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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, June 12, 2014
10:32 a.m.
19th Floor Board Room
Three Empire State Plaza
Albany, New York 12223-1350

COMMISSIONERS:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Garry A. Brown
Diane X. Burman

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2 CHAIR ZIBELMAN: I'd like to call
3 the Commission's Meeting to order.

4 Secretary Burgess, are there any
5 changes to the agenda for today?

6 MS. BURGESS: Good morning Chair
7 and Commissioners. There's no changes to the
8 agenda this morning.

9 CHAIR ZIBELMAN: Thank you. So
10 we're going to move to the regular agenda. We
11 have, actually, two items for the discussion. The
12 first item is 30 -- let me put my glasses back on.
13 301, which is case number E -- 12-E-0577, which is
14 the proceeding to examine the repowering
15 alternatives to utility transmission
16 reinforcements, with Elizabeth Grisaru, who's our
17 Deputy Director of Policy for the Office of
18 Electric, Gas and Water and Kim Harriman, are going
19 to be presenting, our general counsel. And then
20 Raj Addepalli, who's the Director of Office of
21 Electric, Gas and Water will be available for
22 questions. So let's begin. Hi, Liz.

23 MS. GRISARU: Good morning.
24 Thank you commissioners. And I'll just add that
25 Kim and I are also available for questions if you

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2 want to ask us and not Raj.

3 CHAIR ZIBELMAN: That was -- that
4 was assumed.

5 Kim was hoping, not but --.

6 MS. GRISARU: What I'd like to do
7 first is to address, in brief terms, the history of
8 the proceeding to date as well as the bases for the
9 conclusions that are represented in the order
10 that's before you today.

11 Ms. Harriman will then discuss
12 some procedural rulings that are also involved in
13 the case.

14 As you know, N.R.G. Energy is the
15 indirect owner of the Dunkirk Power Station in
16 Dunkirk, New York. In March of 2012 N.R.G.
17 notified the Commission in accordance with your
18 existing retirement policies, that it intended to
19 mothball the plant and take it out-of-service.

20 The NYISO and the connecting
21 utility, National Grid, thereafter conducted
22 reliability studies of the mothballing decision.

23 Grid identified local reliability
24 issues associated with the shutdown of the plant
25 and proposed several transmission upgrades, in

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2 response to those reliability concerns.

3 Since that time N.R.G. has
4 continued to keep the facility available under
5 reliability-service agreements, initially as two
6 units and currently only one, as it continues to be
7 needed for reliability.

8 The present R.S.S. arrangement
9 expires next year, at the beginning of June 2015.

10 In January of 2013, this
11 Commission directed National Grid to evaluate the
12 potential costs and benefits of repowering Dunkirk
13 to run on gas, as compared to the costs and
14 benefits of the company's proposed grids, proposed
15 transmission reinforcements.

16 The Commission at the time
17 recognized several potential sources of value that
18 could be achieved through a repowering project:
19 Reliability, environmental enhancements, economic
20 development, electric-market competitiveness and
21 economic benefits to ratepayers.

22 Subsequently, the New York
23 legislature endorsed the Commissions approach and
24 enacted a law requiring the Commission to consider
25 these benefits when determining whether a

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2 repowering might be in the public interest.

3 Thereafter in April and May of
4 2013, the parties made their cases for the proposed
5 solutions. National Grid filed a report supporting
6 its transmission alternative and N.R.G. offered
7 several options for repowering the Dunkirk plant.

8 We had extensive public
9 interaction around this -- this evaluation in July.
10 Staff hosted a very widely-attended public
11 information forum in Fredonia, New York to get
12 public input on the options that had so far been
13 presented.

14 Staff later also convened a
15 technical conference here in October to review new
16 information and analyses that National Grid, the
17 NYISO and N.R.G. had submitted over the summer.

18 N.R.G. and Grid subsequently
19 negotiated a proposal for modifying the Dunkirk
20 plant to run on gas and they memorialized that
21 proposal in a term sheet that was filed here in
22 February of 2014.

23 National Grid and N.R.G. also
24 submitted statements supporting the refueling
25 proposal and various public comments were filed in

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2 response to the term sheet.

3 Those commentators included
4 multiple interveners, Earthjustice, the Sierra
5 Club, and numerous state and local elected
6 representatives and many, many, members of the
7 public. Staff then evaluated the arguments and the
8 estimates of value that were offered by N.R.G. and
9 National Grid.

10 Staff's assessment is included in
11 a report that staff issued for public comment last
12 month. That report provides the basis for the
13 recommendation that we are making here that the
14 Commission approve the proposal to refuel Dunkirk
15 and authorize National Grid to recover the costs
16 associated with implementing that project.

17 To begin with, Staff agrees with
18 National Grid and N.R.G. with the identification of
19 the attributes of generation at Dunkirk that
20 provide value to ratepayers. These are also
21 consistent with the benefits that the Commission
22 and the Legislature earlier identified as
23 appropriate for the assessment of a potential
24 repowering.

25 The term sheet and the supporting

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2 comments focus appropriately on reliability,
3 economic development, economic impact, and
4 environmental factors.

5 First, the term sheet
6 contemplates Grid paying about twenty million a
7 year to N.R.G. for the availability of the plant,
8 for a cost of about one hundred and forty million
9 dollars on a net present-value basis for ten years.

10 N.R.G., under this agreement,
11 will share capacity revenues with Grid, if capacity
12 prices exceed a certain market level. Hence, it is
13 likely that the net cost to ratepayers may be under
14 that one hundred and forty million dollar figure.
15 That is for the cost.

16 In terms of the benefits, staff
17 evaluated the proposal in terms of its reliability,
18 economic development, economic and environmental
19 aspects. Some of these benefits, I know, are
20 quantifiable at least within some kind of
21 reasonable range and we have quantified those.
22 Others are expressed qualitatively, as they are not
23 amenable to precise quantification.

24 Overall, staff concludes that the
25 benefits of the project exceed the cost to

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2 ratepayers and hence, Grid should be allowed the
3 associated cost recovery.

4 Staff agrees with Grid and N.R.G.
5 that the reliability benefits of maintaining
6 generation at Dunkirk here are significant. Some
7 of these benefits can be estimated, as I noted.
8 The availability of the plant over the next ten
9 years gives National Grid certain flexibility in
10 planning its system and allows it to defer some
11 transmission investments that might otherwise be
12 necessary. Grid estimated the range of avoided
13 transmission costs could be between approximately
14 thirty-seven point seven million to seventy-six
15 point four million.

16 The project will also void the
17 need for any R.S.S. payments that may be needed to
18 address reliability between September 2015, when
19 the refueled units would come online, and the end
20 of the summer of 2017, when Grid's transmission
21 projects would have come online.

22 Staff estimates these savings at
23 a net present value of approximately fifty million
24 dollars.

25 However, other reliability

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2 benefits fall more in the qualitative category and
3 these are laid out for you in the staff report, but
4 I would like to mention in particular, that keeping
5 Dunkirk in service mitigates other risks that could
6 arise with other generation retirements in this
7 region, provide some increased flexibility for the
8 system operator, and increases the NYISO's ability
9 to call on the hydro resources at NYPA's Niagara
10 plant and imports from Ontario resources during
11 high load conditions.

12 In addition, the plant will now
13 be dual-fueled, hence it provides additional
14 fuel-diversity reliability benefit in periods when
15 natural gas shortages may occur.

16 Turning from the reliability
17 benefits, we note also that the economic
18 development benefits are significant. Staff
19 recognizes that the town of Dunkirk is extremely
20 dependent on this plant for employment and tax
21 revenue. Staff recommends under the circumstances,
22 that the Commission recognize those tax benefits
23 and the direct employment benefits that the plant
24 provides to the community.

25 We estimate these benefits to

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2 represent a range of value between twenty-one
3 million and thirty-four million dollars, again, on
4 a net present-value basis.

5 There are certainly other
6 economic benefits that accrue to electric
7 customers. For example, both Grid and N.R.G.
8 projected economic price benefits to customers.
9 However, staff is uncertain as to the duration of
10 these benefits and proposes instead that you
11 utilize a different metric for this factor.

12 Staff recognizes that Dunkirk
13 provides congestion relief at certain periods and
14 recommends using a production cost savings metric.
15 Staff has estimated the production cost savings
16 associated with Dunkirk to range from thirty-one
17 million dollars to eighty-one million dollars on a
18 ten year M.P.V.

19 Finally, staff recommends that
20 the Commission give some weight to the
21 environmental benefit that Dunkirk provides in
22 reducing limits on power output at Niagara, a major
23 source of renewable power in the State. The
24 refueling proposal also provides some benefit over
25 the present R.S.S. arrangement from an

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2 environmental perspective in that it allows us to
3 capture all of the benefits of maintaining
4 generation at this location, using a less-polluting
5 fuel than coal.

6 For all of these reasons, we
7 believe the term sheet proposal to refuel Dunkirk
8 under a ten-year agreement is consistent with the
9 public interests and will provide benefits to
10 ratepayers.

11 We also recommend that the
12 Commission approve the recovery of the costs in
13 implementing the term-sheet proposal. National
14 Grid suggested allocating and recovering these
15 costs through the existing R.S.S. agreement
16 surcharge mechanism and staff agrees that this
17 approach is appropriate here.

18 Thank you. I'll now turn to Ms.
19 Harriman.

20 MS. HARRIMAN: Good morning Chair
21 and Commissioners. We have several procedural
22 motions and substantive point to raise this
23 morning.

24 First, with respect to one of the
25 procedural motions, Earthjustice filed a request

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2 for evidentiary hearings in this case.

3 The standard to grant an
4 evidentiary hearing is first found in law and
5 second a matter of discretion for the Commission.

6 The points raised by Earthjustice
7 to support a statutory requirement for the
8 evidentiary hearing is found in Public Service Law
9 66(12) (f) and that pertains to a major rate
10 increase.

11 As noted, both in the draft order
12 and then in the presentation by Ms. Grisaru, the
13 impact of the cost for the term sheet in the
14 contract, falls below the threshold for a major
15 rate increase, which is two and-a-half percent of
16 aggregate revenues of the company.

17 In this case, the annual cost of
18 the contract is approximately twenty million
19 dollars. For National Grid a two and-a-half
20 percent increase in aggregate revenues would equate
21 to about sixty-three million dollars. So as a
22 matter of law, an evidentiary hearing is not
23 required.

24 With respect to a hearing being
25 required for the discretion of the Commission,

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2 Earthjustice raises several points.

3 One, being that the hearing is
4 required -- or a hearing is required in order to
5 ensure an open and transparent process. They also
6 raise the point that there's conflicting
7 information in the record and that the
8 environmental impacts could only be explored
9 through an evidentiary hearing.

10 I think that through reading the
11 staff report, which reads as an in-depth novel of
12 what's been going on as well as the draft order
13 before you, you can see that there has been
14 tremendous process afforded to this case. And I'd
15 like to specifically point out that the Staff
16 report was issued for comment which really gave the
17 insight into the rationale and the thought process
18 that went on to get to the staff recommendation.

19 Moreover, having conflicting
20 information in the record doesn't necessitate an
21 evidentiary hearing. There is always differences
22 of opinion.

23 And lastly, the environmental
24 impact has been raised and has been noted in the
25 draft order and as I will talk in a minute, for the

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2 SEQRA analysis here, it's, in fact, having an
3 environmental benefit, when you look at what we're
4 doing as far as repowering a coal fuel plant to
5 natural gas.

6 With that said, the evidence
7 before you is ample, it's complete, and an
8 evidentiary hearing would not require -- or would
9 not provide any additional certainty in the
10 decision that we're asking you to make today.

11 And therefore, the draft order
12 before you denies the motion for evidentiary
13 hearing.

14 The second point this morning is
15 with respect to the State Environmental Quality
16 Review Act. In taking the vote today, you're
17 actually taking two actions. One is to approve the
18 term sheet that was filed by National Grid with
19 Dunkirk for the repowering of the Dunkirk facility
20 and the second is the authorization for allocation
21 and cost recovery as noted by Ms. Grisaru.

22 And as the lead agency in this
23 case because no other entity is going to be
24 required to issue a permit, we will address the
25 first action under SEQRA and that is an unlisted

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2 action, which is the approval of the term sheet.

3 Dunkirk submitted in long form,
4 environmental assessment form and it points out in
5 that form as well as articulated in the draft order
6 before you, that the changes that are necessitated
7 by refueling are really within the envelope of the
8 building.

9 There will be no significant or
10 material land-use changes, as well as the
11 environmental benefits will be noted in the
12 reduction of air emissions through the removal of
13 coal as the primary fuel source for this unit.

14 Therefore, what you have in front
15 of you as attached to the draft order, is a
16 determination of non-significance and a negative
17 declaration by the Commission.

18 The second action with respect to
19 cost recovery and allocation of those costs, is
20 what we call a type-two action and that is not an
21 action for purposes of SEQRA that necessitates an
22 environmental review.

23 So when you take your vote today,
24 you'll be taking two votes that will be indicated
25 by the Chair.

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2 Thank you. We're available for
3 questions.

4 CHAIR ZIBELMAN: Thank you. And
5 I would note in addition to the three esteemed
6 colleagues I mentioned, we also have Warren Myers
7 and Jeff Hogan and Tom D'Ambrosia, who I assume
8 also were part of this analysis, and would be
9 available to question.

10 So, let me just start and first
11 of all, you know, I appreciate the fact that the
12 way we've processed this, is that we were having
13 the ability to both see the analyses done by,
14 initially, Grid and then N.R.G. as well as others.
15 And then staff's work, which I know also reflected
16 a lot of the work that came off out of the
17 technical session. So, you know, from my
18 perspective, I feel very comfortable that all of
19 the salient information has been placed into the
20 record. And, that, it just seems to me, in reading
21 all the briefings and all the information in the
22 analysis, the issue is not whether or not there's a
23 net present-value benefit, but what is the level of
24 the benefit and, you know, reasonable minds will
25 differ. But, clearly, whichever way you look at

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2 it, whatever numbers you look at, you're going to
3 find that there's a net present-value benefit. And
4 so I feel very comfortable that the record is
5 certainly there to support moving forward with
6 this.

7 The second piece though is, you
8 know, I'm struck by the fact that, you know, we
9 often look for a trifecta of benefits around costs,
10 reliability and the environmental benefits.

11 In this case, and I don't even
12 know if there's a word for it, but it's like a
13 quadfecta, because we'll also have local economic
14 benefits that are clearly associated with retaining
15 the jobs and creating construction jobs at the
16 plant. As well as the local economic benefits that
17 the plant provides in the form of tax revenue to
18 the community.

19 And, you know, frequently the
20 issues concerned, we primarily have around the
21 impact on consumers' ability to create and maintain
22 a resilient and reliable system and as well as
23 protect the environment, we weigh very heavily, but
24 the fact that in this case we can also consider
25 positive economic benefits, really makes this not

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2 only a win for consumers, but a win for the
3 community.

4 And in that light, you know, I
5 congratulate Grid who certainly had every interest
6 to say, well, our preference would be to build
7 transmission to actually work with N.R.G. and
8 construct an agreement that provides the same
9 reliability benefits that the transmission would,
10 but additional system benefits, in particularly the
11 ability to convert a coal plant to natural gas.
12 And, also the fact that we now have the ability
13 to -- the flexibility of the system to make sure
14 we're maximizing the availability of hydro from
15 Ontario and also NYPA's units in Niagara.

16 I think, you know, for us,
17 maintaining fuel diversity and not artificially
18 constraining hydropower, because we simply don't
19 have enough sufficient system in the western part
20 of New York, would be not only harmful to local
21 consumers, but, you know, also deters -- is an
22 adverse effect from the rest of the state because
23 that means we have to use fossil fuel rather than
24 hydro to potentially meet the instantaneous demand
25 of the system.

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2 So, I think, you know, looking at
3 all of this, I appreciate Grid's work, I think I
4 know, you know, these are always hard-fought
5 negotiations. I'm sure that there was, from
6 N.R.G.'s perspective, lots of give and take, maybe
7 more give than take. And, I appreciate that as
8 well. I think moving forward for my purposes, the
9 ability to repower a coal plant to natural gas,
10 reduce prices to consumer, get an environmental
11 advantage by making sure we're getting better use
12 of our hydroplants, as well as avoid, you know,
13 risks that another plant retires, and then provide
14 local economic benefits on top of that.

15 You sort of look at it and say,
16 why would we ever do anything but say yes and thank
17 you to the parties for getting -- being involved
18 and being creative in finding this solution.

19 So with that, you know, I'm
20 certainly prepared to vote in favor of this. I
21 congratulate also staff. I think your analysis
22 really helped make it clear that we were looking at
23 this as a local-reliability benefit. It also
24 reduces production costs, which, of course, then
25 results in reduction of prices to retail consumers,

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2 which is always a primary concern for this
3 Commissioner.

4 So thank you and I'm prepared to
5 vote in favor. With that, let me open it up to my
6 fellow commissioners for any questions or comments.

7 Commissioner Brown?

8 COMMISSIONER BROWN: Just one
9 quick question. The western New York transmission
10 upgrades envisioned by Grid, how does this affect
11 that status?

12 MR. ADDEPALLI: I think clearly
13 this is going to solve certain reliability
14 concerns. There may be other reliability benefits
15 with other transmission upgrades that will need to
16 be pursued. So this is not end-all. This is one
17 step. There will be other developments to the
18 coming years.

19 CHAIR ZIBELMAN: Further
20 questions or comments? Commission Sayre?

21 COMMISSIONER SAYRE: I attended
22 the public statement hearing in Fredonia last year
23 and I knew it was going to be something special
24 when I saw the flashing sign pointing the way to
25 the P.S.C. hearing as soon as I pulled off of the

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2 Thruway.

3 I wasn't disappointed. I was
4 moved and impressed by the strength of the
5 community support for keeping this station open.
6 Economic development and local economic issues are
7 important factors, although, of course, not the
8 only factors in our decision. But, I'm extremely
9 happy to be able to conclude from the record that
10 keeping this plant open is in the public interest.

11 CHAIR ZIBELMAN: Commissioner
12 Burman? You're good. Okay.

13 So with respect to that as our
14 counsel said there are two votes that we need to
15 take with respect to this matter. The first one is
16 all those in favor -- related to the SEQRA, in
17 favor of the recommendation to adopt a resolution
18 and issue a negative declaration in accordance with
19 the State Environment Quality Review Act, please
20 say aye.

21 COMMISSIONERS: Aye.

22 CHAIR ZIBELMAN: Opposed.

23 Hearing no opposition, the
24 recommendation is adopted.

25 The second vote is with respect

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2 to the contract itself. And that -- with regard to
3 that everyone and all of those in favor with the
4 recommendation to adopt or approve Nation Grid's
5 proposed allocation and the recovery of its costs
6 associated with implementing the term sheet for
7 refueling the Dunkirk generating facility, please
8 indicate by saying aye.

9 COMMISSIONERS: Aye.

10 CHAIR ZIBELMAN: Proposed.

11 Hearing no opposition, the recommendation is
12 adopted. Thank you very much.

13 Okay. The second item for
14 discussion is actually only for discussion only
15 or -- and information. There's no vote. It's item
16 Number 501, which is the update on Fire Island and
17 Mike Rowley, the chief of the utility operations
18 for the Office of Telecom is going to be
19 presenting.

20 And I see that Chad is also here.

21 So, Mike, you want to proceed?

22 MR. ROWLEY: Sure. Good morning
23 Chair and Commissioners.

24 Item 501 is an informational item
25 to update you on the status of telecommunication

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2 services on Fire Island and to discuss Verizon's
3 recent action to remove Voice Link as a tariff
4 service on western Fire Island.

5 To recap, large portions of
6 Verizon's landline copper network on Fire Island
7 were significantly damaged or destroyed as a result
8 of Super Storm Sandy in October 2012.

9 Verizon determined that Voice
10 Link, a new wireless based voice-only service would
11 be the most efficient, reliable and cost-effective
12 way to restore services in time for last year's
13 summer season.

14 In May 2013, the Commission
15 authorized Verizon to offer Voice Link as an
16 alternative to basic landline service on a
17 temporary basis, limited to western Fire Island,
18 pending public comment and further review.

19 The approved tariff required
20 Verizon to offer Voice Link according to the
21 existing rules and regulations for basic local
22 telephone service and specified that Verizon would
23 need to seek further approval to offer the service
24 in other areas of the State as a sole offering.

25 As you know, Verizon's decision

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2 not to rebuild the landline network raised many
3 concerns. The proceeding generated over seventeen
4 hundred public comments from Fire Island residents,
5 as well as interested parties from across the
6 State, elected officials, and other interested
7 parties from across the State.

8 The comments covered a wide range
9 of issues associated with the restoration and
10 replacement of copper networks and alternative
11 telephone technologies, including voice quality,
12 reliability, feature limitations, compatibility
13 with E911 and copper-based applications, such as
14 faxing and D.S.L. service.

15 Last August the Commission
16 conducted an informational forum and public
17 statement hearing in Ocean Beach. Approximately
18 two hundred people attended, including about fifty
19 speakers.

20 The general tone during the
21 public statements was similar to that of the
22 comments. One of the main points that came out of
23 the gathering was that while reliable telephone
24 service is critical, customers rely on their
25 telephone lines for more than just voice services,

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2 especially in areas where competitive choices are
3 lacking. The company heard that message as well.

4 On September 11, 2013, Verizon
5 informed the Commission that it decided to rebuild
6 its wire line network on western Fire Island with a
7 state of the art fiber to the premises or F.T.T.P.
8 network, capable of providing voice services and
9 broadband and they were going to have it built by
10 May 2014.

11 As determined by the Commission
12 in its October 24, 2013 order, the decision to
13 build a fiber network and the removal of tariff
14 language regarding the possible expansion of Voice
15 Link as a sole offering elsewhere in the state,
16 rendered many of the concerns regarding the
17 feasibility of Voice Link as an alternative to wire
18 line service moot.

19 Thus the requirement for a
20 comprehensive report by Verizon on voicing service
21 was cancelled.

22 The item before you summarize
23 events since the issuance of the order in October
24 and recommends that the case and all-related
25 complaints be closed. Staff is pleased to report

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2 to you that on April 17, 2014, Verizon informed us
3 that telephone service over its completed fiber
4 network was now generally available to all
5 residents of western Fire Island. And, the company
6 filed additional amendments to the tariff to remove
7 that portion of the tariff, related to Voice Link,
8 which became effective May 1st, 2014 by operation
9 of law.

10 Since October 2013, staff has
11 been monitoring construction progress on Fire
12 Island and conducted several inspections of the
13 serving central office and outside plant.

14 Prior to making-fiber services
15 generally available, Verizon sent mail notices to
16 residents informing them of the rebuild and the
17 availability of voice and data services.

18 As a result of these mailings,
19 the company was successful in pre-positioning
20 necessary equipment and cabling at the vast
21 majority of storm-affected residential and business
22 locations.

23 Verizon also developed a web page
24 dedicated to Fire Island residents to inform
25 customers of all of their service options. The

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2 company states that its pre-positioning efforts
3 were successful and now allow them to efficiently
4 provision customers -- provision services, as more
5 customers return to the island for the summer
6 season.

7 Nearly all of the pre-orders
8 received are now complete and customers are
9 receiving fiber-based services. Currently there
10 are three service offerings generally available to
11 western Fire Island residents. They include
12 traditional T.D.M. based voice service over the
13 F.T.T.P. network, pursuant to tariff, untariffed
14 Voice Link service as an option, and FiOS digital
15 voice service and bundled with FiOS Internet, which
16 is unregulated.

17 The company states that there is
18 no plan to offer FiOS video service on Fire Island
19 at this time. The company also advises staff that
20 for at least this season, customers with voice
21 and/or D.S.L. services provided on the surviving
22 copper facility, will continue to be served on
23 copper until those facilities require replacement
24 and/or a fiber migration occurs.

25 Copper loops will eventually be

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2 retired pursuant to applicable federal and state
3 requirements.

4 We note that Verizon has
5 constructed fiber networks in other areas of the
6 State for over a decade now and those networks have
7 shown to be both reliable and resilient over time.

8 Accordingly, staff believes that
9 further investigation of Verizon's service quality
10 performance and network conditions on Fire Island
11 prior to Super Storm Sandy, is unnecessary, as an
12 upgrade to fiber would likely have been the most
13 beneficial remedy to address findings that network
14 repair was warranted.

15 It is also important to note that
16 the standard voice-only telephone service on Fire
17 Island provided over copper or their new fiber
18 network, will continue to be subject to the
19 Commission's service-quality reporting metrics and
20 other applicable regulations.

21 While Verizon will continue to
22 offer Voice Link as an optional service or on an
23 interim basis to address cable failures throughout
24 the state, staff will continue to monitor its use
25 and report to the Commission accordingly.

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2 However, staff believes there is
3 no longer reason for this proceeding, which was
4 limited to the specific offering of Voice Link
5 service on western Fire Island to remain open.

6 A large volume of the comments
7 raised concerns about the general deployment of
8 Voice Link. Staff believes the immediate concerns
9 of those comments were addressed when language that
10 could've facilitated the expansion of Voice Link in
11 other areas of the State was removed from the
12 tariff last September.

13 Staff will, however, continue to
14 monitor Verizon's use of Voice Link in New York
15 State in the context of our existing service
16 quality proceedings, especially how its deployment
17 relates to making timely repairs to its existing
18 wire line network. Interested parties are welcome
19 to comment there or file additional complaints as
20 necessary.

21 Staff believes that Verizon has
22 met its obligations with regard to repairing
23 damaged facilities on western Fire Island and
24 providing wire-line telephone service subject to
25 its tariff and applicable law. We believe the new

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2 fiber network will be more reliable and resilient
3 to weather conditions on Fire Island than the
4 legacy copper network that existed prior to Super
5 Storm Sandy.

6 We can expect an immediate and
7 long-term improvement in telephone service quality
8 for both year-round and seasonal customers on Fire
9 Island. Residents will also benefit from the
10 expanded availability of broadband services through
11 the FiOS platform.

12 In conclusion, we recommend that
13 this case and all other petitions regarding the
14 conditions of the pre-Sandy network on Fire Island
15 be closed.

16 Staff believes this action can be
17 accomplished procedurally, so this report is for
18 informational purposes only and no Commission
19 action is required.

20 I'd like to end my report with a
21 graphic that represents the areas of the
22 Metropolitan area which experienced the most severe
23 damage to communications, infrastructure and
24 long-term outages following Sandy.

25 The shaded areas you see are

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2 where Verizon had replaced damaged copper with
3 fiber in either the entire wire center or
4 significant portions of it. And, while those areas
5 look small on that map, that's a considerable
6 amount of the population in the metropolitan New
7 York area.

8 I'm happy to report that with the
9 Fire Island build complete, the restoration of wire
10 telecom networks following Sandy, is now complete.

11 That concludes my report on the
12 status of telephone service on Fire Island and I am
13 happy to entertain any questions you may have.

14 CHAIR ZIBELMAN: Thank you,
15 Michael. I appreciate the report. I also
16 appreciate the color scheme. You know, I actually,
17 I think this is terrific and I'm glad that we're at
18 the end of this chapter in terms of the restoration
19 and particularly the fact that as I was coming on
20 board last year, was just after I think
21 Commissioner Acampora came, had attended the
22 hearings on Fire Island and I appreciate the fact
23 that we are now -- have fiber and that people are
24 restored.

25 So it's good to close this

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2 chapter.

3 Any other questions, comments?

4 None. Commissioner Acampora?

5 COMMISSIONER ACAMPORA: As the
6 Chair said, I did attend the public statement
7 hearings. And, it was a lively group and they made
8 a lot of very good points. What a lot of this
9 boiled down to was public-safety issues, people who
10 had lifeline devices could not use their devices
11 with Voice Link and the police department that was
12 there, did get me on the side to say that they had
13 a problem with it.

14 So we're happy that this has
15 worked out and I really want to thank firstly, Mike
16 Rowley, for, you know, you've been very tenacious
17 in making sure that things have been done right,
18 paying attention to consumers who have extra
19 concern. And, that's really appreciated. And to
20 Sandra Sloane and the group at the call center who
21 really helped keep us up to date on the phone calls
22 that were coming in and the concern that was
23 exhibited by the residents of Fire Island. So as
24 the Chair said, we hope that this page is now
25 finished and not to really speak in a negative way

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2 with regard to Voice Link, but Voice Link was not
3 the answer for Fire Island.

4 So we're happy that the FiOS will
5 bring peace and calmness to some of the residents
6 and I just have one question, Mike. How many
7 people are still on Voice Link?

8 MR. ROWLEY: I don't have that
9 information, but there will be people coming onto
10 the island now or pretty much that should be over
11 at this point. But from the take rates, I would --
12 the take rates on the fiber, the bundle package and
13 just the plain basic telephone service, I would say
14 very little.

15 COMMISSIONER ACAMPORA: Right.
16 So is, you know, I hate to put you on the spot, but
17 here again, FiOS, Voice Link, is that how we kind
18 of measure that? I mean, how many people are going
19 to stay with Voice Link when they have, you know,
20 FiOS remedy?

21 MR. ROWLEY: I'd say that's
22 pretty accurate.

23 COMMISSIONER ACAMPORA: Okay.

24 MR. ROWLEY: But, again it's a --
25 right now it's an optional service and it's on

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2 tariff.

3 COMMISSIONER ACAMPORA: Right.

4 MR. ROWLEY: So there's no
5 obligation for us to -- for them to provide info on
6 that. I'm sure they would if we asked, but --.

7 COMMISSIONER ACAMPORA: Yeah.
8 I'd be interested to know. We'll talk about that
9 offline. Thank you.

10 CHAIR ZIBELMAN: Just one
11 question or one comment. I know that there's a
12 study going on actually and I think it'll be
13 important for us and to understanding the impacts
14 on. A couple of pilots for people who are using
15 Voice Link to see how -- if it can provide secure
16 services.

17 I think there in the south -- one
18 in the south; is that right, Chad -- do you --

19 MR. HUME: Yeah. A.T. and T is
20 doing some pilots down south with respect with, you
21 know, replacing wire line telephone with
22 wireless-based services. Yeah. We do intend to be
23 informed through those pilots that are being done
24 underneath the auspices of the F.C.C.

25 CHAIR ZIBELMAN: Good. I think

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2 that would be helpful for us to understand what

3 their findings are. Any other comments,

4 Commissioner Sayre?

5 COMMISSIONER SAYRE: I'd just

6 like to commend Verizon for doing the right thing

7 here for its customers and the community by

8 bringing fiber all the way to customers' homes and

9 businesses. And I'd like to add to the Chair's and

10 Commissioner Acampora's commendation of staff for

11 keeping the pressure on.

12 CHAIR ZIBELMAN: Okay. Thank

13 you. Great that was -- we'll move now, since there

14 was a discussion only, to the consent agenda and I

15 know, Commissioner Sayre, you are recusing yourself

16 from item Number 566, is that correct?

17 COMMISSIONER SAYRE: That's

18 correct.

19 CHAIR ZIBELMAN: Okay. So now

20 you have to close your ears because I'm going to

21 talk about item 566.

22 Actually it's with pleasure.

23 This item is with respect to a commendation with, I

24 think, fifty -- is it fifty-four companies,

25 fifty-one companies. I have to get my notes.

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2 MR. HUME: Yeah. It's actually
3 fifty-three of the I-LECs out of seventy-four
4 companies.

5 CHAIR ZIBELMAN: Do you want --
6 would you mind, Chad, just taking a couple of
7 minutes and summarizing, or Michael, just what this
8 is about because I think, you know, it's rare that
9 we get to do this and it's a pleasure to be able to
10 do it today.

11 MR. HUME: Yeah. Essentially we
12 go through every year and make a determination as
13 to whether or not the I-LECs and the C-LECS have
14 number one, met their obligations underneath our
15 various service-quality metrics. And secondly,
16 take a look and see if they have exceeded our
17 expectations.

18 And in the case of what you have
19 before you, is the 2013 service-quality
20 commendations for the incumbent local exchange
21 carriers and the competitive local exchange
22 carriers, for those carriers that meet our metrics
23 ninety-five percent of the time. I mean, the
24 required is a minimum to meet them eighty-five
25 percent of the time. In order to be commended,

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2 they're required to meet them ninety-five percent
3 of the time.

4 There are seventy-four companies
5 in total that are looked at. They include the
6 fifty-three I-LECs and twenty-one competitive local
7 exchange carriers. Of those seventy-four, we are
8 recommending that we provide commendations to
9 fifty-one of them this year.

10 That includes thirty-one of the
11 I-LECs or fifty-eight percent of the I-LECs and
12 twenty of the competitive exchange carriers, which
13 is ninety-five percent of the competitive exchange
14 carriers.

15 It also includes the Frontier
16 companies and the report before you also does
17 provide the annual report for Frontier service
18 quality and again Frontier has met our requirements
19 for service quality for the year 2013 and some of
20 their divisions are also receiving commendations.

21 I would add that for these
22 companies, they look upon the commendations as an
23 accomplishment. And it's something that they're
24 proud of every year when the Commission grants
25 these commendations. And they even include them as

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2 part of their F.C.C. filings with respect to
3 service quality to indicate that they have been
4 commended for, want of a better term, exemplary
5 customer service here in New York State.

6 So, you know, it's a good news
7 item. It's consistent with respect to the
8 performance in the past and I think, you know, that
9 they set a goal to get the commendations and we're
10 pleased this year to recommend again granting them
11 to the companies before you.

12 CHAIR ZIBELMAN: Thank you. What
13 I mean, is by the way, my comment was not that we
14 don't have companies that outperform. We have a
15 lot of companies that outperform, but frequently
16 when we have matters before us, it's to -- where
17 we're talking about opportunities for improvement.

18 It's nice sometimes to be able to
19 take a moment and say we've got companies who are
20 doing a great job. They're focused on providing
21 customer service. And, so, I'm very pleased to be
22 able to note that and we will be sending letters to
23 each of them soon. So thank you.

24 Then I have one other item I just
25 wanted to bring out that's on the consent agenda.

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2 We have an -- with the change in the 18(a)
3 assessments from this past winter, we know are
4 going to be working with each of the utilities to
5 implement the new rates that they will be
6 implementing in order to reflect the reduction in
7 the 18(a) collections.

8 We want to note that this staff
9 has done a great job. There's a lot of work to try
10 to figure out exactly where each of the
11 companies -- it's electric, gas, and water
12 companies are, to be able to first figure out where
13 they are and then to determine what's the right
14 path forward, so that we can as quickly and
15 accurately as possible, make certain that we're on
16 the right track in reflecting a reduction in 18(a)
17 collections.

18 So with that, I just wanted to
19 express my appreciation to Jeff Hogan and his team,
20 that I know they have been working very hard on
21 looking at a lot of numbers and trying to get it
22 right and we'll be moving forward with that.

23 Any other comments on the consent
24 agenda?

25 Commissioner Burman?

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2 COMMISSIONER BURMAN: Thank you
3 Madam Chair. And thank you for allowing me to
4 speak. I'd like to speak on item 261, which you
5 were just talking about.

6 Unfortunately, it's not an item
7 that I can look at as a good news item. In fact,
8 based on the SAPA notice, the published session
9 agenda and this item not being on the discussion
10 agenda, but rather only on the consent agenda.

11 At first blush, it may
12 inadvertently appear as nothing more than merely
13 implementing what was done in the 2014 budget,
14 which is accelerating the elimination of the 18(a)
15 surcharge. That's part of our administrative
16 regulatory obligation under the law. And if that
17 was all it was, I would not have anything else to
18 add today on the item.

19 But this item also deals with, to
20 me, a much thornier and more complicated issue that
21 dates back to 2009.

22 We are implicitly being asked to
23 address the inherent and catastrophic problems with
24 the 2009 legislatively mandated 18(a) collections
25 that occurred between 2009 and now.

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2 For point of historical
3 reference, on April 7th, 2009, New York State
4 enacted the State budget for 2009 and 2010, which
5 in part required the Department of Public Service
6 to collect a temporary state energy and utility
7 service conservation assessment, commonly referred
8 to as the 18(a) T.S.A., by others as a regressive
9 energy tax.

10 The T.S.A. is applicable to
11 electric, gas, steam and water corporations,
12 municipal and gas corporations subject to the
13 Commission jurisdiction and for purposes of 18(a),
14 also the Long Island Power Authority.

15 The T.S.A. was expected to
16 generate an estimated five hundred and forty
17 million in additional revenue during the 2009-2010
18 State fiscal year for the support of the State's
19 general fund.

20 The actual way to recover the
21 funds looks somewhat complicated under the law and
22 required the Commission to direct the utilities to
23 implement the law.

24 The Commission did what it was
25 required to do. It did so in June of 2009 by

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2 ordering subjected utilities to establish and
3 collect a surcharge from customers. This 2009
4 imposed surcharge hits every single business and
5 resident in our State. And between 2009 and March
6 2014, approximately two point nine billion dollars
7 was collected by the State.

8 Every year the Department,
9 because of the imposition of the law on behalf of
10 the State, sent a letter to the utilities telling
11 them how much they owed and every year the
12 utilities wrote a check and it went to the general
13 fund.

14 Ironically, the collections went
15 to the general fund and never actually helped with
16 any energy savings or energy programs. Albeit, the
17 stated purpose of the T.S.A. was to help with
18 energy conservation. Every year the utilities
19 filed with the department what their collections
20 were and every year this went on.

21 In August of 2013, a letter was
22 sent to the utilities by the department seeking
23 information to reconcile the collections and get
24 things in order for the Commission action today.

25 What I find disturbing is we're

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2 having now to revisit just how awful the 2009 law
3 was and the devastating effects the collections can
4 have on New Yorkers. We are now first addressing,
5 that in some cases, the collections may have been
6 significantly over collected to the tune of close
7 to two hundred and fifty million dollars and that
8 does not necessarily include LIPA. Yet the over
9 collections are apparently limited in time and to a
10 few companies.

11 Most over collections may have
12 happened only recently. And, yes, we do have a
13 plan that this order is immediately going to put in
14 place to get in a just and fair ways, the monies
15 over collected back to the customers who paid them.

16 I appreciate that this surcharge
17 was not in the control of the utilities. This
18 surcharge was imposed upon them by the State and
19 they were directed to turn the money over in full
20 to the State in the first fiscal year 2009 and
21 2010, which immediately set up a significant
22 cash-flow issue from the get-go. Moreover, they
23 did every year, inform the Department and the State
24 of their collections.

25 I continue to remain concerned on

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2 our over reliance on energy tax surcharges which
3 extend beyond just the 18(a) surcharge, as there
4 are other non-legislatively imposed surcharges that
5 we need to look at.

6 The way surcharges -- I continue
7 to remain concerned the way surcharges are being
8 collected and allowed to build-up and are setting
9 us up for more problems and complications.

10 The imposition in collections of
11 surcharges are in the control of the State. High
12 energy costs in New York State are a key impediment
13 to the State's economic growth.

14 Our focus must remain on easing
15 the high energy bills our families and businesses
16 shoulder. These are office work cooler and kitchen
17 table issues.

18 Accelerating the phase out of the
19 18(a) assessment is not enough. What this item
20 shows to me is that we as a State, and more
21 specifically in my role as a regulator, I need to
22 make sure that we are properly accounting for
23 ratepayer funds.

24 The 2009 law was destined from
25 the get-go with problems in collections. I'm glad

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2 we have now and are reviewing the records and
3 ensuring the collections going forward are
4 appropriate. Because we are in this order looking
5 at getting back immediately in a fair way to the
6 ratepayers, the over collections and doing it
7 through tariffs, they're going to come back before
8 us before they're permanent to the Commission and
9 we're going to be able to look at that before we
10 approve them on a permanent basis.

11 I'm going to be voting yes,
12 because I don't want to harm the ratepayers and
13 when I look at the order, I see that we're going to
14 be doing this in a just way. And I also see that
15 we're going to do this in an immediate way.

16 I do note that we're going to
17 need to have some consumer outreach on exactly what
18 the plan will be. I do note that I expect that
19 we're going to fairly quickly get a detailed
20 accounting on all of the companies, including LIPA
21 on what exactly all the collections have been from
22 2009 to 2014 and I also note that we have set up
23 now, on a going-forward basis, that the collections
24 that will be going forward, are going to be done
25 differently, so that this won't happen again.

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2 For me, what's important is that
3 we do have other ongoing proceedings and I think
4 that what's significant is that as we look at those
5 proceedings and look at how we're focused on
6 ratepayer funds and the cost-benefit analysis that
7 gets done, with looking at the issues that are
8 coming before us, it's very important that we look
9 at all that has to happen in the energy of the
10 future and the different things that we're tasked
11 with and concerned about. So that we make sure
12 that we holistically address all that we want to
13 do, all that we need to do to ensure that we have
14 safe and reliable energy at reasonable prices for
15 folks. So thank you.

16 CHAIR ZIBELMAN: Any further
17 comments?

18 Let me just reflect on just one
19 point. And, you know, we live in an extraordinary
20 complex world and one of the things that we know in
21 this country in the last ten years, we've had a lot
22 of economics ups-and-downs and there were periods
23 of doubt. And we've -- while I wish we could live
24 in a bubble, we don't. And we are part of a sort
25 of greater economy. It's not necessarily, I

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2 believe, the appropriate role for the Commission to
3 debate issues that are decided amongst other bodies
4 who also have the interests of the State at hand
5 and our role is to implement.

6 So with respect to that, I don't
7 think it's appropriate for us to debate tax policy
8 here. But, at the same time, we do have an overall
9 interest in maintaining the electric bills and
10 looking at ways to maintain affordability, which is
11 a good portion of what we are focused on and are
12 revved up in our water dockets, when we do rate
13 cases. And, you know, I do think it's important
14 when we look at these, we consider all of the
15 effects, things we can control and things we can't
16 control in making a determination of what's the
17 best for consumers.

18 But with that, you know, our
19 action here today is really to address a -- is to
20 make sure moving forward and any time there are
21 charges there is going to be reconciliations that
22 need to occur, that we do the reconciliations
23 accurately and we get the levels of the surcharge
24 accurate. And, I again, appreciate the work of
25 staff in what I think is a tremendous effort in a

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2 short period of time to get us on that track.
3 So if there are no further
4 comments on the consent agenda, I'll move the
5 consent agenda. All those in favor?
6 COMMISSIONERS: Aye.
7 CHAIR ZIBELMAN: Opposed?
8 Hearing none and we will then --
9 the consent agenda is approved.
10 Commissioner Burgess are there
11 any -- or Commissioner -- Secretary Burgess -- she
12 has a promotion. No maybe it's not a promotion.
13 Any other matters before us
14 today?
15 MS. BURGESS: There are no other
16 matters today and the next Commission session is
17 June 26 at ten-thirty here in Albany.
18 CHAIR ZIBELMAN: The Commission
19 stands adjourned.
20 Thank you.
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STATE OF NEW YORK

I, Jamie-Lee Greene, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 48, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 15th day of June, 2014.

Jamie-Lee Greene, Reporter

