

**In The Matter Of:**  
*NYS Public Service Commission*  
*Session Meeting*

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*October 18, 2012*

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1 STATE OF NEW YORK  
2 PUBLIC SERVICE COMMISSION

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4 Session Meeting of the Public Service Commission  
5 -----

6 Thursday, October 18, 2012  
7 10:30 a.m.

8 Agency Building 3  
9 19th Floor  
10 Albany, New York

11  
12 COMMISSIONERS:

- 13 GARRY A. BROWN, Chairman  
14 PATRICIA L. ACAMPORA  
15 MAUREEN F. HARRIS  
16 GREGG C. SAYRE  
17 JAMES J. LAROCCA  
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## D I S C L A I M E R

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2 This is an unofficial transcript of a public  
3 meeting of the New York State Public Service Commission  
4 held on October 18, 2012 in the Commission's Offices at  
5 Three Empire State Plaza, 19th Floor Board Room, Albany,  
6 New York.

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8 may not include all discussion conducted at the meeting.

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1 P R O C E E D I N G S

2 CHAIRMAN BROWN: Good morning. I would  
3 like to call the October 2012 Session of the  
4 New York State Public Service Commission to  
5 order.

6 Madam Secretary, are there any changes to  
7 the agenda this morning?

8 SECRETARY BRILLING: There are several,  
9 so please bear with me.

10 We have two items that are over. The  
11 first is Case 12-G-0423 in the Matter of an  
12 Enforcement Proceeding against Bill Leonardo,  
13 contracting for alleged violations of 16 NYCRR  
14 Part 753, protection of underground facilities  
15 and service territory of Niagara Mohawk Power  
16 Corporation d/b/a National Grid.

17 CHAIRMAN BROWN: Do you have an item  
18 number for that?

19 SECRETARY BRILLING: I'm sorry. That's  
20 161. So all the other cases in that listing  
21 will remain the same.

22 CHAIRMAN BROWN: Thank you.

23 SECRETARY BRILLING: And then in Case --  
24 Item Number 363, Case 08-E-1496-99 Cent

1 Center, Inc. Consolidated Edison Company New  
2 York, Inc. rehearing of Commission  
3 determination is also over.

4 Now, added to the agenda is Item 172,  
5 Case 12-T-0399. And that's a notice of intent  
6 filed by Scepter New York, Inc. to construct a  
7 fuel gas transmission line containing  
8 approximately 15,880 feet of six-inch high  
9 density polyethylene HDPE pipeline located in  
10 the Towns of Tyre and Seneca Falls, in the  
11 Village of Seneca Falls, Seneca County. And  
12 that's a confirming order.

13 Those are the changes.

14 CHAIRMAN BROWN: Thank you, Madam  
15 Secretary.

16 Let's see. Do any of the Commissioners  
17 need or wish to recuse or abstain from voting  
18 on any of the consent agenda items this  
19 morning?

20 (No affirmative response.)

21 CHAIRMAN BROWN: Seeing none, let's go to  
22 a vote.

23 All those in favor of the recommendations  
24 on the consent agenda, please say aye.

1 (Affirmative response.)

2 CHAIRMAN BROWN: Opposed?

3 (No affirmative response.)

4 CHAIRMAN BROWN: Hearing none, the  
5 recommendations are adopted.

6 I'll just note a couple of mentions on  
7 the consent agenda. Item 368, the adoption of  
8 the proposed changes to company standby  
9 service rules will really help customer-sided  
10 generation and CHP. Takes away some of the  
11 disincentives that existed.

12 And I'll also note Item 370, Hudson  
13 Valley's clean energy petition to increase the  
14 the minimum net meter rate limit. That's an  
15 important tool in promoting the State's solar  
16 and energy policies. So those two things  
17 happened this morning along with the rest of  
18 the consent agenda.

19 (A pause was taken in the proceedings.)

20 CHAIRMAN BROWN: Move to the regular  
21 agenda. First item for discussion, Item 101,  
22 Case 12-B-0206, report on New York State and  
23 natural gas supply readiness for the 2012-13  
24 winter season to be presented by John Sano,

1 the utility supervisor in the Office of  
2 Electric Gas & Water.

3 John, please begin.

4 MR. SANO: Good morning, Chairman Brown  
5 and Commissioners.

6 It is my pleasure today to brief you on  
7 staff's annual winter supply review and the  
8 readiness of the State's local gas  
9 distribution companies, also known as LDCs,  
10 for the upcoming winter.

11 Based upon our review in representations  
12 by the LDCs regarding natural gas supply  
13 readiness for the upcoming winter season,  
14 staff concludes that going into this winter  
15 the LDCs have made arrangements to obtain  
16 adequate commodity supply to meet expected  
17 firm customer demands under design winter  
18 weather conditions. The utilities are  
19 completing the filling of their storage  
20 facilities, which will be done by the  
21 beginning of the heating season.

22 With the continued development of new  
23 supply sources and the large increase in  
24 proposed and newly constructed pipelines to

1 access these supply sources, New York State  
2 continues to see its situation improve  
3 regarding the reliability of supply gas  
4 commodity pricing and gas price volatility.

5 The gas supply prices of LDCs serving New  
6 York State are expected to be lower than last  
7 year, but overall bill impacts will be higher  
8 due to an anticipated return to normal  
9 weather.

10 LDCs are evaluating the opportunities to  
11 economically expand their customer base and  
12 for alternative uses of natural gas.

13 We continue to see proposals and filings  
14 for a multitude of gathering and midstream  
15 supply diversity projects. Projects to  
16 improve limited New York City delivery  
17 capacity are already in progress.

18 The LDCs have contracted for adequate gas  
19 pipeline capacity to deliver their gas supply  
20 this winter. Interstate pipeline capacity  
21 available to New York has been tight,  
22 especially in the downstate region, for  
23 several years.

24 Core customer demand for natural gas is

1 growing in the New York City and Long Island  
2 regions. Specifically, Con Edison Gas is  
3 expecting its firm winter load to grow  
4 significantly from last year. This is driven  
5 by both the Clean New York City initiative to  
6 phase out No. 4 and No. 6 fuel oils, and the  
7 large price disparity between oil and gas for  
8 heating services. The downstate LDCs are  
9 expecting 2 to 4 percent average growth over  
10 the next five years.

11 Fortunately, there are two proposed  
12 projects that will help meet expected gas  
13 demand growth in the New York City and Long  
14 Island markets. The first is Transco's  
15 proposed Rockaway Lateral Project, which  
16 connects Transco's existing Lower New York Bay  
17 Lateral to a new interconnect with Keyspan New  
18 York. This project would initially provide  
19 100,000 decatherms per day of additional  
20 delivery capacity, and is very important to  
21 the reliability of the existing system and to  
22 allow for the anticipated demand growth in  
23 both the Far Rockaway Peninsula and Southern  
24 Brooklyn. The United States Senate recently

1 passed a bill to allow the construction of  
2 pipeline facilities in the Gateway National  
3 Recreational Area. The bill must now be  
4 ratified in the US House of Representatives.  
5 The National Park Service must then authorize  
6 construction and final FERC approval is  
7 required for Transco to achieve its  
8 anticipated in-service date of 2014.

9 The second Texas Eastern's proposed New  
10 Jersey-New York Expansion Project, which will  
11 have interconnections with Algonquin at  
12 Ramapo, New York and with Texas Eastern at  
13 Lambertville, New Jersey, and would bring  
14 800,000 decatherms per day into Con Edison's  
15 system at the East 14th Street area of lower  
16 Manhattan. It is important to note that while  
17 Con Edison has contracted for capacity on this  
18 project, an even larger percentage of the  
19 capacity for this project is contracted by two  
20 Marcellus Shale gas producers. This shows a  
21 shift from LDC-driven projects to  
22 producer-driven projects, as many Marcellus  
23 producers look for ways to get their gas to  
24 market. This project is expected to be in

1 service by 11/20/13.

2 Incremental pipeline capacity continues  
3 to meet growing loads downstate and specific  
4 upstate, such as Niagara Mohawk's Capital  
5 Region area.

6 There are three components of the gas  
7 utility's supply portfolio; namely, storage  
8 gas, hedged supply, and unhedged supply, also  
9 known as flowing gas. Storage gas is injected  
10 into storage fields during the summer to help  
11 meet peak winter demand. Hedged supply is gas  
12 whose price is set through a hedge, such as a  
13 fixed price contract, or a financial hedge,  
14 such as the futures contract are an option.  
15 Flowing gas is priced at market prices during  
16 the winter.

17 As a result of new market conditions and  
18 the associated cost the LDC's hedging  
19 programs, the LDCs have reduced the hedging  
20 levels of their winter supply portfolio. With  
21 the newly observed price stability and  
22 relatively low prices, staff recommended  
23 reducing the amount of hedged supply, and  
24 therefore the amount of premiums paid for

1 hedging, and instead rely now on the stability  
2 and low cost of flowing supply.

3 Production from Marcellus Shale wells,  
4 primarily in Pennsylvania and West Virginia,  
5 continue to increase. Shown in this chart,  
6 Pennsylvania was producing close to 6 billion  
7 cubic feet per day in May of this year.  
8 Pennsylvania is the largest state producing  
9 gas from the Marcellus Shale formation. Most  
10 of New York's LDCs are currently buying larger  
11 and larger amounts of natural gas produced in  
12 Pennsylvania and West Virginia from this  
13 formation. As a result, though, net imports  
14 of Canadian gas are expected to continue to  
15 decline. In addition, several pipelines have  
16 projects to flow gas north from the Marcellus  
17 region into Canada. Historically, we have  
18 imported gas from Canada, but it appears that  
19 is about to change.

20 The federal Energy Information  
21 Administration, or EIA, reported that the  
22 natural gas storage inventories in the  
23 continental United States, shown in this  
24 graph, total 3.7 trillion cubic feet at the

1 end of September of this year. This exceeds  
2 the latest five-year average for this period  
3 by more than 8 percent.

4 New York LDCs contract for storage  
5 capacity and manage the injection and  
6 withdrawal of gas from that storage. As of  
7 October 1st of this year, the New York LDC  
8 storage inventories ranged from 87 percent to  
9 97 percent full. They are on target for the  
10 beginning of the winter season.

11 In EIA's Peak Underground Working Natural  
12 Gas Storage Capacity report, released on  
13 September 12th of this year, it stated that  
14 the working gas design capacity in the lower  
15 48 states rose to 4.5 trillion cubic feet as  
16 of April 2012. This is an increase of 110  
17 billion cubic feet from April of the previous  
18 year, an increase of two and a half percent.

19 This pie chart shows the average  
20 statewide amount of natural gas that comes  
21 from storage, the amount that is financially  
22 hedged, and the amount that is unhedged for  
23 the coming winter. Although we show this pie  
24 chart every year, there has been a significant

1 change over the last few years, especially  
2 since last year. Due to the reduced  
3 volatility in natural gas pricing, the hedge  
4 portion shrank from its historical one-third  
5 level to only 15 percent.

6 Regarding this portfolio, during the 2012  
7 storage injection season, April through  
8 October, the cost of natural gas was lower  
9 than the previous year, so storage prices have  
10 dropped.

11 NYMEX future prices for this winter were  
12 lower during the hedging period than the  
13 hedging period for the previous winter, so  
14 this price is also lower. This component  
15 represents 15 percent, again, of the year's  
16 average portfolio, as compared to 19 percent  
17 last year and over 30 percent in previous  
18 years.

19 The unhedged or flowing gas prices for  
20 the upcoming months aren't determined until  
21 the last days of the trading period to that  
22 month. This is the component of the commodity  
23 cost that is most likely to vary in response  
24 to change in market conditions such as weather

1 and gas availability. For the purpose of  
2 forecasting winter commodity costs, the  
3 current NYMEX futures prices for the given  
4 months are used. This is now a larger portion  
5 of the LDC's portfolio, increasing from  
6 43 percent last year to 49 percent this year.

7 On this slide, we can see that gas prices  
8 and gas volatility have decreased over the  
9 past few years, and we appear to be in a  
10 period of stability, as shown by the relative  
11 flatness of the graph. This can be attributed  
12 in large part to the development of the  
13 natural gas production associated with the  
14 different shale formations. As I referenced  
15 in the previous slide, reduced volatility has  
16 resulted in less hedging on the part of our  
17 LDCs. This reduced volatility can be directly  
18 attributed to new gas supplies close to our  
19 load in New York, as well as ample storage  
20 supplies.

21 Natural gas prices can be affected by  
22 many factors. Weather remains a key, but  
23 other factors that can influence gas prices  
24 include storage inventory levels, use of gas

1 for electric generation, oil prices and the  
2 divergence of oil and natural gas prices,  
3 supply disruptions due to hurricanes,  
4 perceptions of adequacy of gas supplies, and  
5 environmental policy.

6 This slide shows how these factors have  
7 impacted our prices over the last few years.  
8 It contrasts the relative low volatility at  
9 Henry Hub in Louisiana -- the black line --  
10 with the continued volatility at certain  
11 points in the gas system.

12 We have seen prices in the Marcellus  
13 region, usually priced at Dominion  
14 Transmission's South Point, or DTI SP. And  
15 that is represented on the graph by the blue  
16 line. They remain flat with, and even drop  
17 lower than, the Henry Hub prices.

18 Even though Henry Hub prices and the  
19 associated volatility has been lower over the  
20 past year, the Transco Zone 6 New York  
21 prices -- the red line -- continue to see  
22 price spikes, but were lower last winter due  
23 to the warmer weather. Our LDCs use firm  
24 transportation, and are therefore somewhat

1 shielded from this. But customers who rely on  
2 interruptible transportation, like electric  
3 generators, are exposed to these price spikes.  
4 Since it is the periods when demand is higher  
5 that creates these spikes, the frequency of  
6 Transco Zone 6 New York price spikes shows  
7 that pipeline capacity into the New York City  
8 area remains constrained. While it is  
9 expected the volatility as a whole will  
10 continue to moderate over the next few years,  
11 as New York gas supply portfolios continue to  
12 diversify into Marcellus and other  
13 unconventional gas basins, there remains a  
14 need to build additional pipeline capacity  
15 into constrained load centers to reduce  
16 localized volatility.

17 On a statewide basis, this is how the  
18 price of each of the three components  
19 discussed earlier compared to last year's  
20 results.

21 The LDC's inventory cost of market area  
22 storage has decreased approximately 29 percent  
23 from an average of \$4.62 per decatherm last  
24 year, to \$3.27 per decatherm this year. Since

1 the injection season runs to the end of  
2 October, the final cost of gas in storage will  
3 continue to change, but due to the relatively  
4 high current inventory levels, the final price  
5 should not be substantially different.

6 The NYMEX futures contracts over the last  
7 year have settled lower than the previous  
8 year, which is held to reduce the average  
9 price of hedged gas by about 11 percent, from  
10 \$4.85 per decatherm last year, to \$3.92 per  
11 decatherm year as of the beginning of  
12 September. While some LDCs may still have to  
13 execute to some hedges, most hedges have  
14 already been locked in at this point. This  
15 component has been reduced in all of our LDC  
16 holdings and, as we said before, now only  
17 represents 15 percent of the total portfolio.

18 Last year natural gas settled prices on  
19 the New York Mercantile Exchange averaged  
20 \$3.25 per decatherm for the winter months,  
21 November through March. Last winter was  
22 between 17 percent and 25 percent warmer than  
23 normal based on temperature in New York's six  
24 major cities. As of October 1st of this year,

1 NYMEX futures prices for November 2012 through  
2 March 2013 averaged \$3.65 per decatherm. This  
3 projects the price of flowing gas to be higher  
4 than last year, but when combined with a lower  
5 cost of gas in storage and a lower price of  
6 hedged gas supply, it is expected that this  
7 year's total commodity portfolio will be about  
8 12 percent less than last year's.

9 For every major natural gas LDC in New  
10 York, the commodity price of gas appears to be  
11 moderately lower than last year. However,  
12 total bills -- commodity and delivery -- are  
13 expected to be higher for the most part due to  
14 the assumed return to normal weather.

15 We expect the average natural gas  
16 customer's heating bill this year to be about  
17 \$843 this winter based on normal weather.  
18 This is about \$83 more than last year due to  
19 the change in weather. This estimate will  
20 vary by utility. Residential heating customer  
21 bills are forecasted to range from about the  
22 same to approximately 16 percent higher based  
23 on the latest LDC updates.

24 We annually coordinate with NYSERDA and

1 the oil industry on winter preparedness, which  
2 has proven to be effective in improving  
3 communication between the oil and gas sectors  
4 of the heating fuel market, especially during  
5 times of interruption.

6 Interruptible human needs gas customers  
7 that have distilled oil backup must have oil  
8 storage capacity and sufficient alternate fuel  
9 on hand. Customers lacking sufficient storage  
10 space are required to enter the heating season  
11 with oil tanks filled and a contract for  
12 replenishment of oil storage inventory. LDCs  
13 must alert their interruptible customers of  
14 the potential need to replenish oil storage  
15 inventory whenever accumulated gas service  
16 interruptions exceed a total of five days  
17 prior to February 15th.

18 With regard to interruptible customer  
19 compliance with the Commission's alternate  
20 fuel availability requirements, LDCs will be  
21 conducting tests and inspecting the alternate  
22 fuel burning equipment of interruptible  
23 customers to ensure compliance with alternate  
24 fuel inventory requirements.

1                   Finally, factors that may impact prices  
2 this winter include:

3                   A return to normal weather. Last winter  
4 was probably one of the warmest winters that I  
5 remember on record. And for us to think we're  
6 going to see another winter like that, I think  
7 it's wishful thinking. So you can anticipate,  
8 even if it isn't a normal winter if it gets  
9 warmer, we don't think it's going to be quite  
10 as warm as it was last winter. But that will  
11 have a tendency to increase the bills to  
12 customers this year, and may have an impact on  
13 prices.

14                   Continuation of high world oil prices  
15 could increase natural gas demand due to  
16 additional economic fuel switching. Even  
17 though we have seen some disjoining now  
18 between oil and gas prices, where they used to  
19 track right along with each other, there are  
20 several differences now. And the increased  
21 demands from oil and people wanting to switch  
22 off of oil could have a bigger impact than the  
23 actual price itself.

24                   An improved economy. Higher demand due

1 to increased natural gas-fired generation,  
2 possible US industrial comeback, and the  
3 beginning of LNG exports and growth LNG  
4 exports from the United States, where we now  
5 import, could have an impact on prices.

6 And hurricanes, less of a potential now  
7 due to significant growth of market area gas  
8 production. But still, hurricanes, even  
9 though we've only got a month left in the  
10 hurricane season, are still a factor that has  
11 to be considered.

12 This concludes our presentation. I'll  
13 now be happy to take any questions you may  
14 have.

15 CHAIRMAN BROWN: Thank you, Jim.

16 Go ahead, Mr. LaRocca.

17 COMMISSIONER LAROCCA: Just some odds and  
18 ends as you went through.

19 What do we attribute the decline in  
20 Canadian availability, which I think we've  
21 seen in the last couple of years?

22 MR. SANO: Well, the decline in Canadian  
23 gas supplies first occurred because there was  
24 a decline in the actual supply coming out of

1 western Canada, where most of the Canadian gas  
2 came from. They're now switching over to  
3 shale gas in that area, too, so that hasn't  
4 been true anymore. But now that we can get  
5 gas abundantly here in the United States,  
6 there's no need pay the high transportation  
7 cost on gas coming in through Canada, so we  
8 opted to get the gas closer to home and pay  
9 less for the transportation and reduced our  
10 overall cost.

11 COMMISSIONER LAROCCA: You mentioned the  
12 Transco line through the Gateway Park. Where  
13 exactly is that?

14 MR. SANO: That cross -- the proposed  
15 path crosses the very southern tip of Far  
16 Rockaway and then extends right into southern  
17 Brooklyn. And the park is right on the  
18 southern tip of Brooklyn at on the end of Far  
19 Rockaway where the pipe was supposed to come  
20 in.

21 COMMISSIONER LAROCCA: Just crosses the  
22 barrier beach?

23 MR. SANO: Right around the barrier  
24 beach, right.

1                   COMMISSIONER LAROCCA: And finally, the  
2 chart that had the spikes in it, the spikes  
3 are quite dramatic. There's one that  
4 fourfold -- very brief, fourfold. What -- is  
5 there a different story between each of those  
6 episodes, or what accounts -- particularly the  
7 one where it was so dramatic?

8                   MR. SANO: Usually those spikes, the  
9 spikes on Transco Zone 6 will usually occur  
10 with one of two situations: Number one, very  
11 extreme cold weather. Even last year, as warm  
12 as it was, we had some cold days. And on  
13 those cold days, we saw some spiking going on.  
14 Even though they're very, very small in that  
15 graph, it was a spike.

16                   At other times we've noticed that there  
17 has been some spiking occurring in the summer  
18 when the electric generators are calling more  
19 and more on the interruptible gas supplies  
20 through that line. Now, those spikes  
21 sometimes don't seem quite as high as the  
22 other spikes because demand is down during the  
23 winter, but it's -- as we move forward and  
24 there's more and more electric generation

1 throughout the entire country being fed with  
2 natural gas, it's a situation that should be  
3 watched to make sure we know what's going on  
4 in the summer versus a winter peaking  
5 situation.

6 The biggest one, of course, was winter.  
7 And then there was pretty decent one in  
8 April-September; then the summer ones were  
9 smaller.

10 COMMISSIONER LAROCCA: So something like  
11 fourfold, which was the biggest one in  
12 January-February, is not terribly unusual?

13 MR. SANO: No. In fact, if I showed you  
14 that same chart over the last five years,  
15 you'd see spikes up to -- closer to 70 and a  
16 hundred dollars. It shows you how much --  
17 even the volatility still seems to be there,  
18 those spikes are still occurring. And that  
19 basically, I think, shows you that localized  
20 volatility situation we're talking about based  
21 on constrained transportation capacity.

22 COMMISSIONER LAROCCA: Thank you. And  
23 good report, John, thank you.

24 CHAIRMAN BROWN: Commissioner Harris.

1                   COMMISSIONER HARRIS: Just a quick  
2 question on some figures that you were  
3 mentioning.

4                   Based on forecasting of normal weather  
5 for this winter, the average residential  
6 customer should expect approximately -- it  
7 will vary by utility -- to pay an additional  
8 \$80 a month.

9                   MR. SANO: Compared to last year.

10                  COMMISSIONER HARRIS: Compared to last  
11 year, despite the lower cost of.

12                  MS. McCARRAN: Over the whole year.

13                  MR. SANO: Oh, over the whole year.

14                  COMMISSIONER HARRIS: Over the whole  
15 year. Okay. I understood it to be...

16                  CHAIRMAN BROWN: Five-month season; is  
17 that what you mean?

18                  MR. SANO: Yes, five-month season. Over  
19 the five months, the five-month season.

20                  COMMISSIONER HARRIS: And obviously if we  
21 have a more severe winter, then they could  
22 expect to pay even more?

23                  MR. SANO: Of course. And that's why I  
24 finished up with the chart about reminding

1           everybody that weather is probably the most  
2           critical factor that impacts prices as we go  
3           through the winter.

4                   COMMISSIONER LARocca:   Okay, thank you.

5                   CHAIRMAN BROWN:   Just to follow up on  
6           that.

7                   So on a decatherm basis, it will be less  
8           expensive than it was last year.  The question  
9           is how many decatherms you're going to use  
10          over the course of the winter, and that's  
11          usually very weather-dependent?

12                  MR. SANO:   Essentially, yes.  So, yeah,  
13          basically.  Because when we think about the  
14          fact that the one slide we have shows that we  
15          anticipate the commodity, the average  
16          portfolio of all of the companies to be  
17          reduced by about 12 percent, all right, as far  
18          as the commodity price of gas is concerned.  
19          Yet, we're talking about an increase.  So  
20          12 percent did not compensate totally for a  
21          change of about 20 to 25 percent of weather  
22          changes.

23                  CHAIRMAN BROWN:   So some of that could be  
24          controlled by your thermostat and how much you

1 use, but...

2 MR. SANO: Using a sweater, not using a  
3 sweater. All the above.

4 CHAIRMAN BROWN: Thank you.

5 I just had one question about the  
6 interruptible customers and our requirement  
7 that -- I believe there's an oil/petroleum  
8 storage requirement for interruptible gas  
9 customers.

10 At one time, the price of petroleum,  
11 heating fuel and gas tracked pretty good, and  
12 I would imagine there may have even been times  
13 when dual fuel customers may have  
14 intentionally used oil because it was less  
15 expensive than gas.

16 Now, my understanding is it's about, on a  
17 BTU basis, three times the price of gas, what  
18 I've heard, in that rough range. So I would  
19 assume that they would never willingly use the  
20 petroleum supplies unless there was truly an  
21 interruption and it was only way they could  
22 keep going.

23 MR. SANO: That's essentially true.

24 That's one of the reasons why I think that

1           this year, and every year until we see more  
2           gas supplies available so that customers who  
3           want to switch from interruptible service to  
4           firm service can. It's something that has to  
5           be watched; we're watching these tests that  
6           are coming up, especially with the downstate  
7           utilities, where most of these customers  
8           exist, to make sure that everybody has got the  
9           ability to switch and will switch when they  
10          have to.

11                   CHAIRMAN BROWN: So I guess where I was  
12           going to go with that is, it's a bit of a  
13           financial burden for the interruptible  
14           customers to maintain, I believe it's  
15           something like ten days of petroleum supplied  
16           to meet their needs.

17                   MR. SANO: You're right. And I think  
18           some of these customers are looking at the  
19           financial burden of maintaining that oil  
20           inventory versus the savings they made by  
21           paying lower delivery costs because they're  
22           paying an interruptible rate, to determine  
23           whether they still want to remain  
24           interruptible or not.

1           The one problem we do have is that  
2           interruptible customers do help the operation  
3           of the systems. They are a very big benefit  
4           to keeping the effectiveness and the  
5           efficiency of running the distribution system  
6           throughout the whole year. So losing them all  
7           would not be a good thing. But allowing the  
8           ones that economically need to switch, to  
9           switch, would have to be allowed. We just  
10          need more supplies and the ability to get more  
11          supplies into these areas to allow this to  
12          happen.

13           CHAIRMAN BROWN: Kind of where I was  
14          going to end up is, the ten days of  
15          determination, I'm sure, was somewhat  
16          arbitrary; I mean, you just have to pick some  
17          portion. I'm sure it was based on a lot of  
18          facts. But it was also at a time where the  
19          ten days wasn't quite the financial burden  
20          that I imagine it is today.

21           Have we at all relooked at the length of  
22          time for the supply they need to maintain an  
23          inventory of to protect our gas system?

24           MR. SANO: Ten days, if I remember

1           correctly, was originally set based on the,  
2           what we thought the average number of  
3           interruption days had been historically. Even  
4           though there are days when -- you know, we had  
5           some situations where there was extended  
6           interruptions, ten days looked like a  
7           reasonable level. And I believe the ten days  
8           was an effort to try and strike exactly the  
9           balance you're talking about: How to make  
10          sure that with the system and the  
11          interruptible system it's going to be run  
12          reliably, we have oil for those customers to  
13          use.

14                 Remember, this developed after -- I  
15          believe it was 2001, when there was an extreme  
16          oil shortage in New York City because there  
17          were barges full of number 2 fuel oil, but the  
18          harbor was basically frozen and nobody could  
19          get the oil out of the barges and into the  
20          dealer's hands so the he could to get it to  
21          the customers. And we had a whole bunch of --  
22          we had large problems with people getting --  
23          not not getting off the system when they  
24          needed to during that winter.

1 MS. McCARRAN: And also Chairman Brown --  
2 Cindy McCarran -- I just would point out that  
3 in the intervening years there has been a  
4 significant amount of storage facilities for  
5 those petroleum alternate fuel products that  
6 have just disappeared. Plus we've had some  
7 refinery closures in the northeast. I would  
8 be very hesitant to, you know, recommend  
9 reducing that ten-day requirement just for  
10 that.

11 CHAIRMAN BROWN: I'm not suggesting we  
12 should recommend it. Maybe circumstances mean  
13 they need more; I just want to make sure. It  
14 sounds like the whole world has changed an  
15 awful lot from 2001 in terms of petroleum and  
16 natural gas supplies, and the system, and  
17 whether the ten days is still the right  
18 number, given where we are today. And if it  
19 seems to be working, that's where we should  
20 be. But the world has changed.

21 Commissioner Sayre.

22 COMMISSIONER SAYRE: Even assuming that  
23 it's economical and -- in pricing, do we have  
24 enough pipeline capacity to allow all

1 interruptible customers to switch to firm gas?  
2 Right now? No. Will we in the future? I  
3 think the question is more, should we. Should  
4 we spend that money or should we try to keep a  
5 minimum level of interruptible customers on  
6 each distribution system where possible to try  
7 to improve the effectiveness and efficiency;  
8 basically keep the pipe full all year long  
9 instead of having it go empty during the  
10 summer months, or something like that, when  
11 you don't need it. That's the whole purpose  
12 of interruptible service, to begin with.

13 MR. DVORSKY: Commissioner, that would  
14 also be an economic impact on interruptible  
15 customers that really don't need firm  
16 capacity. And putting in new firm capacity to  
17 access areas of New York City is an expensive  
18 price. So besides the reliability aspect,  
19 there would be a, probably a huge customer  
20 reaction to mandate everybody going on firm  
21 capacity. It's like having an electric road  
22 to meet all the capacity of the demand and not  
23 having demand side management or companies  
24 that switch to oil, and stuff like that,

1 during the situations.

2 COMMISSIONER SAYRE: Yeah, I certainly  
3 wasn't suggesting that we would mandate  
4 everybody going firm. It's just, it seems to  
5 me even if customers want to go to firm  
6 because they just no longer want to have the  
7 burden keeping dual fuel or the requirement to  
8 shut down, we don't have enough capacity to  
9 let them all do that, even if they want to.

10 MS. McCARRAN: And Commissioner Sayre, I  
11 was reminded, this summer we did put in place  
12 some changes that allow certain large process  
13 users of natural gas to no longer have to keep  
14 that ten-day inventory as long as they agree  
15 to physically disconnect, you know, stop  
16 taking gas during periods of interruption.

17 So we do have some situations like that  
18 where we are trying to be flexible where we  
19 can, where it doesn't imperil reliability.

20 CHAIRMAN BROWN: Commissioner Acampora.

21 COMMISSIONER ACAMPORA: I just would like  
22 to ask a question with regard to, John, you  
23 mentioned several times in the report about  
24 more natural gas being available. Are we

1           seeing in specific areas of the state a move  
2           by residential areas to switch from oil heat  
3           to gas heat, and what kind of an impact does  
4           that have?

5           MR. SANO: We have personally gotten  
6           several phone calls from several customers in  
7           certain areas throughout the state. There is  
8           a large cry going out right now from people  
9           who are hurting because they're paying that  
10          big disparity in price between number 2 fuel  
11          oil and natural gas. And the problem we are  
12          going to have looking forward into the future  
13          is, how do we get gas to some of these areas  
14          because they're not all densely populated  
15          areas; a lot of them are rural areas; even the  
16          nonrural areas in suburbia are so sparsely  
17          populated that it could be costly to keep gas  
18          lines to these people.

19          So the question is how do we pay for them  
20          and how do we get it there. Again, this is an  
21          infrastructure issue on the distribution  
22          system side, when even though today I  
23          concentrated primarily on the transmission  
24          side, getting to gas to our LDCs, we will have

1 to face what to do on the distribution side  
2 with the LDCs and how we can extend gas to  
3 other users moving forward.

4 COMMISSIONER ACAMPORA: And what about  
5 areas even like with New York City,  
6 residential?

7 MR. SANO: Right now, New York City,  
8 residential switching going on right in New  
9 York City right now is primarily driven by two  
10 factors. The first is the Clean New York city  
11 initiative to rid number 6 fuel oil. Along  
12 with that, both National Grid and Con Edison,  
13 when they go to an area and they're working on  
14 that, they have other customers who are not  
15 using number 6 and number 4, and they're  
16 setting the system up to let them convert also  
17 at the same time.

18 So right there we've got -- we have one  
19 project going on that's got a twofold purpose  
20 and we're converting as many people as they  
21 possibly can. And these are basically  
22 targeted areas where they think they can deal  
23 with the fastest and get things done for the  
24 least cost possible and as many people

1 switched over as possible as fast as they  
2 possibly can.

3 COMMISSIONER ACAMPORA: Thank you.

4 CHAIRMAN BROWN: I can also vouch that  
5 there are some of our major manufacturers that  
6 do not have natural gas availability are  
7 finding themselves at a very competitive  
8 disadvantage to others. And Cindy's had more  
9 than one phone call about, are there ways that  
10 we can start accommodating and get gas to some  
11 of these areas. So there's -- a lot of people  
12 are looking, with this price disparity, to see  
13 how they can get natural gas supplied.

14 Any other comments or questions?

15 (No affirmative response.)

16 CHAIRMAN BROWN: Hearing none, excellent  
17 report, John. Thank you very much.

18 Second item for discussion is Item 201 --  
19 actually, Commissioner Harris wanted to jump  
20 in.

21 COMMISSIONER HARRIS: Madam Secretary,  
22 I'm sorry. I had mistakenly believed that  
23 item -- one of the items on the consent agenda  
24 was a discussion item and I failed to register

1 my vote. If you would record my wish to  
2 abstain from item no. 265.

3 Thank you very much.

4 CHAIRMAN BROWN: The chairman give her  
5 bad information. I apologize.

6 Item 201 is \* 98-M-1343, in the matter of  
7 Retail Access Business Rules, and \* 0610647 in  
8 matter of Energy Services Company Price  
9 Reporting Requirements.

10 We've got a group of people presenting.  
11 This will be presented by Doug Elfner,  
12 Director of the Office of Consumer Policy;  
13 Mark Reeder, Director of Regulatory Economics,  
14 and Ben Wiles, Managing Attorney for the  
15 Office of General Counsel, will be available  
16 for any questions as well.

17 So I believe Doug, you're leading?

18 MR. ELFNER: Yes, thank you and good  
19 morning Chairman Brown, Commissioners.

20 For several months, staff has been  
21 reviewing certain aspects of retail  
22 electricity and natural gas markets,  
23 particularly for residential and small  
24 nonresidential customers. We've reviewed and

1 are continuing to review:

2 The structure of those markets, including  
3 information that's available to consumers;

4 The rules that the Commission has  
5 established governing ESCO marketing and the  
6 content of ESCO contracts;

7 Complaints or inquiries that the  
8 Department has received regarding ESCOs;

9 And prices charged by ESCOs in certain  
10 utility territories.

11 We've approached this in a very careful  
12 and analytical manner. As part of this  
13 review, we met several times with ESCOs and/or  
14 their trade associations. And Chairman Brown  
15 joined us for some of those meetings. We also  
16 met with representatives of large utilities  
17 and representatives of consumers.

18 Our objective has been to identify  
19 whether and how we can improve the operation  
20 of retail energy markets to the benefit of  
21 consumers. I want to emphasize again that our  
22 review is ongoing, but at this point we've  
23 identified had several concerns that we want  
24 to bring to your attention.

1           First, a bit of background on retail  
2           markets. We have about 85 ESCOs certified to  
3           provide electricity in New York State and over  
4           a hundred certified to provide natural gas.  
5           For electricity, about 1.3 million residential  
6           customers, representing 22 percent of all  
7           residential customers, now obtain electricity  
8           from an ESCO. On the gas side, about 800,000  
9           households, or 18 percent, obtain service from  
10          an ESCO. For nonresidential customers, a much  
11          larger percentage of customers obtain service  
12          from ESCOs.

13                 ESCOs can compete directly with the  
14                 utility in offering commodity service, or they  
15                 can offer options for consumers that the  
16                 utility does not, such as products that fix  
17                 the price for some period of time, electricity  
18                 from renewable sources, home heating  
19                 maintenance and repair service, airline  
20                 miles --

21                         CHAIRMAN BROWN: If you would come closer  
22                         to the mic, please.

23                         MR. ELFNER: Our review has focused on  
24                         residential and small nonresidential

1 customers. Regarding large commercial and  
2 industrial customers, retail competition  
3 appears to be working very well. The majority  
4 of these relatively sophisticated consumers  
5 obtain their energy from ESCOs and report  
6 savings and benefits from the services that  
7 the ESCOs provide.

8 Turning to residential and small  
9 nonresidential markets, as part of our review  
10 we requested and analyzed comparative ESCO  
11 billing or pricing data from four utilities.  
12 I'd like to thank those utilities for their  
13 assistance, particularly because the  
14 information we requested typically was not  
15 easy for utilities to compile.

16 Specifically, we requested a comparison  
17 of bills paid by ESCO customers with the bills  
18 they would have paid if they obtained  
19 commodity from the utility. This reflects all  
20 bill differences, including commodity prices  
21 and sales taxes. This data showed that some  
22 ESCO customers paid less for electricity  
23 and/or natural gas than they would have if  
24 they were full-service utility customers; some

1 customers paid more; and some customers paid  
2 much more. Two utilities provided data on the  
3 prices that ESCOs charge in their service  
4 territories in comparison with what the  
5 utility charges. Again, there was a wide  
6 range of prices paid by ESCO customers and, of  
7 course, some of these price and bill  
8 differences may reflect value-added services  
9 that I highlighted before, such as fixed  
10 prices.

11 Several issues have been identified that  
12 we would like to bring to your attention.

13 First, it is very difficult for  
14 residential and small commercial customers to  
15 know and compare the prices for electricity  
16 and natural gas that are available from the  
17 utility and ESCOs. Because, for example,  
18 ESCOs primarily promote prices that are  
19 currently available, whereas most utilities  
20 generally present historic prices. Further,  
21 after selecting an ESCO, it's particularly  
22 difficult for most small customers to evaluate  
23 whether they obtain the expected benefits from  
24 that service. For example, if the customer

1 expected bill savings in comparison to utility  
2 service, were those savings realized?  
3 Similarly, if the customer chose value-added  
4 services, such as fixed prices, renewable  
5 energy or airline miles, did the customer pay  
6 more for those attributed, and if so, how much  
7 more.

8 Providing ESCO customers easy and timely  
9 access to competitive billing information  
10 would make it easier for customers to evaluate  
11 their options. There are many ways that we  
12 could do this, including by providing this  
13 important information directly on customer  
14 bills, or through web-based tools, or perhaps  
15 by publishing historical pricing data for each  
16 ESCO.

17 As a first step, we worked with two  
18 utilities, Central Hudson and National Fuel  
19 Gas, to design and implement a tool on their  
20 utility websites that would enable ESCO  
21 customers to easily compare what they paid for  
22 service from an ESCO and what they would had  
23 they obtained service from the utility. We  
24 worked with ESCO trade associations and those

1 utilities to draft statements explaining the  
2 tool and how the results should be interpreted  
3 by customers.

4 Those tools have been in place since  
5 June 2012. Central Hudson reports that in the  
6 last three weeks, more a thousand ESCO  
7 customers have used this tool. Central Hudson  
8 also has a short survey available to users of  
9 its site, and reports that approximately 80  
10 percent of customers using the tool have  
11 commented favorably. NYG expects to begin  
12 marketing this tool in the near future, and  
13 thus far approximately 700 customers have used  
14 it. So we want to consider whether this  
15 web-based tool should be implemented  
16 statewide.

17 Next we have a concern about some  
18 door-to-door marketing conducted by ESCOs.  
19 Door-to-door marketing is often perceived by  
20 customers to be high-pressure and may not be  
21 conducive to customers making an informed  
22 decision concerning their energy supply. Many  
23 of the marketing-related complaints or  
24 inquiries that the Department receives concern

1 door-to-door practices, and include complaints  
2 about aggressive sales representatives,  
3 marketers misrepresenting themselves as the  
4 utility, an unauthorized change of providers  
5 attributed to the account number that is  
6 obtained from the customer during door-to-door  
7 marketing. These complaints have been  
8 increasing recently, we currently are  
9 conducting formal investigations of five ESCOs  
10 concerning whether their door-to-door  
11 marketing practices comply with our existing  
12 rules. One of the concerns we're bringing to  
13 you now is whether the existing rules  
14 governing door-to-door marketing are adequate.

15 We're also concerned about the impact on  
16 low-income customers. Data from one utility  
17 shows that some ESCOs have substantially more  
18 customers participating in utility low-income  
19 assistance programs on a percentage basis than  
20 the overall population. Coupled with data  
21 that indicates that many ESCO customers pay  
22 more than if they had purchased from the  
23 utility, we're concerned that there may be  
24 inconsistency with the Commission's efforts to

1 assist low-income customers in maintaining  
2 electricity and natural gas services.

3 We have additional questions or concerns,  
4 including whether the Power-to-Choose website  
5 should be changed, and if so, how; whether a  
6 program designed to encourage the development  
7 of retail markets known as ESCO Referral  
8 should be maintained or modified; whether ESCO  
9 customers should be provided additional notice  
10 of price changes; and whether changes should  
11 be made to the purchase of receivables. These  
12 issues are all detailed in the draft order.

13 In summary, our recommendation is that  
14 the Commission institute a new proceeding to  
15 address these aspects of residential and small  
16 nonresidential energy markets. The first  
17 action that we recommend is that the  
18 Commission issue a notice seeking comments on  
19 the issues I've discussed and issues detailed  
20 in the Order. The specific questions on which  
21 we would like input from the parties are in  
22 the Appendix of the Draft Order. After  
23 reviewing that input and obtaining additional  
24 data, we expect to come back to you with a

1 recommendation on whether any modifications to  
2 the retail market programs and rules should be  
3 made; and if so, precisely what changes we  
4 recommend.

5 Thank you. Any questions?

6 COMMISSIONER ACAMPORA: Doug, could you  
7 just go over how you intend to get the public  
8 to participate in this? Because we know that  
9 some customers may not have the ability to  
10 come and speak for themselves, but maybe there  
11 are larger groups like AARP or senior citizen  
12 organizations, who can come and talk to what  
13 they know of and what the experiences of  
14 individuals have been.

15 MR. ELFNER: Yes, thank you. Those are  
16 very, very good suggestions.

17 One of the problems here, as I mentioned,  
18 is that ESCO customers, including some experts  
19 in this department, have a difficult time in  
20 understanding whether they paid more or less  
21 for the utility, whether they have gotten the  
22 value from the service that they expected. So  
23 that's true for customers at large. So our  
24 plan is to work with consumer organizations --

1 community boards in New York City, for  
2 example, AARP chapters, local groups in  
3 various areas in this state -- to work closely  
4 with them at the beginning to assist us in  
5 working with customers more directly so we get  
6 this kind of feedback.

7 I think the information that's from the  
8 two pilot programs we have with Central Hudson  
9 and NFG is also instructive. But yes, we're  
10 concerned about the need to get direct  
11 impact -- information from consumers, in  
12 addition to the usual tools that we have.  
13 When we issue notice for comments, anybody can  
14 comment a lot of ways. It doesn't have to be  
15 sophisticated written pleadings; we have a  
16 toll-free information line that consumers can  
17 call, we have information that can be  
18 submitted by the web. So we'll be working to  
19 generate other more direct and easier ways for  
20 consumers to provide information to us.

21 COMMISSIONER ACAMPORA: How long does it  
22 take before a consumer would be aware that  
23 they're paying too much?

24 MR. ELFNER: Well, again, it depends on

1 the ESCO product and -- again, I don't want to  
2 lose sight of the point that many ESCOs are  
3 providing services and products where the  
4 customers are paying less. So I don't want  
5 lose sight of that at all.

6 But again, it depends on the ESCO  
7 product. There are some -- we have an ESCO  
8 referral program that this Commission has  
9 established, which was intended to encourage  
10 the development of retail access. And under  
11 that program, for the first couple of months  
12 ESCO was providing discounts from the utility.  
13 And then after that, the ESCO can charge a  
14 price that's not necessarily discounted from  
15 the utility.

16 So it really depends. And again, if an  
17 ESCO customer is locked in a fixed price  
18 product and prices are declining, they're not  
19 going to be paying more.

20 COMMISSIONER ACAMPORA: Just as a point  
21 of interest -- because, let's face it, you  
22 know, we've had a history while trying to open  
23 up competition to folks in many areas, even  
24 with phones when we had slamming going on.

1           Sometimes it does take a period of time for a  
2           consumer to realize, oops, I made a mistake.  
3           And I think that goes to the heart of what  
4           we're trying to talk about. We know we feel  
5           many good players out there in the ESCO  
6           community who are doing a fine job. But there  
7           always seems to be a few who will have some  
8           problems, and I think this is what we're  
9           trying to get at to make sure that the playing  
10          field is straight and honest and level for  
11          consumers out there.

12                   MR. ELFNER: That's exactly right.

13                   And speaking of oops, I made a mistake, I  
14          realize in the statement that I just  
15          described, I said if a customer is locking a  
16          fixed price product and ESCO prices -- market  
17          prices are going down, they would be paying  
18          more.

19                   COMMISSIONER ACAMPORA: Thank you.

20                   CHAIRMAN BROWN: I just want to emphasize  
21          for a second something. What we're really  
22          looking at here is residential and small  
23          nonresidential customers. I think the ESCO  
24          program has proven to be very successful at

1 the larger customer level and we're not -- I  
2 don't think any of the questions that we're  
3 looking at here is really exploring that  
4 element of the market. It is less  
5 sophisticated users and it's just difficult to  
6 do comparative data. We've had staff people  
7 that work in our accounting department trying  
8 to figure out whether they're saving money  
9 with ESCOs that were having difficulty trying  
10 to figure that out. If they're having trouble  
11 doing that, the average consumer is going to  
12 have trouble doing that.

13 So I think a lot of what we're looking at  
14 here are, are there tools that would be useful  
15 to people. And there are also -- I think  
16 would be the flip side of that coin -- are  
17 there rules that are necessary to kind of make  
18 sure that the people who are not performing --  
19 the ESCOs that are not performing always at  
20 the high level, that we protect the consumers.  
21 And we need to do that.

22 So I'm really going into this with an  
23 open mind of, we need more data but we need to  
24 think about the tools. And as far as I know,

1 nobody's come up with a kind of a foolproof  
2 tool, because you can't look into the future.  
3 I want to know over the next 12 months whether  
4 I'm going to pay more or less. Well, if you  
5 knew that, you could make a lot of money on  
6 the stock market.

7 So I'm looking forward to this  
8 proceeding. And I agree with Patty, in order  
9 for this proceeding to be fulsome, it needs to  
10 include the voice of the consumer. And I'm  
11 glad you're doing some outreach as well so  
12 that we get that voice here.

13 COMMISSIONER ACAMPORA: On that note  
14 also, Mr. Chairman, I think that once you  
15 gather this information I think it would be  
16 helpful if you could like put it in a map form  
17 around areas of the state, so we can visually  
18 get a picture of where the possible problems  
19 are and, you know, is it an area that is  
20 predominantly a low-income area, is it an area  
21 that has a lot of senior population. Just so  
22 we get kind of an idea of where the problems  
23 the, little pockets are so that we can further  
24 understand how to address the problem. Thank

1           you.

2                   CHAIRMAN BROWN:  Commissioner Harris.

3                   COMMISSIONER HARRIS:  And also, earlier  
4           you had mentioned, Doug, that there are some  
5           customers who pay less with an ESCO; some who  
6           pay some who pay more with an ESCO.  And then  
7           you mentioned some a lot more.

8                   Do you have information currently that  
9           could geographically distinguish those  
10          customers who may be paying a lot more?  In  
11          other words, are they customers that might be  
12          in the National Grid upstate territory that  
13          are with an ESCO, or a downstate such as  
14          Con Edison?

15                  MR. WILES:  I can detail -- I'll go to  
16          the information I have.

17                  (A pause was taken in the proceedings.)

18                  So it's both.  We obtained information  
19          from four utilities.  The Grid data has been  
20          publicized to some extent.  We looked at that  
21          a little more carefully, and that's upstate  
22          Grid operation.  And the question is always,  
23          how much is a lot more.

24                  Just for sake of analysis, I looked at

1 customers that are paying for electricity \$20  
2 more a month than with the utility. And over  
3 this 24-month period, 49 percent of Grid's  
4 electric customers who take service from  
5 ESCOs, residential, are paying more than \$20  
6 more in a typical month in the last two years.

7 NFG, the data we got from NFG did not  
8 readily allow us to look at that kind of  
9 comparison. Central Hudson data did. And the  
10 way it was easy to calculate for Central  
11 Hudson was how many customers are paying a per  
12 kilowatt hour or per therm that's more than  
13 double what the utility charged. And it's a  
14 much smaller number, obviously. The average  
15 for the three months that we obtained, 6  
16 percent of ESCO -- residential ESCO customers  
17 in Central Hudson's territory paid more than  
18 double. On the gas side, 11 percent paid more  
19 than double.

20 Con Edison, since you mentioned  
21 Con Edison, we haven't compiled it in that  
22 way. But it's very illustrative that at least  
23 one of the months of data we got from ConEd,  
24 the majority of ESCO customers paid less than

1 had they purchased from ConEd. And there are  
2 a variety of reasons for that, and we're  
3 getting more data from the company to look  
4 into that.

5 COMMISSIONER HARRIS: And that type of  
6 information is going to be very helpful, I  
7 think, probably to all of us, not just simply  
8 mapping out low income customers and senior  
9 customers, but also those areas, such as in  
10 the ConEd areas where customers might be  
11 paying less and those areas upstate in the  
12 Grid territory where customers might be paying  
13 more, or Central Hudson. That will be very  
14 helpful.

15 CHAIRMAN BROWN: I would almost describe  
16 the information we have today as anecdotal.  
17 It's done differently in every service  
18 territory, pretty comprehensively in some  
19 places, we got some good information. But in  
20 other places we got very little. And I guess  
21 we want to make a little plea to the utilities  
22 here because I know some are -- it's much  
23 easier. Their billing systems are more  
24 capable of doing this comparative analysis

1           than some of the other utilities. And I think  
2           that is going to be a challenge for us as  
3           well, to try to work with the utilities and  
4           not cost an arm and a leg trying to do a  
5           comparative analysis that's consistent between  
6           different utilities. And I know that's going  
7           to be challenge.

8                       Commissioner Sayre.

9                       COMMISSIONER SAYRE: I'm certainly a  
10           great supporter of customer choice, but it's  
11           also important for the customers to have the  
12           information they need to make an informed  
13           choice. So I'd echo all the comments that  
14           were made thus far and urge utilities and  
15           consumers to provide as much data as they can  
16           in response to these questions. The record in  
17           this case, I think is going to be very  
18           interesting. And I would particularly echo  
19           the Chairman's statement requesting utilities  
20           to take a good look at their systems and tell  
21           us what would be the least cost alternative  
22           that would allow them to give us and give  
23           consumers the data that they need to make  
24           informed choices.

1                   CHAIRMAN BROWN: Commissioner LaRocca.

2                   COMMISSIONER LAROCCA: Thank you.

3                   Mr. Chairman, I think that Doug and his  
4 team have done terrific work on this to date.  
5 And the information is I guess directly as  
6 anecdotal, but there's a lot of information  
7 offered. And it does seem clear that the  
8 degree of sophistication of the customer is a  
9 key factor in this story. And not  
10 surprisingly, that falls most heavily in the  
11 residential sector, and the residential sector  
12 where the least amount of tools are available  
13 for resolving such things as the effect of  
14 hedging by my ESCO on my bill, those kinds  
15 of -- those concepts. So we're on the right  
16 track there.

17                   I would think as we go forward, one of  
18 the things we ought to look at very, very  
19 carefully is the sales practices that have  
20 brought many of these customers into the  
21 picture, and particularly the association of  
22 this service with other products, unrelated  
23 products. One of the prices we pay for going  
24 to a competitive environment is that we don't

1           have regulatory reach on some of those  
2           practices, but at the same time we -- as we  
3           become aware that some of those practices may  
4           bring people into contracts and arrangements  
5           that are not as they seem or that they get  
6           associated with products that they perhaps  
7           don't need or don't understand that they don't  
8           need, or that they can buy while nevertheless  
9           getting the benefit of an ESCO. So the sales  
10          practice is an important inventory, I think,  
11          in this examination. There's some information  
12          already out there about high pressure sales  
13          techniques that may or may not have been used.  
14          So I think the inquiry has to examine that as  
15          well.

16                 The law of unintended consequences is at  
17          work here, as it always is on good effort.  
18          And we don't want to lose sight of the fact  
19          that, I think Commissioner Sayer said it very  
20          well, is we do favor customer choice; but it  
21          has to be real and meaningful and informed  
22          choice, and at least on average should lead to  
23          a better result than not. And some of what  
24          we've seen so far puts that into genuine

1 question.

2 So I want to encourage the most vigorous  
3 effort going forward from this order. I would  
4 like to ask what kind of timetable we're  
5 likely to see and what we can expect you to  
6 bring back to us. Will it involve  
7 recommendations for specific actions,  
8 statutory, regulatory or other changes, and  
9 when we might see that.

10 MR. WILES: Well, with respect to the  
11 schedule, this is a proceeding that will start  
12 tomorrow when we start on the cases, we'll  
13 probably receive the bulk of the comments  
14 before the end of the year; but just before  
15 the end of the year, and then the evaluation  
16 process goes on. And I think also the  
17 extension of the outreach will probably take  
18 us to sometime in the beginning of 2013. I  
19 think the conclusion depends a lot on what the  
20 information is that we receive.

21 COMMISSIONER LAROCCA: I would hope that  
22 we would begin to see quite specific  
23 recommendations perhaps by mid spring, that we  
24 would really bear down on. Because,

1 particularly based on the earlier report,  
2 we're heading into a normal or cold winter,  
3 we're going to have another season of  
4 information and consequences and a tight  
5 economy. And I think the sooner we can get to  
6 remedies to the extent we are able to catalog  
7 elements that can be remedied and should be  
8 remedied that will happen kind of soon.

9 Thank you Mr. Chairman.

10 CHAIRMAN BROWN: Any other comments or  
11 questions.

12 (No affirmative response.)

13 CHAIRMAN BROWN: Once again, thanks to  
14 the team. You've worked very hard on this and  
15 you've got a lot of hard work to do. So we  
16 appreciate your hard work.

17 Anything else?

18 So we have a recommendation to begin a  
19 proceeding as described by Doug. All those in  
20 favor of the recommendation, please say aye.

21 (Affirmative response.)

22 CHAIRMAN BROWN: Opposed.

23 (No affirmative response.)

24 CHAIRMAN BROWN: Hearing none, the



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C E R T I F I C A T I O N

I, ELLEN J. FRANKOVITCH, Shorthand  
Reporter and Notary Public in and for the  
State of New York, do hereby CERTIFY that the  
foregoing record taken by me at the date and  
place noted in the heading hereof is a true  
and accurate transcript of same, to the best  
of my ability and belief.

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ELLEN J. FRANKOVITCH

Dated: October 22, 2012