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Monthly Meeting - 3-19-2020

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MONTHLY MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, March 19, 2020
10:29 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS:

JOHN B. RHODES, Chair
DIANE X. BURMAN
JAMES S. ALESI
TRACEY A. EDWARDS
JOHN B. HOWARD

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2 CHAIRMAN RHODES: This Commission to
3 order. Can I just confirm that -- in the room, for
4 -- for -- so, everybody can -- we've got Commissioner
5 Burman, Dakin LeCakes, we've got Brandon and we've
6 got Tom Dwyer and we've got Kevin Wisely and we have
7 general counsel, Bob Rosenthal, and on -- on the
8 line, we've got participating remotely, Commissioner
9 Jim Alesi, Commissioner John Howard, Commission Tracy
10 Edwards and myself, Commissioner John Rhodes. That's
11 correct, right? So, with that, I call -- I actually
12 call the session of the Public Service Commission to
13 order. Secretary Phillips, are there any changes to
14 the final agenda?

15 SECRETARY PHILLIPS: There are no
16 changes to the final agenda. I do want to note, I
17 believe Dakin LeCakes is here, as well. And, I also
18 wanted to just reinforce because of the way that
19 we're doing this particular session, please remember
20 to say your name before you speak if you're on the
21 phone and if you are not speaking, please mute your
22 line but no changes to the agenda.

23 CHAIRMAN RHODES: Okay. Thank you and
24 once again, somebody is creating noise on the mic.
25 I'm not sure but the -- the most we could do to still

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2 that, would be great for the quality. Again, it's
3 John Rhodes. Before we get started, I would like to
4 take note of our arrangements here today. In line
5 with the guidelines around social distancing and
6 minimizing large gatherings and in light of Executive
7 Order 202.1, that suspends the opening meetings law
8 on an emergency basis, we're conducting today's
9 session with minimal, in-person attendance.

10 The public will have the opportunity
11 to observe the session remotely on the Department's
12 webcast page, which I'm viewing myself and we will
13 also record and transcribe the session, as per our
14 practice.

15 These arrangements have been reviewed
16 by our general counsel and he has found that they
17 meet the requirements of the Executive Order. They
18 also meet my own expectations of honoring the intent
19 of the open meeting law to the maximum extent
20 permitted by our duty to protect the public health of
21 New Yorkers.

22 So, with that, let's proceed into
23 business. The first item on our regular agenda, is
24 -- I'm sorry, is someone speaking?

25 UNIDENTIFIED SPEAKER: Just you John.

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2 CHAIRMAN RHODES: Yeah but someone's
3 creating noise. Let's begin with an update from
4 Kevin Wisely, Director Office with Resilience and
5 Emergency Preparedness on the Department's response
6 to COVID-19.

7 Kevin?

8 MR. WISELY: Good morning, Chairman
9 Rhodes and Commissioners. As you know, New York
10 State has confirmed cases of COVID-19 and through the
11 Governor's leadership, steps are being taken to
12 flatten the curve of the rate of infection. Steps we
13 can all take to minimize the spread of COVID-19; wash
14 your hands often with soap and water for at least
15 twenty seconds. If soap and water are not available,
16 use an alcohol based hand sanitizer. Avoid touching
17 your eyes, nose and mouth with unwashed hands. Avoid
18 close contact with people who are sick. Stay home
19 when you are sick. Cover your cough or sneeze with a
20 tissue, then throw the tissue in the trash. Clean
21 and disinfect -- disinfect frequently, touched
22 objects and surfaces.

23 The Department of Public Service
24 Staff, have been tracking the COVID-19 outbreak for
25 several weeks. The DPS Office of Resilience and

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2 Emergency Preparedness has been working with our
3 internal offices, as well as the utilities, relative
4 to continuity of operations and pandemic planning.
5 In addition, DPS continues to support the New York
6 State Emergency Operations Center, which has been
7 activated in response to COVID-19 outbreak.

8 All DPS offices have reviewed their
9 mission critical functions and the staffing necessary
10 to achieve these functions. Directors have
11 reassessed their critical functions against the
12 potential for a reduced work force. Directors have
13 also assessed their capabilities to work remotely, in
14 preparation of the direction for the non-essential
15 employees to work from home.

16 DPS is supporting State operations and
17 the Emergency Operations Center, through
18 participation in the daily New York State multi-
19 agency coordination calls, staffing of the Emergency
20 Operations Center daily, including weekends, offering
21 support staff for State regional operation centers
22 and also working to establish a procedure for
23 coordination of a utility response to a quarantined
24 utility customer premise and to ensure proper
25 protections, precautions are in place.

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2 With respect to the utilities, DPS has
3 discussed their continuity of operations plans and
4 critical functions, ensuring they maintain the
5 ability to provide safe and reliable service and
6 reduce employee contact, both internally and
7 externally. Electric, gas, telecom, water and
8 generation companies, have been communicating with
9 their employees and providing appropriate guidance.

10 The utilities have all reviewed their
11 contingency plans, including the potential of a
12 reduced workforce. Each utility has limited
13 participation -- has limited participation in any
14 large gatherings and has restricted employee travel.
15 The utilities have begun to require non-essential
16 employees to work from home and are reducing the
17 density or reporting locations to those -- for those
18 field staff that are essential personnel.

19 Essential utility work activities are
20 currently occurring as scheduled and will not be
21 limited unless they reach staffing reduction
22 thresholds defined in their continuity of operations
23 plans. All emergency work will be handled as it
24 typically has been.

25 Our discussions have also included,

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2 the New York Independent System Operator, which has
3 taken necessary precautions to protect their
4 workforce, including measures for social distancing
5 and reducing work force density.

6 The Governor also directed the New
7 York State Department of Public Service to suspend
8 public utilities from cutting off service, including
9 power and heat, to customers affected by COVID-19.
10 The State's major utilities have taken immediate
11 action to suspend service shut off to households
12 during the COVID-19 outbreak and will continue to
13 offer deferred payment plans for customers struggling
14 financially due to the outbreak.

15 For additional information on COVID-
16 19, please refer to the daily updates posted on the
17 New York State Department of Health website. This
18 concludes my presentation. Thank you for the
19 opportunity to provide this important informational
20 briefing.

21 CHAIRMAN RHODES: Thank you very much
22 Kevin. This really is important and I'm glad you are
23 able to share how much we're doing to protect New
24 Yorkers as this un -- unfolds. I'll now turn to the
25 first item for discussion, which is Item 101, Case

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2 18-G-0716, as it relates to the joint proposal
3 concerning a natural gas incident in Little Falls,
4 New York, on February 14, 2018, presented by Chief
5 Administrative Law Judge, Dakin LeCakes. Kevin
6 Speicher, Chief of Safety and Reliability, is
7 available for questions. Judge LeCakes, please
8 begin.

9 A.L.J. LECAKES: Thank you Chairman
10 Rhodes. Chairman Rhodes, Commissioners, good
11 morning. Before you is a Draft Order recommending
12 the adoption of a joint proposal between Department
13 of Public Service and Niagara Mohawk Power
14 Corporation. The joint proposal would resolve all
15 issues related to a February 14, 2018 natural gas
16 explosion in Little Falls, New York in a case brought
17 by the Commission under Public Service Law, Section
18 25-A.

19 In 2013, Governor Cuomo and the New
20 York State Legislature, enacted Section 25-A, to
21 provide the Commission with the authority to assess
22 administrative sanctions directly against certain New
23 York electric and gas providers, for regulatory non-
24 compliance.

25 The Little Falls explosion, resulted

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2 in three injuries, one of which required
3 hospitalization and destroyed three buildings, while
4 damaging several others. Staff from the Department
5 of Public Service Gas Safety Division, investigated
6 the explosion and issued its findings in a November
7 2018 report. At its December 2018 session, the
8 Commission ordered Niagara Mohawk to show cause as to
9 why the Commission should not institute a penalty
10 action against the Company, based on the alleged
11 violations of three sections of the Commissions' gas
12 safety regulations. One regulation concerns the seal
13 required on an opening, where service lines enter a
14 building, while the other two regulations concern
15 company pipeline inspector qualifications.

16 The building where the explosion
17 occurred, had been inspected by Niagara Mohawk in
18 December 2017, two months before the incident. Under
19 Staff's theory of the case, gas had leaked from a
20 loose pipe connected to a curved shut off valve and
21 entered a basement through an open conduit. The
22 unsealed conduit was documented during the Company's
23 December 2017 inspection. The Niagara Mohawk
24 inspector did not seal the open conduit during that
25 inspection.

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2 As part of its own company
3 investigation, Niagara Mohawk provided the pipe and
4 other information to a third party laboratory,
5 Massachusetts Materials Research or M.M.R. M.M.R.
6 after reviewing all the available information,
7 provided a reasonable alternative cause for the
8 explosion. Niagara Mohawk also disputed Staff's
9 claim, that its inspector was required to seal the
10 conduit pipe at the time of the inspection, noting
11 that no such requirement existed in the Company's
12 standard operating procedures.

13 The joint proposal, includes the
14 Company's commitment to update those operating
15 procedures and to train its inspection personnel
16 accordingly. Niagara Mohawk has agreed that its
17 shareholders will pay for the implementation costs,
18 which total over \$650,000. The Company also has
19 agreed to incorporate the new policies and procedures
20 for its downstate KeySpan affiliates.

21 After reviewing the record, I
22 recommend that the Commission adopt the joint
23 proposal. The Commission's settlement guidelines,
24 evaluate whether to adopt the joint proposal under
25 the public interest standard. Section 25-A, directs

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2 the Commission to consider specific factors for
3 assessing penalties, including the seriousness of the
4 violation, the nature and extent of any previous
5 violations and whether there was any knowledge of the
6 violation to determine what the public interest
7 holds.

8 While the potential violations are
9 serious, it is not a forgone conclusion that any
10 violations occurred. Similarly, there is no evidence
11 of any previous violations for the specific
12 regulation regarding pipeline entry. Moreover, given
13 the existence of a reasonable dispute, no foundation
14 exists to impute knowledge of a violation to the
15 Company.

16 Weighing the above factors, I
17 recommend the Commission adopt the joint proposal.
18 The amount of shareholder responsibility, could
19 theoretically be higher but to impose such a penalty,
20 would require the Commission to find that the Company
21 was in non-compliance with the Commission's
22 regulations. In this case, National Grid provides a
23 reasonable dispute, as to whether it was in non-
24 compliance. The joint proposal avoids costly
25 litigation and serves to prevent this situation from

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2 repeating.

3 I note in closing, that this case
4 demonstrates how the Department is able to use
5 Section 25-A, not just as an enforcement tool but to
6 assist the Commission in determining where its
7 regulations should be tightened to promote public
8 safety at the highest levels. Here, the Company's
9 dispute revealed an ambiguity in the Commission's gas
10 safety regulations, concerning the expectations
11 placed on an inspector, on discovering an unsealed
12 conduit where utility service facilities enter a
13 building. Later in this session, the Commission will
14 consider an item on the consent agenda, that amends
15 its gas safety regulations, to make clear, that when
16 unsealed conditions are discovered during an
17 inspection of utility service lines, the inspector is
18 expected to remedy that condition immediately. This
19 concludes my presentation and we are available for
20 your questions.

21 CHAIRMAN RHODES: Thank you very much,
22 Judge LeCakes. My own view, is that this is a
23 reasonable resolution under the circumstances, in
24 especially that it's a protective resolution,
25 implementing the appropriate and needed remedies and

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2 also implementing appropriate and needed improvements
3 to policies and standards.

4 Thank you very much. Commissioner
5 Burman, comments; questions?

6 COMMISSIONER BURMAN: Thank you so
7 much. I'm going to be voting for this item. I think
8 it is a sound joint proposal and -- and settlement.
9 The process was sound. I particularly was pleased to
10 see that an independent third party was contracted,
11 pursuant to an agreement with Staff by the Company,
12 to investigate the cause of the explosion and that
13 that report helped to give a context to some of the
14 potential observations of what may or may not have
15 caused the explosion.

16 I particularly am very happy to see
17 that the goal was to engage in a way that allowed
18 folks to understand each other's positions, the
19 Staff's position, the Company's position, with the
20 help of the third party independent laboratory.

21 The notification on -- going into
22 settlement discussions was made and the process was
23 following the very sound settlement guidelines, in
24 what was appropriate for resolving the issue in the
25 public interest. In -- in -- very mindful to me, is

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2 that the solutions are focused on continuous
3 improvement for pipeline safety, not only for this
4 company but in lessons that we can learn in our
5 regulatory process, to ensure that we are looking
6 forward in lessons learned -- lessons learning from
7 events that happen. And, with that, I am very
8 supportive and will be voting yes. Thank you.

9 CHAIRMAN RHODES: Thank you very much.
10 Commissioner Alesi?

11 COMMISSIONER ALESI: Thank you, Mr.
12 Chairman. This joint proposal will allow us to close
13 out the investigation into nearly tragic
14 circumstances in Little Falls. The joint proposal
15 ensures immediate and positive changes to operations,
16 training and line inspections, associated costs will
17 be burdened by the shareholders and the joint
18 proposal will help us avoid the prospect of costly
19 litigation, so I will be supporting it.

20 CHAIRMAN RHODES: Thank you very much.
21 Commissioner Edwards?

22 COMMISSIONER EDWARDS: Now, I think
23 that this is a -- it's a good thing. It's very
24 positive and I will be supporting it, as well.

25 CHAIRMAN RHODES: Thank you very much

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2 and Commissioner Howard?

3 COMMISSIONER HOWARD: I will also be
4 supporting this item and I am -- I want to concur
5 with Commissioner Burman's comments, that this now
6 leads to a process of continuous improvements and
7 helping guarantee the public's safety in every way
8 possible. So, I -- I vote yes.

9 CHAIRMAN RHODES: Well, we're about to
10 vote, so thank you. With this, I call for a vote and
11 my own vote is in favor of the recommendation to
12 adopt the terms of the joint proposal as discussed.
13 Commissioner Burman, how do you vote?

14 COMMISSIONER BURMAN: Yes.

15 CHAIRMAN RHODES: Commissioner Alesi?

16 COMMISSIONER ALESI: Yes.

17 CHAIRMAN RHODES: Commissioner

18 Edwards?

19 COMMISSIONER EDWARDS: Yes.

20 CHAIRMAN RHODES: Commissioner Howard?

21 COMMISSIONER HOWARD: Yes.

22 CHAIRMAN RHODES: Thank you all. The
23 item is approved and the recommendation is adopted.
24 We will now move to the second item for discussion,
25 which is Item 102, Case 20-G-0131, which is in the

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2 matter of gas planning procedures, presented by
3 Brandon Goodrich, Assistant Counsel, Rudy
4 Stegemoeller, Special Assistant for Energy Policy, is
5 available for questions. Brandon, please begin.

6 MR. GOODRICH: Thank you, Chair
7 Rhodes. I would note, that Cindy McCarran will also
8 be available by phone for questions. Good morning,
9 Chair Rhodes and Commissioners. Item 102, is a Draft
10 Order, instituting a proceeding focused on the
11 planning processes of natural gas utilities in New
12 York. The new proceeding will address a number of
13 issues, including locational constraint analysis, to
14 determine where current natural gas infrastructure,
15 both at the distribution and upstream transmission
16 levels, may be inadequate to address projected
17 customer demand. Second, this proceeding will
18 address utility planning information.

19 Planning by natural gas utilities,
20 should include comprehensive consideration of supply
21 alternatives and demand site options and should
22 ensure reliability for customers and the advancement
23 of State policies. Up until now, the planning
24 process for natural gas utilities, has been opaque,
25 with much information filed confidentially, so that

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2 stakeholders have little access.

3 That same planning process, has
4 centered on conventional approaches, to meeting
5 natural gas demand, specifically building new
6 infrastructure and failed to prioritize other
7 approaches, such as demand reduction. Thus, the
8 solutions considered, may not necessarily have
9 reflected the best balance of the interests in
10 reliability, cost, timeliness of solutions in
11 advancing the State policies. Planning going
12 forward, must be more transparent, consider
13 alternatives and strive to avoid infrastructure
14 investments, where possible.

15 Third, this proceeding will address
16 non-pipe solutions. These include things like
17 efficiency programs, electrification of heating load,
18 clean demand response and temporary supply. These
19 options can allow a natural gas utility to meet
20 customer demand, without contracting for additional
21 pipeline supply.

22 Fourth, this proceeding will address
23 reliance on peaking services. Utilities have become
24 more reliant on peaking services, to meet customer
25 demand. These include things like trucking,

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2 compressed natural gas to specific points on the
3 distribution system, where there are constraints or
4 contracting with natural gas marketers for short term
5 contracts, which are priced at market prices.

6 Downstate New York, typically has the
7 highest natural gas prices in the nation, during very
8 cold weather because the interstate pipelines are
9 full to capacity. As reliance on peaking services
10 increases, there needs to be clear standards for
11 cost, safety and reliability.

12 Fifth, this proceeding will address
13 standards governing moratorium. These would include
14 things like, how and when a utility declares a
15 moratorium, how impacted customers are treated,
16 communication standards and practices, prioritization
17 of customers and how and when to lift a moratorium.

18 Finally, other issues considered in
19 this proceeding, will include how rate design can
20 affect demand, reduction of criteria pollutants and
21 tariff and rule revisions, that may be necessary to
22 facilitate the chosen outcomes.

23 The recommendations before you, would
24 have the utilities file supply and demand analysis
25 within 90 days, for locations in their service

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2 territories known to be vulnerable to supply
3 constraints and within 120 days, for their entire
4 service territories. Also within 120 days, gas
5 utilities will file, either separately or in concert,
6 proposals to address reliance on peaking services and
7 moratorium management. Within 150 days, Staff would
8 issue for comment, a proposal for modernizing the gas
9 system planning process. Also, within 150 days,
10 Staff proposes that utilities be directed to provide
11 a status report and proposals, regarding the use of
12 demand reducing measures in their service
13 territories.

14 This concludes my presentation and
15 Rudy, Cindy and I, will be happy to answer any
16 questions. Thank you.

17 CHAIRMAN RHODES: Thank you very much.
18 In my view, we leaned over the past year or so, that
19 we need smarter, more comprehensive and more
20 transparent planning by utilities for gas
21 infrastructure. With this -- with this proceeding,
22 we have a chance to explore an approach that is more
23 useful, that is more open and that is more tuned to
24 one, advancing those and only those investments and
25 costs that we really need and two, an approach that

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2 will simply work better for customers, in terms of
3 giving them -- giving them a feature that they can
4 plan on. I think this is an important undertaking
5 and I think it's timely. Commissioner Burman?

6 COMMISSIONER BURMAN: Thank you very
7 much. I have been focused on, as well have, on what
8 the appropriate gas planning policies and procedures
9 should be. We have, right now currently, robust gas
10 planning, just like our electric planning that we do
11 routinely and working with the utilities and other
12 stakeholders. In fact, our annual winter review, has
13 many of the things we're asking for now, in terms of
14 supply and demand analysis and we also monitor that
15 through the winter.

16 In rate cases, each utility is called
17 upon to give us detailed work papers behind the
18 design day forecast. We look at this on a continual
19 basis and so, our planning and what may need to be
20 included, is important for us for the times that we
21 look at it, to take a pause and see what we may need
22 to add. It is also not lost on me, that in these
23 challenging times, now more than ever being mindful
24 of COVID-19, our job is also helping in the continued
25 delivery of natural gas and electricity services,

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2 while taking care of affected customers. It also is
3 coming up June 1st, hurricane season and the planning
4 that would go into that, as well as our summer
5 planning coordination.

6 For me, I think that the Order falls
7 short of what we need to be providing. Before we
8 ask, at this time, for new things and potentially
9 regulatory burdens or barriers upon the utilities,
10 who really must be laser focused on the response to
11 the COVID-19 and other challenging issues, I would
12 like to see from the perspective that we are giving
13 more historical context, for all of the issues that
14 are raised in the Order. And, I do think that we lay
15 out numerous important issues, like non-pipes
16 alternatives, like supply and demand analysis, like
17 moratoriums, etcetera.

18 My concern is, that it doesn't seem to
19 tell the full picture. It doesn't tell the picture
20 of what is already currently being done, what the
21 review process is by Staff and the Commission, as
22 well as the understanding of all of the different
23 compliance reports and processes that go into
24 effectively planning, not just at the utility but for
25 the State as a whole.

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2 From my perspective, we also should be
3 calling upon NYSERDA, when appropriate, to help us
4 with that. There is ongoing studies, like the
5 renewable study, that could give us some information
6 that would be helpful to our gas planning but also
7 our electric and gas coordination, which is really
8 significant, as well as the I.C.F. study and the P.A.
9 consulting, as well as the N.Y.I.S.O. fuel security
10 study and the intricacies of how this all plays with
11 ongoing proceedings.

12 I -- I want to avoid confusion and I
13 want to avoid overlap that doesn't align, such as the
14 ongoing proceedings with the CONED smart solutions,
15 as well as the natural -- excuse me, the National
16 Grid long-term supply information and ongoing
17 proceedings with that and how that connects and what
18 needs to be done under those, that may now get
19 collapsed into here or not and wanting to make sure
20 that we -- knowing that we have limited resources, we
21 may have increased limited resources, that it is
22 really imperative that we take a look at it and see
23 what we can pause that are non-essential activities
24 and what are crucial for us to keep our eye on the
25 ball for what we need to do from an essential

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2 perspective, not just for us and our staff but also
3 for the utilities.

4 There also is a lot of history behind
5 how the Commission has operated under times of gas
6 constraints and that doesn't just include moratoriums
7 but it also includes the actual curtailments. Those
8 things are -- give us some opportunities from a
9 historical perspective, to look at it now, see how it
10 overlaps with our current operations and management
11 and oversight. But, it also is really important for
12 us, to not just do it in a vacuum and that's why we
13 really do need to help un-cloud the waters in a way
14 that I think shows clear direction and comprehensive
15 analysis.

16 I -- I -- I do look at this and, you
17 know, want us also to focus -- excuse me, on making
18 sure that we get under the hood, when it's
19 appropriate, to provide that. I'm afraid that we
20 have given or are giving in this Draft Order,
21 mandatory directives to the utilities, to do things
22 that we may have been able to do in hindsight, a
23 better job in -- in getting out and laying out the
24 foundational information that we need but yet, they
25 Order itself is devoid of that critical information,

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2 even in citing to the relevant proceedings and the
3 status of those.

4 However, I do think that we have an
5 obligation to try to work together in our system
6 planning, in this case, in gas planning. I am going
7 to be voting in concurrence with grave reservation
8 and also with a -- a, you know, thought that is it
9 appropriate for us to look at this in helping to
10 ensure that we have reasonable flexibility and that
11 we are open to working with the utilities on what
12 they need to be set aside as priorities for today
13 that are non-essential, that they can feel
14 comfortable that we will not be making them jump
15 through hoops to get those approvals, if we need to
16 extend that and also that their workers are not
17 unduly stressed, you know, with feeling that they are
18 behind in mandatory requirements that have now come
19 from this Order today. We are in extraordinary times
20 and we need to be very mindful of appropriate
21 regulatory lifting of barriers that we may be
22 unintentionally imposing. And, in -- in my mind, the
23 focus also is, in making sure that safety is not
24 compromised and that we are all focused together in a
25 team approach, which I have no doubt that we are.

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2 And, so for that and because I think it's important
3 that we try to come together, I will be concurring
4 with reservations and also I'm hoping that we could
5 be a little bit more coordinated, in the overall
6 scheme of how we are going about planning. But, keep
7 in mind that we have and we continue to be working
8 with the utilities on system planning, not just with
9 natural gas but with electric, as well as all of the
10 things that are under our jurisdiction. Thank you.

11 CHAIRMAN RHODES: Thank you very much.
12 Commissioner Alesi?

13 COMMISSIONER ALESI: Thank you, Mr.
14 Chairman. I embrace this comprehensive plan, which
15 centers around some important factors, such as
16 location, reliability, cost and non-pipe-line
17 efficiency, primarily because it does so, it would
18 Order so in a transparent fashion. I think the plan
19 meets the desired end result, which we always seek
20 and that's safe and reliable energy.

21 CHAIRMAN RHODES: Thank you.
22 Commissioner Edwards?

23 MR. EDWARDS: I will be voting in
24 favor; no questions.

25 CHAIRMAN RHODES: Thank you very much

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2 and Commissioner Howard?

3 COMMISSIONER HOWARD: I also will be
4 supporting this. And, I think one of the most
5 important aspects of this exercise, which I believe
6 will lead to other exercise going forward, is to make
7 sure that stakeholders know, that what potential
8 outcomes could be vis a vis, moratoriums, shortages
9 or the future of our energy system.

10 What we learned this year, was people
11 got surprised quickly and while information may have
12 been known and available to the broader public, it
13 was not taken advantage of. And, I would encourage
14 all stakeholders to have a stake in this, local
15 governments, the business community, etcetera, to
16 really participate at high level in this proceeding
17 and I look forward to its outcome.

18 CHAIRMAN RHODES: Thank you very much.
19 With that, I will proceed to call for a vote. My
20 vote is in favor of a recommendation to execute the
21 proceeding and direct filings as discussed.
22 Commissioner Burman, how do you vote?

23 COMMISSIONER BURMAN: I vote in
24 concurrence with my comments as part of the record.

25 CHAIRMAN RHODES: Thank you.

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2 Commissioner Alesi?

3 COMMISSIONER ALESI: I vote yes.

4 CHAIRMAN RHODES: Commissioner

5 Edwards?

6 COMMISSIONER EDWARDS: I vote yes.

7 CHAIRMAN RHODES: Commissioner Howard?

8 COMMISSIONER HOWARD: Yes.

9 CHAIRMAN RHODES: Thank you very much.

10 The item is approved and the recommendation is
11 adopted. We now move to the third item for
12 discussion, which is Case 20-G-0131, which is in the
13 matter of strategic use of energy-related data,
14 presented by Tom Dwyer, Assistant Counsel. Marco
15 Padula, Director of the Office of Markets and
16 Innovations, is available for questions. Tom, please
17 begin.

18 MR. DWYER: Thank you. Good morning
19 Chair Rhodes and Commissioners. Item 201, is a Draft
20 Order that initiates a new proceeding, to address the
21 strategic use of energy-related data. To date,
22 issues surrounding customer and system data, have
23 been addressed as they have arisen in numerous
24 Commission proceedings.

25 However, on -- in the December 2018

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2 Order Adopting Accelerated Energy Efficiency Targets,
3 the Commission determined that the topic of strategic
4 use of energy-related data, should be further
5 developed in a comprehensive manner, through a new
6 proceeding. The Commission noted that, while the
7 process to date has been necessary to deal with
8 unique data issues and applications that are unique
9 to individual proceedings, addressing data across
10 multiple proceedings, is not the optimal way to
11 ensure consistent treatment of data issues.

12 Additionally, this has required
13 parties interested in data access, to engage in
14 multiple proceedings. Thus, the Draft Order before
15 you today, initiates a new generic energy-related
16 data proceeding and as an initial step, directs
17 Department of Public Service Staff, to file two white
18 papers.

19 The first white paper, shall address
20 the development of a data access policy framework,
21 that standardized the necessary privacy,
22 cybersecurity and data quality requirements for
23 access to energy-related data.

24 The white paper shall take into
25 consideration, energy-related data initiatives in

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2 other jurisdictions and shall address, among other
3 things, standard definitions for key data related
4 terms, issues surrounding customer consent, issues
5 surrounding access to what types of data and by whom,
6 privacy and cybersecurity requirements, as well as
7 data quality standards.

8 The second white paper, shall address
9 the creation of an integrated, energy data resource,
10 that will create a platform for useful access to
11 useful data, both system and customer data. That
12 white paper shall also take into consideration,
13 energy initiative -- energy data initiatives in other
14 jurisdictions and shall include recommendations for
15 stakeholder engagement, data resource design,
16 implementation and operation, as well as data
17 resource use cases.

18 The Draft Order directs that both
19 white papers be filed within 60 days of issuance of
20 this Order. Additionally, both white papers will be
21 issued for public comment and the recommendations
22 will be brought back before the Commission for a
23 decision.

24 This concludes my presentation on Item
25 201 and Staff is available for any questions.

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2 CHAIRMAN RHODES: Thank you very much.

3 We know that all around us, more is possible with
4 data and information. We know for instance, that
5 A.M.I. -- the information and -- we have on -- on
6 energy system. So, the question is what to do with
7 that, in order to benefit the energy system and to
8 benefit New York's customers. This proceeding
9 rightly puts us well on the path towards useful
10 access to useful data, while still protecting our
11 overriding interests on consent and privacy and
12 cyber. I think this is timely and important. Thank
13 you very much. Commissioner Burman?

14 COMMISSIONER BURMAN: Thank you so
15 much. So, the Order is silent, other than opening
16 the proceeding and then the Staff issuing the two
17 white papers. But, Tom you did talk about and I just
18 want to make sure that I heard you right, that the
19 Staff issues the two white papers and then they will
20 be issued for comment for relevant interested parties
21 and then it comes back to the Commission for
22 decision, is that correct?

23 MR. DWYER: That is correct.

24 COMMISSIONER BURMAN: Okay. Thank
25 you. And -- and, I think that's important. I will

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2 note that this opening -- this proceeding, is
3 different than the previous 102 Order, in that we
4 aren't directing any parties, at this point, to do
5 anything, other than directing the Staff to issue the
6 two white papers. And, therefore, if there is a -- a
7 delay -- necessary delay in issuing those white
8 papers, there's no, you know -- there's no now
9 concern from having the Staff to have to then ask for
10 permission. And, so it allows us the flexibility
11 from a regulatory perspective, to not have to jump
12 through hoops because Staff can get that guidance
13 directly from the Chair, as appropriate. And, for
14 me, that's a distinction between the prior opening of
15 a proceeding, which may cause mandatory requirements
16 on utilities that -- then they have to follow certain
17 things or seek a waiver to that.

18 So, I look at them a little
19 differently and so, am not as concerned here about
20 opening a proceeding. In fact, we have been
21 discussing these crucial data access issues since the
22 beginning of my regulatory lifetime as a
23 Commissioner. It has spanned over many, many
24 proceedings and I think that the -- there's a
25 rightful recognition in the Order, itself, that it's

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2 time to bring these issues under one proceeding and
3 more holistically address these issues.

4 I think that's an important thing
5 because I think it's really the first time we, in our
6 Draft Order, have clearly laid out some language that
7 may be applicable for other -- for other proceedings,
8 as well, to see about what makes sense and it's
9 something that I have talked a lot about, about how
10 we need to coordinate and streamline many of these
11 proceedings. So, I am really glad to see that clear
12 language in the Draft Order, recognizing a more
13 optimal way of addressing these, in this case,
14 important data issues.

15 We need to be mindful of the fact that
16 some of these proceedings have been helpful in giving
17 direction on data access issues. But, some have
18 taken us around and around, without much clarity or
19 forward progress. I believe, though, there was and
20 there is serious commitment on the part of the
21 Commission, the Staff and interested parties, to make
22 headway on these clear data access issues.

23 At times, we have overestimated our
24 potential success. For example, the Utility Energy
25 Registry, which is now on NYSERDA's website, is not

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2 the most efficient resource and can't currently get
3 more granular data. But, we can look to improving.
4 We can look to our success. For example, the -- CON-
5 ED is implementing green button connect now and
6 others are being strongly encouraged to speed up
7 green button connect or something similar.

8 Obviously, there are challenges and
9 there are disagreements among that, which has also
10 been part of, I think, the decision to move a lot of
11 this under one proceeding and trying to now have some
12 clear direction come from the Commission.

13 I am also mindful, that folks should
14 be cognizant of the fact that just because Staff
15 issues white papers, does not mean that they speak
16 for the whole Commission and that that is to help in
17 terms of giving some concrete, potential direction
18 and then working through that after appropriate
19 comments from interested parties.

20 I think it is important to -- to
21 mention really, you know, two other things. One is
22 that, to the extent that in these data access
23 proceedings and going through them, I have seen what
24 appears to be more flexibility given to NYPA versus
25 other utilities, in terms of what they can ask for

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2 and what they can do, as to engagement with data
3 access from third party providers and others. I
4 think it's important for us, to keep that in mind and
5 see about whether or not, that flexibility needs to
6 be on par or comparable for the other utilities and
7 whether or not, it's working on some of the issues
8 that might be there for NYPA. To the extent that we
9 don't create two different levels of access or non-
10 access, I think it's important for us to look at that
11 and see what some of the challenges are and whether
12 we need to make some changes to what might be done
13 for NYPA, that now should or should not be done for
14 the utilities and vice versa.

15 And, then my last comment really is
16 that, it's a recognition that the utility regulatory
17 landscape is becoming more complicated. The biggest
18 challenge I think is likely due to technology and we
19 live in a world of digital and social media, that
20 dramatically increases the first -- the thirst for
21 such communication, to be even faster, more accurate,
22 instantly solve problems and create investment and
23 customer opportunities. We have to filter through
24 all this communication, to respond with immediate
25 viable solutions. This helps to increase

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2 accountability from greater transparency and customer
3 expectations.

4 So, when I look at this in the context
5 of this data access, I realize that -- and the Chair
6 touched upon this, that A.M.I. is a technological
7 innovation, that can enhance our utility regulatory
8 process. It can enhance such things as, A.I. A.M.I.
9 collects tremendous amounts of data, leading to
10 predicting power quality issues, before they may
11 jeopardize electric system reliability. Likewise,
12 data collection in the natural gas sector, could aid
13 smart automation of pressure regulation and identify
14 abnormal operating conditions. These examples, allow
15 for a smarter and more efficient energy system. We
16 will need workers with strong data analysis and
17 technological backgrounds. And, as technology
18 advances, we can collect more detailed data about
19 consumer's energy use and system operations.

20 So, at its core, our getting under the
21 hood on data access, may help us fundamentally impact
22 the way the grid operates and therefore, this is very
23 important for us to continue to work towards
24 improvements and process and I look forward to that.
25 Thank you.

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2 CHAIRMAN RHODES: Thank you very much.
3 Commissioner Alesi?

4 COMMISSIONER ALESI: Thank you, Mr.
5 Chairman. I believe that this is going to guide us
6 as we take the necessary steps to increase access to
7 customer data -- system data and guide us also as to
8 doing that in appropriate ways, as we pursue our
9 clean energy goals. Good work.

10 CHAIRMAN RHODES: Thank you very much.
11 Commissioner Edwards?

12 COMMISSIONER EDWARDS: Yes, thank you.
13 I think that this is a good step on ongoing progress
14 that we have to make towards these ultimate goals and
15 I will be supporting it.

16 CHAIRMAN RHODES: Thank you very much.
17 Commissioner Howard?

18 COMMISSIONER HOWARD: I think this
19 issue will be one of the preeminent ones for this
20 Commission and the utility industry in going forward.
21 The internet of things will be something that we will
22 rely on more and more and how that data is collected,
23 used, who owns it and the commercial aspects of it,
24 will be critical to making the system work the way we
25 think it will in the future. So, I will be

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2 supporting this and as I said, I think it will be one
3 of the most important items we will do in this near
4 term.

5 CHAIRMAN RHODES: Thank you very much.
6 With that, I proceed -- I will proceed to call for a
7 vote. My own vote is in favor of the recommendation
8 to institute the proceeding and direct filings as
9 discussed. Commissioner Burman, how do you vote?

10 COMMISSIONER BURMAN: Yes.

11 CHAIRMAN RHODES: Commissioner Alesi?

12 COMMISSIONER ALESI: Yes.

13 CHAIRMAN RHODES: Commissioner

14 Edwards?

15 COMMISSIONER EDWARDS: Yes.

16 CHAIRMAN RHODES: Commissioner Howard?

17 COMMISSIONER HOWARD: Yes.

18 SECRETARY PHILLIPS: Chair Rhodes --

19 CHAIRMAN RHODES: Thank you. The item
20 is approved and the recommendation is adopted.

21 SECRETARY PHILLIPS: -- Chair Rhodes -

22 -

23 CHAIRMAN RHODES: We will now --

24 SECRETARY PHILLIPS: -- Chair Rhodes -

25 -

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2 CHAIRMAN RHODES: -- yes.

3 SECRETARY PHILLIPS: -- this is

4 Secretary Phillips. I just wanted to make a quick
5 note. There may have been a reference to a different
6 case number when you first started out and I wanted
7 to clarify that the vote that was just taken on Item
8 201, was for Case 20-M-0082.

9 CHAIRMAN RHODES: Okay. Thank you for
10 that. Thank you very much for that clarification.
11 We will still move now to the consent agenda. Do any
12 of my fellow Commissioners wish to comment on or
13 refuse from voting on any items on the consent
14 agenda?

15 COMMISSIONER BURMAN: Yes. This is
16 Commissioner Burman.

17 CHAIRMAN RHODES: Commissioner Burman.

18 COMMISSIONER BURMAN: Thank you. I'll
19 be speaking on five different items. The first, I'm
20 combining Item 161 and 162. I am fully supportive of
21 these, at this time, as we are doing them with the
22 goal of increased pipeline safety and alignment with
23 the Federal regulations. There is a real need to
24 move these items forward now because failure to do
25 so, could subject us to a loss of Federal dollars and

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2 loss of interstate agency status and that is not
3 something we should risk, by allowing a delay.
4 However, to the extent there is any need for further
5 alignments that may be appropriate as FIMSA, Industry
6 and States look at addressing COVID-19, we must be
7 mindful of that and fully open to that, as
8 appropriate. I have no doubt we are all collectively
9 focused on that, as well.

10 The third item, 264 URAC, I am
11 supportive of this item and the decision to deny the
12 petition for declaratory ruling. However, I note,
13 that this is not the first declaratory ruling from
14 URAC that has come before us and raise some potential
15 global consumer complaint concerns. I find, though,
16 that here the concerns do not raise to the level of
17 granting the declaratory ruling and instead, can be
18 dealt with through the individual complaint process.
19 However, I do want to strongly remind utilities, to
20 truly work with URAC, in finding viable and timely
21 solutions to the claims they raise on behalf of their
22 clients, the utility consumers. I am aware that
23 there has been some positive movement in that
24 direction, with the aid of our Office of Consumer
25 Services leadership. I thank them for that and I

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2 trust that will continue.

3 The fourth item, Item 372, I am
4 supportive of deferring NYSERDA's request, that a
5 community adder be authorized in those service
6 territories with the New York Sun expansion petition
7 separately before the Commission, as a future
8 session. I am not suggesting that I have made a
9 decision on that petition. I have not and have in
10 the past, raised strong concerns with similar
11 expansion petitions from NYSERDA. There are numerous
12 animated and serious disagreements around the
13 appropriate level of the community adder. Having
14 these issues decided in the NYSERDA expansion
15 petition that'll come before us at a future time,
16 does seem the right approach. However, I don't think
17 this Order goes far enough and in fact, I am not
18 convinced, at this time, that granting the other
19 aspects of the NYSERDA petition before us today,
20 around reallocating unused capacity in trounces zero,
21 one, two and three, to the community credit trounces
22 and National Grid, NYSEG and R.G. in service
23 territories, is -- is good. Accordingly, I vote no
24 on this item.

25 Item 376, I very hesitantly will be

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2 voting yes on this item. I believe that the mere
3 clarifications requested by Tesla, are appropriate
4 and I do support giving such clarifications. But, I
5 am less certain about the modification request Tesla
6 has requested and that we grant it in some fashion.
7 One modification we make, we ensure we are not
8 increasing the funding levels but rather just ensure
9 we take the 2019 maximum incentive level and extend
10 that through December 31st, 2020. I am glad to see
11 we have not increased those funding levels. It is
12 important we act now, on whether we would allow such
13 modification and because of no increase to the
14 funding, I can support such short extension, as
15 appropriate here. However, I am truly not convinced
16 that our continued approach with continued
17 modifications to the E.V. plug incentives, to
18 encourage more investment in E.V. charging
19 infrastructure, is really working or that we have
20 landed on the right regulatory focus with E.V.s. I
21 think we were, at times, overly optimistic in our
22 focus and not as robust in our comprehensive analysis
23 beyond E.V. charging stations, as maybe we should be.

24 I do agree with the Draft Order, that
25 some, if not most developers, won't submit

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2 applications under the per plug incentive program,
3 prior to Commission action on the Staff's proposed
4 make-ready program -- Staff's white paper proposed
5 make-ready program. So, it makes sense that we try
6 today, to create movement in that area, while we
7 await our action on that white paper. But, I must
8 caution folks, that the Staff white paper on the
9 proposed make-ready program, does not mean that the
10 Commission, as a whole, will adopt whole cloth what
11 is in that. We may very well do so but we also may
12 very well not. Thus, people should understand that
13 the Commission, as a body, will need to act on the
14 right regulatory action on those issues and I look
15 forward to that deliberative process. Thank you.

16 CHAIRMAN RHODES: Thank you very much.
17 Commissioner Alesi, any comments or questions on
18 consent?

19 COMMISSIONER ALESI: I have none,
20 thank you.

21 CHAIRMAN RHODES: Thank you very much.
22 Commissioner Edwards?

23 COMMISSIONER EDWARDS: No comments.

24 CHAIRMAN RHODES: Thank you very much.
25 Commissioner Howard?

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2 COMMISSIONER HOWARD: No, I have no
3 comments.

4 CHAIRMAN RHODES: Okay. Thank you
5 very much. So, I'll proceed to call for a vote on
6 the consent agenda. My own vote is in favor of the
7 recommendations of the consent agenda. Commissioner
8 Burman, recognizing your comments just now, how do
9 you vote?

10 COMMISSIONER BURMAN: I vote yes on
11 all items, except Item 372, which I vote no on.

12 CHAIRMAN RHODES: Thank you very much.
13 Commissioner Alesi?

14 COMMISSIONER ALESI: I vote yes on all
15 items.

16 CHAIRMAN RHODES: Thank you.
17 Commissioner Edwards?

18 COMMISSIONER EDWARDS: I vote in
19 favor, thank you.

20 CHAIRMAN RHODES: Thank you very much.
21 Commissioner Howard?

22 COMMISSIONER HOWARD: Yes, I am voting
23 for yes on all these items.

24 CHAIRMAN RHODES: Thank you very much.
25 The items on the consent agenda are approved and the

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recommendations are adopted. Secretary Phillips, is there anything further to come before us today?

SECRETARY PHILLIPS: There is nothing further.

CHAIRMAN RHODES: Okay. Thank you. With that, we are adjourned. Thank you very much for making this work.

(The meeting concluded.)

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2 STATE OF NEW YORK

3 I, JANET WALLRAVIN, 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 51, 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 12th day of February, 2020.

11

12

13 JANET WALLRAVIN, Reporter

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