

PSC MONTHLY MEETING - 4-20-2017- Albany, NY

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, April 20, 2017
1:00 p.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS

GREGG C. SAYRE, CHAIRMAN
DIANE X. BURMAN

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2 CHAIRMAN SAYRE: Ready to go? I'd like to
3 call this session of the Public Service Commission to
4 order. Secretary Burgess, are there any changes to the
5 final agenda?

6 MS. KATHLEEN BURGESS: There's one change
7 to the final agenda. Item 565, Case 15-M-0388 is over.

8 CHAIRMAN SAYRE: Thank you. The first and
9 I believe only item for discussion this afternoon is item
10 101, 15-G-0257, which is a proceeding as to rates,
11 charges, rules, and regulations for National Fuel Gas
12 Distribution Corporations presented by Administrative Law
13 Judge Dakin Lecakes. Cindy McCarran, Deputy Director of
14 Gas and Water, and Denise Gerbsch, Chief of the Office of
15 Accounting Audits and Finance, are also available for
16 questions. Judge Lecakes, please begin.

17 A.L.J. DAKIN LECAKES: Thank you very much.
18 Good afternoon, Chairman Sayre and Commissioner Burman.
19 It's my great pleasure to present this case to you both.
20 You've both shown an active interest in this case by
21 attending with me different public statement hearings out
22 in the Buffalo metropolitan area and I really appreciate
23 that. We'll talk about those public comments in a moment.
24 Right now, you have before you a proposed order that I
25 prepared with the invaluable input of advisory staff. If

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2 we could go to the slides, slide two -- before we get to
3 the order, I'd like to provide some background for
4 context.

5 Base rates for this company were last set
6 in 2007 so that means that the rate payers for National
7 Fuel Gas have had almost a decade of rate stability and as
8 NFG indicated, its customer bills are actually lower now
9 than they were twenty years ago. Through a combination of
10 efficiencies at the company, personnel were able to get,
11 as well as a drop in the price of natural gas, on an
12 inflation-adjusted basis that the difference is even more
13 impressive over those twenty years.

14 In 2013, the commission instituted a show-
15 cause proceeding due to some concern about the earnings
16 that NFG was receiving. A joint proposal resulted from
17 that case and a two-year rate plan that froze base rates
18 for those two years. In addition to that two year base
19 rates freeze, there was additional value provided to the
20 NFG customers by the institution of an earnings sharing
21 mechanism so that if the earnings got too high, the
22 customers would be able to share in some portion of that.
23 After that, the company stayed out a little longer and
24 then eventually filed a year ago on April 28th, a new
25 tariff leaves seeking a rate increase. Those tariff

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2 leaves sought 41.7 million dollars in increase. It would
3 have been a 15.3 percent increase to delivery revenues and
4 a 7.8 percent increase in its overall revenues.

5 The next slide please. For this next
6 slide, I just have the schedule for the case. As you see,
7 I noted that about a year ago the filing was made in
8 August of 2016, the parties filed their testimony
9 responding to NFG's case and then in September, all the
10 parties filed a rebuttal. Very soon after that in the
11 beginning of October, we held three days of evidentiary
12 hearings here in Albany on the third floor. It was a
13 little unusual for this case because after those hearings
14 were finished, NFG then filed a notice of settlement
15 negotiations so there were settlement discussions that
16 took place in this case, but rather than having them
17 between the rebuttal and the potential evidentiary
18 hearings, they were held after those hearings were held.

19 It provides some benefit in that the
20 parties already know what the outcome of the cross-
21 examination questions were through that hearing process,
22 but even with that additional knowledge, the parties were
23 not able to reach any negotiated settlement in this case.
24 From the parties perspective, the -- the unfortunate part
25 of not having a settlement is that there is no certainty

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2 in the results that they get knowing what the joint
3 proposal would say.

4 If we could go to the next slide. So going
5 to staff's case here compared to the initial filings,
6 staff had filed a 2.5 million dollar increase. Their
7 position was less than a one percent increase to delivery
8 or revenues. One of the key areas that accounted for that
9 difference between the company's filing and staff's case
10 was in the company's cost of capital. Staff had
11 recommended return on equity in this case of 8.6 percent
12 and an equity ratio of 42.3 percent. The company had
13 filed for a return on equity of 10.2 percent and had also
14 filed for an equity ratio of 48 percent consistent with
15 most of the utilities that have gotten rate plans over the
16 last few years. I'll talk about those differences in a
17 moment. In addition to that, part of the reason the
18 number on the equity ratio was lower is because staff
19 recommended that the commission impose ring fencing
20 measures to protect the regulated business from the
21 unregulated corporate affiliates of National Fuel Gas
22 delivery.

23 One of the issues in this case about the
24 ring fencing came up because the exploration and
25 production business of National Fuel Gas was recently

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2 required to write down the value of its holdings. It's an
3 accounting action called an impairment. NFG distribution
4 does not issue its own debt and doesn't -- does not
5 receive its own credit rating so because of this
6 impairment, the parent's actual equity to debt ratio was
7 significantly reduced and it went from above 50 percent to
8 then being the 42.3 percent that staff employed in its
9 case. The impairments were also mentioned in connection
10 with a recent downgrade to the parent's credit rating.
11 The parent remained at investment grade level, but the
12 credit rating was actually reduced and as I mentioned, the
13 impairments were included in the discussion of that
14 downgrade.

15 Also, I'd like to note that there was, in
16 staff's case, a significant increase added for low-income
17 funding and this was tied to the conditions of affordability
18 proceeding guidance. When NFG initially filed this case
19 in April of last year, the commission had a generic
20 proceeding looking at statewide low income programs and
21 after NFG filed its case, the commission came out with its
22 initial order in that affordability proceeding. The
23 party's testimony then addressed -- well, NFG filed
24 supplemental testimony addressing the guidance in that
25 case and then when the parties filed their testimony

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2 responding, they also included the guidance from the
3 affordability generic proceeding.

4 If we could go to the next slide please.
5 This slide just shows the other parties that were involved
6 in this case so the Utility Intervention Unit of the
7 Department of State intervened here -- multiple
8 intervenors, the Public Utility Law Project, an NFG
9 customer on an individual basis, a Mr. Richard Ford, and
10 then Energy Mark who is a gas marketer, and on this slide
11 I just mentioned not all of the issues that these parties
12 were concerned with, but the ones that were really
13 highlighted especially in my recommended decision. One of
14 the parties that's not listed here is PUSH Buffalo, People
15 United for Sustainable Housing. They were involved in
16 previous NFG litigations, but they were not very active in
17 the litigation in this case; however, as you both know,
18 they made significant efforts to get people out to the
19 public statement hearings. They also filed briefs on
20 exceptions once my RD came out.

21 The next slide please. On this slide, we
22 talk about the public statement hearings. Three public
23 statement hearings where three venues were held for public
24 statement hearings. Two of them were done in the Buffalo
25 area, one before the evidentiary hearings and then one

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2 again after the evidentiary hearings. A third public
3 statement hearing was held in the City of Jamestown;
4 however, there were very few people that attended that
5 one. The -- of the four that were held in the Buffalo
6 area, two on -- on one day and then two on another, many
7 of the low-income customers came in and spoke and they
8 discussed the difficulties of being able to afford gas.
9 They were afraid that any increase would impact that and
10 again, one of the themes that came up was the popularity
11 of some of the low-income programs that existed within
12 NFG's territory and the uncertainty about what was going
13 to happen to those programs with the affordability
14 proceeding.

15 In addition to the comments about the
16 difficulty in affording heating bills, the other thing
17 that a lot of the customers mentioned was the difficulty
18 in getting weatherization for the older housing stock. A
19 lot of people mentioned that the housing that they have
20 out in Buffalo is really susceptible to the western New
21 York winters and so there's a lot of concern that even if
22 they wanted to make efforts to reduce their heating usage
23 in the winter, they'd have a lot of difficulty doing that
24 because there just wasn't enough insulation in their
25 houses to keep them at a -- a lower temperature -- at a

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2 reasonable level of commodity use. There are also 350
3 written and telephone comments received on our
4 Department's website. They're mostly from residential
5 low-income users as well and they basically reiterate all
6 of the things that were hit in the public statement
7 hearings.

8 Next slide. So after we conducted the
9 evidentiary hearings and there was an opportunity to
10 discuss settlement, in November, NFG filed a notice
11 signifying that the settlement negotiations were not
12 fruitful so we pursued a fully litigated track. The
13 companies filed -- the parties all filed their briefs at
14 that time and based on the briefs and the evidentiary
15 record, I released a recommended decision in January. My
16 recommended decision included an 8.5 million-dollar
17 revenue requirement increase. Some of the main points
18 that I hit in the recommended decision were discussing the
19 cost of capital, the return on equity, and the equity
20 ratio. In both of those areas, I followed the
21 commission's recent precedent in adhering to both the
22 methodology to calculate the return on equity as well as
23 the use of appearance equity ratio when there are not
24 sufficient ring fencing measures in to protect the
25 regulated utility.

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2 As for ring fencing, staff had filed a case
3 where it sought to impose certain measures. What became
4 fairly clear to me during the evidentiary hearings was
5 that there was some uncertainty as to the effect of those
6 ring fencing measures that staff would have imposed on NFG
7 so my resolution to that was to recommend that the
8 commission institute a process to further explore ring
9 fencing. I think it's an important thing to have to
10 protect that regulated utility, but at the same time, we
11 do have these other measures just affecting the equity
12 ratio and -- and some other things that we can do
13 financially to make sure that the customers aren't harmed
14 by the lack of ringfencing measures.

15 Another issue that was sought by staff is
16 in the company's filing, it mentioned that its computer
17 system was severely out of date and was having trouble
18 finding people that could use the archaic computing
19 languages -- the programming languages that were needed to
20 support that system so it instituted a large project to
21 replace its computer information system and they called it
22 the Barcelona Computer Information System Project. As
23 part of its testimony to support the costs behind the
24 Barcelona project, NFG witnesses testified as to the
25 expected benefits that could be received from this

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2 upgraded computer system. When staff had asked NFG about
3 those benefits and whether they would be able to put costs
4 to those benefits or savings to those benefits, NFG
5 responded that it didn't feel that it was able to put a
6 proper savings level on them so what they did say is that
7 those benefits would actually flow to the rate payers
8 through the future. Staff took that information and said
9 well, since we don't have any actual numbers that we can
10 rely on, what we'll do is we will impute a second percent
11 or another -- an additional one percent productivity
12 savings. I adopted that in my recommended decision and
13 did recommend that.

14 Another area was the performance matrix.
15 Under most rate plans that are settled, companies are held
16 responsible for certain targeted performance in different
17 areas. It was a very contested issue in this case as to
18 whether, if this case went through litigation, those
19 performance targets should continue to exist. I did
20 recommend ultimately that the performance targets and the
21 associated negative revenue adjustments for missing those
22 targets continue. I relied on a precedent that was mostly
23 from settled rate cases although there were a couple of
24 litigated rate cases which I did mention and then in
25 addition to those areas, low-income -- I have already

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2 mentioned the affordability proceeding. At the time that
3 my recommended decision was released, we had had an
4 initial order in the affordability proceeding; however,
5 there were still outstanding petitions for re-hearing on
6 that as well as filings had -- that had been made by all
7 of the utilities including NFG that discussed their
8 implementation plans for the new programs that were to be
9 instituted. I looked at that and felt there was still
10 some uncertainty about that so I had recommended that NFG
11 be allowed to keep its existing low-income program
12 portfolio in place for an additional year until the winter
13 of 2018/2019 at which time I would be able to put in the
14 new -- what would be low-income programs based on tiers of
15 affordability.

16 Finally, one of the other issues that was
17 brought up was revenue allocation and rate design and the
18 reason I mention this is it was one of the most -- one of
19 the biggest areas of interest among the participating
20 parties. It wasn't a very particularly contested issue by
21 staff, but the Utility Intervention Unit and MI were very
22 concerned with the revenue responsibility issues. UIU
23 was very concerned with the cost of study service and the
24 composition of the company's cost of service study and in
25 its -- in addition to that, UIU, PULP, and Richard Ford,

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2 the customer party, were very concerned with minimum
3 charge. That is also the area that the -- that staff
4 really took an interest in. The company had filed for an
5 increase in its minimum charge for the residential and
6 small commercial customers, but all those other parties
7 that I just mentioned felt that at the very least, the
8 minimum charge should stay frozen and not be increased at
9 all, if not significantly reduced.

10 Next slide. So now we turn to the order
11 that you have in front of you. After my RD came out and
12 all the parties filed briefs on exceptions and briefs
13 supposing exceptions criticizing some of the
14 recommendations I had made, after consulting with senior
15 advisory staff and taking a look on the briefs on
16 exceptions, we drafted an order that basically further
17 reduces the allowed revenue requirement increase to 5.9
18 million dollars. The significant holdings in this order,
19 the return on equity adheres to the elements that are
20 continually cited by the commission as being important.
21 The commission has continued, as I said, to set precedent
22 through its orders that signify that certain items in --
23 in its calculation are important to it. These include the
24 use of the discounted cash flow and capital asset pricing
25

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2 models to determine -- apply to a proxy group of utility
3 companies to determine a reasonable range of returns.

4 One of the contested issues again in this
5 case that has been litigated previously is the weighting
6 of those discounted cash flow method versus the capital
7 asset pricing model method. The commission has
8 continually adhered to a weighting that applies the DCF
9 result at a two thirds weighting versus the Cap-M result
10 at a one thirds weighting. NFG argued that the weighting
11 should be equal, that it should be fifty percent weighting
12 from each result. Again, based on commission precedent
13 and my reading, we adhered to the two thirds/one third
14 weighting. We didn't see anything in particular that
15 changed why this outcome should be any different than
16 recent outcomes.

17 So basically, this order adopts the RD's
18 recommendation based on staff's proxy group as well as its
19 calculations and then it was updated for current financial
20 market conditions. What that does is it results in a 8.5
21 percent ROE base to which twenty basis points is added as
22 a premium for the lower equity ratio. Again, there was
23 concern that if NFG rates premised on a 48 percent equity
24 ratio, they -- the customers would be paying for equity
25 that actually does not exist at the parent level so the

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2 order continues to use the parent's actual equity ratio
3 which on update is 42.9 percent and the return on equity
4 as I mentioned is 8.7 percent. The order establishes a
5 collaborative process to engage staff, NFG, and any other
6 interested parties in exploring the ringfencing measures
7 that I talked about earlier. If those were able to be put
8 in place, then you would see perhaps a different result on
9 the equity ratio and maybe even on the return on equity.

10 Another notable element of the order
11 modifies the recommended decision to forgo the application
12 of any negative revenue adjustments for targeted
13 performance. The performance targets continue to guide
14 the company and the company will still be required to file
15 its reports on an annual and also on a quarterly basis for
16 many of these targets, but at the end of the day, if any
17 performance slips, there's no automatic adjustment that
18 happens to the company's revenues. Instead, if the
19 commission gets any hint that the company is backsliding
20 in any of these areas, it retains the right to call the
21 company in to answer the commission's questions as to why
22 that its performance seems to be slipping.

23 The reason we were comfortable with going
24 ahead without these negative revenue adjustments in
25 addition to the fact that this is an -- not a multi-year

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2 case is that the evidence in this case showed that NFG is
3 a top performer in many of the categories that are
4 traditionally measured through these performance targets
5 especially relative to its New York state pure gas
6 utilities. The company has definitely met most of its
7 performance targets historically and it seemed that there
8 was less of a concern about whether it would be able to
9 continue to meet those.

10 The hardest part that I had in my
11 recommended decision in making a recommendation wasn't so
12 much whether the commission had the ability or the right
13 to impose these measures. It was where the target should
14 lie and that is largely due in part to the fact that the
15 company's performance has been so strong in some of these
16 areas that even staff had difficulty assigning a proper
17 level to measure that performance. So again, the company
18 will continue to report on its performance, but will not
19 be suffering any negative revenue adjustments as an
20 automatic measure. When we took that performance level
21 historically against the fact that this is a joint -- that
22 this is not a joint proposal that has an additional stay
23 up premium on its return on equity. We felt that there
24 was some comfort level in letting the company go forward
25

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2 on kind of an experimental basis without these performance
3 measures, without the negative revenue adjustments.

4 The next -- the last bullet on this slide
5 here concerns an earnings sharing mechanism. We really
6 sought a balance in trying to figure out how all these
7 elements worked together so that we can sit -- we continue
8 that balance with this next provision where there's no
9 earnings sharing mechanism that's implemented on the first
10 year of -- the first year of earnings, excuse me, but will
11 be applied against the company's future earnings after
12 that first rate year if the company stays out and doesn't
13 file for new base rates to become effective in 2018. The
14 company -- the order provides that for those future years
15 because what it does is it captures the Barcelona Project
16 savings as well as some of the other efficiencies that
17 might come up if they are realized and if we can go to the
18 next slide.

19 I'm going to skip to the second bullet
20 because it ties into the one that I was just talking
21 about. So we've modified the RD in this draft order to
22 impute only a one percent productivity adjustment which is
23 consistent with the productivity adjustment that's been
24 applied against utilities for -- for a long-standing
25 period. The two percent that I had recommended in the --

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2 in the recommended decision was very much premised on the
3 Barcelona Project; however, NFG showed in its briefs on
4 exceptions that the real issue that it was concerned with
5 is not that the savings will not come about, it's that
6 there is some timing issues with when those savings will
7 appear. We can therefore capture those either through an
8 earnings sharing mechanism if the company doesn't file or
9 if they do file for new base rates, those earnings can
10 either be included in any settled result of that next case
11 or they can be anticipated to be available through
12 discovery or testimony.

13 Also on this slide we do provide additional
14 funding for accelerated leak prone pipe replacement. The
15 funding in this order allows replacement at one hundred
16 miles for 2017 and a hundred and ten miles for 2018. It
17 also provides an additional incentive to NFG to continue
18 to go beyond those levels if it can do that during those
19 years by providing for a surcharge to recover some of its
20 cost in the event that it exceeds its targets. This
21 surcharge is very similar to a surcharge that's been
22 allowed for other gas utilities in the state and in fact
23 the commission had instituted a generic proceeding looking
24 about -- looking at whether this surcharge should be made
25 available to all the gas LDCs and Cindy can correct me if

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2 I'm wrong, but I believe that with this being applied in
3 NFG now, all of the major gas LDCs in New York state have
4 this surcharge which eliminates the need to continue the
5 generic case.

6 Another provision in that order that deals
7 with a pretty contested issue in this case dealt with the
8 executive incentive compensation for NFG's executives.
9 It's part of the labor expense and what we did here is
10 we'd adhered to the commission precedent which was
11 initially set back in a 2011 Orange and Rockland order
12 that basically affirms the showing that's required to
13 receive credit base rates for the -- for receiving funding
14 of the executive incentive compensation. Here there just
15 was no clear indication that the goals that the executives
16 were required to meet to receive this additional incentive
17 pay would benefit the rate payers in any strong way and it
18 also was not made clear as to whether the executive
19 incentive compensation was part and parcel of the base pay
20 for those executives and in that the amount of that base
21 pay was fairly fair relative to its peer utilities.

22 Finally, on this slide, I talk about the
23 low-income program costs. What we've done is in this
24 case, the order allows as I mentioned before, consistent
25 with the RD, NFG to continue to offer its existing

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2 portfolio of low-income programs for an additional year;
3 however, in accordance with the guidance in the
4 affordability proceeding, the amount of funding for those
5 programs has been increased so that perhaps the low-income
6 customers who came out and spoke at the public statement
7 hearings can receive a little bit more relief from the
8 bills to offset some of this increase.

9 Next slide. So the next two slides show
10 the drivers of the rate increase. This one -- the first
11 one shows drivers that increased the rates. As I
12 mentioned, funding for the low-income program costs, the -
13 - the increases are -- aren't there both due to more
14 funding needed for the existing programs, but also to fund
15 the transition for the tiered programs as they come into
16 place in the following year. There was also an additional
17 increase to net plant and rate base. The company, as I
18 had mentioned, had been out for a significant number of
19 years and so those costs were folded in. The depreciation
20 expense has increased. The site investigation and
21 remediation costs have increased and also in my
22 recommended decision based on the levels of revenue
23 requirement increase that I recommended, I felt that there
24 was an opportunity to accelerate some of the SIR recovery
25 in this case to offset the deferral costs. There was, as

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2 I mentioned, the Barcelona project before there was a need
3 to put into base rates some of the cost recovery for the
4 costs that have been expended for that project and finally
5 there was an increase to the cost of the material for
6 NFG's construction programs and its materials expense.

7 The next slide. These -- this slide shows
8 the offsets or the downward drivers that exist -- put
9 negative rate pressure on NFG's rates. NFG has
10 experienced increased sales which have resulted in
11 additional revenues. NFG has also had lower pension and
12 amortizations over the last few years. It's also had
13 lower property tax expenses. NFG has been fairly
14 aggressive in filing for economic obsolescence awards that
15 are offered by the New York State Department of Taxation
16 and Finance and has received these awards and finally
17 there was a reduction in the overall pre-tax rate of
18 return which is due to the lower return on equity and
19 equity ratio both from the last case. The -- also the
20 reflection of the one percent productivity adjustment as
21 the base rates are going up, the one percent becomes a
22 little bit greater so the offset is a little bit more.
23 The next slide please.

24 Given all that we've discussed, as I've
25 mentioned, there's a 5.9 recommended or allowed revenue

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2 requirement increase. What that means, here's the bottom
3 line slide, for a typical residential heating customer of
4 NFG, they will be estimated to have an average increase in
5 their total annual bill of about thirteen dollars and
6 twenty-one cents and that's a 1.4 percent assuming normal
7 weather and that's an annual bill and there was no
8 increase to the minimum charge so they can further modify
9 or offset the increase by, if they're able to, controlling
10 or conserving their energy usage.

11 With that said, you know, thank you very
12 much for the opportunity to present this case. It was
13 really my honor to be able to bring it through litigation
14 and present before you today. The order that's before you
15 was drafted both by me and with the, again, the invaluable
16 assistance of advisory staff and we really think it
17 strikes a very fair balance based on all the parties'
18 testimony and the evidentiary record and I'm here for any
19 questions or any comments you wish to make.

20 CHAIRMAN SAYRE: Thank you, Judge Lecakes.
21 That was very informative and very well presented. Thank
22 you very much, but I'm going to turn not to you, but to
23 the Office of Accounting Audits and Finance and channel
24 retired Commissioner Patricia Acampora who asked in every
25

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2 rate case whether the office sees any problems on Wall
3 Street from the proposed order?

4 MS. DORIS STOUT: So I'll take that
5 question. It's somewhat difficult to predict in this case
6 the reaction of Wall Street to the commission order
7 because NFG, the distribution company, is often
8 overshadowed by the rest of NFG's corporate activities
9 including its exploration and production and pipeline
10 investments. In fact, NFG distribution is only about 38
11 percent of the overall corporate revenues, 20 percent of
12 capital expenditures, and 36 percent of the assets of the
13 overall corporation. Thus NFG is viewed by the street as
14 a diversified natural gas or energy company as opposed to
15 a pure utility. How NFG's stock trades and its bonds are
16 rated is based on the overall corporation.

17 So that being said, if I focus solely on
18 the utility and the impact of this order, I can say that
19 while some analysts might be surprised to see an ROE below
20 nine percent and an equity ratio below 48 percent, they
21 really shouldn't be. Our precedence and approach to
22 setting cost of capital are very transparent. The 8.7
23 percent ROE and 42.9 percent equity ratio reflected in the
24 draft order are consistent with those methodologies and
25 are appropriate for the circumstances in this case. The

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2 components that Dakin discussed of this order largely
3 reduce risk by providing rate recovery based on a fully
4 forecast test here including some enhanced capital
5 programs with that surcharge for leak prone pipe that's
6 possible.

7 The order continues our normal risk
8 reducing mechanisms on more than seventy percent of the
9 company's revenues by providing true-ups and deferrals on
10 items like gas costs and pension and OPEBs and providing a
11 continuation of the revenue decoupling mechanism. The
12 order also removes any risk associated with the negative
13 revenue adjustments and the ROE at 8.7 percent for a one-
14 year case is appropriate considering the current interest
15 rate environment where we're looking at triple B debt in
16 the mid four percent range. It's also comparable to the
17 nine percent ROEs that the commission authorized in recent
18 three year rate plans for ConEd and the KeySpan companies
19 and it considers the differences and the risks between NFG
20 and those companies.

21 Finally, I can say that this overall
22 revenue requirement that you'd be setting is sufficient
23 for distribution to maintain financial strength. At the
24 levels in the draft order, distribution will have adequate
25 revenues to maintain the investment grade financial ratios

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2 at Moody's and S&P. All that being said, I would be
3 remiss not to acknowledge that there is a risk still that
4 S&P or Moody's might change their outlook based on their
5 perception of NFG's regulatory environment. The street
6 has generally viewed our multi-year agreements favorably
7 and as Dakin mentioned, this case did not deliver such an
8 agreement so overall, however, based on the litigated
9 record in this case, I think the draft order strikes the
10 right balance.

11 CHAIRMAN SAYRE: Thank you, Director, and I
12 can just imagine Commissioner Acampora saying the same
13 thing. My next question is to either Judge Lecakes or to
14 our general counsel Paul Agresta. Given that we've got
15 here a one-year rate case without any kind of a stay-out
16 obligation, how soon could the company turn around if it
17 so chooses and file another rate case?

18 A.L.J. LECAKES: It's -- it can file almost
19 immediately if it chose to. The rate year would end on
20 March 31st. Together with the settlement discussions that
21 NFG instituted after the evidentiary hearings, they filed
22 an agreement to postpone the traditional eleven month
23 suspension period by an additional month. That makes this
24 session a month later than it normally would be so there
25 would be some time that the company would normally hold

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2 off before it would file again in a thirty-day window.
3 This that case -- in this case, because the rate year
4 stays the same and rates are compressed by a month, that
5 thirty-day window actually doesn't exist so if the company
6 wanted to, it could file almost immediately after this
7 came out so the rate year starts in about a week and a
8 half on May 1st.

9 CHAIRMAN SAYRE: And in the opposite
10 direction, if the commission were to become dissatisfied
11 with the company's performance or felt that financial or -
12 - or operational conditions have changed to a point where
13 the rates are unreasonably high, how soon could the
14 commission on its own motion if it so chose, bring back
15 the company into a rate proceeding?

16 A.L.J. LECAKES: I will defer that question
17 to General Counsel Agresta.

18 MR. PAUL AGRESTA: It's basically the same
19 schedule.

20 CHAIRMAN SAYRE: Thank you. I don't have
21 any more questions. Commissioner Burman, would you like
22 to ask questions before I make my comments or shall I
23 proceed?

24 MS. DIANE BURMAN: Sure. I'll just ask two
25 questions and then I'll turn it back to you for your

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2 comments and then I'll save my comments. You mentioned
3 Judge Lecakes, that because each gas utility has some form
4 of a surcharge right now, that the generic proceeding did
5 not need to exist. I think that's a little unclear. I
6 think specifically to that aspect maybe it's resolved
7 enough for each utility; however, the holistic aspect of
8 the 2012 generic proceeding which was looking at the
9 natural gas expansion of -- in New York was really geared
10 towards how could we focus on ways to properly expand and
11 appropriately expand natural gas and what were some of the
12 challenges and opportunities.

13 There was, I believe, also a 2014 generic
14 proceeding relating specifically to looking at potential
15 ways -- innovative ways to finance pipeline leak prone
16 pipes et cetera and both of those proceedings I believe
17 are still outstanding. There may have been things that
18 have been done outside of them, but to the extent that the
19 holistic approach is still one that's relevant. I just
20 want to clarify that there was -- there wasn't an
21 expectation that we'll be closing the 2012 or 2014
22 proceedings.

23 A.L.J. LECAKES: Right. That's correct.
24 My comments were more specifically directed at the arm of
25 the generic proceedings that specifically looked at the

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2 surcharge mechanism of -- there were a couple of orders
3 and comments that were sought a couple of times on what
4 showing would need to be made by a New York state LDC to
5 receive a surcharge mechanism like the one that we've now
6 applied to NFG and -- and all the other instate LDCs so
7 that discrete area only is the -- is the area that really
8 doesn't need to be considered as part of those generic
9 cases for gas expansion now since that surcharge mechanism
10 exists in each of the rate plans and because it exists in
11 each of the LDC rate plans, it can be modified as
12 necessary through those individual rate plans.

13 COMMISSIONER BURMAN: Okay. Thank you for
14 the clarification. I have no further questions.

15 CHAIRMAN SAYRE: I've remarked at a number
16 of previous sessions that I favor multi-year settlements
17 for the rate stability and innovative agreements that they
18 make possible, but there's no particular harm and actually
19 some real benefit from doing a fully litigated one-year
20 rate case every now and then and that's what we have here.
21 The order in front of us, which I support, is in no way a
22 punishment of NFG or anyone else for failing to reach a
23 settlement. It represents, in my view, a fair balancing
24 of the public interest taking into account the needs of
25 both large and small customers particularly the low-income

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2 customers, safety, reliability, all those factors into the
3 mix.

4 As I've also said before on a number of
5 occasions where we have a difficult balancing job to do at
6 the commission, I'm not terribly troubled if everybody is
7 a little unhappy with our result because that's some
8 indication that maybe we've achieved a reasonable balance
9 of the public interest. I don't think here we're creating
10 an outcome that is extremely favorable or extremely
11 unfavorable to any party. So with this one-year rate
12 case, all parties to this and other future rate cases are
13 getting a good look into how the commission is going to
14 address a very wide range of issues and I think that kind
15 of occasional level setting is a good thing to do.

16 With respect to low-income customers in
17 particular, we heard loud and clear that there are many
18 gas customers in the Buffalo area and in NFG's territory
19 who are having problems paying their heating bills. I
20 understand that and it's very important for us to address
21 that issue. That is very much a part of the public
22 interest, but in my view, the right way to address that
23 issue is not to throw out a complete rate case. The right
24 way to address the issue is to improve the company's low-
25 income programs. As Judge Lecakes has said, the proposed

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2 order increases low-income program funding up to about two
3 percent of NFG's anticipated revenues which is the level
4 that the commission decided in the low-income
5 affordability order is a fair level for other rate payers
6 to pick up so the order here is consistent, as Judge
7 Lecakes said, with the low-income affordability order and
8 we will do our best to continue to make progress toward
9 the goal in that order of limiting the household costs of
10 energy to six percent of average household income after
11 taking into account current bills and -- and other
12 supportive programs, but still limiting the amount that
13 other rate payers are required to bear to a reasonable
14 amount.

15 The order resolves dozens of other issues
16 and I'm sure is going to make very interesting reading to
17 everybody. It represents my best efforts to balance the
18 public interest and I'm prepared to vote in favor of it.
19 Commissioner Burman?

20 COMMISSIONER BURMAN: Thank you. So this
21 is the first rate case since I've been on the commission
22 where we've just looked at a one-year rate case. We did
23 in the ConEd matter do an extension of one year, multi-
24 year rate case, but this is the first unless I'm mistaken
25 -- well, right -- that we're -- we've only done the one-

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2 year rate case and for me I was troubled by that. I do
3 think that and take note of Director Stout's comments on
4 the preferred focus from the street -- Wall Street on
5 multi-year rate cases and so it troubles me that we're
6 looking at a one-year rate case and I really am focused on
7 the path forward and looking at what we can do to -- to
8 make it even better for customers and to the extent that,
9 you know, NFG which is a very good company and has really
10 shown leadership in many ways especially in their ability
11 to keep customer bills manageable really due to its mix of
12 assets in New York and Pennsylvania, and their bills are
13 really among the lowest in the state. So for that, my
14 focus really has been on looking at the record here in the
15 one-year case and embracing it because the -- the record
16 has been robust enough to indicate that it's appropriate
17 to approve this.

18 However, going forward, we really should be
19 looking at what we can do to bring more to a multi-year
20 rate case that will help with customers getting more
21 benefits and potentially looking at other ways of
22 innovation that we can incorporate for that. I am
23 cognizant of the fact that we're doing this April 20th and
24 April is National Safe Digging month which is, for those
25 who aren't aware, it's really a broad national effort to

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2 promote safe digging practices and protect our buried
3 utility infrastructure. We really have been focused on
4 the integrity and reliability of our natural gas system
5 that's paramount and at the core of that is safety.

6 I am heartened that we have, in the rate
7 case, looked at significantly accelerating the replacement
8 of pipes that might no longer be fit for service and also
9 looking at opportunities for using advanced technologies.
10 We do have to look, and that's why I focused on one of my
11 questions in the generic proceeding, and how can we
12 maintain our natural gas system and the integrity of that
13 system. Natural gas is an important partner in our energy
14 mix and this really is an opportunity through here to look
15 at solidifying that.

16 I would like to make a -- a plea for those
17 also to join me in recognizing National Safe Digging month
18 as an important public safety initiative. I have been
19 spending time trying to help get the message out far and
20 wide and help to reduce the number of utility incidents
21 that are stemming from excavation activities because
22 excavation damages are significant issues and as people
23 are out there now in their yards, myself putting in a new
24 driveway, we really do need to make sure that people are
25 aware of call eight one one and that the contractors and

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2 the excavators that we hire are also doing that. So any
3 help in tweeting and making it, you know, a top priority
4 during this month is -- is appreciated by me.

5 Getting back to the rate case, I will join
6 with Commissioner Sayre in approving this rate case and
7 focus on the path forward, the opportunities that are
8 available and the continued collaborative effort not only
9 with staff and the company, but with those stake holders
10 who have an interest and primarily the customers. I will
11 want folks to understand that the commission will really
12 not tolerate any decreases in performance related gas
13 safety and consumer services. That's very important to me
14 personally. I will be looking at that and I am pleased
15 with the gas safety and consumer services performance of
16 the company and would like to see that continue and work
17 towards how can we even do more things around that that
18 will help so that's it. So thank you and I would like to
19 say a special thank you to the judge as well as the staff.
20 I know you've worked really tirelessly on this. This was
21 really an incredible effort in your recommended decision
22 and the amount of time and effort you put into it was
23 recognized by us so thank you.

24 CHAIRMAN SAYRE: Commissioner Burman, I
25 very much appreciate your bringing up National Dig Safely

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2 month. I can only reiterate what you've just said. If
3 you're a homeowner and you're putting in a driveway or a
4 new post hole for -- for a mailbox, call eight one one.
5 It's not going to cost you anything. The utilities will
6 come out and mark it and you'll avoid a great deal of
7 potential trouble. If, however, you're a contractor and
8 you excavate as part of your business and you don't call
9 eight one one, watch out. We will come after you. This
10 agency enforces the dig safely laws and we're very serious
11 about them, but with that, I think we're prepared to call
12 for a vote on item 101, the National Fuel Gas Distribution
13 Corporation rate case. Chair votes aye?

14 COMMISSIONER BURMAN: Aye.

15 CHAIRMAN SAYRE: Commissioner Burman votes
16 I. The decision being unanimous, the recommendation is
17 adopted. We will now move to the consent agenda.
18 Commissioner Burman, do you want to recuse from voting or
19 have any comments on any of the items on the consent
20 agenda?

21 COMMISSIONER BURMAN: I do have comments.
22 Thank you very much. I have comments on three items. On
23 item 377, this is an appeal of an informal hearing
24 decision. Here we're upholding the informal hearing
25 officer's determination that a service line extension and

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2 restoration should be provided at no cost to the
3 complainant. It's related to a specific factual issue
4 concerning the notice -- the utility's notice to the
5 complainant on their two-year policy on storm-related
6 electric service and I just really wanted to highlight
7 that this is not just to this utility. There is a
8 footnote in this order that states that to the extent that
9 other utilities have similar rules limiting the no cost
10 service restoration to a particular period of time, proper
11 notice of the applicability of the rule to affected
12 customers is imperative. So I think it is important that
13 utilities read this order and look at their policies and
14 make sure that if they have any questions on proper notice
15 that they work with the Office of Consumer Services on
16 that. This is, I think, an important consent item to look
17 at.

18 On item 387, this is on the proceeding on
19 motion of the commission to develop dynamic load
20 management programs and this is looking at the tariffs in
21 particular. I do make note of the fact that last year, I
22 voted no in some aspects. Where's Marco? I voted no in
23 some aspects of this case and my concern with more of a
24 holistic approach. So I had really struggled with this
25 item, I think I drove staff crazy with this item, and

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2 really looked at very much all of the specifics of this
3 and what we were doing and what the need was to do this
4 item now. So I came up with really three questions and --
5 and rationales for why and to the extent that I think it's
6 important that folks understand this.

7 So one of the questions was why are we
8 acting? What's the need of acting on this dynamic load-
9 management tariff at this time? So the demand response
10 programs are effective for the peak summer period that
11 begins on May 1st and these modifications that were
12 proposed by the utilities are based on program experience
13 from last year and they're intended to increase
14 participation this year. They were taken and there was
15 reflective comments made on proposals from market
16 participants and it really comes down to that there needs
17 to be regulatory certainty and here, if we delayed action,
18 it could result in changes being made mid-period or not at
19 all and that could negatively impact the participation
20 levels. So for me on that aspect, it was important to
21 send that regulatory certainty and to not delay. It
22 doesn't mean that some of my comments that I had on the
23 overall moving forward are not still valid and will not be
24 taken into consideration at some future point, but I do
25 think from looking at where we are now and the need to act

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2 and to give some certainty on that movement forward, it
3 was --it was necessary.

4 So then the other question is really why
5 would I support these changes if I haven't been supportive
6 of some, not all, but some of the REV initiatives in the
7 past as it relates to this?

8 Well, first I would dispute that I'm not
9 supportive, but that's an hour long conversation so I'll
10 save that for another time. It really is that for me,
11 these demand response programs fit into a specific sort of
12 bucket and they've been in place in New York City for many
13 years pre-REV and we recognize the benefits they've
14 provided and that the programs should be expanded
15 statewide I'd say post-REV, but I think we're still in REV
16 so -- and they are intended to be cost-effective programs
17 that produced real peak-load reductions during the
18 critical peak summer period and is a benefit to consumers
19 and that really is at the core of it for me. I do recall
20 that the distribution load relief program component
21 addresses the intraday reliability problems so as it fits
22 with helping consumers looking at the peak load as we're
23 entering into getting ready for this summer and the
24 reliability issues, this really is important and I didn't
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2 think it warranted the delay which may cause issues in
3 reliability of the system.

4 I grapple with a lot of the other aspects
5 and the implementation. I am cognizant of the fact that
6 we still have utility earning adjustment mechanisms to
7 look at. We still have petitions for rehearing that are
8 out there. We still are going forward on the next phase
9 of value D and exploring all of those different aspects,
10 but here, this action is really targeted to those demand
11 response programs. It does not have a fatal impact on the
12 utility AIMS and all the other proceedings and really is a
13 tool in the toolbox that utilities can use to achieve some
14 of their targets related to peak load reduction for
15 example. And I do note that the AIMS are yet to be
16 developed and implemented for the upstate utilities and so
17 this is a focused item on what's necessary and I really
18 look forward to continued robust respectful dialogue on
19 the other things and how we may implement some of them.

20 Then the last item is item 389 which is the
21 Ravenswood petition for expedited approval of a transfer
22 in financing pursuant to lightened regulation. This is a
23 one commissioner order. I am -- when I reviewed the one
24 commissioner order, my focus was on the discretion given
25 to the chair in this and the necessity for his need to act

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2 on this item again going to regulatory certainty and so
3 for this limited fashion, as it is a one commissioner
4 order, that really sticks to the four corners of the
5 document in the approval with some subject to some
6 conditions. I do -- I will be voting for it.

7 I do note though that the item also is
8 clear in that it is deferring to the ISO and FERC on
9 matters that deal with the market power and other pending
10 matters dealing with AC transmission in Western New York
11 and that I also am very cognizant of the fact that the
12 market power issues are very verbose right now. I don't
13 know if that's the right word, but very -- right now
14 there's a lot of discussion around that. I look forward
15 to the May 1st and May 2nd FERC conference where a lot of
16 these issues will be flushed out and then working through
17 what some of the challenges are and what that means as
18 some of these things may get changed or evolved or adapted
19 and that to the extent that we will be looking at all of
20 these issues and are cognizant of it.

21 I also am cognizant of the fact that there
22 is a, you know, continuing look at the state resource
23 planning and energy planning for New York and those issues
24 and how all of what we do will fit in and we'll address
25 those issues and those challenges and opportunities at a

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2 future time. So for now, I'm limited in the approval of
3 the one commissioner order. That's it.

4 CHAIRMAN SAYRE: We're ready to move to a
5 vote on the consent agenda. This vote is in favor of the
6 recommendations on the consent agenda. The chair votes
7 aye.

8 COMMISSIONER BURMAN: Aye.

9 CHAIRMAN SAYRE: The votes being unanimous,
10 the recommendations are adopted. Secretary Burgess, is
11 there anything further to come before us today?

12 MS. BURGESS: There's nothing further to
13 come before you today. The next commission meeting is May
14 18th at ten thirty in Albany.

15 CHAIRMAN SAYRE: This meeting is adjourned.

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2 STATE OF NEW YORK
3 I, LESLIE TOMPSON, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and place,
5 as stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription consisting of
7 pages 1 through 35, is a true record of all proceedings
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 27th day of April, 2017.

11

12

13 LESLIE TOMPSON, Reporter

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