 as fairly as they could.

21 We need -- we will -- this does not in any
22 way symbolize that we're done; okay, that takes care of
23 Hurricane Sandy. We gave everybody \$3 back and
24 therefore, you know, everybody -- that's not where we're

1 going here.

2 We will follow up as appropriate. The
3 Moreland Commission is following up already. We will
4 take a hard look at performance. We will take a hard
5 look at every aspect of the storm and what we have in
6 our disposal.

7 But this petition is before us today. It
8 does provide a small modicum of relief. And it is fair
9 that, in my mind, customers are not paying for a service
10 that they obviously wanted and could not receive.

11 So, I would recommend that we approve this
12 with the note that this doesn't end anything.

13 Commissioner Acampora.

14 COMMISSIONER ACAMPORA: Thank you,
15 Mr. Chairman.

16 I just want to follow on what you said
17 because I think it's very important, that after the
18 Moreland Commission's investigation is over that we want
19 to make sure that every effort is being made to take
20 care of customers, whether they're residential or
21 whether they're small business people, and we want to
22 make sure that they are treated fairly.

23 So I'm asking, Mr. Chairman, that you look,
24 along with the staff, get the staff to do some checking

1 into some of the questions that were raised here today
2 that we just don't seem to have a lot of clarity on, to
3 review our policies and mechanisms that have been
4 available to us in the past, and let's take a good look
5 at these things to make sure that when an extraordinary
6 circumstance arises -- and we talked about this last
7 month about the new norm and what's going on -- that
8 we're really prepared to deal with it.

9 And I think it's important also, and
10 behooves our utilities to make sure that they're doing
11 the right thing by the customers. We're always trying
12 to strike that balance, but then Superstorm Sandy comes
13 along and the balance is really skewed and it's not
14 favorable for customers.

15 So, I'm asking also that the utilities
16 consider doing more for the right thing for customers,
17 whether they're residential or whether they're small
18 business people, because the impact that this storm has
19 made to our state, we'll be talking about it for years.

20 And so, I'm hoping that the staff will come
21 back to us with some recommendations that possibly we
22 may wish to act upon in order to do a better job and to
23 be more responsive to the masses of people rather than
24 concerning ourselves -- things in New York State for our

1 utilities have been pretty good.

2 And I think that there are times where we
3 have to measure what is also good for the people who
4 were on the receiving end, which unfortunately was not
5 so good this time.

6 CHAIRMAN BROWN: Any other comments or
7 questions?

8 Commissioner Larocca.

9 COMMISSIONER LAROCCA: When we got at this
10 subject in November, admittedly late in the month, and
11 with an earlier than usual turnaround this month, we've
12 said that we'd come back in December with a full policy
13 discussion of this entire area, which we're not really
14 able to do because the time has not allowed it.

15 I would like to establish what the timetable
16 is going forward for that policy review, and enumerate
17 some of the questions that I think we really have to get
18 at.

19 Certainly one came up already today, and
20 that is the different treatment of different species of
21 customers.

22 But in the three matters that we've been
23 kicking around the building for the last few weeks --
24 late payments, credits, suspension of terminations -- we

1 found that we were dealing with different categories of
2 customers in all three. And the explanation of why each
3 was here in a different form was not completely
4 satisfactory.

5 So one of the things I think we would want
6 to look at is what is our across the board policy
7 categories for this kind of relief. It shouldn't be ad
8 hoc. It shouldn't be a company by company differential
9 that can't be justified and so forth.

10 So, I think if we were to clarify which
11 customers we're talking about, clarify and express what
12 our actual policy is on these matters, whether relief
13 granted is part of or exempt from further calculation in
14 the RDM or other processes that come along, and
15 establish a timetable for when we come back to this
16 subject.

17 My concern, because the clock has been what
18 it is and now we're in the holiday period and so on,
19 that the broader concerns, the broader policy we have to
20 examine not get lost in the ether as we get into a new
21 year.

22 So, I would like hopefully we go out of here
23 today with a fix on a timetable for whatever burdens
24 we're going to put on people to come back to us with

1 propositions, that that be a fixed time and we know when
2 we're going to bear down on these.

3 CHAIRMAN BROWN: Let me add to that.

4 I think this can be separated completely
5 from the Sandy investigation of utility actions. I
6 think you're actually -- and it would make it go faster
7 if we separate it from that program.

8 COMMISSIONER LAROCCA: We'd be dealing with
9 the overall policy.

10 CHAIRMAN BROWN: Overall generic policies,
11 whether it's -- what sort of outage it is, and I think
12 even across technologies I think you're suggesting as
13 well as class of customers within those different
14 businesses.

15 And if we make it, I think, a more generic
16 approach we could -- if we tie it in too much to Sandy,
17 we don't even know when we're going to begin our Sandy
18 investigation. We know we're going to do it after the
19 Moreland Commission is done.

20 So, I would suggest -- well, I'll look at
21 Peter, but I would think that we could be back in
22 February with a good generic description of what our
23 policies currently are, and what maybe some of the
24 options might be if we feel the need to change some of

1 our policies.

2 MR. MCGOWAN: Can I suggest that I --

3 COMMISSIONER LAROCCA: As the color drains
4 from his face.

5 CHAIRMAN BROWN: I didn't say January,
6 Peter.

7 MR. MCGOWAN: Let me suggest that I, with a
8 couple of others, put together -- I've already thought
9 through a couple of things that I think we should be
10 doing to revise our policies, but there are several
11 different categories, and I think the different things
12 that we're trying to address are going to have different
13 timelines.

14 So what I'd like to do is put on a piece of
15 paper the different things that we're going to look at
16 and the timelines associated with them so that we can
17 all get on the same page.

18 And obviously, there's a concern about
19 getting these things done timely so that they don't get
20 lost as we're -- because the other thing that we're
21 trying to think about is how do these new policies get
22 worked into different rates and rate plans as we work on
23 them.

24 Not that all of them -- not that some of

1 them couldn't be done outside of that, but some of them
2 will be done in that connection.

3 CHAIRMAN BROWN: No. I think that's a
4 really important point.

5 Where we tend to implement these policies is
6 in individual cases and I'm not sure when the next
7 individual case is going to be coming to us, but I know
8 we've got a lot cooking at this point in time. So, we
9 want to move at a proper speed that these can be
10 properly considered.

11 Now, if we've got a final settlement it's
12 going to be difficult perhaps to go back in there, but
13 we'll have to explore that.

14 So, you'll provide us a timeline for kind of
15 some different categories.

16 MR. MCGOWAN: Yes.

17 COMMISSIONER LAROCCA: I would like to use
18 the phrase descriptor of a scoping document that
19 describes what we're going to do, of which one element
20 is the timing as it may vary from one element to
21 another. But a scope of what this policy review is and
22 what the key questions are, maybe we can contribute to
23 that.

24 MR. MCGOWAN: Absolutely.

1 COMMISSIONER HARRIS: I agree.

2 I think these are great points and I think
3 we'd all like to have input into that scoping document
4 since we all have similar issues and different points
5 and really have some issues that we want to address in
6 that scoping document.

7 So, meeting with all of us separately, some
8 of us together, I think would be very helpful to make
9 sure it's comprehensive.

10 CHAIRMAN BROWN: Is there anything else on
11 item 203?

12 COMMISSIONER ACAMPORA: One more question.

13 CHAIRMAN BROWN: Yes.

14 COMMISSIONER ACAMPORA: Can I get a
15 clarification on security deposits? The fact that,
16 again, residential, business people, may be forced to
17 relocate and how does the security deposit -- is it
18 waived? Do they have to pay another one, people who
19 were affected?

20 MS. SLOANE: What's happened is that the
21 utilities for customers who were affected by the storm
22 have waived utility deposits, security deposits, for
23 both residential and non-residential customers. That is
24 in effect at least through the end of January.

1 I know Con Ed has given a commitment not to
2 do security deposits for residential or non-residential
3 until April 1st.

4 Again, I think what's happening is we're
5 revisiting. We've got so many people who are in
6 recovery who aren't recovered yet, who are in recovery.
7 So, again, this is -- we're doing things, right now we
8 are looking at the end of January. Then we're going to
9 be looking at going forward.

10 But security deposits have been waived.

11 COMMISSIONER ACAMPORA: Is there anything
12 else, Sandra, that while we're having this discussion
13 that we've missed that you asked the utilities to do to
14 take it a step further in any area?

15 MR. INSOGNA: Just may I add, Commissioner
16 Acampora, in the late payment charge order, because the
17 effect of the late payment charge order might result in
18 customers paying bills later than they might otherwise
19 do so, customers could become delinquent as that's
20 defined in our regulations, and could be subject to a
21 demand of security deposits.

22 So, this order also takes note of that and
23 directs the utilities to show forbearance in requesting
24 security deposits if any customer becomes delinquent as

1 a result of adherence to this.

2 COMMISSIONER HARRIS: Can I ask -- what
3 about reconnection fee, do you know what the utilities'
4 policy, Con Ed for example, if customers are terminated
5 at some point if there is a reconnection fee?

6 MS. SLOANE: Right now -- and I think this
7 gets back to what Commissioner Acampora was asking about
8 about fees. The fees have been waived for customers who
9 are affected by the storm.

10 COMMISSIONER HARRIS: For reconnections?

11 MS. SLOANE: Yes.

12 COMMISSIONER HARRIS: So if they get
13 terminated in February for no payment to reconnect they
14 will not --

15 MS. SLOANE: They're not going to be
16 terminated.

17 COMMISSIONER HARRIS: Ever?

18 MS. SLOANE: They won't be terminated in --
19 they should not be terminated in February because of the
20 protections that are in place.

21 COMMISSIONER HARRIS: So at what point -- if
22 a consumer has not paid their bill in how many months?
23 Will they never be terminated?

24 MS. SLOANE: They will be terminated. I

1 mean, they can be terminated. I shouldn't say no one is
2 going to be terminated. But, as you know, it's during
3 the winter so we have several protections that are in
4 place.

5 And hopefully in January customers who are
6 payment-troubled are going to be going in and getting
7 emergency HEAP payments. They've got HEAP payments.

8 Then, as you know, because of our voluntary
9 agreements with the utilities, they're going to give
10 those people -- put them on a new deferred payment plan.

11 Again, the whole idea of what we're trying
12 to do is to minimize terminations through the winter.
13 So as far as customers who are affected by the storm,
14 there should not be any reconnection fees.

15 They also -- if I can turn to do some of the
16 other fees for Commissioner Acampora at this point.
17 Access fees have been suspended. They've cancelled
18 credit action which was ongoing prior to the storm.

19 They have suspended field collections,
20 temporary suspension of credit notices, temporary
21 suspension of cold weather interviews.

22 Again, there's a list of things that are
23 going on. The request for deposits I covered. Again, I
24 think that what's really important, too, I want to

1 mention is that one of the practices that we've really
2 encouraged are consumer advocates at all the utilities.

3 These are people of a social service
4 background. And the utilities have these people out in
5 the field. In certain cases they're going door-to-door.
6 I know Grid has people, consumer advocates going
7 door-to-door in the flooded areas trying to help assess
8 and coordinate.

9 So, again, what we're trying to do is take a
10 mosaic of all the programs and trying to make sure the
11 customers, number one, that we can identify them. And
12 it's really changed.

13 I've never been in a situation where we had
14 to deal with customers who haven't had an outage but
15 suddenly they've got their relatives living at their
16 house. So now suddenly instead of a household of four
17 people, it's a household of 10 or 12.

18 And that customer's -- their electric bill
19 is going to go up. Their water bill is going to go up.
20 Their food bills.

21 So, those are the things we want to have the
22 utilities reach out to those customers and help them,
23 get them to the programs they need, make sure these fees
24 and these other things are not there. Again, trying to

1 give them -- just really helping them on the road to
2 recovery.

3 MR. INSOGNA: If I can add with respect to
4 the reconnection fees.

5 Outside of the voluntary suspension, which I
6 think for most utilities extends through January 31st,
7 and then the other special winter protections that are
8 in place, on a normal, business as usual, day-to-day
9 basis, customers do face termination of service for
10 non-payment.

11 When a customer has been terminated for
12 non-payment, once they've paid the amount that's past
13 due they can get service reconnected.

14 Generally a reconnection fee will be billed
15 on the following month's bill. All the utilities have
16 reconnection fees in their tariffs. It reflects the
17 amount of work that the utility has to do to go out and
18 actually terminate the customer and then turn them back
19 on after they've paid.

20 So, there are reconnection fees that
21 customers can face. All of the utilizes have low income
22 programs. And those programs generally have provisions
23 which provide at least a partial -- either a partial or
24 full waiver of reconnection fee for customers who

1 qualify as low income.

2 Again, as Sandra said, during this period of
3 time when the utilities are showing forbearance and not
4 terminating customers, there is no reconnection fee
5 because they weren't shut off in the first place.

6 CHAIRMAN BROWN: Any other comments or
7 questions?

8 Well, I would like to take item 203 to a
9 vote.

10 All those in favor of the recommendations,
11 please say aye.

12 (Response of "aye".)

13 Opposed?

14 (No response.)

15 Hearing none, the recommendations are
16 adopted.

17 I'd like to take a break until 25 after.
18 Let's take a ten-minute break, and then we'll finish up
19 our agenda.

20 (Recess taken.)

21 CHAIRMAN BROWN: Okay. I'd like to
22 reconvene the session.

23 Next up is item 301, case 11-M-0710, in the
24 matter of reviewing and amending electric submetering

1 regulations. Presented by LuAnn Scherer, Chief in the
2 Office of Consumer Policy, and Diane Dean, Assistant
3 Counsel in the Office of General Counsel, is available
4 for questions.

5 LuAnn.

6 MS. SCHERER: Good afternoon, Chairman Brown
7 and Commissioners.

8 Item 301 recommends that you adopt revised
9 residential electric submetering regulations. Earlier
10 this year, at the January 19th and again at the August
11 16th sessions, you approved issuance of draft
12 residential electric submetering regulations for public
13 comment.

14 Since January, staff has reviewed comments
15 from more than 25 parties, including elected officials,
16 consumer advocates, submeterers and submeter
17 manufacturers, building owners and managers, and
18 utilities. We have also held numerous meetings with
19 some of the same stakeholders.

20 The first set of comments we received
21 resulted in significant changes to the proposed
22 regulations which we issued for comment in the late
23 summer.

24 The second set of comments resulted in only

1 minor wording changes; therefore, additional public
2 comment is not necessary.

3 The electric residential submetering
4 regulations were last revised in 1988. In addition to
5 the 2003 Public Service Law amendments, which extended
6 the statutory requirements of HEFPA to submeterers,
7 numerous commission orders issued over the last 24 years
8 have established additional submetering requirements.

9 As the use of submetering continues to grow,
10 it has become apparent that the department's approval
11 process for most submetering petitions could be
12 streamlined, while adding requirements in instances when
13 additional tenant protections are necessary, such as
14 when landlords plan to submeter electrically heated
15 buildings.

16 The proposed regulations reflect the HEFPA
17 obligations, the requirements established in Commission
18 orders, and the streamlined approval process all in one
19 document.

20 I will briefly describe some of the more
21 notable changes to the regulations in comparison to the
22 current regulations.

23 As I previously stated, the new regulations
24 clarify the submeterers' HEFPA requirements in detail,

1 including, for example, the submeterers' obligation to
2 provide budget billing, deferred payment agreements, and
3 annual notices of customers' rights and
4 responsibilities.

5 The new regulations incorporate Commission
6 orders that have been issued in submetering
7 authorization since the submetering regulations were
8 first adopted. Some examples are the special
9 protections in electric heating situations which you
10 adopted in 2010 and 2011.

11 The new regulations create a bifurcated
12 review process. Since the majority of submetering
13 issues do not raise new policy issues requiring
14 Commission deliberation, the new regulations require
15 that request to submeter in most situations will be
16 submitted as a notice of conversion to submetering,
17 which is reviewed by staff and approved and confirmed by
18 an abbreviated Commission order.

19 However, a case by case review of petitions
20 to submeter will be conducted in certain situations,
21 such as when electric heat is currently included in
22 rent, or when a building owner seeks to replace direct
23 metering with submetering, or when new policy issues
24 arise. These reviews when completed will result in a

1 comprehensive Commission order.

2 The new regulations require that submeters
3 installed after adoption of the regulations must comply
4 with the same quality standards as those required of
5 utilities. The new regulations also require annual
6 random testing of submeters.

7 Staff's intention in adding the testing
8 requirement is to provide submetered tenants with the
9 same accuracy protections as electric utility customers.
10 Moreover, the testing will help staff in resolving
11 billing complaints by providing verifiable and reliable
12 data.

13 In addition, all submetering systems
14 installed after 2016 must allow for the termination of
15 submetered electric service to individual units.

16 The new regulations provide remedies for
17 when submeterers fail to adhere to tariff service
18 conditions and fail to cure such failures.

19 Enforcing compliance with HEFPA and
20 submetering regulations has been challenging, primarily
21 because of the number of submeters that exist, and the
22 limited remedies currently available to the Commission.

23 Therefore, in addition to specifying the
24 conditions pursuant to which each submeterer must

1 provide service, the proposed regulations include a new
2 remedy if they fail to abide by the conditions.

3 Failure to comply with the Commission order
4 approving submetering, or to abide by HEFPA, may result
5 in an administratively imposed reduction in the rate cap
6 submeters are allowed to charge tenants.

7 Staff believes the new regulations achieve
8 an appropriate balance between the benefits of
9 submetering and our obligation to protect submetered
10 residential customers.

11 In summary, we believe the new regulations
12 balance consumer protections and energy efficiency
13 goals.

14 We are requesting that you adopt the
15 regulations, which will go into effect upon the
16 Commission's issuance of its memorandum and resolution
17 adopting the regulations.

18 This concludes my presentation. Diane and I
19 are available to answer questions.

20 CHAIRMAN BROWN: First of all, thank you for
21 this long, ongoing process and your flexibility to
22 really listen to all the varied parties and to try to
23 adjust. I think it was a really positive process of
24 give-and-take along the way. Kind of the best of

1 regulatory policy in the sense that that's what we do
2 here.

3 And it tries to achieve -- obviously,
4 submetering tries to achieve a lot of different
5 objectives all at once, some of which conflict with each
6 other, been extremely controversial, and I'm kind of --
7 I think we achieved a pretty good balance here that,
8 hopefully, everybody -- maybe we won't have quite as
9 many submetering concerns and appeals now that the rules
10 are clear and set.

11 So, thank you for your hard work.

12 I'll open it up to comments or questions.

13 After all that, if you get no comments or
14 questions that's a...

15 COMMISSIONER ACAMPORA: I really --

16 CHAIRMAN BROWN: Can't stop herself.

17 COMMISSIONER ACAMPORA: I can't stop myself
18 because this has been going on for how long?

19 CHAIRMAN BROWN: How long have you been
20 here?

21 MS. SCHERER: It's been going on for awhile.

22 COMMISSIONER ACAMPORA: It's been a long
23 time. It is a complex issue. If there was an easy fix
24 to it...

1 But, again, that word "flexibility" is so
2 important. We have to be able to be flexible so that
3 when we see there is something that needs to be fixed we
4 can go back in and deal with it.

5 So, I think that we've come up with a pretty
6 good plan this time, but I'm sure down the road
7 somewhere we'll have to go back in and look at it again.
8 But, really, for everyone who did all the work on this,
9 it's certainly appreciated.

10 You did a great job. Thank you.

11 MS. SCHERER: Thank you.

12 CHAIRMAN BROWN: Well, with no more comments
13 or questions, all those in favor of the recommendations
14 as described by LuAnn, please say aye.

15 (Response of "aye".)

16 Opposed?

17 (No response.)

18 Hearing none, the recommendations are
19 adopted. World record time.

20 Thank you.

21 The fifth item for discussion is item 302,
22 12-E-0359, joint petition of NRG Energy, Plus Merger
23 Corporation and Genon Energy for a declaratory ruling
24 that Public Service Law Section 70 does not apply to a

1 proposed transaction, or in the alternative, for
2 approval of proposed transaction pursuant to Section 70.

3 This will be presented by Mark Reeder,
4 Director of Regulatory Economics. Ben Wiles is
5 available for questions. Ben has also been working on
6 this.

7 Mark, please begin.

8 MR. REEDER: Thank you.

9 As you mentioned, this is a merger
10 combination of two generating companies, NRG and Genon.
11 And we have -- we're talking about the New York part,
12 but keep in mind this is a national merger. Each
13 company owns 20,000 or more megawatts around the
14 country.

15 In New York, NRG has five generation
16 facilities for about 3,900 megawatts, and Genon has one,
17 the Bowline plant, which is 1,093 megawatts.

18 Now, we've had a lot of mergers come before
19 you. Usually they're pretty simple, but this case is
20 different. NRG is New York's largest owner of
21 generation and through this merger it's getting larger.

22 At some point a limit is reached and it
23 affirms New York holdings get too big, big enough to
24 become a real market power concern. And this is the

1 case here.

2 The concern is in the capacity market. New
3 York has a lot of markets, but the capacity market is
4 the one we have really focused on here. And it gets a
5 little complicated, but we're going to talk about two
6 capacity markets, the one that governs NRG's upstate
7 generators and the Bowline plant right now.

8 The second one is one that is being proposed
9 that would come -- may come into play in the future that
10 would govern NRG's downstate units in New York City and
11 the Bowline generation.

12 The merger creates some market power
13 problems in both of these markets, the one we have now
14 and the one we may have later. The major concern in
15 examining it is the possibility of market power exercise
16 through withholding supply via retirement of a plant or
17 through withholding supply via the mothballing of a
18 plant.

19 Just to define, mothballing is when a
20 company takes a plant out of service for awhile with the
21 intention of bringing it back.

22 Each of these actions would drive the price
23 up in the capacity market to the benefit of NRG's other
24 generation in their fleet that will stay in the market

1 and would get the higher price.

2 The draft order contains conditions to
3 accompany the merger approval. They govern both NRG's
4 operations in the upstate capacity market for right now,
5 and NRG's operations in the new Hudson Valley capacity
6 market that might get created.

7 So, for the upstate market the conditions
8 are as follows: For the Bowline plant upstate, if NRG
9 desired to retire the plant it would first have to offer
10 the plant for sale via an RFP process.

11 If no one wanted to buy the plant then that
12 would be an affirmation that retiring might make sense
13 and they could proceed with their desire to retire it.
14 If, of course, there was a bona fide buyer, then that
15 new buyer would buy the plant and the new buyer could do
16 what they want with it.

17 There is also conditions at Bowline if
18 Bowline were to want to mothball the plant. The company
19 would be required to supply an economic analysis
20 supporting the decision to mothballing the plant. If
21 the Commission agrees with that analysis then, fine,
22 they can go ahead and mothball the plant.

23 If the Commission finds the analysis
24 unsatisfactory, then the company could not mothball the

1 plant. They would, in that case, have two choices.
2 They could choose to continue operating, or they could
3 choose to go to an RFP process and sell the plant. That
4 would be their choice.

5 So, I just described the Bowline conditions.
6 Now, there's also conditions on the company's other
7 upstate generators. These are like the Bowline
8 conditions, but they're slightly relaxed.

9 The mothballing condition is the same as
10 what I just described for Bowline. They'd have to
11 provide a study. The condition if NRG wanted to retire
12 one of their upstate plants is relaxed a little bit.

13 Instead of going straight to an RFP process,
14 the upstate plants would have the opportunity to first
15 provide an economic analysis of the retirement. And if
16 the Commission found that satisfactory, they can just
17 retire the plant without an RFP process.

18 If the Commission found it unsatisfactory,
19 then, in order to retire the plant they would have to
20 first go through an RFP process and offer it for sale.

21 That's for the upstate plants -- I'm sorry
22 -- and for the upstate market as it exists right now.

23 Now I'm going to talk about this new market
24 that might exist. Since around 2007, the ISO's market

1 monitor, Potomac Economics led by David Patton, has been
2 recommending creating a new capacity market within New
3 York State.

4 As you know, we already have a couple of
5 capacity markets within New York State. We have one for
6 New York City and we have one for Long Island. This is
7 a recommendation of an additional one or more to govern
8 the Hudson Valley.

9 And so, one possible likely configuration
10 would be a market that would govern the New York City
11 portion of New York as part of one market, combined with
12 the Hudson Valley up to perhaps even as far as Albany.

13 And in that configuration, Bowline, the
14 plant NRG is asking to acquire here, would be in the
15 same market as NRG's existing New York City generators,
16 the Arthur Kill station and NRG's Astoria gas turbines.

17 So we would have all of them in the one
18 market. And that presents a market power problem there.
19 They would be a very large player in that market.

20 So, the order has conditions for that
21 eventuality, and they're the same as the ones I just
22 described. Bowline has its set of conditions. The
23 other generators, in this case it would be the New York
24 City generators, would have conditions that would be

1 slightly relaxed in the way I described for the upstate
2 generators.

3 Now, the one additional feature here in the
4 order and the conditions has to do with this market that
5 may come in to play. As soon as this market gets set
6 up, if it were, and it included New York City and the
7 Bowline generator in a separate market, that market is
8 likely to clear at a different price than the upstate
9 market.

10 And, in essence, Bowline would no longer be
11 in the same capacity market as NRG's upstate generators.
12 And so, the merger would then have no longer a negative
13 effect in terms of the upstate generators and the
14 competitiveness of that market because they would be
15 separate markets.

16 So the order has the conditions
17 automatically expire as regards to upstate generators on
18 the day that a new market in the Hudson Valley gets
19 created that includes Bowline.

20 Similarly, the conditions I described for
21 the downstate generators would automatically start on
22 the day that that new market is set up and that, in
23 essence, becomes the default.

24 Of course, either the Commission or NRG can,

1 ahead of time or at any time, say, hey, here's how this
2 new Hudson Valley market is really happening.
3 Conditions have changed since we issued this order. It
4 can, in NRG's case, can petition to change the
5 conditions, or the Commission's case can decide to
6 change them if things come about differently than was
7 expected. But the default is this automatic. One
8 switch is off; one switch is on.

9 So, let me just conclude by saying what has
10 been done here is an attempt to strike a balance between
11 the benefit of letting firms that have invested in New
12 York operate freely, and the need to protect the market
13 and consumers from price increases that could result
14 from the exercise of market power.

15 So, I've done a pretty quick overview, at
16 least for me. And if you have any questions, be happy
17 to get into more details.

18 But before that, I want to mention Ben Wiles
19 just has one sort of aspect he wants to clarify.

20 MR. WILES: There is one place in the order
21 where we are going to -- we'll circulate the order
22 again, but there's one place in the order where we're
23 going to propose some modified language. It doesn't
24 change the result at all. It certainly doesn't change

1 the intended result and it doesn't change the result
2 that Mark described.

3 But on page 16 we'll be making it clear in
4 that statement that NRG, in that case the operator,
5 always has the opportunity to just go on operating the
6 facility. If they come in and ask to mothball it and
7 the mothballing demonstration is not persuasive, one
8 option is for them to just go on operating it. They
9 don't have -- someone could read the language there
10 suggesting that they don't have that option of continued
11 operation, but that wasn't the intent and we're going to
12 make sure that's clear.

13 Also, there's going to be a little add
14 about -- elsewhere in the order we've referred to the
15 operator having the burden of proof, which they always
16 would in a petition anyway. It's a little bit
17 superfluous, but i think at page 16, since it's the
18 first time we're talking about this test, we should also
19 refer to the burden of proof there, too, so there'll be
20 a little delineation that makes that point, too. Makes
21 it clear.

22 CHAIRMAN BROWN: Thank you, Ben.

23 I got a couple of questions, Mark.

24 If NRG upon purchase decides to sell

1 Bowline, everything would revert back to the way it is
2 today? Those other conditions on their upstate plants
3 would disappear given the zone system that we have
4 today?

5 MR. REEDER: That's correct.

6 If they were to sell Bowline then they would
7 be taking away the act that caused us to do this and the
8 conditions would all go away. That's right.

9 CHAIRMAN BROWN: Go away.

10 And if the new Bowline owner -- we would do
11 our own market power analysis, but assuming that they
12 didn't have market power, none of these conditions would
13 apply to the new owner.

14 MR. REEDER: That's correct.

15 CHAIRMAN BROWN: Okay. Just want to get
16 that clear.

17 So, this only exists for as long as the
18 company decides they want to operate all their existing
19 facility and their new facility, these conditions apply.

20 MR. REEDER: Yes.

21 CHAIRMAN BROWN: Thank you.

22 Commissioner Larocca.

23 COMMISSIONER LAROCCA: I don't know if I
24 have comments or questions, but some clarifications.

1 I find our old friend the Walkill
2 presumption lurking throughout this conversation. And
3 if I understand the architecture of it, because Walkill
4 is in this narrative, that through Walkill we determine
5 that Article 70 doesn't attach to a transaction like
6 this because we earlier decided that upstream exchanges
7 of ownership don't bear on any of the matters that were
8 there underlying the original application of the Walkill
9 presumption.

10 MR. WILES: I'm not sure that's right.

11 COMMISSIONER LAROCCA: Okay. So I do have a
12 question, then.

13 How wrong was I?

14 MR. WILES: I think the Walkill is
15 lurking -- that's a good verb for that -- is lurking in
16 this item because of the fact that there is a proposed
17 transaction under Section 70.

18 And if we had decided that the Walkill
19 presumption applied, we would -- the decision-making
20 process would be somewhat different than it is here.

21 In the item we decide that the Walkill
22 presumption doesn't apply, and so we're doing a quote,
23 unquote, what is a full Section 70 review. And maybe
24 this causes the confusion. But the reason it doesn't

1 apply, and the much more aggressive look at the
2 transaction, is prompted by and focused on the
3 horizontal market power.

4 CHAIRMAN BROWN: Just reading page 5 here,
5 Commissioner Larocca, where Walkill was footnoted, it
6 says it applies unless there is a potential for harm to
7 the interest of captive utility ratepayers sufficient to
8 overcome the presumption.

9 And I think what they found here is that
10 unless it applies to this case. So, therefore, Walkill
11 doesn't apply, if I'm reading this correctly.

12 COMMISSIONER LAROCCA: It merely lurks.

13 Fair enough.

14 So, we go from there to Article 70 to a
15 conclusion at the back of all this, because we're
16 essentially dealing only with an ownership matter, that
17 the potential for -- what do we call it -- or the
18 requirement for an EIS is obviated by that earlier
19 determination in the architecture of all how that works.

20 That the only thing we're focused on are the
21 market power implications of this deal. There's nothing
22 else in the universe that requires our examination in
23 this deal. None of what you would ordinarily look at in
24 an EIS pertains here.

1 MR. WILES: That I'm pretty sure of.

2 I think there's a couple places in the order
3 where -- for example, there's a reference to vertical
4 market power and then an explanation, very short, that
5 it isn't really an issue in the case.

6 So, while what you said is true, this case
7 is about horizontal market power and that's the focus
8 and that's where the conditions are.

9 I don't think it's true that if we had found
10 something else we wouldn't have looked at that, as well.

11 For example, in another case -- maybe this
12 helps. In another case, Alliance Power, we -- that's
13 another one where -- one of the few other ones where we
14 said the Walkill presumption doesn't apply and we're
15 going to apply -- we're going to look at this more
16 closely.

17 What we ended up looking at more closely is
18 the practices of one of the participants in that
19 transaction and how well they basically pay their gas
20 bills for that project and elsewhere.

21 And we were worried that their unreliability
22 in paying the gas bill was creating an unreliability in
23 underlying generation and that was something that we
24 thought was -- should be a concern.

1 COMMISSIONER LAROCCA: Should, in that case,
2 a concern under whatever environmental review might have
3 taken place --

4 MR. WILES: No. Under Section 70.

5 COMMISSIONER LAROCCA: -- or earlier in the
6 staging?

7 MR. WILES: I'm not sure what...

8 COMMISSIONER LAROCCA: Apart from the EI --

9 MR. WILES: Yes. Apart from the SEQ
10 analysis.

11 COMMISSIONER LAROCCA: In this case, we're
12 saying with all the usual language that we have
13 concluded this will not have a significant adverse
14 environmental impact.

15 I guess the question I would have: On what
16 basis do we reach that conclusion? Is there not some
17 sort of minimum examination of potential environmental
18 impacts that you have to make before you conclude that
19 there are none?

20 So, what was the process that was applied
21 that allows us to come to this conclusion, other than
22 the one that we have previously established, that a mere
23 change of upstream interests is not of significant
24 environmental impact?

1 MR. WILES: Well, there is a process filing
2 with an environmental assessment, I believe. That is
3 done.

4 But I think fundamentally the conclusion is
5 the lack of environmental impact is based on the fact
6 that there is no proposal or no change in the parameters
7 or limitations on the operations of any of the plants,
8 so...

9 COMMISSIONER LAROCCA: So, if I had to
10 express it in a rule is the mere change of ownership
11 north of the facility is not grounds for a full
12 environmental review. Only if the new owners were going
13 to move the fence or put ethenol in the tank or
14 whatever.

15 MR. WILES: Or change the limitation, if
16 there's a NOx limitation in operation or -- yes.

17 COMMISSIONER LAROCCA: Okay. But behind
18 that conclusion of no adverse environmental impact there
19 has been some consideration of the possibility that
20 there might be that would justify the call for an EIS,
21 but a conclusion that whatever that review was did not
22 have that result. There was some level of inquiry.

23 MR. WILES: Yes. I think that's true.

24 COMMISSIONER LAROCCA: And that would be

1 found on the record.

2 MR. WILES: Yes.

3 COMMISSIONER LAROCCA: Thank you.

4 CHAIRMAN BROWN: Any other comments or
5 questions on this, or clarifications of course?

6 Commissioner Acampora.

7 COMMISSIONER ACAMPORA: Mark, you mentioned
8 about the possibility of creation of a new market. How
9 long has that discussion been going on?

10 MR. REEDER: Well, like I said, it's been
11 proposed in the annual state-of-the-market report by the
12 market monitor, David Patton. I know the 2007 report
13 had it in it. I don't know if it was before that, but
14 at least that far back.

15 There has been discussions since then, but
16 discussions in earnest have been taking place more
17 recently in the New York ISO's committee process to talk
18 about the possible parameters, what would the geographic
19 boundaries of it be. Serious discussions have been
20 underway.

21 I don't really know exactly when those
22 started. I know they've been going on this fall. I
23 believe before that time.

24 COMMISSIONER ACAMPORA: Thank you.

1 CHAIRMAN BROWN: This is something that's
2 pretty much FERC jurisdictional. The proposal or
3 proposed rule change would go to FERC for their
4 approval. We certainly can and will participate in that
5 process.

6 MR. REEDER: Chairman Brown, I just want to
7 do a clarification. You asked me a question and I want
8 to give a better answer.

9 You said if they were to cease operation at
10 Bowline, and then you went on to any of the other
11 plants, would these conditions go away.

12 CHAIRMAN BROWN: No. I said if they sell,
13 if they sell Bowline.

14 MR. REEDER: Right. And Bowline, I gave you
15 the right answer. But the other plants, if they were to
16 sell one of their other plants, that would not
17 necessarily make these conditions go away.

18 The implication would be if they sold an
19 upstate plant that was of sufficient size that would be
20 a reason to take away the upstate conditions. If they
21 sold a New York City plant of sufficient size that would
22 be enough to take away the New York City conditions.

23 CHAIRMAN BROWN: The point I was trying to
24 make --

1 MR. REEDER: It's not the fulcrum there.

2 CHAIRMAN BROWN: -- was that the conditions
3 that are being put on Bowline are very specific to this
4 company and their relationship with other plants and the
5 rest of the state. And they are free to sell this plant
6 to somebody else.

7 Unless they sold it to another company that
8 had some market power concerns, the conditions would
9 simply go away not only for Bowline but for their other
10 upstate facilities.

11 MR. REEDER: Right. If they sold the
12 Bowline plant the conditions on NRG for all other
13 facilities would go away.

14 COMMISSIONER HARRIS: Mark, my kids would
15 call that a do-over, not really a clarification.

16 CHAIRMAN BROWN: With that, any other
17 comments or questions?

18 So, we have a series of recommendations as
19 described by Mark with a couple of small changes as
20 described by Ben.

21 All those in favor of the recommendations,
22 please say aye.

23 (Response of "aye".)

24 Opposed?

1 (No response.)

2 Hearing none, the recommendations are
3 adopted.

4 Madam Assistant Secretary, is there anything
5 further to come before us today?

6 ASSISTANT SECRETARY LYNCH: No,
7 Mr. Chairman. That completes today's agenda.

8 The next regularly scheduled session will be
9 held January 17th, 2013 here in Albany at 10:30 a.m.

10 CHAIRMAN BROWN: Very good.

11 Meeting adjourned.

12 Thank you.

13 (Meeting concluded at 12:58 p.m.)

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