

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Regular Meeting of the Public Service Commission

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THURSDAY, AUGUST 15, 2013  
10:30 a.m.

Three Empire State Plaza  
Agency Building 3, 19th Floor  
Albany, NY 12223

COMMISSIONERS:

GARRY BROWN, Chairman  
GREGG C. SAYRE  
DIANE X. BURMAN  
PATRICIA L. ACAMPORA

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D I S C L A I M E R

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1 CHAIRMAN GARRY BROWN: Good morning. I'd  
2 like to call the August 15th, 2013, session of the  
3 New York State Public Service Commission to order.  
4 Madam Secretary, are there any changes to the agenda?

5 SECRETARY KATHLEEN BURGESS: Good morning,  
6 Chairman Brown. There is one change to the agenda.  
7 Item 264, case 13-M-0314, the request for proposal  
8 for an independent third party consultant to conduct  
9 a review of the accuracy and effectiveness of certain  
10 reliability and customer service systems and all gas  
11 and combination gas and electric companies in New  
12 York State that provide statistics to the commission  
13 on the services they provide customers is being moved  
14 to the regular agenda and is being renumbered number  
15 203.

16 CHAIRMAN BROWN: Thank you. And I want to  
17 welcome Kate Burgess as our new secretary.

18 SECRETARY BURGESS: Thank you very much.

19 CHAIRMAN BROWN: So let's move to consent  
20 agenda. Do any of the commissioners wish to refuse  
21 or abstain from voting on any consent agenda items?

22 COMMISSIONER SAYRE: Mr. Chairman, I'm  
23 recuse on item 562.

24 CHAIRMAN BROWN: And I would like to recuse  
25 myself from item 367. Before we go to a vote, are

1           there any comments today or questions on the consent  
2           agenda items?

3                        COMMISSIONER DIANE BURMAN:  Yes.  I have a  
4           number of them.  On item 162, which deals with  
5           natural gas station, and item 163, which deals with  
6           natural gas vehicles, can you, counsel, talk a little  
7           bit about a separate proceeding on the electric car  
8           vehicles and the stats of that?

9                        MR. PETER MCGOWAN:  Yes.  There is--the  
10          commission has issued a notice which is designed to  
11          identify some legal and policy questions concerning  
12          how the commission might--how the commission might--  
13          how the Public Service Law would apply to public  
14          electric charging stations.  That proposed notice  
15          sought comment.  The comments were filed about I  
16          would say three or four weeks ago, and we are in the  
17          process now of analyzing those comments and are  
18          preparing to bring something forth for the  
19          commission's consideration at a session coming in the  
20          near future.

21                       COMMISSIONER BURMAN:  Thank you very much.  
22          I'm looking forward to that item.  On item 261, which  
23          deals with the EEPS budget, can someone talk to me a  
24          little bit about how we're going to--by consolidating  
25          these into one, how we're going to still deal with

1 transparency?

2 MS. COLLEEN GERWITZ: Okay. So from the--  
3 even though they're getting consolidated to one,  
4 where we've got a requirement to have an annual  
5 report that currently exists that's filed every June  
6 there will be an addendum to that where the  
7 expenditures in the previous year are reported out  
8 and plans for expenditures--plan uses of the funds  
9 for the future years are also made very transparent  
10 and reported.

11 COMMISSIONER BURMAN: Okay, great. So the  
12 transparency will continue and there will be a layer  
13 to make sure that it's all accounted for?

14 MS. GERWITZ: Yes.

15 COMMISSIONER BURMAN: Okay, great. On item  
16 262 by Energy Direct, I'd just like to ask counsel  
17 you're--this is an item that we're not weighing in on  
18 an action finding of any wrongdoing but it's rather  
19 an order to show cause asking the company to respond  
20 to that. Is that correct?

21 MR. MCGOWAN: That is correct.

22 COMMISSIONER BURMAN: Okay, great. I did,  
23 on this item, just want to note Robin Taylor and  
24 Christine Bosy, two staff people who I know have  
25 worked on this, and it just seemed to me that there

1 is a significant level of detail and professionalism  
2 with two staff people. And it helped me to see and  
3 to talk to staff members just in general on how they  
4 handle dealing with trying to work with the company.  
5 So I just want to give a special mention to those two  
6 staff members.

7 Item 367, this for me seems like the last  
8 time this commission did not have complete, accurate  
9 information. So it's good to see that now this item  
10 is going to give an opportunity for an ALJ to work  
11 with the parties and hopefully, you know, there will  
12 be resolution that will be positive and we'll be  
13 seeing that back from what the ALJ is able to do  
14 reviewing the record and talking to the interested  
15 parties.

16 On 562 I'd like to understand a little bit  
17 about the notice with this item and what exactly the  
18 company has done and will be doing.

19 MR. GREG PATTENAUE: Yes, Commissioner.  
20 The company did notice--put in their bill as a bill  
21 insert regarding the proposed tariff change in their  
22 July and August bills. They will also be doing it in  
23 their September bills reflecting the fact that the  
24 commission took action on the tariff and the new  
25 proposed late payment fee would be effective with

1 October bills.

2 COMMISSIONER BURMAN: Okay. So that notice  
3 said that this would be happening, as if the  
4 commission had already acted. Is that fair to say?

5 MR. PATTENAUDE: The notice did not reflect  
6 that it had been filed because it reflected that the  
7 tariff would be--the new charge would be going into  
8 effect, yes.

9 COMMISSIONER BURMAN: Okay. And how are we  
10 going to deal with that? What's the recommendation  
11 in terms of making sure that we actually do have  
12 proper notice? I just want to make it very clear  
13 that if the commission has not acted, that really  
14 it's important that the notice reflect the commission  
15 has not yet taken action.

16 MR. PATTENAUDE: Yeah. That's something  
17 that we will work with Frontier as well as other  
18 companies so the notice will correctly reflect the  
19 proposal.

20 COMMISSIONER BURMAN: It should never happen  
21 again.

22 MR. PATTENAUDE: Yes.

23 COMMISSIONER BURMAN: And we're going to  
24 deal with that by making sure there's an extra layer  
25 of notification to the customers before this takes

1 effect. Is that correct?

2 MR. PATTENAUDE: That's correct.

3 COMMISSIONER BURMAN: Okay. What about this  
4 applying--is there anything in terms of waivers for  
5 who this would not apply to, like life support? Is  
6 there any issues with what customers that late  
7 payment fees would not be applicable to?

8 MR. PATTENAUDE: Yeah. It would not be  
9 applicable to Lifeline customers and customers with  
10 deferred payment arrangements. That's what was  
11 spelled out in the commission's concrete order where  
12 they allowed companies to make proposals to change  
13 the late payment fee. So that would continue here as  
14 well.

15 COMMISSIONER BURMAN: Okay. I think that's  
16 great and I do know that that's what's been  
17 historical. It would be important that we look to  
18 the future in terms of any extraordinary events and  
19 customers that may be affected by that, how we might  
20 carve them out as well. I know that's not an item  
21 before us right now but it is something that we  
22 should look at because there may be extraordinary  
23 circumstances that take place that we need to  
24 consider that as well.

25 MR. PATTENAUDE: Yeah. We actually have

1 discussed that with Frontier and I think they would  
2 be willing to have that discussion, as well also  
3 included other telecommunications carriers.

4 COMMISSIONER BURMAN: Okay, great. So  
5 you'll follow up on sort of a discussion on that  
6 then?

7 MR. PATTENAUDE: Yes, we will.

8 COMMISSIONER BURMAN: Great, thank you.  
9 That's all the comments I have on the consent.

10 CHAIRMAN BROWN: Okay. Any other comments  
11 or questions this morning? Hearing none, all those  
12 in favor of the recommendations on the consent  
13 agenda, including the recusals, please say "Aye."

14 MULTIPLE VOICES: Aye.

15 CHAIRMAN BROWN: Opposed? Hearing none, the  
16 recommendations are adopted. Let's move to the  
17 regular agenda. The order we'll be going in this  
18 morning is 203, 101, 202A, 202B, 301, and 201. So  
19 let's begin with item 203, case 13-M-0314, request  
20 for a proposal for an independent third party  
21 consultant to conduct a review of the accuracy and  
22 effectiveness of certain reliability in customer  
23 service systems for certain gas and combination gas  
24 and electric utilities presented by Kate Tallmadge,  
25 Unit Leader, Office of Accounting, Audit, and

1 Finance. Good morning, Kate.

2 MS. KATE TALLMADGE: Good morning, Mr.  
3 Chairman and Commissioners. We are bringing to you  
4 this request for a proposal for our first multi-  
5 utility operations audit in this new era of  
6 management and operations audit. You may remember  
7 that the Moreland Commission recommended and the  
8 Governor included in his budget presentation the  
9 request or direction that we do more frequent  
10 operations audits, as they had been done in the  
11 1980's and '90's. As well as three instances since  
12 2007. These would augment our existing comprehensive  
13 management and operations audits, which we also  
14 reinvigorated in 2007 and 2008.

15 Operations audits differ from our  
16 traditional management audits in that they review  
17 specific areas and processes at multiple utilities  
18 rather than being a general review of the management  
19 of a company. It may be of a single company, in a  
20 single topic, or it may be one topic that is covered  
21 in all utilities as we are bringing forward today.  
22 The area--the view is to get the best practices, to  
23 make sure that we're doing things properly.

24 Operations audits are being done at the  
25 suggestion of specific offices and recommended to the

1 chairman by an audit oversight committee, which is  
2 composed of directors and senior executives here in  
3 the department. And they look for the topics that  
4 will bring about the most value to them and fill gaps  
5 in their staffing and availability, time  
6 availability. We view the operating offices as our  
7 clients and, as such, we rely on their expertise to  
8 review the consultant's work product, and especially  
9 during implementation when a lot of the  
10 responsibility will fall to these offices requesting  
11 the topics because they are the experts in the field.

12 In the request before you, we're proposing  
13 to have a consultant review the accuracy of data that  
14 is provided to us by utilities in the areas of  
15 electric service interruptions, gas safety, and  
16 customer service. These data points are received by  
17 OAGW, OCS, and OCP, who are our main clients here.  
18 We don't have any reason to believe that the problem-  
19 -there are any problems with the data. We in fact  
20 have completed NYSEG and RG&E, a study of that area  
21 found no problems but we need to verify that the  
22 information is correct. We do rely on it very  
23 extensively, so we have to make sure that it is  
24 accurate.

25 The consultant will examine the company's

1 programs and processes for collecting and analyzing  
2 the data that is reported to us, and will make  
3 recommendations for improvement where it may lie.  
4 Specifically in the area of electric interruptions,  
5 the companies are required by NCYRR Section 97 to  
6 report data related to the interruptions, and this is  
7 used primarily by Mr. Worden and his shop to look at  
8 how well the companies are doing in interruptions.

9 In gas utilities it's NYCRR Parts 232 and  
10 255 that requires them to report on annual  
11 transmission gathering and distribution. They have  
12 to report accidents, interruptions. They have to  
13 report on emergency response times, notice of  
14 interruptions, and there are certain gas safety  
15 performance measures in individual rate cases. So  
16 the consultant will be looking at all of those. The  
17 gas companies also voluntarily report on gas  
18 performance measures like leak management, damage  
19 prevention, and emergency response.

20 In the customer service area, the required  
21 customer service information is appointments made and  
22 kept, adjusted bills, telephone answer response, non-  
23 emergency service response time, estimated readings,  
24 and customer satisfaction. Cost of the audit will be  
25 paid by the utilities but the consultant will be

1 selected by the commission, will report to and be  
2 under the direction of our newly enlarged management  
3 operations staff, one of whom you'll be hearing from  
4 directly after me. That's Sandra Reulet. Many of my  
5 new staff are in the back row. So we have new staff  
6 who will be participating very heavily in these  
7 audits. And the enlargement of the staff was also a  
8 result of Moreland and the governor's office.

9 Also, as usual, the staff team of subject  
10 matter experts, or you've heard me call them SMES,  
11 will be very heavily engaged in this audit. I don't  
12 have to--did you mention all of the utilities or  
13 we'll just say all the big ones instead of going down  
14 the list, but know that this will pertain to all of  
15 the large utilities that are covered by 66-19, and  
16 I'd be happy to answer any questions you have about  
17 this matter.

18 CHAIRMAN BROWN: Just to start out, I just  
19 want to thank you for bringing this presentation and  
20 moved it into the regular agenda. I would say one of  
21 the things that I'm proudest of in my five and a half  
22 years as the chair here was the reinvigoration of the  
23 management audit program, and I've seen tremendous  
24 value out of that. Many of those management audits  
25 included operational aspects, but I think the

1 Moreland Commission's kind of focusing attention that  
2 we can expand further on this, and we are. It's  
3 exactly what we're beginning here today. I'll give  
4 the credit to Commissioner Acampora. I believe this  
5 all really began during her time as chair, who really  
6 got this kicked off. And we have followed up and I  
7 look forward to this. We've managed to really be  
8 able to at least double the size of your staff, which  
9 is extremely important too in being able to do this  
10 correctly. So that's one of the reasons I wanted to  
11 highlight this this morning. So any other comments  
12 or questions before we take a vote on this?

13 COMMISSIONER PATRICIA ACAMPORA: I would  
14 just like to add that, you know, we talk about the  
15 management audit and what a great tool it's been in  
16 our toolbox, and this actually will enhance the  
17 toolbox greatly. So again thanks to you staff for  
18 the work they're going to be doing, and I know that  
19 it's really going to help us as commissioners to look  
20 at management audits on rate cases with that  
21 information to make sure that it's verifiable because  
22 it has a lot of ramifications if it's not. So we  
23 appreciate that. Thank you.

24 CHAIRMAN BROWN: Any other comments or  
25 questions? Hearing none, all those in favor of the

1 recommendation to issue a request for a proposal for  
2 an independent third party consultant to conduct an  
3 operations audit of utility data accuracy as  
4 described by Kate, please say "Aye."

5 MULTIPLE VOICES: Aye.

6 CHAIRMAN BROWN: Opposed? Hearing none, the  
7 recommendation is adopted. Thank you, Kate.

8 MS. TALLMADGE: Thank you.

9 CHAIRMAN BROWN: And now we'll move to  
10 something belated but a little more specific, item  
11 101, 11-G-0580, a comprehensive management audit of  
12 National Fuel Gas Distribution Corporation, New York  
13 business presented by Sandra Reulet, Unit Leader,  
14 Office of Accounting Audits and Finance. Good  
15 morning, Sandra. Take your time.

16 MS. SANDRA REULET: Thanks. Good morning,  
17 Mr. Chairman and Commissioners. Today I will be  
18 presenting the findings of the management and  
19 operations audit of National Fuel Gas Distribution  
20 Corporation, which was performed by Shoemaker and  
21 Company [phonetic]. My presentation consists of two  
22 parts. The first part will provide an overview of  
23 the audit results. The second will discuss changes  
24 to our internal processes as a result to  
25 modifications made to 66-19 earlier this year. And

1 I'd like to note that this is the first audit that's  
2 being brought to the commission since those recent  
3 changes were enacted.

4 The only action requested today of the  
5 commission is that it direct National Fuel  
6 Distribution Corporation, or the company for short,  
7 to file an implementation plan within 30 days of the  
8 date of this order. A brief recap of events to date  
9 is as follows. In January 2012, the commission  
10 authorized issuance of an RFP for an independent  
11 third party consultant to conduct a comprehensive  
12 management operations audit of the company. In May  
13 2012, the commission approved the selection of  
14 Shoemaker and Company to conduct the audit.  
15 Shoemaker completed the audit and submitted the final  
16 audit report to the department in July of this year.  
17 This audit was an independent assessment of the  
18 company's gas business in New York. It had a  
19 specific focus on the utility's construction program  
20 planning processes and operational efficiency  
21 pursuant to section 66-19 of the Public Service Law.

22 Slide two shows a summary of the overall  
23 audit results. The audit contained 150 findings  
24 resulting in 76 recommendations and associated  
25 customer benefit analysis. Twenty-one of these

1 recommendations had quantifiable cost and/or  
2 benefits. Shoemaker also highlighted one management  
3 decision in particular that could be considered a  
4 best practice that could be used elsewhere. This  
5 company uses mini excavators extensively. They save  
6 more than \$200,000 a year. They are basically hauled  
7 around on trailers on the back of pickup trucks, so  
8 no commercial driving license is required. And  
9 they're more maneuverable and can dig as well, if not  
10 better, than a tradition backhoe.

11 Shoemaker projected an estimate of a savings  
12 to rate payers but certain figures will be  
13 speculative. As a result, staff will be examining  
14 the project cost and savings figures further during  
15 the evaluation of the company's implementation plan,  
16 and as the implementation progresses. These  
17 estimates by their very nature, they get further  
18 refined as the implementation plans are solidified  
19 and are reviewed in the context of rate proceedings.

20 The next line summarizes actions to date.  
21 The company has already implemented nine of the  
22 recommendations and has started taking action on  
23 nearly 20 more. In the past, there was a concern  
24 that incorporation of rate case staff and emphasis on  
25 the customer benefit analysis would actually polarize

1 the parties, leading to a less productive management  
2 audit process. However, the fact that the company  
3 has already begun taking action on more than a third  
4 of the recommendations demonstrates that if all  
5 parties come to the table and evaluate the proposals  
6 from an independent objective and professional basis,  
7 a product will be delivered that promises both cost  
8 savings and service quality improvements for  
9 customers, which is the ultimate aim of both the  
10 utilities and the commission.

11 National Fuel Gas Distribution is a local  
12 distribution company serving approximately 732,000  
13 customers in western New York State and northwestern  
14 Pennsylvania. Approximately 517,000 of these  
15 customers are in New York State. The next slide  
16 shows an organization chart and Shoemaker noted that  
17 this company is unique in that it is part of a larger  
18 entity which also owns gas production and gas  
19 transmission facilities.

20 It's wholly owned by the National Fuel Gas  
21 Company, which is a utility holding company primarily  
22 operating in the following four business segments;  
23 the utility segment, pipeline storage segment,  
24 exploration and production, and energy marketing.  
25 The supply company is the essential link in the

1 ability to move gas into the distribution system  
2 because the supply corporation's pipelines generally  
3 operate in the same geographical footprint as the  
4 utility service area.

5 In general, Shoemaker found that although  
6 the company did many things well there are five areas  
7 that it identified as significant findings because  
8 they touch multiple areas throughout the  
9 organization. The first finding on slide five is  
10 that there is no formal strategic planning process.  
11 The company has many elements of strategic planning,  
12 operational planning, performance measurement, but  
13 these processes are not tied together as part of one  
14 comprehensive, integrated strategic plan.

15 Rather, they're largely carried out through  
16 the annual budgeting process. The recommendation  
17 here is to enhance the existing processes by  
18 expanding and tying them together into one single  
19 comprehensive and integrated strategic plan. In  
20 addition, the performance measurement and reporting  
21 processes should be improved and integrated into the  
22 strategic planning process as well.

23 The next slide shows that the consultant  
24 found an overuse of a common cost allocation with the  
25 affiliated companies. Shoemaker found that the

1 company relies too heavily upon this common cost  
2 allocator, which was actually approved via a 1984  
3 commission order, rather than cost causation factors.  
4 And there's been significant changes in the parent  
5 company's organization since that time, specifically  
6 the growth of the non-regulated entities. The  
7 recommendation is to increase the reliance on cost  
8 causation factors and have the company work with  
9 staff to modify the common cost allocator to more  
10 current--reflect the current organization.

11 The next finding was that there are  
12 opportunities to improve the program and project  
13 management practices. The company doesn't have  
14 standardized program project management method that  
15 is used by all of its organizations, which makes  
16 comparison of progress and results across the various  
17 groups difficult. Essentially, the consultant is  
18 pointing out that the company lacks consistent  
19 project management principles such as those defined  
20 by Project Management Institute. The recommendation  
21 is to implement a companywide project management  
22 methodology, including standardized reports to senior  
23 management, to aid in the effective evaluation of  
24 projects and results across the various groups.

25 A fourth finding on the next slide is that

1           there are potential opportunities to reduce natural  
2           gas costs. Shoemaker noted that it generally found  
3           the supply procurement activities to be well managed  
4           and that the company is in a good position to take  
5           advantage of natural gas that is currently coming on  
6           stream in the Marcellus Shale region. They actually  
7           made various recommendations to reconfigure the gas  
8           supply portfolio. One example is that the company  
9           could potentially reduce the no notice service.

10                   The fifth significant finding was that the  
11           use of technology is both advanced and behind.  
12           Shoemaker was impressed that the company has recently  
13           converted the bulk of its systems maps to a GIS  
14           system, and that the company has begun to build  
15           applications to identify possible main replacement  
16           projects. In fact, Shoemaker noted that the company  
17           has reduced the number of leaks by more than 50% over  
18           the last three to four years due to more targeted  
19           main replacements and repairs.

20                   However, the company is behind in certain  
21           technology to the extent that some of their tools are  
22           still mainframe and PC based. Case in point, their  
23           customer information service system is over 30 years  
24           old. It needs an upgrade to newer technology just to  
25           have ongoing support. Customer information service

1 systems can also support and tie into other systems  
2 that could improve the productivity and/or  
3 operational efficiency of the company. For example,  
4 it could be tied into the workforce management  
5 system. The recommendation is that the company  
6 should pursue technology projects more aggressively  
7 as part of its capital budgeting process.

8 So the draft order before you requires that  
9 the company file an implementation plan within 30  
10 days whereas before it used to be 45 days. In  
11 addition, before the recent modifications to section  
12 66-19, the utility just had to file the plan. No  
13 commission action was necessary. However, now the  
14 next steps are expected to be as filed--as follows.  
15 Upon receipt of the implementation plan, staff will  
16 SAPA the plan, review it, and evaluate the contents.  
17 Then staff will come back to the commission and  
18 recommend that the commission approve the plan as  
19 filed, or recommend that the commission direct the  
20 company to modify the plan as necessary.

21 In addition, the draft order recognizes that  
22 implantation plans are living documents that  
23 necessarily may need to evolve over time.  
24 Accordingly, this process will have to take into  
25 account flexibility as we go forward. The company is

1 also required to report the implementation status  
2 every four months to staff. Staff will review the  
3 company's filing to ensure that we concur with their  
4 claimed status, and we will include the latest status  
5 in the periodic report that we provide for all of the  
6 management and operations reports that we give to the  
7 commission every six months. The next one is  
8 expected in November.

9 In conclusion, the customers will benefit  
10 from the company's implementation of the  
11 recommendations that were contained in the Shoemaker  
12 audit both in terms of net cost savings and improved  
13 service quality. Moreover, as we discussed above, we  
14 have incorporated the recent changes to section 66-19  
15 into our internal processes. And, as I stated at the  
16 onset, the only action being requested of the  
17 commission today is that you direct the company to  
18 file an implementation plan within 30 days. This  
19 completes my prepared remarks on the management  
20 audit. If you have any questions, I'll do my best to  
21 answer them.

22 CHAIRMAN BROWN: Yeah. I'll start with a  
23 couple comments and we can open up if there's  
24 anything else. First of all, I'd like to thank  
25 Shoemaker who I think did a very excellent job in

1 this audit. I'm not sure if we've used them before.

2 MS. DORIS STOUT: This is the first time.

3 CHAIRMAN BROWN: The first time?

4 MS. STOUT: In this time period.

5 CHAIRMAN BROWN: In this process they did a  
6 very nice job. Secondly, you know, I find most of  
7 the findings here--I would describe them as enhance  
8 rather than fix, which speaks very positively for the  
9 company. There were no smoking guns. It was, you  
10 know, places where things can be done better, which  
11 so I think that's a positive management audit. It's  
12 not like they didn't find places where things  
13 couldn't be done better but they also didn't identify  
14 any major holes in the way business was being  
15 conducted.

16 Third, I just want to reiterate something.  
17 As we started the cost/benefit analysis as part of  
18 the management audit, the first time through I think  
19 every company gets very nervous about the  
20 cost/benefit analysis. And I just want to emphasis  
21 we see it as a tool, not any--not findings that have  
22 to be adhered to, not final determinations of cost  
23 and benefits. It's an--it's an estimate to try to  
24 give us some level of feeling about what the cost and  
25 the savings might be associated with particular

1 recommendations.

2 I noted in the company's comments that they  
3 kind of made a major point of that and just try to -  
4 - I agree. This is not meant to hold anybody to any  
5 particular cost or any particular savings. It's to  
6 be a tool. So, with that, I'll open it up for any  
7 other comments or questions before we go to vote.  
8 Commissioner Burman, do you have...

9 COMMISSIONER BURMAN: Yes, thank you. First  
10 of all, thank you for your presentation. I think  
11 really kudos to the company and the staff and the  
12 consultant. Whenever you start looking at things and  
13 constructive feedback, as my husband has learned, it  
14 can get a little dicey. So from that perspective  
15 here there's a perfect opportunity for people to come  
16 together and really drill down and look. And it  
17 seemed like it was very smooth even working through  
18 some of the bumps and trying to figure out where to  
19 go for overall positive outcome.

20 The Commission here seems to be continuing  
21 its vigorous, robust management audit program, which  
22 has been even expanded with the recent change in the  
23 law. And when I looked at all of the different  
24 management audits this seems to be one that has been  
25 very thorough and focused on identifying, like the

1 others, improvements in the company's program  
2 planning and operational efficiencies.

3 So I'm very comfortable with this, that it  
4 does seem to continue raising the bar in a positive  
5 way on what should be done. I think it's very  
6 important that auditing of the utility company's  
7 management and processing is just one tool or the  
8 regulatory kit, but it's a very important tool. I'm  
9 glad to see that the staff that will be dealing with  
10 rate cases are included because I do think that staff  
11 should be collaborating together overall in all of  
12 these different things because it fits in continually  
13 improving.

14 So I just really just want to say that I  
15 look forward to the continued focus on the management  
16 process, the operational audits as well, and the  
17 staffing resources to ensure that it continue to  
18 identify improvements in this area. So thank you.

19 CHAIRMAN BROWN: Any other comments or  
20 questions? Commissioner Sayre?

21 COMMISSIONER SAYRE: I'd like to echo the  
22 comments of the Chairman and Commissioner Burman. It  
23 can be very difficult for a well performing company  
24 like NFG to recognize on its own that there are some  
25 changes that would be helpful in light of best

1 practices that have developed elsewhere over the  
2 years. I view this audit as a success for everybody  
3 involved. It will help make the utility even better,  
4 reduce costs, improve customer service. So I too am  
5 very glad to see the reinvigoration of the audit  
6 processes over the past few years, as the Chairman  
7 has discussed earlier. I look forward to more good  
8 results.

9 CHAIRMAN BROWN: Commissioner Acampora?

10 COMMISSIONER ACAMPORA: I'd like to comment  
11 also on this because, in sitting with Shoemaker when  
12 they gave their presentation, I thought they did a  
13 really thorough and professional job, something that  
14 we lacked in a few of the audits. So it was nice to  
15 see this new company come in with a fresh new look at  
16 some of the things that maybe might have been not  
17 thoroughly looked at in past audits. And certainly  
18 to thank the staff and Sandra for your presentation.  
19 It was excellent. But I do have a question and I  
20 want to go back to where Shoemaker had pointed out  
21 that the company had a vision, a 2017 plan, and how  
22 that interacted with the dividends. If you can just  
23 go over that.

24 MS. STOUT: Shoemaker made an observation, a  
25 finding that NFG, the distribution company, has been

1 paying dividends in excess of their earnings for a  
2 number of years. And they suggested in their  
3 recommendation that NFG should establish a dividend  
4 policy. But they did note that that dividend policy  
5 needs to take into consideration the company's  
6 overall capital structure. And the--they went further  
7 and said that, you know, maybe that additional amount  
8 that was paid in dividends could have been applied  
9 toward other projects like these information type  
10 systems that are expected in the Vision 2017.

11 There is a tension here with NFG's capital  
12 structure because they capitalize their regulated  
13 company with actually more equity than they do their  
14 overall--the overall corporation. Typically you  
15 would expect to see a utility which has lower  
16 business risk have lower equity than a competitive  
17 company like a supply company. So the company paying  
18 out dividends is a way of getting that equity ratio  
19 down. In fact, their equity ratio exceeds 50% and is  
20 heading towards 60%, and we have typically only set  
21 rates at 48%.

22 So they have--it's a balancing act to figure  
23 out how to finance their projects and they may need  
24 to address further a recapitalization of their  
25 utility operations. The decision to invest in Vision

1 2017, that has to come somewhat separate from how  
2 they're going to finance it. You know, that comes  
3 first. They have to make the decision to invest in  
4 their programs and then they have to address their  
5 capitalization.

6 COMMISSIONER ACAMPORA: Thank you.

7 CHAIRMAN BROWN: Okay. All those--let's  
8 take a vote on this. All those in favor of the  
9 recommendation of what we're recommending today, was  
10 pointed out was direct National Fuel Gas Distribution  
11 Company to file its audit implementation plan, as  
12 presented by Sandra, please say "Aye."

13 MULTIPLE VOICES: Aye.

14 CHAIRMAN BROWN: Opposed? Hearing none, the  
15 recommendation is adopted. Thank you. Thank you for  
16 your hard work in this. The next item for  
17 discussion, item 202A, case 13-M-0178, a  
18 comprehensive review of security for the protection  
19 of personally identifiable customer information for  
20 large energy utilities. This will be presented by  
21 John Sennett, the Chief Utility Security Office of  
22 Electric, Gas, and Water. Good morning, John.

23 MR. JOHN SENNETT: Thank you Chairman Brown  
24 and Commissioners. We're dealing here with the ever  
25 growing phenomenon of cyber based identify theft,

1 which has intruded upon the utility companies across  
2 the country, including New York. This effort that  
3 I'm talking about today really commenced with a  
4 breach of customer security, of cyber security at a  
5 utility company in New York in early 2012.

6 And after our investigation of that incident  
7 and dealing with recommendations to try to keep that  
8 from happening again at that company, staff  
9 determined that we should continue that process of  
10 looking at the cyber security measures for the  
11 protection of customer information at the other large  
12 energy utilities, and we began that process in the  
13 first half of 2012. And then a little less than a  
14 year ago, before we completed that process, the  
15 commission instructed us to expand the scope of those  
16 inquiries further to include all of the class A and B  
17 utilities. And that took in the large  
18 telecommunications companies, some smaller mostly gas  
19 companies, and the two large water companies,  
20 American Water and United Water.

21 And as we were--we sent out detailed  
22 questionnaires to all of those companies and we  
23 received good responses from all of them. And then  
24 we--based on--based on the responses we got, we  
25 selected the companies where we should devote most of

1 our attention. And what we found was that some of  
2 the smaller companies had very little exposure of  
3 their customer information to malicious cyber  
4 activity. Some of the smaller gas companies, for  
5 example, are doing all of their customer billing by  
6 paper, by traditional snail mail, and we didn't think  
7 that it would be a wise decision to pursue the matter  
8 further with those companies. The large  
9 telecommunication companies are frankly very  
10 sophisticated and very forward leaning in this  
11 regard. They have a very extensive array of  
12 sophisticated defensive technologies in place.

13 So we--after doing onsite audits with the  
14 large telecommunication companies, we determined that  
15 we would not ask you--we would not make any  
16 recommendations for those companies, other than to  
17 have continuing contact with them regarding this  
18 subject.

19 We looked at the combined factors of threat  
20 and vulnerability and consequences in order to come  
21 to a conclusion about the total risk. The threat is  
22 something that is out there. There is--there has  
23 been a steady stream of national threat intelligence  
24 coming our way, much of it reported in the media  
25 about cyber--malicious cyber activity directed

1           against the energy sector and utility companies  
2           included. And we have the fact--the historical fact  
3           that there have been three breaches of cyber security  
4           that we know about in New York in the last two years  
5           directed at energy companies, directed at utility  
6           companies. And also we have similar threat  
7           intelligence indicating that water companies, water  
8           works and utilities--and water utilities have been  
9           the subject of malicious probing and scanning by  
10          unknown forces in most cases.

11                    So the threat is--the threat is--the threat  
12          is a present factor. There is no denying that. The  
13          consequence in coming to a risk determination is  
14          really a factor of the size of the customer base of  
15          the company. A National Grid or a Con Ed represents  
16          a greater potential consequence of cyber breach than  
17          does a National Fuel Gas, for example. But the  
18          consequence for any large utility is a large  
19          consequence. And then the vulnerabilities are what  
20          we really focused on in our audits. It's the  
21          vulnerabilities that we have the most ability to do  
22          something about.

23                    So, among the numerous subject areas covered  
24          in our staff audits, our findings led to nine  
25          recommendations, all aimed at lessening

1 vulnerabilities. Two of these recommendations merit  
2 the most emphasis. In most instances, staff found  
3 that leading edge cyber security technologies were  
4 lacking to some degree. The increasing  
5 sophistication and tenacity of cyber based identity  
6 theft call for the advanced defenses available today  
7 at reasonable cost. Therefore, a key recommendation  
8 calls for company planning, for upgrading of  
9 technical security controls that should lead to  
10 procuring and deploying next generation intrusion  
11 detection systems and security information event  
12 management solutions.

13 I noted a comment from a speaker at a high  
14 level cyber security conference in Washington last  
15 week involving the energy sector. To quote,  
16 "Utilities need to closely monitor network traffic  
17 and technology that allows for a comprehensive  
18 picture of risk, being able to identify and respond  
19 to an event quickly." We, that is staff, could not  
20 agree more. It is important now to be able to detect  
21 when malware, malicious software, is crossing the  
22 threshold from the outside world into your  
23 organization, enabling you to isolate or eradicate it  
24 before it has the chance to do costly harm. This is  
25 a reality that applies to cyber security for critical

1 infrastructure protection as well as for identity  
2 theft protection.

3 Understanding that malicious cyber threats  
4 are a constantly evolving phenomenon, it is a  
5 challenge for any organization to know which mix of  
6 available defensive measures, the toolboxes  
7 Commissioner Acampora referred to it a moment ago,  
8 and technologies that are the most effective and  
9 prudent. Accordingly, staff has concluded that  
10 keeping ahead of the threat can be much more  
11 assuredly accomplished with the benefit of recurring  
12 third party audits by credentialed experts with the  
13 knowledge to identify weaknesses and make the most  
14 well-informed and up to date recommendations to  
15 address them.

16 Therefore, our other key recommendation  
17 calls for recurring third party vulnerability and  
18 counter measure assessments for the protection of  
19 sensitive customer information. This last  
20 recommendation is the most significant in the long  
21 term. Each company should have at least annual input  
22 from expert assessors as to where the company's cyber  
23 protective measures stand in safeguarding customer  
24 information. It is expert and objective outside  
25 analysis that will be of most help in preventing a

1 company from slipping behind, as the cyber identify  
2 theft threat continues to advance.

3 From these conclusions, we recommend that  
4 the commission direct the large electric, gas and  
5 water companies to prepare a report within 60 days  
6 detailing steps they have taken or are being--or are  
7 being taken in response to our recommendations or  
8 alternatives to those recommendations, and provide an  
9 implementation plan for such. Staff will develop a  
10 schedule to review the company implementation plans  
11 and begin those reviews following the 60-day period.

12 I have a second part to this item concerning  
13 one company.

14 CHAIRMAN BROWN: Yeah. Let's do the generic  
15 first and take a vote on that. Then we'll move on.  
16 So let me just start out. 202A here, this is a  
17 threat that I think is a little different than  
18 anything we've ever seen before in that there's no  
19 conclusion to this.

20 MR. SENNETT: No.

21 CHAIRMAN BROWN: There is no, "Okay, we got  
22 it right now and we can stop." This is going to be  
23 continual evolution because, as you pointed out,  
24 people that are trying to do the hacking are--come up  
25 with new stuff every day. And so it's very difficult

1 for each one of our utilities to develop the complete  
2 expertise to be able to truly understand that. And  
3 that's why I think your third party recommendation is  
4 so important.

5 I think it's--you know, a very large utility  
6 like Con Ed might be able to get enough resources in  
7 place, but when we start talking some of the smaller  
8 water companies, they just can't possibly have the  
9 expertise that's necessary. So they're going to have  
10 to obtain it because they've got a lot of critical  
11 information. They all have a lot of critical  
12 customer information with personal information about  
13 people that we don't want to get out. So I think  
14 your recommendations are good ones and we just have  
15 to remain diligent on all of this. Commissioner  
16 Burman?

17 COMMISSIONER BURMAN: I'm going to reserve  
18 my comments for the next item.

19 CHAIRMAN BROWN: Okay.

20 COMMISSIONER BURMAN: Because they're  
21 combined.

22 CHAIRMAN BROWN: Commissioner Sayre?

23 COMMISSIONER SAYRE: I'd like to commend  
24 staff for focusing on the companies and situations  
25 that need the work, and not adding regulatory costs

1 where the threat is low or the company is already  
2 following best practices. That's just smart  
3 regulation and I think that's a very good thing that  
4 you're doing there.

5 CHAIRMAN BROWN: Anything else?

6 COMMISSIONER ACAMPORA: John, you mentioned  
7 that our telecom industry was doing a very good job.  
8 I'm kind of wondering why we wouldn't ask the telecom  
9 industry to talk to other utilities and share that  
10 information if they're really ahead of the curve  
11 right now, or at least on par. I think it would be  
12 important to share and discuss what they're doing, so  
13 that the companies could possibly get some ideas.  
14 And when they do want to contact a consultant to come  
15 in and look at things, that they have an idea of what  
16 somebody already else is doing and question that as  
17 whether it could be useful to them.

18 MR. SENNETT: This was an idea or suggestion  
19 that Commissioner Sayre has previously expressed, and  
20 it's obviously a good one. I'm pleased to tell you  
21 that the Chief Information Officers of the large  
22 energy utilities just last week had a conference call  
23 where they agreed--where they began a process of  
24 sharing information on cyber threats and addressing  
25 vulnerabilities with technical solutions and other

1 measures. To bring the telecom--their telecom  
2 counterparts into that circle I think is a good idea  
3 and I'll work on that. I'll suggest that very  
4 strongly.

5 CHAIRMAN BROWN: John, if I remember looking  
6 at some of the third party companies that would be  
7 providing the third party analysis, an awful lot of  
8 them were associated with telecom.

9 MR. SENNETT: Yes, they are.

10 CHAIRMAN BROWN: It's--and they've made a  
11 business out of providing their expertise to others.

12 MR. SENNETT: Yeah. With regard to these  
13 third party audits, I didn't want to get into the  
14 detail too much, but the--we are--we are insisting  
15 really that the companies select auditors,  
16 consultants, from a list of highly reliable companies  
17 certified by the payment card industry as approved  
18 assessors. And those companies include Verizon  
19 Security and AT&T Security and so forth. And they  
20 have gone through a process. We can be confident  
21 that they know what they're doing is what I'm saying.

22 COMMISSIONER ACAMPORA: That's good because  
23 I think that not only in this particular area of  
24 cyber security, which as the chairman said this is  
25 ongoing and we'll have to deal with it forever, but

1 also in other areas when we're talking about and we  
2 will have yet to be talking about storm restoration  
3 and things like that, the sharing of information  
4 amongst the utilities is critical also to solving and  
5 looking at some of these problems that we have to all  
6 deal with and that have an effect on the companies  
7 themselves and their customers. Thank you.

8 CHAIRMAN BROWN: Okay. So let's take a vote  
9 on 202A. All those in favor of the recommendations  
10 to direct large utilities to develop and file  
11 implementation plans detailing the measures taken or  
12 to be taken to improve the protection of personally  
13 identifiable customer information as described by  
14 John, please say "Aye."

15 MULTIPLE VOICES: Aye.

16 CHAIRMAN BROWN: Opposed? Hearing none, the  
17 recommendations are adopted. Now we'll go to the  
18 counterpart item, item 202B, case 13-M-0178,  
19 comprehensive review of security for the protection  
20 of personally identifiable customer information for  
21 Central Hudson Gas and Electric Company. That's  
22 being presented by John Sennett.

23 MR. SENNETT: Thank you again. In the midst  
24 of this process that I just outlined for you, we  
25 discovered the--Central Hudson I should say

1 discovered in February of this year that they had  
2 experienced a breach of security that led to the  
3 compromise of personally identifiable customer  
4 information. They notified the department very  
5 quickly and immediately secured the services of a  
6 highly respected national consulting organization to  
7 conduct a forensic examination of what happened and  
8 how it happened, and what the consequences of that  
9 might be.

10 The consultant conducted its examination in  
11 the weeks following the discovery, and in March  
12 offered its opinions as to the cause, made  
13 recommendations to enhance protective measures, to  
14 minimize the chances of a similar occurrence. In the  
15 days--in the days after the discovery and  
16 confirmation that a compromise had occurred, a great  
17 deal of communication took place between the staff of  
18 the Office of Consumer Policy and the Office of  
19 Consumer Services with Central Hudson officials to  
20 make sure that customers were going to be promptly  
21 and fully notified about what happened, and to put  
22 some credit monitoring and credit protection measures  
23 in case any of those--in case the identity of any of  
24 those customers led to some form of fraud.

25 Central Hudson also--Central Hudson took

1 steps to notify its customers by direct mail, by  
2 putting notices on its website, and at various other  
3 means, automated phone calls. And it made the staff-  
4 -Len Silverstein is here. I know he can--he was--oh,  
5 I'm sorry. Oh, there you are. Yes.

6 [Laughter]

7 MR. SENNETT: I should watch my back more  
8 carefully.

9 [Laughter]

10 CHAIRMAN BROWN: You're the guy that's  
11 looking back all the time.

12 [Laughter]

13 MR. SENNETT: Yeah. I'm getting old. I'm  
14 getting old.

15 CHAIRMAN BROWN: Didn't think he could sneak  
16 up on you?

17 [Laughter]

18 MR. SENNETT: Yeah. So Len was part of the  
19 investigation that focused on the consumer protection  
20 issues that the company had agreed to put in place,  
21 and he can expand on that more for you.

22 In addition to strengthening some basic  
23 cyber security measures, the company offered  
24 recommendations for the deployment of added technical  
25 cyber security measures. And this goes back to the

1 issue I talked about in the first part of this item,  
2 that we are in a technical arms race with the bad  
3 people and they are coming up with evermore ingenious  
4 techniques. And the defenses to deal with those  
5 techniques need to become consistently more  
6 sophisticated.

7 According to staff review of the  
8 consultant's report and information more recently  
9 supposed to staff by Central Hudson, the company has  
10 acted on some of the consultant's recommendations but  
11 not others. Particularly, the advanced technical  
12 measures that their consultant claimed could have  
13 been instrumentally effective in preventing the  
14 introduction of malware into the Central Hudson  
15 network, that the consultant has concluded was the  
16 genesis of the consumer data security breach.

17 To enable better tracking of progress at  
18 Central Hudson in implementing recommendations or  
19 suitable alternatives, Central Hudson should develop  
20 an implementation plan that includes full  
21 descriptions of all actions it has taken to date or  
22 plan to be taken in response to the recommendations  
23 submitted by the company by their own consultant. We  
24 recommend that Central Hudson be directed to create  
25 such a plan within 30 days.

1                   CHAIRMAN BROWN: Commissioner Burman, did  
2 you have a comment on this?

3                   COMMISSIONER BURMAN: Yes. First of all,  
4 thank you very much. Just in general I just kind of  
5 wanted to make sure I understand. This really is a  
6 continued approach to looking at utility security. I  
7 believe in August of 2002 the PSC directed all major  
8 electric, gas and telecom utilities to conduct their  
9 own comprehensive security audits. That was an  
10 internal process. PSC directed them to do that.

11                   Then I believe in July of 2003 PSC under  
12 then the leadership of then Chairman Bill Flynn  
13 created a dedicated office addressing utility  
14 service--utility security. And it seems to me that  
15 it--and I think as Chairman Brown says, the work is  
16 not done. It's a continuing, ongoing need to be ever  
17 vigilant and focus on how to assess where the help is  
18 needed, make sure that we're looking at that and  
19 working with everyone so that the public is  
20 protected.

21                   And the focus that I am very happy to see is  
22 that it's the diligence and the looking at what needs  
23 to be done, and helping with that, and to try to  
24 avert threats or neutralize them before they have any  
25 legs. And looking at best practices that are

1 comprehensive but yet flexible I think is very  
2 appropriate. And I just am very happy to see that  
3 that still is continuing and is increasingly making  
4 sure that we're ever vigilant for new things that are  
5 coming. So thank you.

6 MR. SENNETT: Thanks.

7 CHAIRMAN BROWN: And I will note that John  
8 and his staff are constantly on tour doing both  
9 physical and cyber, for lack of a better term,  
10 audits, finding out what's happening in the  
11 utilities. And, once again, that can't have an end  
12 date either. It's got to be ongoing.

13 MR. SENNETT: And I want to acknowledge  
14 Keith Haugen sitting somewhere behind me.

15 CHAIRMAN BROWN: He did sneak up.

16 MR. SENNETT: Yeah. Keith plowed through  
17 thousands, literally thousands of pages of  
18 questionnaire responses and supporting documentation.  
19 When we looked at company's responses in these  
20 audits, we weren't satisfied just with the company  
21 response. We wanted to see supporting memorandum,  
22 supporting documents, supporting communications to  
23 back up all of the company responses. And Keith went  
24 through wheelbarrows of material.

25 CHAIRMAN BROWN: And, John, I think we have

1 also noted you brought to my attention some of the  
2 companies are kind of reorganizing and recognizing  
3 more and more the importance of cyber security as  
4 part of their overall operations. It's no longer  
5 kind of a stepchild off on the side.

6 MR. SENNETT: It's becoming a more technical  
7 discipline security generally. Physical security is  
8 becoming more technologically oriented. And so at  
9 one company we now have one person wearing both hats.  
10 I think that's a developing trend.

11 CHAIRMAN BROWN: Any other comments or  
12 questions? So what we have here is a vote to be  
13 taken to direct Central Hudson to develop and file an  
14 implementation plan identifying the actions it took  
15 or plans to take to implement the recommendations the  
16 company's consultant who conducted a forensic  
17 analysis to the cyber breach as described by John.  
18 All those in favor, please say "Aye."

19 MULTIPLE VOICES: Aye.

20 CHAIRMAN BROWN: Opposed? Hearing none, the  
21 recommendations are adopted. John, thank you again  
22 for you and your team, all the hard work that's been  
23 done.

24 MR. SENNETT: Thank you.

25 CHAIRMAN BROWN: The fifth item for

1 discussion is item 301, case 13-E-0198, 2013 Electric  
2 Emergency Plan Review, presented by Mike Worden,  
3 Department Emergency Manager, and Martin Insogna,  
4 Consumer Production Program Specialist with the  
5 Office of Consumer Policy is available as well.  
6 Mike?

7 MR. MICHAEL WORDEN: Good morning, Chairman  
8 Brown, Commissioners. Is that working?

9 CHAIRMAN BROWN: Yes, I think so.

10 MR. WORDEN: Okay, thank you. I think it's  
11 a major understatement to say that super storm Sandy  
12 emphasized the need to have to effective electric  
13 emergency plans. We all know that. We're here today  
14 to talk about the emergency plans that were filed  
15 with the commission on April 1st under the previous  
16 existing Public Service Law in Part 105, which  
17 identified things that were supposed to be contained  
18 in the emergency plans. These plans have been filed  
19 with the commission for many years.

20 As you also know, about the same time as the  
21 plans were filed, a new Public Service Law was  
22 amended--excuse me, was enacted. And so as part of  
23 our review process we tried to take into account the  
24 things that were in the new Public Service Law to the  
25 extent possible. So today I'm going to give you an

1 overview of staff's review of these plans that were  
2 filed on April 1st. At the end of the day, we're  
3 going to ask you to approve those plans as they're  
4 modified by the discussion we're going to have. And  
5 we're going to ask that you direct the utilities to  
6 make certain improvements within 30 days, and that  
7 you also direct them to make some additional  
8 improvements by the 12/15 filing date, which is in  
9 the new Public Service Law. So just to step back.

10 CHAIRMAN BROWN: Mike, let's just--I just  
11 want to clarify what's happened here. By statute now  
12 on December 15th of this year each utility is going  
13 to be required to develop an emergency plan.

14 MR. WORDEN: Correct.

15 CHAIRMAN BROWN: We also have directed them  
16 to develop one to kind of, up until the interim  
17 period between now and then.

18 MR. WORDEN: That was--that was by statute  
19 as well.

20 CHAIRMAN BROWN: Okay.

21 MR. WORDEN: The new statute says they will  
22 file them by December 15th.

23 CHAIRMAN BROWN: Right. And what we're  
24 dealing with today was interim, for lack of a better  
25 term.

1 MR. WORDEN: Essentially yes, interim plans.  
2 We're going to ask you--we're calling them interim  
3 plans. The plans that were filed on April 1st with  
4 some modifications that have been made today, with  
5 the recognition that we're going to make additional  
6 modifications for the December 15th.

7 CHAIRMAN BROWN: Approving certain things or  
8 at least asked to approve certain things today and  
9 then directing the utilities to make other changes as  
10 they move forward with the December 15 Plan?

11 MR. WORDEN: I think you have it down better  
12 than I do.

13 CHAIRMAN BROWN: Okay. It's a little  
14 confusing.

15 MR. WORDEN: It is confusing a little bit  
16 and I hope at the end to go through that so that it's  
17 a little clearer as to where we're at. But I think  
18 we have to talk through some of the changes first  
19 before we can get there.

20 CHAIRMAN BROWN: That's right.

21 MR. WORDEN: I just--I do want to point that  
22 this review has been a--was a joint effort of our  
23 office, Office of Electric Gas and Water, Office of  
24 Consumer Services, Office of Consumer Policy, Office  
25 of General Counsel. We had over 20 people that

1 worked on this at various points during this review.  
2 And I do want to note one of my staff members, Mary  
3 Ferrer, was really the lead person in trying to herd  
4 this thing together to get to you today. So she put  
5 an awful lot of work into this.

6 We addressed in this--again, if you look at  
7 Part 105, Part 105, the existing commission rule  
8 actually details a lot of what has to be in these  
9 emergency plans. We had staff members from all the  
10 offices that went through those things and reviewed  
11 checklists to determine if everything that was called  
12 for in Part 105 was actually in the plans. And I  
13 would note that a lot of the details that are in  
14 part--in the new Public Service Law are already  
15 identified to an extent in Part 105. And we'll be  
16 working as we go forward towards this December 15th  
17 filing to make sure they're synced up properly.

18 Even before we got to the April 1st filing  
19 date, I want to mention that, you know, Super Storm  
20 Sandy happened and we knew this filing was coming up.  
21 So we didn't just say, well, let's wait and see what  
22 the filing is and see if they didn't address some  
23 items that really I think were obvious in Sandy that  
24 should be addressed. The one that comes to mind  
25 that's most obvious is flood restoration protocols.

1 It was clear in Sandy there was a dynamic that took  
2 place there that really had not been experienced and  
3 we recognized that that needed to be in the plans.

4 We asked the utilities to put those in the  
5 plans when they filed them on April 1st. Preemptive  
6 shut downs, if you recall, Manhattan had a couple of  
7 outages and they had some areas actually in lower  
8 Manhattan that they preemptively shut down customers.  
9 That needed to be identified in the plans. There  
10 have been a lot of changes in the whole and I'm not  
11 going to not probably present this quite right and  
12 maybe Marty can elaborate on it.

13 The whole social media thing and how those  
14 things are used to update customers. We wanted them  
15 to reflect what they experienced in Sandy in their  
16 filings. And finally it's important to note the  
17 companies had done 60-day reports which are required  
18 under the Part 105 filing rules, and we asked them to  
19 implement the findings that they had identified  
20 during those--during their own reviews.

21 So, as I mentioned earlier, you know, we put  
22 together extensive checklists and we had staff go  
23 through and review not only Part 105, not only the  
24 new Public Service Law, but also we had the Ready and  
25 Respond Commission, you know, the reports were in

1 draft but there had been some briefings on them. So  
2 we looked at those areas to the extent, you know, we  
3 thought there were things that should be done and  
4 tried to address them.

5 The 2100 Commission report was also issued.  
6 We tried to address that to the extent possible.  
7 And, again, we're kind of on two phases here. One is  
8 what we thought we could do right away and then we  
9 ended up with what we think we should do for December  
10 15th. After we completed our initial review, we sent  
11 a letter to the companies asking them to identify  
12 numbers that were--excuse me. We identified a number  
13 of things that we thought could be fixed quickly and  
14 should be.

15 At this point, we were around July 1st and  
16 we're in hurricane season. Technically, it starts  
17 June 1st but the worst part of the hurricane season  
18 tends to start around mid to late August. And so we  
19 saw some things we thought could be improved prior to  
20 that, you know, earnest hurricane part of the season.  
21 So we asked them to identify telecommunication  
22 contacts within their service territory. And this is  
23 an issue I'm going to touch on a little later, but  
24 this is the first step. We wanted to make sure they  
25 knew who they were. We wanted them to have 24/7

1 contact with these people so they can have a dialogue  
2 during an emergency. We wanted to make sure they had  
3 some coordination with local officials.

4 One of the things we identified was, for  
5 example, with Con Edison. They have a fairly robust  
6 program for having people at the various municipal  
7 offices but what's important is those people have to  
8 be--they have to be knowledgeable people and they  
9 have to be able to reach back into the organization  
10 to communicate the kind of information the  
11 municipalities need. So we wanted to make sure they  
12 had the right people out there and the people had the  
13 right resources.

14 And then we had some specific utility  
15 specific things. I think one that comes to mind is  
16 on our ETRs was an issue--was a particular issue  
17 during Sandy. And we asked them what additional  
18 steps they were taking to make sure they didn't  
19 affect the job going forward.

20 I think generally we were pleased with the  
21 responses. One area that I think that needs more  
22 work is mutual assistance. We asked the utilities  
23 for more developed protocols as to how that process  
24 is going to work. I will tell you there's two  
25 efforts that are under way. There's one that's kind

1 of a northeast regional effort that involves the New  
2 York utilities, New England utilities, and the Mid-  
3 Atlantic utilizes. They have developed some draft  
4 protocols. You know, I would say they are  
5 significantly improved from what exists a year ago,  
6 but they're still working through the details of how  
7 they would allocate crews, and until they do that,  
8 you know, it's still something that has to be worked  
9 on.

10 There's also what's called a national  
11 response effort under way that involves all the  
12 member EEI [phonetic] utilities and these things  
13 called RMAGs, Regional Mutual Assistance Groups.  
14 There's a number of them around the country. And,  
15 again, they're still working through the details on  
16 that. So we see improvements on the horizon. I  
17 think it's a major event we're having today. It's  
18 better than it was a year ago but there's still work  
19 that has to be done. That's something we continue to  
20 work with the utilities on.

21 A more focused thing that we mentioned in  
22 the responses is Grid developed some procedures for  
23 wires down that we thought were significantly  
24 improved. And we--actually, at the end of the day  
25 we're going to ask you to direct them to implement

1           them and put them in their emergency plan within 30  
2           days. The draft order before you also has a host of  
3           recommendations, staff recommendations that we want  
4           the companies to implement as part of their 12/15  
5           filing.

6                         We mentioned--and I actually mentioned this  
7           three times in this talk, communication with telecoms  
8           and other industries, we think that needs to be--  
9           we're asking them to make sure they have contacts.  
10          Now we want to make sure it's in their plans and it's  
11          a more robust discussion of how that process is going  
12          to work. So we need to work on that going forward.  
13          And that's something, you know, the electric  
14          utilities can do part of it. We need the telecoms to  
15          participate in that as well.

16                        The downed wires, we've mentioned what  
17          National Grid has done. I think that's an area  
18          Central Hudson has developed some downed wire  
19          protocols that we really think are the best ones in  
20          the state amongst the regulated utilities, and we're  
21          asking all the companies to look at doing something  
22          like that or something better if they have something  
23          better in mind.

24                        Now, you've had a lot of stuff--a lot of  
25          stuff in these plans about life support and special

1 needs customers. And we've done a lot of work in  
2 that regard over the past couple of years, but I  
3 think one thing that our review of the plans right  
4 now found was that it hadn't really made its way into  
5 the plan sufficiently. So they need to work on  
6 undoing that.

7 So finally there's--you know, we noted with  
8 regard to the call center that the companies--you  
9 know, sometimes they often bring in outside resources  
10 to help with the call center. They just need to make  
11 it a little clearer when they're going to do that  
12 instead of just kind of doing it on an ad hoc basis.

13 I just want to note some of the other  
14 activities that the staff has been engaged in as we  
15 work through these plans. We did have a technical  
16 conference with electric, gas, and telecommunication  
17 utilities. Commissioner Sayre was there. You know,  
18 it was--it was a good discussion but I think at the  
19 end of the day we recognize that we have to continue  
20 working to make this interaction between those  
21 parties work better and we're going to continue to do  
22 that.

23 There was a number of mentions--I believe it  
24 was mentioned in the Moreland report. I believe it's  
25 been mentioned in some other areas. We met with the

1 National Guard and SEMO [phonetic], the State Office  
2 of Emergency Management, to discuss and better refine  
3 what the National Guard can do in an emergency event.  
4 That was one of the--that was a real issue last year  
5 during Sandy. I personally was right in the middle  
6 of that and I know the utilities were saying, "Hey,  
7 you can help us do this." And the guard was saying,  
8 "What is that?" And so we had a number of  
9 interactions with the two groups to define what  
10 exactly the Guard could do for the utilities, what  
11 are the guard's capabilities.

12 And so part of that work's been done.  
13 Those--we've identified what can be done. Now it's a  
14 question of we've still got to work through exactly,  
15 you know, where the Guard is going to fit into the  
16 picture but we've made significant progress since  
17 last year.

18 We did meet with the State Office of  
19 Emergency Management a couple of times to get their  
20 feedback on this. I do expect when we get to the new  
21 filing under the new Public Service Law that we're  
22 going to get more feedback from them. I also want to  
23 mention that, you know, we're talking about electric  
24 today. We're talking about electric because we've  
25 got this new Public Service Law, which is really

1 directed to the electric. And these plans were filed  
2 and so, you know, we've had to go through this  
3 process to review these plans but that doesn't mean  
4 we're not looking at other industries. I know that  
5 telecommunications actually completed an initial  
6 review and I expect--I think they expect to report to  
7 you maybe even as early as next month but fairly  
8 soon. And I know our gas safety people are working  
9 with their utilities to try to put improvements in  
10 place for the gas industry because there were gas  
11 issues during Sandy. So we do have a lot of other  
12 things going on as well.

13 I just want to take a minute on another  
14 front and mention to you the work on the scorecard.  
15 If you recall, we came to you in April with a  
16 scorecard that was designed as a quantitative tool to  
17 assess utility performance following these major  
18 outages. And it was put out for comment. We did--we  
19 got comments from the City of New York and the joint  
20 utilities and, you know, they were--they were good  
21 comments and, you know, they were--they were fairly  
22 extensive.

23 The utilities comments were fairly extensive  
24 but they really focused on one thing. We need to be  
25 very clear on what we're measuring and how we measure

1 it. How do we report to you? What exactly--what  
2 data do you want to meet this measure? And, you  
3 know, I thought that was a good, valid observation  
4 and the city had some good observations as well.

5 So we've had a series of dialogues with both  
6 of those parties to try to make refinements to the  
7 scorecard. We've done that. While I consider them  
8 to be refinements, we really didn't change the  
9 structure at all and we really didn't change many of  
10 the measures that much. We added a lot of definition  
11 to them and made them a lot better. So we plan on  
12 issuing that, having the secretary issue that  
13 scorecard for further comment. We're not going to  
14 wait for the comments to come in from the parties  
15 that have already engaged. We're going to continue  
16 to have dialogue with them on what we need to do to  
17 improve that.

18 One thing we are asking for though in the  
19 notice is that if there is a major storm we're going  
20 to ask the utilities to report on their performance  
21 under the scorecard as it currently exists. And we  
22 use that as a tool to figure out how everything  
23 works. So that's kind of our plan going forward.

24 So if we can step back to the emergency plan  
25 now I'm getting close to settling down here. A

1 couple of things. We did get comments. You know, we  
2 did put these emergency plans out for public comment.  
3 We received comments from four parties. I've got to  
4 read this one because I couldn't say it otherwise,  
5 Office of People with Developmental Disabilities,  
6 OPWDD, Department of Corrections, City of New York,  
7 and Cablevision.

8 You know, Cablevision's comments really  
9 align with what we're talking about, all this  
10 telecommunications. Cablevision wants to be engaged  
11 with the utility but they also want to help the  
12 utility better identify where problems are. It's to  
13 their benefit if they can help the utility, the  
14 electric utility then helps them know where to go.  
15 So, you know, we're going to take some of what  
16 Cablevision has put in their comments and use that as  
17 we go forward with what the other electric utilities  
18 should put in their plans.

19 The other groups predominantly were saying,  
20 you know, "I'm a critical customer or I'm a special  
21 needs customer." You know, Corrections, for example,  
22 said prisons should be a critical customer. And  
23 OPWDD said that the people that they have in the  
24 system are important customers. I think we recognize  
25 all that. You know, in the process of reviewing

1           these comments and putting together this draft Order  
2           I think we recognize that we--there needs to be a  
3           better job in the utility plants of identifying  
4           critical customers, special needs customers, to make  
5           sure we're all using the same terminology, because  
6           I've personally seen there are times when we get into  
7           the discussion of that and, you know, one says a  
8           critical customer and I'm thinking it's a hospital,  
9           and somebody else thinks it's a life support  
10          customer. So I think that's something that staff  
11          needs to work with the utilities to make sure we do a  
12          good job.

13                    The other thing I want to mention just  
14                    briefly is the Moreland Commission report. We have  
15                    been through that report. There's a--there's a  
16                    section devoted to the utility performance. We've  
17                    been through that. And there's--you know, there's  
18                    three key issues that came out of that that I think  
19                    really coincide with the things I've already talked  
20                    about today; improvement of local ETRs, mutual  
21                    assistance, and large scale flooding events.

22                    So we've, to an extent, done a lot of work  
23                    in that regard. And I think what, you know, what we  
24                    need to do is make sure we're doing everything that  
25                    needs to be done at the end of the day. There are a

1 whole host of recommendations in the Moreland  
2 Commission report directed at specific utilities.  
3 They basically did a utility by utility set of  
4 recommendations and we need to work through those to  
5 determine, you know, which ones are applicable to be  
6 implemented. But, you know, my reading on that was  
7 that most of them are consistent with the direction  
8 we're already heading. So I think we're making good  
9 progress. So if I can come for air for a second.  
10 Getting close, there we go.

11 CHAIRMAN BROWN: Take a breath.

12 MR. WORDEN: So, you know, while today I  
13 want to point out we're asking you to order the  
14 utilities to do a number of things, which I'm going  
15 to go through each individual thing. I want to point  
16 out that, you know, we're not going to take this  
17 order and have you issue this order and then wait  
18 until December 15th to talk to the utilities. All  
19 right? We're going to work with them and interested  
20 parties. We're going to collaborate in whatever way  
21 we need to, to make sure, to the best we can, what's  
22 filed on on December 15th meets what we're talking  
23 about here today.

24 So I expect we're going to have a series of  
25 discussions with the utilities. I expect we're going

1 to reach out to some of the parties that have  
2 expressed interest. That doesn't mean we won't talk  
3 to other parties. Anybody that is interested we  
4 certainly will talk to, but we know some specific  
5 concern we want to make sure we try to address that.  
6 So I expect we're going to be doing a lot of that  
7 between now and December 15th.

8 So, having said that, what we're asking you  
9 today is we're asking you to approve the electric  
10 emergency plans that were filed on April 1st as  
11 modified in response to our July 1st letter that we  
12 sent to the utilities. We're asking you to adopt the  
13 ETR protocols effective immediately, and require the  
14 utilities to file amended plans incorporating those  
15 protocols within 30 days.

16 We're asking you to require National Grid to  
17 incorporate its revised wires down procedure into its  
18 emergency plan within 30 days. We're asking you to  
19 direct the utilities to incorporate the additional  
20 improvements identified in this order into its  
21 December 15th emergency plan filing. And finally  
22 we're asking you to require the utilities to file a  
23 status report by December--by October 1st on its  
24 implementation efforts for its meeting the 12/15  
25 filing date.

1                   Now, that's--those are the ordering clauses.  
2                   I do need to step back just a bit and touch on the  
3                   ETR protocols. You know, I didn't mention that  
4                   earlier. We have ETR guidelines that have been in  
5                   existence for a number of years. And actually your  
6                   2010 staff sent those guidelines to the utilities and  
7                   asked them to put them in emergency plans. So  
8                   they've been working under these guidelines for  
9                   several years. Now what we're asking is that you  
10                  formally adopt them as official protocols and that  
11                  you require the utilities to put them in their plan  
12                  and make them an official part of their plan. So  
13                  that's all I have for you.

14                 CHAIRMAN BROWN: Thank you for the thorough  
15                 presentation. So I'm going to--again, I just want to  
16                 emphasize what we're doing here today. We're doing a  
17                 couple of different things. We are really improving  
18                 the currently filed plans and then putting out for  
19                 notice a variety of enhancements that we'll be  
20                 looking for in the December 15th plans.

21                 MR. WORDEN: We're actually directing to do  
22                 them in the December 15th plan. That's not being put  
23                 out for notice.

24                 COMMISSIONER SAYRE: Yeah, the notice is a  
25                 scorecard.

1 MR. WORDEN: Notice is the scorecard,  
2 that's--yeah.

3 CHAIRMAN BROWN: Okay. Thank you for the  
4 clarification. So, with that, I'll open it up for  
5 any comments or questions. Commissioner Burman?

6 COMMISSIONER BURMAN: I have a couple of  
7 comments and some questions as well. When you talked  
8 about the utility alliance groups, how many are  
9 there?

10 MR. WORDEN: You're talking about mutual  
11 assistance?

12 COMMISSIONER BURMAN: Yes.

13 MR. WORDEN: There are a number of them. If  
14 you're talking regional we have--right now we have a  
15 New York Mutual Assistance Group. There's a New  
16 England Mutual Assistance Group and there is a group--  
17 a Mid-Atlantic Mutual Assistance Group. So there's  
18 three.

19 CHAIRMAN BROWN: And what's their acronym?  
20 Come on. You've got to say it, Michael.

21 MR. WORDEN: MAMA.

22 [Laughter]

23 MR. WORDEN: So there's NYMAG, NEMAG, and  
24 MAMA. I didn't make this up. They use those.

25 [Laughter]

1 MR. WORDEN: And that's a regional thing.  
2 And the utilities are actually--those three mutual  
3 assistance groups are talking about creating a group  
4 called North Atlantic Mutual Assistance Group, NAMAG,  
5 all right, which would be a little broader group. So  
6 that's kind of--that's regionally what's going on.  
7 And then nationally, you know, I can't tell you the  
8 names of them all but there were--as of right now,  
9 there's nine regional mutual assistance groups around  
10 the country. And each of the three that I just  
11 mentioned in the northeast are part of the nine, but  
12 some of the groups are huge. There's a group in the  
13 southeast United States that's a very large group.

14 COMMISSIONER BURMAN: So they're working  
15 together and out of these nine there's a group of  
16 them that are working on looking at these issues and  
17 about to issue some kind of procedures, process.

18 MR. WORDEN: There's--

19 COMMISSIONER BURMAN: [Interposing] I mean  
20 what exactly--

21 MR. WORDEN: [Interposing] There's two group  
22 things going on. One is the regional thing, just the  
23 north Atlantic. Okay? That's kind of on its own  
24 front. And then separately there's a national  
25 response in that group which includes all the

1 northeast utilities but includes all the utilities  
2 across the country.

3 COMMISSIONER BURMAN: Okay. And are you  
4 involved in those groups in some fashion? Will you  
5 get involved in those--in working with them?

6 MR. WORDEN: To date, this has been  
7 predominantly a utility effort. All right?

8 COMMISSIONER BURMAN: Uh-huh.

9 MR. WORDEN: We've had some brief--we've had  
10 some discussions with the utilities but the--you  
11 know, the details of how the crews are going to be  
12 allocated really haven't been worked out. At the end  
13 of the day, when they get to the point where they've--  
14 -where they've come to their agreement with the  
15 utilities, then we expect the utilities to tell us  
16 what those are.

17 COMMISSIONER BURMAN: Okay, great. So you  
18 will be then working with the utilities and drilling  
19 down sooner rather than later?

20 MR. WORDEN: As soon as we can.

21 COMMISSIONER BURMAN: Okay. All right.  
22 That's very--that's very good. When you talked about  
23 the wires down and National Grid and putting the  
24 wires down procedure and processes into the revised  
25 emergency plan, I just wanted to make sure I'm clear.

1 So National Grid looked at these issues with wires  
2 down and put it--has these procedures already? So  
3 we're just asking them to take those procedures and  
4 put them into the emergency plan?

5 MR. WORDEN: Well, and to be able to execute  
6 them.

7 COMMISSIONER BURMAN: Okay.

8 MR. WORDEN: Yes.

9 COMMISSIONER BURMAN: Okay. But they're  
10 already like there?

11 MR. WORDEN: We liked what--

12 COMMISSIONER BURMAN: [Interposing] This  
13 won't be new to them?

14 MR. WORDEN: No. We liked what they  
15 developed but they--we want them to put it in the  
16 plan. We want them to be able to execute it. It  
17 does take a little bit--some effort on their part  
18 because they have to make sure their people know what  
19 the new protocols are, that they developed a  
20 procedure.

21 COMMISSIONER BURMAN: Okay, great. And so  
22 my understanding is the--under the regulations it's  
23 April 1st is when there has to a filing of emergency  
24 response plans. And then--and the utilities did file  
25 them and in the meantime there was this change in the

1 law that expanded the emergency plans in specific  
2 subject areas to be looked at. And those are  
3 supposed to be approved by the commission and then  
4 certified to the Homeland Security. Is that correct?

5 MR. WORDEN: Yes.

6 COMMISSIONER BURMAN: Okay. And what are  
7 those--and I think it's more of a counsel question.  
8 What are those specified subject areas that are  
9 supposed to be in the December plan?

10 MR. WORDEN: Actually, a lot of these  
11 specific things, when it comes to the plan--I'm not  
12 talking about the rest of the Public Service Law.  
13 There's a lot of other things in the Public Service  
14 Law.

15 COMMISSIONER BURMAN: Right.

16 MR. WORDEN: But when it comes to the plans,  
17 there's a lot of details in there. There's a lot of  
18 things in the new Public Service Law that are  
19 consistent with a lot of what's in the existing Part  
20 105.

21 COMMISSIONER BURMAN: Okay.

22 MR. WORDEN: So instead of being in a rule  
23 it's now in a law. And there does have--there are  
24 some differences, a couple of differences. I'll  
25 point at one. The law requires the utilities to file

1 the mutual assistance protocols as part of the plan,  
2 so.

3 COMMISSIONER BURMAN: Okay.

4 MR. WORDEN: Those things have to be--you  
5 know, it spells it out. There's another thing in the  
6 law that's a little different that's--well, it's not  
7 a little different. It's different than what's in  
8 the existing plans. Is it has some language in there  
9 about response to wires down within 36 hours, for  
10 things that are reported by a government official. I  
11 mean that's something that I think we need to work  
12 with the utilities to figure out how just to work  
13 that in the language.

14 COMMISSIONER BURMAN: Okay.

15 MR. WORDEN: But, you know, it says you've  
16 got to have the ability to--information about how you  
17 deal with local officials. That's in Part 105. You  
18 know, communication, how you handle mutual  
19 assistance, so there's a lot of similarities to them.  
20 I'm not implying that, you know, we've got it all  
21 covered because we don't, but we'll work to make sure  
22 they do.

23 COMMISSIONER BURMAN: Okay. So it is  
24 helpful then for staff--and I think you used the  
25 right wording of collaborate and discuss in an

1 ongoing dialogue with the relevant parties so that it  
2 is not just this is the April 1st filings have been  
3 approved, if they are, and then in December we look  
4 to approve and then certify the December 15th plans.

5 So that it's between now and then there  
6 should be an ongoing collaborative working with staff  
7 and folks to make sure that folks know what those  
8 plans potentially should incorporate. We're not  
9 making a finding necessarily. Obviously they have to  
10 look to the Public Service Law and what needs to be  
11 in there, but to work through anything else that may  
12 help to make those as robust as possible, those  
13 emergency plans.

14 MR. WORDEN: Yeah. I mean at the end of the  
15 day when these plans are filed in December I think  
16 we're going to again review them and we're going to  
17 come to you with our assessment of them. So if we  
18 have certain things that we think, you know, in  
19 interpreting what's in the law--because some of it  
20 would require some interpretation. How far do you  
21 go? So I think to the extent we can work with the  
22 parties to make sure we're all on the same page, that  
23 will just make it easier when we--when they file the  
24 plans in December.

25 COMMISSIONER BURMAN: Okay. So it also

1 sounds like then there will be a lot of really  
2 working together to make sure that everyone is  
3 understanding and working through some of the issues  
4 with what needs to be in the plan?

5 MR. WORDEN: Well, the more we can do that,  
6 the better off we'll be.

7 COMMISSIONER BURMAN: Yeah.

8 MR. WORDEN: It does take two parties to  
9 tango. We'll certainly be reaching out to the  
10 utilities. I think it's in their--personally, I  
11 think it's in their best interest to work with us.

12 COMMISSIONER BURMAN: Uh-huh. And to let  
13 you know of any potential either alternatives that  
14 they have to things or also others that may be--not  
15 just the utilities that may also think that there  
16 might be something to add to the plans.

17 MR. WORDEN: Certainly. I mean we've  
18 already has some very brief discussions on things  
19 that they wanted to sit down with us about.

20 COMMISSIONER BURMAN: Uh-huh.

21 MR. WORDEN: To, you know, make sure we're  
22 all on the same page.

23 COMMISSIONER BURMAN: Okay.

24 MR. MCGOWAN: I would note that there's  
25 going to be a process before the filing in December.

1           Then there will be a filing in December, and then  
2           there will be a further process after that because my  
3           sense is that we will again put those December 15th  
4           plans out for comment. And it will take, you know, a  
5           while before the commission ends up then approving  
6           those December plans.

7                        COMMISSIONER BURMAN: Right. I think that's  
8           very helpful. I think it's very helpful that folks  
9           understand that they can be engaged in this process,  
10          and that this is establishing those steps for that.  
11          So that we're not just waiting to December but we are  
12          also actively looking for back and forth specific  
13          questions or concerns people may have, as well as how  
14          does it really work and what are some of the things  
15          that need to be in there.

16                       I mean you mentioned even--you know, this  
17          isn't new to the staff. The staff has been working,  
18          looking at the April 1st filings, and have already  
19          identified working with the company's particular  
20          areas that can be improved. And those companies  
21          have--are, you know, looking to do that. National  
22          Grid has already revised their wires down procedure  
23          which will be incorporated into the plan. So I think  
24          this is very helpful and the more that we can have  
25          that dialogue and that collaborative process I think

1 is--it adds to better work product.

2 MR. MCGOWAN: We agree.

3 CHAIRMAN BROWN: Commissioner Acampora?

4 COMMISSIONER ACAMPORA: First, Mike, I don't  
5 know if you've had a vacation but I think after today  
6 you definitely need to go on vacation.

7 [Laughter]

8 MR. WORDEN: It starts tomorrow.

9 COMMISSIONER ACAMPORA: There you go.  
10 Really, we appreciate because you've been the person  
11 that's been dealing with us and appreciate your  
12 efforts and the people behind you who have worked so  
13 hard on all of this. It's not been easy and, you  
14 know, you've had to deal with the Moreland Commission  
15 recommendations and work to incorporate all these  
16 things with the utilities, the electric utilities.  
17 But I have to say when Commissioner Larocca was here  
18 he always talked about the Boy Scout motto. Well,  
19 the Girl Scouts had the same motto, be prepared. And  
20 it's all about that key word, a plan. People need a  
21 plan and I think that this goes a long way to improve  
22 upon some of those things we've already done.

23 I mean I've been here eight years and every  
24 time we have some kind of catastrophic event we find  
25 out maybe there is a better way to do it. And I

1 think we'll continually work on that. This plan  
2 won't be the end all of plans but it certainly will  
3 be an improvement of what we already have. And it's  
4 not only good for the utilities but good for the  
5 customers who are out there, who suffered under  
6 extreme circumstances due to Hurricane Sandy and the  
7 storms before that.

8 I want to point out though, we're talking  
9 about electric utilities. And, you know, I have to  
10 bring up the water utilities and what they did during  
11 those storms. They definitely had a plan and lot of  
12 people said, "Well, they're national companies and so  
13 this also speaks to the mutual assistance point."  
14 They had a plan. They strategized. They put key  
15 components together so that they had staging areas,  
16 but they appreciated very much working with the  
17 Office of Emergency Services because when they needed  
18 help--and you mentioned the National Guard. There  
19 was an instance of the National Guard coming to the  
20 assistance of one of the water companies to help move  
21 a truck that they just couldn't move at the time.

22 So the mutual assistance and having the  
23 National Guard know what the parameters are of what  
24 they can do and how they can help I think is  
25 extremely important. And I know that we're doing

1 electric now but I'm kind of hoping again in that  
2 collaborative effort when we talked before with cyber  
3 security and telecom knowing what to do, that this  
4 communication between all the utilities as to what  
5 works best.

6 And, you know, no one can be proud when it  
7 comes to restoration and public safety in getting  
8 things done, and sharing that information in order to  
9 make sure that New York is looked upon as a place  
10 where we really have a well thought out and executed  
11 plan for emergencies. So I'm looking forward to  
12 seeing what happens on December 15th and how will we  
13 continue on to make sure that we do have the best  
14 possible plan that we can. So thank you for all your  
15 efforts.

16 CHAIRMAN BROWN: Okay. Commissioner Sayre?

17 COMMISSIONER SAYRE: I just have a brief  
18 question for the general counsel. By approving  
19 utility specific plans now and directing their  
20 implementation, what regulatory tools or remedies  
21 does that give us during this interim period before  
22 December, should there be a major storm?

23 MR. MCGOWAN: Excellent question. One of  
24 the things that the new statute did was give the  
25 commission additional and enhanced administrative

1 enforcement authority, including penalties. And one  
2 of the things that the action today does is approve  
3 those--all these emergency plans, and directs the  
4 utilities to implement them. So this becomes a  
5 fundamental enforcement vehicle where we will be  
6 holding the utilities accountable to these approved  
7 plans.

8 COMMISSIONER SAYRE: Thank you.

9 CHAIRMAN BROWN: Okay. So I'm going to try  
10 to describe what we're doing here, and correct me if  
11 I'm--if I'm wrong. So what we're voting on today is  
12 to approve the plans as filed in April, modified in a  
13 variety of ways along the way, require utilities to  
14 address recommendations for their filing on December  
15 15th, and requiring a status report on October 1.  
16 Those are kind of the three actions we're doing by  
17 this vote?

18 MR. WORDEN: Correct.

19 COMMISSIONER BURMAN: I thought there were  
20 five.

21 MR. WORDEN: You're adapt--you're adapting  
22 the ETR protocols.

23 CHAIRMAN BROWN: Okay.

24 MR. WORDEN: And you're requiring all  
25 utilities to file an updated plan within 30 days, and

1 that includes the National Grid wires down plan.

2 CHAIRMAN BROWN: Okay. So those are the  
3 five specific recommendations and of course the  
4 language that goes with it. Okay. So, hearing that,  
5 all those in favor of the recommendations, please say  
6 "Aye."

7 MULTIPLE VOICES: Aye.

8 CHAIRMAN BROWN: Opposed? Hearing none, the  
9 recommendations are adopted. The sixth item and the  
10 last item for discussion today, so I think we can  
11 plow through it--stenographer, are you all set for 15  
12 more minutes? Item 201, case 13-M-0061, consumer  
13 outage credit policies and other consumer protection  
14 policies related to prolonged electric and natural  
15 gas service outages presented by Doug Elfner,  
16 Director of the Office of Consumer Policy and also  
17 available with any questions is Bruce Alch, Chief of  
18 Major Utility Rates in the Office of Electric, Gas,  
19 and Water. Doug?

20 MR. DOUGLAS ELFNER: Good afternoon, thank  
21 you. Good afternoon, Chairman Brown and  
22 Commissioners. Shortly after super storm Sandy, you  
23 directed utilities to take a number of measures in  
24 consideration of the substantial impacts on electric  
25 utility customers in particular. For example, you

1 temporarily waived the assessment of late payment  
2 charges for all customers in affected regions, not  
3 just those who suffered the outages. And, in doing  
4 so, you found that that was appropriate, given the  
5 substantial disruption to mail and transportation  
6 systems, among other reasons.

7           You also approved utility proposals to  
8 provide bill credits on customer charges, which is  
9 the fix portion of the utility bill, to reflect the  
10 period of time the customers were without service and  
11 to have utility shareholders absorb those lost  
12 revenues. And you stated that that action was fair  
13 to customers who did not receive service. It's also  
14 noteworthy that in those time periods utilities  
15 voluntarily suspended several of their businesses  
16 usual collection practices both during and after the  
17 outages.

18           But the commission rarely took similar  
19 action in response to previous prolonged outages.  
20 But, in view of the lengthy outages and the customer  
21 impact resulting from Sandy, you asked staff to  
22 develop a consistent, statewide policy that would  
23 cover customer outage credits, application of late  
24 payment charges, other consumer protections as it  
25 relates to prolonged outages particularly focused on

1 collection activities, and recovery of lost revenues  
2 that are associated with the outages.

3 So we did so. Staff provided--developed a  
4 proposed uniform policy, sent it out for comment,  
5 review the comment, made some changes to the  
6 proposal, and the recommendation before you is that  
7 the commission issue an order that establishes  
8 policies that would be applicable as a result of  
9 prolonged electricity outage. As I said, that  
10 reflects some modification from what was drafted and  
11 sent out for comment in March.

12 And I also wanted to express that, similar  
13 to the item that Mike just discussed, this was a real  
14 team effort, lots of offices involved. Office of  
15 Consumer Services, Electric Gas and Water, Accounting  
16 Audit and Finance, Regulatory Economics, and  
17 counsel's office all contributed to this.

18 The policy that's contemplated in draft  
19 order has two main parts, consumer protections and  
20 then the recovery of lost revenues. So let me  
21 separate those two and provide a high level overview.  
22 Regarding the consumer protections, the order  
23 establishes minimum requirements concerning customer  
24 credits and suspension of certain business' usual  
25 activities related to credits and collections that

1 would be applicable in the event of prolonged  
2 electric outages.

3 On the credit side, electric utility  
4 customers who were out of service for a period  
5 exceeding three days--that three day interval, that's  
6 the same interval that we see with the emergency  
7 plans that we just talked about in the previous item.  
8 So customers who were out of service for a period  
9 exceeding three days resulting from an emergency  
10 would receive a credit on their customer charge  
11 that's proportional to the number of day that they  
12 were out of service. The purpose of that policy is  
13 to avoid the imposition of those charges to customers  
14 who did not receive service.

15 On the suspension of normal business  
16 practices relating to collections there are two tiers  
17 depending on the scope of the outages. For outages  
18 exceeding three days, the collection related  
19 activities such as terminations, assessment of late  
20 payment charges would be suspended for the customers  
21 who experienced the outages for the duration of the  
22 outage and for an additional number of days equal to  
23 the duration of the outage.

24 The second and more comprehensive tier would  
25 apply in only rare events such as we saw in super

1 storm Sandy where there are widespread outages  
2 exceeding three days in duration and, as determined  
3 by the commission, there are widespread disruption of  
4 transportation and mail delivery, for example. Those  
5 conditions are meant to--as indicators of disruption  
6 of normal life. All right. It's just--it's a  
7 disruption of normal practices.

8 In those rare circumstances, again, that's  
9 the commission would determine, the business as usual  
10 collection practices and the late payment charges  
11 would be suspended for 30 days for all residential  
12 customers in the affected areas, and again for other  
13 customers who have been affected by the emergency.  
14 The purpose of these policies is to provide customers  
15 with a reasonable amount of time to recover from  
16 prolonged outages.

17 A very important part of this, as detailed  
18 in the order, is that the order also provides for  
19 flexibility, recognizing that there may be  
20 circumstances in which protections or the duration of  
21 the protections should be modified.

22 Turning to the second main issue, that's the  
23 recovery of lost revenues. We have utility--well,  
24 let me start with under traditional rate making.  
25 Under traditional rate making, utilities bear the

1 risk of revenue shortfalls. We've approved--the  
2 commission has approved revenue decoupling mechanisms  
3 or RDMs, under which the forecasted and actual  
4 utility revenues are chewed up and rate payers bear  
5 the risk of the forecast errors.

6 The RDMs now allow utilities to recover lost  
7 revenues due to outage related customer credits and  
8 the volume metric portion delivery revenues that were  
9 not billed during the prolonged outages. These lost  
10 revenues are calculated on a service classification  
11 basis and are collected from all customers in each  
12 service classification, including customers who  
13 experience the outages.

14 The draft order would, for the most part,  
15 maintain that policy of regarding lost revenue  
16 recovery mechanisms. The exception would be for  
17 extraordinary events such as--such as those that were  
18 determined by the commission. Let me focus on the  
19 non-extraordinary events first. For all outages  
20 except those associated with extraordinary events,  
21 lost revenue and customer credits are relatively  
22 small on a per customer basis, and the revenue  
23 forecasts that are reflected in our rate plans and  
24 RDM targets reflect those outages, those relatively  
25 small outages. So the recommendation is to maintain

1 the existing lost revenue recovery mechanism because  
2 the per customer impacts in these type of events are  
3 relatively small.

4 However, for extraordinary circumstances the  
5 draft order takes a different approach. The per  
6 customer impact of lost revenue and customer credits  
7 associated with events that the commission finds are  
8 extraordinary are much larger. And also those  
9 revenue impacts are not reflected in our RDM targets.  
10 So the draft order would require that where the  
11 commission determines that an event is extraordinary  
12 the electric utility RDM targets would be adjusted so  
13 that utility customers do not pay for this service  
14 that they did not receive. Again, the purpose of  
15 this policy is to ensure the utility customers do not  
16 pay for service not received.

17 So, in summary, the draft order responds to  
18 the commission's request for a statewide policy, and  
19 it would provide regulatory certainty for utilities  
20 and assurance for customers who are attempting to  
21 deal with the aftermath of prolonged outages. So  
22 we're available for questions.

23 CHAIRMAN BROWN: Thank you, Doug. You know,  
24 I've talked to some of the commissioners about this  
25 and I'll certainly open it up for questions for a

1 second, but I think you hit on perhaps the fine line  
2 that we're trying to figure out. It's specificity  
3 versus flexibility. And we're trying to at the same  
4 time define things but at the same time leave  
5 ourselves with some discretion under circumstances we  
6 may not have predicted. And I know you've been  
7 working very hard on trying to nail down the language  
8 on both ends of things, but I think there may be  
9 still be some lingering whether we've got that  
10 balance right. So, with that, I'll open it up for  
11 comments or questions. Commissioner Acampora?

12 COMMISSIONER ACAMPORA: Firstly I know  
13 you've worked extremely hard on this and consumer  
14 protection is really the utmost priority in my mind.  
15 Do any other states have this type of a policy?

16 MR. ELFNER: This type of comprehensive  
17 policy, I believe the answer is no. We looked--as  
18 you know, there have been an increase in frequency of  
19 these storms. In 2011 Mid-Atlantic States got hit  
20 hard and we got hit with Irene and Lee a little bit.  
21 Midwestern states also had some impacts. So the  
22 National Regulatory Research Institute developed a  
23 study just about a year ago looking at what other  
24 states had done. And many people in this table  
25 contributed to that--Mike Worden, Marty, Mike Reeder,

1 myself--and it was kind of an ad hoc approach I would  
2 say.

3 There were several utilities in several  
4 states that looked at, we believe through negotiated  
5 settlements that were approved by the commission, at  
6 just parts of this, and mainly the customer credit  
7 part. Then since then we've tried to keep up with  
8 other states as well. So there's more of an impetus  
9 in states but we haven't seen any other state that's  
10 taken a comprehensive approach dealing with all of  
11 these issues.

12 COMMISSIONER ACAMPORA: Okay. And how do we  
13 define extraordinary event?

14 MR. ELFNER: So here is the tension. Again,  
15 the chairman alluded to it and all of you have in  
16 discussions as well. So the draft order--I'm sorry,  
17 the draft proposal sent out for comment took a stab  
18 and said, "Let's have FEMA essentially do that for  
19 us. So when FEMA declares or makes a declaration  
20 that there's a need for public assistance and  
21 individual assistance, let's go with that." We got  
22 feedback on that as well.

23 Thinking about it again, our focus is on  
24 electric outages and the FEMA declarations don't  
25 necessarily deal with electric outages. So we put

1 all that together and came back with the suggestion,  
2 and the current recommendation is that it would be  
3 you.

4 It would be the commission who, shortly  
5 after an event, would look at all the factors,  
6 including whether there was FEMA declarations,  
7 including the scope of the electric outages,  
8 including the anticipated duration of the electric  
9 outages, and you would make a declaration. You would  
10 make a determination that that--that that would be  
11 extraordinary. And that would trigger the enhanced  
12 protections and it would also trigger the RDM  
13 recovery issue where in that case utilities would be  
14 absorbing the lost services.

15 COMMISSIONER ACAMPORA: Would it be the  
16 commission who declares it or would it be the chair  
17 who declares it?

18 MR. ELFNER: I'm going to defer to Mr.  
19 McGowan.

20 MR. MCGOWAN: The idea is to have the  
21 commission do it, but it is also quite likely that in  
22 a huge event like this, because we're trying to  
23 create certainty, that this declaration may have to  
24 be done shortly after the event. So it's likely that  
25 it will be through a one commission's order.

1 COMMISSIONER ACAMPORA: Okay.

2 CHAIRMAN BROWN: But that would have to be--

3 MR. MCGOWAN: [Interposing] Confirmed by the  
4 commission.

5 CHAIRMAN BROWN: --confirmed by the  
6 commission? That's the current language?

7 MR. MCGOWAN: Yes.

8 COMMISSIONER ACAMPORA: Now, going a little  
9 bit in another area, when we talk about customers who  
10 have had outages, in order for them to then recoup  
11 what normally they would have been charged but they  
12 didn't get any service, do the customers have to call  
13 the utility themselves? Is this taken for granted  
14 that they were in a certain pocket that did not have  
15 any service? How does that work for the consumer?

16 MR. ELFNER: That's right. The intent is  
17 that this would be automatic. Now, many utilities--  
18 utilities are increasing--and here I'll ask Mike to  
19 help if you want further details--are increasingly  
20 able to tell exactly which customers and certainly  
21 which areas are out of service and for how long. So  
22 the utilities have systems and are refining those  
23 systems to do that accurately. And the draft order  
24 would anticipate that this would be automatic. Now--

25 COMMISSIONER ACAMPORA: [Interposing] So

1           then a consumer would not have to call?

2                       MR. ELFNER:     That's correct.   However,  
3           there could also always be circumstances where the  
4           utility--let's say it's not accurate.   Just so in  
5           that case where do you--where the customer calls and  
6           makes a reasonable, you know, claim that appears to  
7           be meritorious, that would be a circumstance where  
8           also the credit would be provided.   So, yes, the  
9           expectation is that certainly over time this would be  
10          automatic.   The utilities will be able to handle this  
11          based on their systems, but allowing for rare  
12          exceptions where the customer would otherwise call.

13                      COMMISSIONER ACAMPORA:   And I think--you  
14          know, I've discussed this repeatedly.   I think this  
15          area needs to be a little bit more refined.   I mean  
16          for me I feel that we don't have any other states who  
17          have this policy.   I would love New York to be first  
18          and we will be first.   However, we have to make sure  
19          we get this right.   I want other states saying, "Look  
20          at what New York has done for consumers."   We've been  
21          a leader over many years in the area of consumer  
22          protection.   So right now I feel that it's not quite  
23          ready and I think that before we make the sweeping  
24          policy that is going to be looked at by other states  
25          that we make sure that we get it as best we can.

1 CHAIRMAN BROWN: Commissioner Burman?

2 COMMISSIONER BURMAN: Thank you. I echo  
3 Commissioner Acampora's comments and concerns. I do  
4 think that staff--and I think you've said it a number  
5 of times that this was an attempt to put together a  
6 statewide policy at the request of the commission,  
7 and it's not soup yet. I think that it's very  
8 important that we make sure when we go through it  
9 that it is comprehensive and understandable, and it  
10 needs to--in some ways when you're drilling down and  
11 trying to put together what you think the  
12 commissioner wants, you lose sight of the needs to  
13 say, "Okay, let's have someone else look at this and  
14 make sure we've covered all of our bases."

15 And does it work? What is missing from the  
16 equation for the customers? Do they under--will they  
17 understand it? There are all different sort of  
18 permutations that can happen. Will the utilities  
19 understand it?

20 There needs to be a lot of certainty when  
21 you set a statewide policy. And if it's set but it  
22 still has all of these bells and whistles that we're  
23 not sure about, that can be problematic because we  
24 will need to make sure that there is a statewide  
25 policy that people really understand and where it

1 fits in. And there needs to be flexibility,  
2 absolutely, but we don't want to do this in such a  
3 way that the flexibility backfires on us.

4 One of the things that struck me from  
5 looking at staff's work product was that there was a  
6 determination that utility costs would increase. I  
7 need to understand that more. I need to understand  
8 what that means, what are the costs. What are the  
9 potential, the highest costs, and who bears the  
10 burden of those costs? And what is the certainty  
11 from that perspective? And I'm still left feeling  
12 just we need to just keep going.

13 I think what Commissioner Acampora is  
14 correct. We will be the first but we need to make  
15 sure that it is the right first. So I'd like to  
16 really continue this dialogue on that and make sure  
17 that we are very comfortable with how this will  
18 actually work in application.

19 CHAIRMAN BROWN: Well, let me take the  
20 chair's discretion here. We won't bring this for a  
21 vote today but I do want to--I do want to thank Doug  
22 and the staff that have been working on this for some  
23 real groundbreaking stuff. And I know you've been--  
24 probably one of the reasons we're at the point we are  
25 today is because you've been working on it up until

1 last night trying to get language that kind of is  
2 specific. And it's often very difficult to kind of  
3 brief everybody and work on the language all at the  
4 same time, very difficult. And so I don't think in  
5 any way there should be a lack of recognition of the  
6 hard work that went into it. Just I think, as  
7 everybody sees this, this is a fairly significant  
8 policy we're about to put in place.

9 So let's take advantage of--if we have a  
10 storm over the next month we can always do what we  
11 did last time and without a statewide policy we can  
12 take a look at its implication if we need to do that.  
13 So I think that's the risk we're taking of holding  
14 this off for another month, but I think there is  
15 something to be gained if all the commissioners can  
16 get to a greater comfort level of the specificity  
17 versus flexibility conundrum that we're kind of faced  
18 in working on this.

19 COMMISSIONER BURMAN: I have another  
20 question.

21 CHAIRMAN BROWN: Sure.

22 COMMISSIONER BURMAN: It's just about your  
23 comments raise. So this was done in Hurricane Sandy.  
24 There was a waiver process?

25 MR. ELFNER: Not all of the aspects that

1 would be in the statewide policy were accomplished  
2 in--

3 COMMISSIONER BURMAN: [Interposing] There  
4 was an opportunity for this waiver process to be done  
5 on a case by case basis?

6 MR. ELFNER: That's right. This--

7 COMMISSIONER BURMAN: [Interposing] And it  
8 was--it was done to some extent?

9 MR. ELFNER: Generally the consumer  
10 protections were provided. Generally the customer  
11 credits were provided, but what was not--what would  
12 be different here would be responsibility, who bears  
13 the cost of the lost delivery revenues.

14 COMMISSIONER BURMAN: Okay.

15 CHAIRMAN BROWN: So the consumer policy is  
16 things like shut offs, things like late fees--

17 COMMISSIONER BURMAN: [Interposing] But  
18 those things were taken care of?

19 CHAIRMAN BROWN: --were actually evoked?

20 MR. ELFNER: Yes, through a pretty  
21 administratively attentive process. There were nine  
22 separate commission orders, but yes.

23 COMMISSIONER BURMAN: Right, but so the  
24 staff did work with the utilities and customers in  
25 making sure that customer protections were in place?

1 I don't know. Maybe Sandra Sloane of Consumer  
2 Services Outreach may have some...

3 MS. SLOANE: Oh, sorry. I just want to make  
4 sure that the commissioners understand that when  
5 there is--as Doug was saying, when there is any event  
6 with outages that's a major event, we work with the  
7 utilities to make sure that credit collection  
8 policies are put in place to protect consumers. So,  
9 for example, upstate flooding which was not a Part  
10 105 event but which had flooding, you received  
11 notification that the companies were working to make  
12 sure that late payment charges, terminations, these  
13 types of things for consumers were waived and  
14 suspended for a certain amount of time to protect  
15 those customers who were affected.

16 COMMISSIONER BURMAN: Okay. And that's what  
17 I wanted to make clear, is that it's not a--by not  
18 doing this policy there is still--we are still and we  
19 have done consumer protection outreach in making sure  
20 that the consumer protections are there and that we  
21 work with the utilities, whether it's through the one  
22 commission order or nine commissioner orders. Thank  
23 you.

24 CHAIRMAN BROWN: Okay. So, with that, I  
25 think we will not take a vote on this today and we'll

1 bring this one back. Thank you very much again for  
2 the hard work, and I know it's going to be continued  
3 work on this.

4 Let's see. Before I asked Madam Secretary  
5 if there is anything to come before us today, I was  
6 remiss in not--in welcoming in Kate, in not thanking  
7 Jeff Cohen, who played the role of acting secretary,  
8 who quickly got very tired of being called "Madam  
9 Secretary."

10 [Laughter]

11 CHAIRMAN BROWN: He doesn't have to put up  
12 with that anymore. And Elaine Agresta, who besides  
13 doing her own job stepped up to the plate and did  
14 instead of just 150% effort she put in about 270%  
15 effort, and thank Elaine for her time. I know she'll  
16 continue to be a tremendous value to Kate. So thank  
17 you both for that. So, with that, Madam Secretary,  
18 is there anything further to come before us today?

19 SECRETARY BURGESS: There are no other  
20 matters to come before you today, Chairman Brown.  
21 And the next scheduled meeting is September 19th here  
22 in Albany, commencing at 10:30 a.m.

23 CHAIRMAN BROWN: Thank you very much. The  
24 meeting is adjourned.

25 [END OF HEARING]

C E R T I F I C A T E

I, Brandi Dean, certify that the foregoing transcript of proceedings in the New York State Department of Public Service, National Grid Affiliates' Rates or Earnings, August 15, 2013, procedural conference, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: 

Date: August 16, 2013