STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, October 19, 2017
12:35 p.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS

JOHN RHODES, Chair
GREGG C. SAYRE

DIANE X. BURMAN
JAMES ALESI
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CHAIRMAN RHODES: Good morning.

I would like to call this session of the Public Service Commission to order.

Secretary Burgess, are there any changes to the final agenda?

SECRETARY BURGESS: Good morning, Chair and Commissioners. There is one change to the agenda. Item 209, which is case 12-M-0476, et al, which is a petition by Utility Expense Reduction, for a waiver to serve low-income customers. That item has been pulled.

CHAIRMAN RHODES: Thank you.

So, let's proceed to the regular agenda and go to the first item for discussion. Item 101, case 17-G-0424, which is the proceeding on motion of the Commission to review operating procedures of natural-gas gathering lines presented by Cindy McCarran, Deputy Director of Gas and Water. Cindy, please begin.

MS. MCCARRAN: Thank you.

Good morning, Chair Rhodes and Commissioners.

In item 101, Staff is recommending that the Commission institute a proceeding to convene a collaborative that will include gathering-line operators and local-distribution companies. The purpose of the
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collaborative will be to determine what information should be gathered, so that Staff can report to the Commission in six months' time about the natural-gas-gathering system in New York. The goal is the development of best practices in the gathering-line industry and to ensure New York's role as a national leader in natural-gas safety.

Staff will report to the Commission in six months, on progress made in developing oversight protocols, identifying gathering lines, subject to New York State gas-safety regulations and any other issues raised in the collaborative.

I would be happy to take any questions you may have.

CHAIRMAN RHODES: Thank you, Cindy.

Speaking for myself, I find this is an important topic, overdue for attention, highly relevant to the safety of -- of New Yorkers and I find this a very useful collaborative approach, that's -- that's been developed.

Are there any comments or questions from my fellow Commissioners?

Commissioner Sayre?

COMMISSIONER SAYRE: Lack of odorization on a natural-gas line is a serious safety concern. If you
can't smell it, you don't know that your life may be in danger.

At this point, it appears that we don't know where all the gathering lines are, especially those that were constructed before our initial safety regulations in 1982. It's also not clear that the owners and operators all understand our regulations and where odorization is required.

It's not uncommon for a well owner to walk away from an unproductive or uneconomic well and the same can hold true for gathering lines. This order will give us the data that we need to enforce our regulations. Once we get the data, I expect that we may have a lot of work to do. I'm confident that Staff is up to the job.

CHAIRMAN RHODES: Thank you.

Commissioner Burman?

COMMISSIONER BURMAN: Thank you.

The integrity and reliability of the gas system is paramount and in New York, we're focused on ensuring we have a safe, reliable and clean, natural-gas system. Today's action by this Commission represents another step in the continuum undertaken, to ensure the transportation and delivery of natural gas with the utmost
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care and safety.

In the recent past, we've either required or encouraged the odorization of gas and gathering lines, increased research development and deployment of methane emission-detection strategies, posting the locations of leaky pipes, gas-worker training-compliance review, expanded utility-system inspections at the customer interface, where meters are locate -- located inside buildings and accelerated replacement rates for leak-prone pipe.

As the demand for natural gas continues to grow, due to economic and environmental factors, we must continue to seek common-sense methods, to ensure its safe delivery, while minimizing unintended environmental impacts. Continuous improvement should be the goal of any pipeline regulator, or pipeline operator. We should strive to do so, with proper communication and collaboration, to help with overall planning and coordination and address issues.

We have an opportunity to engage at the federal level. I sit as the Vice Chair on the Gas Pipeline Advisory Committee, for PHMSA and it's vital that we do so, looking at this effort and how it may be done in a way that is helpful at the federal level, not
overstepping our jurisdiction. Here, we're limited to our jurisdictional gas-gathering lines, but working together to again focus on how we can best improve continuously, for the safety, integrity and reliability of the gas system.

Such opportunities are truly desired and appreciated. I look forward to working together on this issue, not only in this collaborative, but at the federal level.

Thank you so much.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi?

COMMISSIONER ALESI: Yes.

Thank you very much.

I was talking about this very issue with the Commissioner from Montana, where a while back, they had a devastating explosion because they had no idea there were lines underground that had been abandoned.

The only question I would have as you go along, that maybe you could provide answers to, in general, when there's a — an agreement between the private landowner and the utility, they generally grant rights-of-way and I would suspect that as we go through our own history here in New York, that not every one of
these lines would have a right-of-way.

But in the process of setting up this collaborative effort, would that be a good assumption, that we'd be looking at rights-of-way, to try to find where these lines are and aren't -- and are not?

MS. MCCARRAN: Yeah.

That -- Commissioner Alesi, you -- you've highlighted a very important issue and, you know, we know for a matter of fact that there are hundreds if not thousands of property owners that have gas wells on their property and a lot of them get free gas in exchange for allowing, you know, the producer to use their property. So, it's definitely an issue that we're going to be spending some time on.

CHAIRMAN RHODES: Thank you.

So, we'll now proceed to call for a vote on item 101. My vote is in favor of the recommendation to institute the proceeding and commence a collaborative as described. Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: Aye.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Aye.
CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Let's move to the second item for discussion. Item 201, case 15-M-0180, which is in the matter of regulation and oversight of distributed energy-resource providers, presented by Ted Kelly, Assistant Counsel.

John Garvey, Utility Supervisor and Luann Scherer, Director, Office of Consumer Services are available for questions.

Ted, please begin.

MR. KELLY: Thank you.

Good morning, Chair Rhodes and Commissioners.

Item 201 is a draft order, establishing an oversight framework and uniform business practices, for distributed energy-resource suppliers.

Through the Reforming the Energy Vision initiative, the Commission has set the stage for increased deployment and integration of these D.E.R.s for the benefit of the energy system, the environment, and customers. D.E.R.s take a broad range of forms, from rooftop solar panels, to smart thermostats, to energy efficient and demand-responsive industrial equipment, to
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biodigesters making energy from farm waste, to community-scale distributed-generation projects.

The Commission recognized in the REV Track One Order that as D.E.R.s become increasingly -- an increasingly common and significant part of electric and gas service to customers, it has both the authority and the responsibility to ensure the customers participating in D.E.R. markets and programs understand the costs and benefits of their investments and are protected from confusion, fraud and abusive marketing.

Furthermore, clear and robust guidance on appropriate marketing and contracting practices, will create a level playing field for D.E.R. suppliers and support fair competition between suppliers and between various D.E.R. options.

In response to the direction in that order and subsequent orders, including the March 2017 value of D.E.R. order, Staff conducted a robust stakeholder process, including multiple proposals for comment and a number of public meetings. The culmination of that process is the order before you today, which includes the Uniform Business Practices for Distributed Energy Resource Suppliers or U.B.P.D.E.R.S., which represents a rule book for D.E.R. -- for the D.E.R. market.
The order and the U.B.P.D.E.R.S. reflect both the need for clear and robust guidance in this growing market, particularly with regard to transactions with residential customers and small businesses and the need to avoid unnecessary or overly-burdensome obligations, particularly with respect to small D.E.R. suppliers and with innovative individuals and businesses, exploring and deploying new products and services.

For those reasons, oversight is carefully tailored to the characteristics of different market sectors. Specifically, as compared with the Staff proposals, it limits oversight of transactions with large industrial, or commercial customers, to prohibitions on fraud and requirements regarding customer consent. It applies a limited passive set of regulations to most D.E.R. suppliers, while more comprehensively regulating providers of community-distributed generation and onsite mass-market distributed generation, such as rooftop solar panels. And it eliminates certain proposed requirements that were identified as particularly burdensome and not sufficiently justified by an urgent need, including proposed bonding requirements.

I will briefly summarize the provisions
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adopted, first describing the provisions that are broadly applicable to all D.E.R. suppliers, followed by the provisions that are specific to community distributed generation and onsite mass-market distributed generation providers.

D.E.R. suppliers are required to obtain clear and explicit consent from customers, before billing or enrolling them in programs and for large, or ongoing transactions, to retain that consent for at least two years, or the life of the contract. D.E.R. suppliers are required to conduct their marketing in an honest, forthright and clear manner. They're responsible for ensuring that the actions of their contractors and other agents comply with the relevant laws and regulations. They're required to cooperate with Department and Commission efforts to resolve customer inquiries and complaints and to do any investigation of markets or programs.

The order also creates a process for D.E.R. suppliers to access customer information, with the consent of the customer, through the electronic data interchange process currently used to exchange information between utilities and ESCOs.

For violations of these rules, the order
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puts into place the same enforcement process that currently applies to ESCOs, based on the severity of a violation and other factors. It may result in informal Staff contact, formal Staff contact, or a Commission issue order to show cause, with an opportunity to respond by the provider and with potential consequences ranging from a warning, to a requirement to cure the violation and notify customers, to a requirement that customers be refunded or offered corrective pricing. Or at the most extreme end, to a complete ban from Commission-authorized programs and markets.

The additional requirements that apply only to C.D.G. and onsite mass-market D.G. providers include a requirement that a brief registration form and sample contracts and bills be submitted to the Department. More specific marketing requirements, including a requirement that for savings forecasts, a standard baseline, based on actual historical utility prices be used, the inclusion of key minimum terms and contracts including a three day, no penalty rescission period, information on customers' rights and compliance with further standards, based on the New York SUN requirements for onsite systems and -- and the requirement that a standard disclosure form be provided to all mass-market customers.
These providers are also required to have a local or toll-free telephone number and have specified providers for quickly handling and resolving customer complaints and they must file annual reports on the number of customers served and services provided, as well as -- as already required by last month's value of D.E.R. implementation order, send annual reports to each individual customer on that customer's savings and costs.

The order also includes several additional appendices. Appendix B, provides summary table of the order's requirements for quick reference. Appendix C, lists provisions of the Home Energy Fair Practices Act or HEFPA, that apply to D.E.R. suppliers. And Appendix D, contains questions or comments regarding potential additional provisions to be considered on an expedited basis, including limits on termination fees, annual escalation percentages and requirements for production guarantees.

The requirements established here, are part of a framework of regulation and contractual agreements, including interconnection agreements and tariffs, which will govern the interconnection of D.E.R.s into New York's electric and gas system, as well as the rights and responsibility of D.E.R. suppliers. As markets continue
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to evolve, these requirements will receive -- will require
and will receive ongoing review from Staff and from the
Commission and modifications will be made to ensure that
customers are appropriately protected and that D.E.R.
markets are able to thrive.

We're available for questions.

Thank you.

CHAIRMAN RHODES: Thank you very much, Ted.

I find that this item strikes a thoughtful
and protective balance for New Yorkers and the timing is
right. We have -- we're facing important and welcomed
growth in these resources and we need to be in a position
to provide protection for customers against untoward
practices, while pragmatically not burdening developers.

And I also find that the focus -- initial
focus on C.D.G. and mass market, makes all the sense in
the world. So, thank you.

Commissioner Sayre?

COMMISSIONER SAYRE: This item was a
tremendous amount of work and I commend Staff for your
efforts. It's very difficult to tell in advance of robust
markets developing, how much consumer protection is
required for distributed-energy services, versus what is
unduly burdensome and would discourage the development of
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the markets.

Our experience with energy choice, leads me
to conclude that the public interest will be better served
by starting with a lot of protections, rather than too
little. So, where -- when in doubt, I'm in favor of
beginning on the -- on the high side, I'm certainly
willing to consider relaxation of regulations that turn
out to be unduly burdensome and unnecessary for consumer
protection. But it depends on how the market develops and
we need to get some experience first, before we relax any
regulations with what complaints may come up, or -- or
what problems may develop in the markets.

And if things go badly, I would not
hesitate to consider more strict requirements as they may
be necessary.

So, my advice to market players in this
space, treat your customers well and we'll all be happy.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: Thank you.

First, I do want to thank Staff for the
time that you've spent on this and also to the parties.

We've received a lot of comments. We have
had several layers of process in this, in the desire to
try to get it right. I do recognize that it is a process
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and that we will continue to evolve to meet the challenges
and the opportunities. And it's important for us to be
mindful of trying to facilitate collaboration to get to
appropriate solutions.

There are things that I'm unsettled about.
I am mindful in this order, that we are not touching upon
a great deal of the comments, to address this across the
board, whether it's to say don't have anyone under -- any
D.E.R. providers under a U.B.P., or to have all of them
under it, in some fashion.

I do believe that the order is going to be
challenging to get through and there's going to be a lot
of questions, in terms of what does that actually mean in
real life and how does it work, not only for the D.E.R.
provider, but for the utility and for the Staff, the
Consumer Services Staff in particular and most importantly
for the customers.

So, I am hesitantly supportive and I will
cautions, that we need to be very mindful, that while it
sounds, in many ways, like we got it on paper, I don't
know that the reality is going to be as easy in the
implementation. Doesn't mean that it won't be done. It
just means that like the history we've had in the
implementation of our first U.B.P., which I believe took
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several technical conferences over a long period, not just
two months, not three months, not six months, but two
years to maybe even longer than that and it was not a
delay. It was working through definite challenges and
implementation and making sure that we were doing things
that would have a positive impact and that we were -- that
everyone was prepared to handle that.

Same thing with the submetering
regulations, when we made changes to that, that required a
lot of careful, careful deliberation and analysis and
rethinking and frustration among people.

So, I need to emphasize the need for us to
be flexible and open to working with all of the parties,
with the ultimate goal of getting to what we need, for the
benefit of the customers and for the benefit of what the
goals of REV are, with the inclusion of D.E.R.

There are going to be jurisdictional
challenges. I'm mindful, that we're going to need to get
through those. There's also a fundamental unfairness to
ESCOs.

Here, we are very reflective and we are
very thoughtful in understanding that there may be some
bad players in the D.E.R.-provider market and we don't
paint with a broad brush all D.E.R. providers. And yet on
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the other side, we seem to be quicker to paint with a
broad brush. I have no tolerance for bad players at all
and we need to address that in enforcement perspective,
head on.

However, I just want to be very careful
that we are not having an unfairness, or an unlevel
playing field and seeming, you know, to pay lip service on
one end and -- and different degrees of what we allow, or
what we don't allow.

There is an issue, from my perspective, in
what does it mean in terms of figuring out. Here we have
carved out who has more active regulatory oversight, if
you fall under community D.G. or you're a mass-market
D.E.R. provider.

It's -- there's -- there's ongoing
petitions, on asking for clarification on what exactly is
a mass-market customer. We do have some orders that
identify that. However, we do have some upcoming -- I --
I think there's at least one on the gas side, in terms of
changes to that.

And we need to be mindful, that a customer
name may not be clear, on exactly what they -- who they
have and so, I'm concerned that we're going to create more
barriers, but also a lot more work for the Staff, that has
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to quickly try to resolve this and fit it into the appropriate bucket and that if you don't fit into that bucket, it may be very frustrating.

I'm concerned that we have had -- we have seen that there has been a significant amount of barriers, regulatory barriers as well as others, to community D.G. and that we need to monitor, whether or not we are creating another barrier because some D.E.R. providers may say we're going to stay away from community D.G. and the mass market because there's more-active regulation. And therefore, our space is going to be smaller, but better because we don't have to worry about the bureaucrats in Albany.

I am wanting to make sure that we have immediately an opportunity for parties to work together and go through and understand exactly what this order is and -- and work through what I think are going to be definite implementation issues. From my perspective, I'm not going to focus on a lot of the details that are in there, that I think may be concerning, or have to have more clarification. I -- I do expect that -- or I do ask that Staff be very, very engaging on this front.

And to the extent that literally making sure that we walk through all of the different scenarios
and keeping in mind that we are not the experts in a lot of these areas and calling upon those who can help, especially U.I.U., as to the customer aspects, I think are very, very important.

And I won't belabor this anymore, except that I hesitantly will be voting for this item, understanding that I do think that it is not a perfect solution, but again, I come back to -- I recognize this is a process. At some points, it may be very painful, but I hope that ultimately we are going to be working through and continuing to evolve, to meet and exceed these -- these challenges for the opportunities that are there.

So thank you.

CHAIRMAN RHODES: Thank you.

Commissioner Alesi?

COMMISSIONER ALESI: Thank you, Mr. Chairman. Philosophically, I kind of lean towards applying regulations and growing regulations, as we see the need, but I also recognize the hard work and expertise that has gone into your presentation, both last week in greater detail and today. And so, I believe it's always easier to add some regulations than it is to take them away, once they're in place. But again, based on what I've come to learn from your efforts and the hard work of
Staff in general, I believe I can embrace this recommendation and I'll be voting yes for it.

CHAIRMAN RHODES: Thank you very much.

So with that, let's move to a vote on item 201.

My vote -- my vote is in favor of the recommendation to adopt the oversight framework and uniform business practices for distributed-energy resource suppliers, as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman, how do you vote?

COMMISSIONER BURMAN: Aye.

CHAIRMAN RHODES: Commissioner Alesi, how do you vote?

COMMISSIONER ALESI: I vote yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

We now move to item 202, cases 16-M-0015, et al, which is the petition of the Municipal Electric and Gas Alliance, to create a community-choice aggregation pilot program presented by Kelly Connell, Utility Analyst Three, Peter McGowan, Chief Policy Advisory. Ted Kelly
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and Luann Scherer are available for questions.

Kelly, please begin.

MS. CONNELL: Good morning, Chair Rhodes and Commissioners. Item 202 addresses a series of filings made by the Municipal Electric and Gas Alliance, also known as MEGA. MEGA seeks to serve as a community-choice aggregation administrator, for several municipalities in New York State.

The filings by MEGA include a master-implementation plan, a general data-protection plan and certifications of municipal authorizations, to form a C.C.A. program.

Concurrent with these filings, in response to a Commission directive, the joint utilities filed a data-security agreement for Commission consideration.

Staff is recommending Commission approval of these filings, with some modifications.

By way of background, on April 21st, 2016, the Commission established the framework for the development of C.C.A. programs, which aims to increase consumer choice and participation, while also supporting local-energy planning and deployment of distributed-energy resources, or D.E.R.s.

In a C.C.A. program, one or more
municipalities aggregate the load of its residents and small businesses, on an opt-out basis and procures energy and potentially D.E.R. services, on their behalf. The C.C.A. framework order authorized interested municipalities on their own, or through their selected C.C.A. administrator, to make a series of filings for Commission consideration to initiate a C.C.A. program. The C.C.A. framework order requires that the implementation plan include a description of the program and its goals, including plans for value-added services, a public-outreach plan including multiple forms of outreach and engagement, over a period of no less than two months. Drafts over in communication with its residents including opt-out letters, contact information for a C.C.A. liaison to respond to questions, or concerns and identification of at least one local official or agency, in each municipality, for residents to contact with questions, or comments. The C.C.A. administrator's also required to file updates and supplements to the implementation plan, as appropriate, including final versions of customer opt-out letters that provide details of program contracts. The C.C.A. framework order also required the joint utilities to file a proposed standardized data-
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security agreement, that would be entered into by the
municipality, or its C.C.A. administrator and the
appropriate utility. The data-security agreement
obligates the C.C.A. administrator and its residents, to
protect data from -- from disclosure and limit its use.

Based on Staff review, including lessons
learned from the Sustainable Westchester C.C.A. pilot,
Staff finds that MEGA's proposed C.C.A. program meets the
general requirements laid out in the Commission's
framework order, but recommends some additional outreach
and necessary revisions to their data-protection plan.
These revisions can be provided in a compliance filing.

Specifically, Staff recommends that once an
ESCO is selected and before the opt-out period ends, MEGA
continues their outreach and education to ensure that
residents are informed of the commodity prices and
services being offered by the contracted ESCO. Staff also
recommends that MEGA revise its data-protection plan --
plan to effectively protect the data obtained from the
utility, to allow for the sharing of an anonymized
aggregated usage data, with qualifying ESCOs and to
conform with the joint utilities' final data-security
agreement.

The draft order also clarifies the
guaranteed savings requirement intended for C.C.A. customers, who are participating in utility low-income assistant programs.

Staff is also proposing several modifications to the joint-utilities data-security agreement. While customer account numbers were originally envisioned as useful information in the framework order to clearly identify customers and conduct the opt-out phase, Staff now recommends that account numbers are not shared with the C.C.A. administrator. In the unlikely event of a security breach, account numbers could be misused for slamming.

By allowing utilities to withhold account numbers and use an alternate method to identify customers, the risk of slamming, due to a breach, will be eliminated. By removing a customer's account number, the utility information transferred to a C.C.A. administrator will not be highly sensitive.

Therefore, the following modifications are recommended. The joint utilities should remove the requirement for a C.C.A. administrator to procure cyber insurance. At a -- as described in the draft order, the data security-agreement language will also need to change to allow for a more -- greater degree of flexibility
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regarding data-access controls and security.

This concludes my presentation. I am available to respond to questions.

Thank you.

CHAIRMAN RHODES: Thank you, Kelly.

I find that this work establishes a sensible -- establishes a sensible and useful parameters for our next step, which is another pilot, as we march in the direction of C.C.A., which is an important opportunity to bring New Yorkers into our clean-energy future.

COMMISSIONER SAYRE?

COMMISSIONER SAYRE: I'm a fan of community-choice aggregation, as long as it either provides customers with savings, or provides them with benefits or services that they would not otherwise receive. And in the absence of -- of one of those things, I presume that a C.C.A. isn't going to get off the ground in the first place. I have hopes that in the future they will evolve into even stronger models, like storm-

resilient microgrids.

I think we can count on the municipalities to make good contracts with energy providers, which is why I'm okay with their residents being included, unless they opt-out. However, I urge all participants in these new
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programs to keep a close eye on how they're working and hold their municipality leader's feet to the fire, if the promises are not being kept.

I do support this item.

CHAIRMAN RHODES: Commissioner Burman.

COMMISSIONER BURMAN: It may come as no surprise, but when I was in school and the teacher would say we can leave class now, unless anyone has any questions, I was the one that would raise my hand to the groans of everyone else and ask a bunch of questions. So, I have a couple questions. I'm sorry. I just really -- I just want to understand a couple things and just pull it out.

Is C.C.A. subject to D.E.R.?

MR. KELLY: So, to the extent that it includes a -- a -- a distributed -- a D.E.R. component, for example, if it includes the community-solar component, it would be subject to all the relevant rules that the U.B.P.D.E.R., as just discussed.

If it doesn't, if it's really just focused on procurement of a particular ESCO, in that case, it would still be subject to the -- the ESCO U.B.P., but not specifically to the D.E.R. specific rules.

COMMISSIONER BURMAN: Okay. And can you
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explain to me, in this item, there is a focus now, on a --
a -- it -- it -- it -- it's stated as a clarification.
I'm not sure if it's a clarification or a change. I would argue it's a change, but for purposes of this we'll say clarification. Clarification that the C.C.A.s are now held to the guaranteed-savings plan, for low-income customers.

Can you explain that and exactly what that means?

MR. KELLY: Sure.

So, the original C.C.A. implementation order had said that low-income customer -- the -- that service of low-income customers would be subject to any requirements subsequently adopted by the Commission. This was -- that was put out before the guaranteed savings was adopted as a requirement for low-income customers.

So, that's kind of why we see it as a clarification, to just explain that while the low-income order did exempt C.C.A.s from the prohibition on service, it did not exempt them from the general requirement that guaranteed savings be provided.

So, what that means in this context, is that the C.C.A., when they're soliciting an ESCO, if they wish to include low-income customers, which specifically
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in this case means participants in utility low-income assistance programs, if they wish to include those customers, they must get from the ESCO, a guaranteed-savings product and include those -- give those customers the guaranteed-savings product, which would generally mean that in any calendar year, or over the contract term, if the contract expires before the end of the calendar year, the customer must save money, compared to what they would have paid, if they had been on just standard-utility service. And if the customer hasn't saved money, there then has to be essentially a -- a true up-payment, to ensure that the customer paid no more than they would as a utility customer.

COMMISSIONER BURMAN: Okay. So, it does sound to me like -- because I had raised concerns about the exceptions to this, as well as other exceptions, under the -- the -- the ESCO orders --

MR. KELLY: Uh-huh.

COMMISSIONER BURMAN: -- where it was carving out the foot note, the C.C.A.s. So, I am now concerned about the change and what that means for the existing C.C.A.s, that are out there in Sustainable Westchester. The -- the two -- the two, that I know of and -- which -- how many municipalities does that affect
and what does that mean? Are we going -- are we going retroactively and looking at that, or are we going prospectively?

MR. KELLY: So, it would be prospective, in the sense that in Sustainable Westchester, the initial contract was entered into before the low-income order came out. And therefore, it's essentially treated the same as other long-term ESCO contracts, in that the rule doesn't apply, until the contract expires.

So, at the point where Sustainable Westchester, or Westchester Power is what they have specifically designated their C.C.A. as now, when they are getting towards renewing their contract, or looking for a new contract, which is going to be about next year, they'll have to -- they're already required to make a filing with the Commission, for the Commission to review and -- and approve explaining whether they'll be renewing and what -- on what terms they'll be doing so. And part of that will require that as of the new contract, they'll have to start complying with that guaranteed-savings requirement.

COMMISSIONER BURMAN: Okay. I guess we're -- we're -- I guess my focus is I -- I'm -- I'm glad to see we're being thoughtful now in this. You know, these
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are issues that I had raised originally and had raised concerns, in why we're taking this sort of statewide without looking at these issues and further reflecting.

But I'm also now seeing that we seem to be doing it differently and obviously, that's from lessons learned from the pilot. But I'm just wondering, it kind of gets to the bigger issue, which we'll get to in the other items in the low-income, so I'll put aside, where I -- where I'm at on the low-income stuff, except to the extent that I'm glad to see we're trying to address the low-income issues, that are critically important. But I do think that there's still going to be confusion around what is a guaranteed-savings plan. What does that mean under the C.C.A.s? You're looking at it from the -- the - the rate that you set at the date of. On Sustainable Westchester, I think it was from the 2014 was your guaranteed savings, not month to month, correct?

MR. KELLY: So, I could speak to that.

Yeah.

What Sustainable Westchester looked for was not guaranteed savings in the way we generally speak of it, in the low-income sense. But instead, they looked at making sure that the rate that they got would have caused savings, if it had been applied in the past year.
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COMMISSIONER BURMAN: Okay.

MR. KELLY: So, they -- they -- their initial program did not guarantee savings, although the first annual report, which they filed this year and Staff analysis of their first year of billing, does show that all -- that the customers did overall save money. But they did not provide guaranteed savings, in that if an individual customer hadn't saved money, they wouldn't have been required by contract to true-up that customer.

Whereas in going forward, including for MEGA and for Sustainable Westchester, if and when they -- they renew their contract, there will be the requirement that at least for low-income customers, they do a true-up anytime the customer didn't actually save money.

COMMISSIONER BURMAN: Okay. Thank you.

That's helpful. What are the next steps? This -- we're -- we're approving this today, or assuming we approve this today, the Chair used the term that this was our next pilot.

What else is on the horizon for -- for this?

MR. KELLY: For C.C.A. in general or for --

COMMISSIONER BURMAN: Uh-huh.

MR. KELLY: -- MEGA?
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COMMISSIONER BURMAN: C.C.A. in general.

MR. KELLY: So, there's another C.C.A. aggregator, Good Energy, which has also filed an implementation plan, that's currently under Staff and Commission consideration and which we expect to come to session at some time in the relatively near future.

COMMISSIONER BURMAN: Uh-huh.

MR. KELLY: There are also several other potential C.C.A. aggregators who have been in contact with us, with Staff to try, you know, to kind of give us updates on their progress and to ask questions. And they're also being supported by NYSERDA, which pursuant to the C.C.A. implementation order and also the Clean Energy Fund has a program, to support communities including on -- on developing C.C.A.

COMMISSIONER BURMAN: Uh-huh.

MR. KELLY: So, we expect that there will be, you know, probably several more in the next year or so, that are also ready to -- to get started.

COMMISSIONER BURMAN: Okay. So, one of my -- as -- as -- as I believe you know, I -- I voted no, on all of the C.C.A. items to date, primarily because I believed that we were not looking -- we were not holistically looking overall and taking time to
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incorporate what it would mean from an implementation perspective. What it means in terms of doing this, how it affects the load, how it affects customers, how it affects the market.

And all the other states that have done this, have done this through legislation. And we did it really only after a very quick survey of the other states and there have been challenges in many of those states in C.C.A.s. C.C.A.s done well, can be very good. C.C.A.s done poorly, is a disaster.

And so from my perspective, one of the things that I was concerned with, was that we had embraced a pilot, after the -- the bill seeking to do a pilot in that very area had been vetoed. And then we -- after doing the pilot and -- and not having it up and running, then the Commission voted to adopt it statewide, without the information on it.

So, I am glad to see that in MEGA, there's been some thought into some lessons learned from the Sustainable Westchester model. Does seem like there's been some successes. Obviously, some issues, as well, working through that and there will continue to be.

I do want to see that we are engaging overall, not just in, you know, silos, these issues, so
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that all folks who are interested in participating and can -- can benefit from that discussion and we can benefit from their information, as -- to help us in adopting, or approving those that will be successful.

I am cognizant of the fact that in MEGA, MEGA has a long, very good history in New York. So that gives me great confidence in MEGA. If it was someone else, some other entity, I may have a different feeling, but I -- I am very comfortable with them. However, I'm not picking winners or losers. I'm just looking at it from the perspective of do they have the expertise to do this.

I do bristle at any notion that we are going to call to task municipalities because they are not necessarily the experts in a lot of these issues. So, we need to be very mindful that it is incumbent upon us to work through a lot of these challenges and implementations that will definitely trip them up, especially as it goes to D.E.R.

We're going to need to work through that. And what that means, we're going to need to not just rely on the aggregators to say whether they are under U.B.P.D.E.R., or, you know, U.B.P. regular and that maybe it needs to be incorporated up front and clearly defined.
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And some of that will come after we clearly figure it out and define it a little better ourselves, from working through the challenges with the parties.

So, I thank you.

I think my mantra for today is I recognize this is a process. At times it's very painful, but it -- I think it is a necessary process and at the end of the day, we need to be looking to evolve, to work to meet our challenges and our opportunities, in a way that's successful for all New Yorkers. So, thank you.

CHAIRMAN RHODES: Thank you, Commissioner Burman. Commissioner Alesi?

COMMISSIONER ALESI: No.

CHAIRMAN RHODES: We will now proceed to a vote on item 16-M-15 --.

I vote in favor.

Commissioner Sayre, how do you?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: Aye.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: I vote yes.

CHAIRMAN RHODES: Thank you very much.

We now move to the fourth item, item two --
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for discussion. Item 203, case 17-M-0280, which is
Staff's report on the New York State Electric and Gas
Supply readiness for the 2017-18 winter, presented by
Cindy McCarren, Deputy Director Gas and Water. Vijay
Puran, Utility Supervisor of Bulk Electric Systems, Paul
Darmetko, Utility Engineering Specialist Three, Electric
Rates and Tariff Section and Andrew Bisnett, Utility
Consumer Program Specialist, are available to answer
questions.

Cindy, please begin.

MS. MCCARRAN: Good morning again and thank
you.

So, Staff would like to take this
opportunity this morning to brief you on the results of
our investigation into the readiness of the state's
natural gas and electric utilities, for the coming winter.
Although each of us will give more detail, I just want to
kick things off by saying overall the electric and gas
utilities are well-prepared for the coming winter.

First, I will brief you on the readiness of
the state's natural-gas utilities and a projection of
average natural-gas bills for the coming winter. Vijay
Puran will update you on the readiness of the bulk-
electric system and Paul Darmetko will discuss the
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projections for electricity prices, for the coming winter.

And then Andrew Bisnett will conclude the panel, with a
discussion of the outreach efforts, related to winter
bills and safety.

The state's gas utilities are also called
local-distribution companies or L.D.C.s. Based upon our
review and representations by the L.D.C.s, regarding
natural-gas supply readiness for the upcoming winter
season, Staff concludes that the L.D.C.s serving New York
State have adequate natural-gas supply-delivery capacity
and storage inventory to satisfy current firm customer
demands, under designed winter conditions for this winter.

Staff continues to coordinate with the oil
industry representatives and the New York State Energy
Research and Development Authority or NYSERDA, to ensure
that customers have access to adequate supplies of winter-
heating fuels.

Next slide.

Each utility has a unique mix of assets
used to serve a unique mix of customers. Some of the
state's utilities are experiencing growth in natural-gas
demand, as local government seek to phase out dirtier
heating fuels, such as fuel oil and propane.

Especially in the downstate areas of New
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York City and Long Island, interruptible customers are an important piece of the puzzle and their ability to get off the natural-gas system during periods of high demand, reduces the amount of pipeline capacity needed to serve winter load. This is a type of demand response program, that is decades old.

Recently, however, many communities have expressed an interest in meeting growing demand, through a greater use of demand-response programs, including more efficiency, combined with what is being called non-pipes alternatives. Recent filings made by Consolidated Edison and the New York State Electric and Gas Company will focus on the use of demand response and non-pipes alternatives, to meet growing space and water-heating needs.

We continue to monitor some areas of the state, where demand is growing at a faster pace and where the existing distribution system is becoming constrained, including New York City and the Capital District. Staff will continue the traditional monitoring of weather pipeline and storage assets and interruptible-customer compliance, but also work with the utilities and communities, to find innovative solutions that increase environmental benefits, while meeting customer expectations for economic solutions.
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Next, please.

This slide illustrates some info -- interesting information related to weather and climate.

So, it's probably a little difficult to see, but there are thirty years of history here. Each yellow bar shows the number of heating-degree days for each of the last thirty winters. We calculate the number of heating-degree days by determining the average of the high and low temperatures for the -- each day of the winter, subtracting that from sixty-five, with the assumption that at sixty-five degrees you're neither heating nor cooling your home. The taller, the yellow bar on the slide the colder the winter was.

As can be seen, last winter was one of the warmer winters in recent history although it was slightly colder than the previous winter, 2015-16. The polar vortex winter was the winter of 2013-14.

The blue diamond on each yellow bar, indicates how many heating-degree days were measured on the peak day, or the coldest day of that particular winter and what this slide illustrates that even though you have a generally-mild winter, it's still possible to have, you know, one or even a few very cold days and that is what our L.D.C.s plan for.
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Next slide.

The L.D.C.s purchase gas to supply their customers' winter needs in three ways and that is represented by the pie chart to the right. The first way is by filling their natural-gas storage facilities during the summer when heating demand is low. The second way is by hedging, which acts like an insurance policy to guarantee the purchase price of the gas will not go too high. The third way is by purchasing at the prevailing-market price, which fluctuates with market forces, such as demand and weather and is called flowing gas.

Each of these components has increased in price, compared to last year. Last year at this time, the cost of natural gas in storage was the lowest seen in about twenty years and that was due in large part to the very mild winter of 2015-16 which, you know, we just discussed. That also caused the price -- that very-mild winter also caused the price of flowing gas to drop through that winter because there was very low demand.

The price of natural gas is influenced by many factors. Weather is chief among these, but demand for natural gas continues to grow which exerts upward pressure on prices.
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That being said, natural-gas commodity prices are significantly lower now than they were in the recent past. As recently as the winter of 2009-2010, natural-gas commodity prices averaged over six dollars per dekatherm delivered into New York City and you can see for this coming winter, it's below three dollars.

Given our proximity to the northeastern natural-gas production areas, we have access to plentiful supplies and even with colder than normal weather, prices to firm natural-gas customers should be stable.

Next slide.

We expect the average residential customer's winter-heating bill to be less than eight hundred dollars for this winter, assuming normal weather, but this does vary by utility. This is an increase from last winter, but that is mostly due to last winter's mild temperatures, which kept bills lower.

Next slide.

In conclusion, our review indicates that the L.D.C.s serving New York has secured adequate supplies of natural gas to meet expected customer requirements this winter. Staff will continue to monitor supply prices and interruptible-customer compliance throughout the winter and report any situations that require Commission
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attention.

Staff will also work with the utilities and interested communities, to find innovative solutions to the challenges represented by increased demand for natural gas.

This concludes my portion of the presentation. I would be happy to take any questions you have now, or we can wait till the end of the panel.

If you don't have any questions, Vijay would be next.

CHAIRMAN RHODES: I think please continue, Vijay.

MR. PURAN: Thank you, Cindy.

Good morning, Chair Rhodes and Commissioners.

My name is Vijay Puran and I'm a Utility Supervisor in the Department's bulk-electric system section. As Cindy mentioned, I'm here today to brief you on Staff's review of the bulk-electric systems preparedness for the upcoming 2017-2018 winter. At the outset, I would like to say that based upon our review, we conclude that a bulk-electric system is prepared to reliably meet the state's upcoming winter-electric demands.
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Next slide, please.

This chart shows the summer and winter historic coincident peak, since year 2000. It also shows that New York State is a summer-peaking state and therefore has to have sufficient available capability, to meet loads well-above those typically experienced during the winter.

Last winter's actual electric-peak load was twenty-four thousand one hundred and sixty-four megawatt. This was one thousand five hundred and seventy-four megawatts lower than the 2013-2014 polar -- polar-vortex winter record of twenty-five thousand seven hundred thirty-eight megawatts. The New York I.S.O. electric-peak forecast for the upcoming winter period is twenty-four thousand three hundred and sixty-five megawatts.

Next slide please.

This slide summarizes the resources expected to be available to New York, during the winter. The New York I.S.O. expects to have thirty-nine thousand seven hundred and eighty-five megawatts in net-capacity resources available during the winter to serve the forecasted winter-peak load of, as I mentioned, twenty-four thousand three hundred and sixty-five megawatts.

Once operating reserves, which are
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resources available to meet sudden system contingencies are accounted for, there remains a capacity margin of twelve thousand eight hundred megawatts. So, in short, we have sufficient capability to serve the forecasted load, during the upcoming winter.

Next slide, please.

As part of Staff's winter assessment, we reached out to major generating-facility owners in southeast New York, who own about twelve thousand megawatts of dual-fuel generation capability. We found that these owners are continuing to implement lessons learned from the polar-vortex winter of 2013-2014, including having increased pre-winter onsite fuel reserves, having formed contracts with fuel-oil suppliers, conducting more-aggressive replenishment plans, and having more proactive pre-winter maintenance and facilities prep -- preparations.

Also, a winter-coordination protocol is in place to facilitate communications between state agencies and the New York I.S.O. in circumstances where fuel supply for generating facilities may be at risk, or if a generator owner needs a fuel-specification waiver from the D.E.C., to maintain reliability. The state agencies involved are the D.P.S., D.E.C., NYSERDA and D.O.T.
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Next slide, please.

Staff also met with the New York I.S.O. and discussed its procedures and protocols for the winter period. In recent years, the New York I.S.O. had instituted various changes to help ensure electric reliability during periods of tight natural-gas supply, especially closely monitoring generator fuel levels and replenishments.

In addition, the New York State I.S.O. has improved communications with interstate pipelines, local-gas distribution companies and neighboring I.S.O.s, during period of tight electric operating conditions. Our neighboring R.T.O. and I.S.O., also have winter-reliability programs and expect to have adequate supply for this winter.

This concludes my presentation.

Thank you. I'll be happy to answer any questions you may have.

If not, Paul Darmetko would be presenting next.

CHAIRMAN RHODES: I think over to you, Paul.

MR. DARMETKO: So, good morning, Chairman Rhodes. Good morning, Commissioners.
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I'll be providing you with a summary of how the electric utilities have performed at reducing the electric-supply price volatility for their full-service residential customers, compare this winter's forecasted electric market prices to last winter's forecasts and actual prices. And finally, I'll provide you with an estimate of how we expect full service, residential-customer supply rates to compare to the last few years.

Next slide.

This graph shows the results of the utilities electric-supply price volatility-mitigation efforts, since December of 2008. It compares the average New York I.S.O. day-ahead market price volatility, the red line, with the volatility of the utilities electric-supply portfolios, the blue line. Each point represents the volatility over a twelve-month period, as measured by the coefficient variation.

That large spike that you see there, is the 2014 polar vortex and this resulted in an increased market prices and increased-price volatility. And even though customers benefited from the hedges that utilities had in place, the bill impacts that customers experienced were very high and as a result of lessons learned, the utilities modified certain aspects of their hedging.
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These changes included increasing the fixed-price hedge level of the residential supply customers during the winter months from about fifty-five percent to seventy percent, on a statewide average basis, as well as certain utilities maintaining multiple portfolios, to better hedge their customers located in different regions in their service territories. As you can see, the utilities have continued to perform well at reducing their portfolio-price volatility, compared to market.

This chart shows how the New York I.S.O. day-ahead around-the-clock market prices have varied over the last few years. The solid lines represent the actual average-monthly market prices for three New York I.S.O. zones, west, Hudson and New York City. The dashed lines, that are the same color, show what the NYMEX futures were, just prior to the winter season. In the winter months, market prices can be significantly affected by gas-market price, as well as the weather.

In the last two winters there was significantly warmer-than-normal weather, whereas the two winters prior to the last two were significantly colder than normal. Last winter's warmer-than-normal weather
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allowed gas prices and therefore electric-market prices to remain significantly lower than what we experienced the year of the polar vortex and the year immediately following. But this variability is precisely why the utilities hedge for their full-service mass-market customers, to protect them against wide-market swings and spot-market prices.

Next slide.

This next chart shows this winter's expected average-energy prices based on NYMEX futures and how they compare to last winter's forecasts and actual prices for New York City, Hudson Valley and Western New York. Last winter's expected energy-market prices that we reported to you last October, are in green. Last winter's actual-market prices are in blue and this winter's expected-market prices are in red.

As shown, last winter's actual-market prices were significantly lower than what was forecast going into the winter, about thirty-three percent less, which again reflects last winter's unusually-warm weather. And although this year's market prices are expected to be higher than last year's actuals, on a forecast basis, they're between one to twenty-two percent lower, than the prior year's futures. However, as always, these actual
prices will vary, based on the weather and other conditions in the system. 

Next. 

With respect to customers' supply prices this winter, if we experience normal weather, we expect that on a statewide average basis, that full-service residential customers will spend about five-percent more this winter than they did last winter, but approximately sixteen-percent less than over the last five years on average. And -- which is good news for consumers. Prices are still low. 

So, that concludes my portion of the presentation. I'd be happy to answer any questions.  

CHAIRMAN RHODES: Thank you. 

Andrew? 

MR. BISNETT: Good morning, Chairman Rhodes and Commissioners. 

As the winter season approaches and with the rise of energy pricing, many New Yorkers are again facing the difficulty of managing winter-heating costs. The situation will be particularly hard on the elderly and on people on fixed or low incomes. 

This report will describe the work that Department Staff and New York State Energy Utilities are
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doing to provide customers with information, to help prepare for the 2017-2018 winter season.

To help consumers manage their energy bills, we are carrying out a statewide consumer-awareness campaign, to educate consumers about expected pricing and the resources available to assist consumers. Key program messages will focus on how customers can manage winter bills through bill-payment options, such as budget billing and deferred-payment agreements and with financial assistance programs, which are available through the government, such as the Home Energy Assistance Program or HEAP, through community-based organizations and through utility-sponsored programs.

Customers are also provided information about controlling their heating costs, by taking simple and affordable measures to in -- to reduce energy use and become more energy efficient. Customers are also reminded that there are special customer protections in place during the cold weather period of November 1st to April 15th and that there are resources available to assist consumers facing heating-related energy emergencies.

Lastly, in addition to information about winter bills, our winter messaging will include safety information, regarding natural gas, electricity, carbon
monoxide and service interruptions.

The Department's winter-outreach program uses a variety of methods to get messages to consumers, such as developing and distributing publications in English and Spanish, that focus on winter preparedness and managing bills. We also have several of the publications used in our winter programs, available in Chinese, Haitian Creole, Italian, Korean and Russian.

To help us in our efforts to reach as many New Yorkers as possible, we provide copies of our outreach materials to our statewide network of community leaders, free of charge and invite them to work with us, in educating consumers this winter. The list includes over six thousand representatives of social-service agencies, community organizations and local governments.

To further increase the reach of our message, Staff engages in grass-roots outreach, including presentations to community groups and exhibits at public events, such as home shows. We also use the Department's websites and our call-center staff to get our messages out to utility customers.

Next.

In addition to the Department's outreach program, we are working with the utility companies to
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courage them, to maintain strong, customer education and assistance programs. Each utility has developed outreach plans to alert customers about price estimates and mitigating-price volatility, suggest ways to conserve energy and reduce heating bills, to provide advice about payment plans and financial-assistance programs and offer storm preparation measures and safety information.

The companies are using a variety of tools to reach customers, including news releases and paid media ads, bill inserts and bill-envelope messages, newsletters, on-hold telephone messages, website features and social-media platforms such as Facebook, Twitter and Instagram. The utilities also work with municipal and elected officials and partner with human-service organizations and community groups.

Finally, the companies provide training to their consumer advocates and call-center staff on winter messaging and customer service.

In conclusion, the Office of Consumer Services winter any -- energy outreach and education program is designed to ensure that New York utility customers have access to information and programs they need to manage their winter-energy bills and use energy efficiently. Staff will continue to monitor -- excuse me,
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Staff will continue to monitor the need for additional outreach and education efforts and will work with the utilities, to make modifications as needed, throughout the heating season.

We will also continue to work with the state's utility companies to find ways to assist their customers and to keep the heat on and stay warm this winter.

Thank you.

CHAIRMAN RHODES: Thank you, Andrew, also Paul, Vijay and Cindy.

Thank you all for the work and for the forward look. I certainly like the fact that the work shows that we've got adequate capacity and supply, we've got reasonable price outlooks, and that our utilities are ready.

And I also recommend -- also welcome the reminder on this part of the Commission's and the Department's role, we oversee and we pay attention to new kinds of energy models and we also pay attention and oversee consumer-protection issues, safety, reliability and now supply and also making sure that the outreach that's needed to get through winter in good shape is happening, happening here and with our consumer-outreach
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partners. So thank you very much.

Are there any comments or questions from my fellow Commissioners?

Commissioner Sayre?

COMMISSIONER SAYRE: No.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: Thank you.

First, I want to take a moment of personal privilege.

I don't know, I started getting choked up, Andrew, I know this is your first time presenting and we've been partners together at a number of the public-statement hearings. So, I was happy to see you presenting. So thank you. You did a good job.

Couple of things. I just want to -- and -- and please, I think primarily, Cindy and Vijay, please correct me if I'm wrong, I just want to make sure that I am sort of capturing what I’m hearing.

I'm hearing that we are projecting adequate resources to meet demand for the winter 2017-2018. We are well-prepared to handle the winter-operational challenges, due in part to lessons that we learned from the 2014 polar vortex.

And that -- some of that deals with sort of
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the gas-electric coordination issues. You know, we have enhanced operational tools. We have a gas-electric market alignment fuel situation -- situational-assurance measures. The I.S.O. has wonderful winter --

winterization guidelines and protocols that they've enhanced, that we, collaboratively, with the state agencies work on.

And then on the generation side there are a number of different enhancements that have been made, including onsite -- onsite fuel reserves, as well as further planning and collaboration. And that -- really, the key seems to be the planning and the collaboration.

Industries made improvements in their winter preparation activities and this has helped to improve New York's overall preparedness for the winter 2017-2018. However, we do expect it to be much colder, or at least forecasting to be much colder this winter than it was last winter.

I'm not sure that -- Mike, you want to --?

MR. WORDEN: No, go ahead.

I'm just getting ready.

COMMISSIONER BURMAN: Well, if you want to respond to that now, you --.

MR. WORDEN: Well, you know, I wouldn't say
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much colder. I would say colder.

We expect it to be more normal. It's not like we're projecting a polar vortex for this winter. I don't think we have a good handle on that.

Prior to that, I -- I would say yes to all of the things you said, both on the gas and electric side, that we are prepared and we have done all the things that you walked through.

COMMISSIONER BURMAN: Okay. How much colder do we -- has it been forecast? One percent, thirteen percent?

I think I saw a figure from the Natural Gas Supply Association of thirteen-percent colder than last year.

MR. WORDEN: That sounds -- I was going to say ten percent --

COMMISSIONER BURMAN: Okay.

MR. WORDEN: -- but on that --

COMMISSIONER BURMAN: All right.

MR. WORDEN: -- order. Yes.

COMMISSIONER BURMAN: Okay. So, colder. I won't say much colder.

And then it is also expected to be an increased demand with both the colder-expected winter, as
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well as increased demand, that is going to put some price
pressure on -- on the -- on the bills.

Really, we always have to look at sort of
the market-pressure points. And so for winter 2017-2018
some of those market-pressure points are traditionally
weather economy, demand, storage, production, obviously
wild-card factors and expectations for the winter.

Really, some of the critical issues that we
need to address, are looking at the natural-gas
capabilities. First, the electric-system capabilities and
what about that? How does that affect things? As well as
what about the natural-gas system congestion and how does
that impact the electric-system prices? Those are the
things that we need to be really laser-focused on. All of
those different critical issues really do put upward
pressure on our system and while we are projecting
adequate resources to meet demand for the current winter,
we do need to recognize that we need to look at some of
those pressures and what that may mean, you know, not only
this winter, but down the road.

So, I am cognizant of that. Really, for
me, a lot of this also comes back to Andrew's
presentation, in just how critically important it is on
the consumer-services end, the outreach and the education.
We have had a good-working relationship with the utilities, not only under the regulations and the different moratoriums that are in place for the cold-weather period, but also the voluntary enhancements that utilities historically always step-up and step-up very well to do. That comes through the active efforts of the consumer-services folks, who are not waiting until after an issue, but really there beforehand, coordinating through the various means. And I'm -- I'm sure that's going to continue and I look forward to working through that.

And, again, as much as we can get out the information, especially as we know it on HEAP and emergency HEAP availability and getting it out to the relevant organizations, that can help us with that, is critically important.

So, thank you.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Thank you.

This is a great presentation all the way across the board. And I appreciate the hard work and effort that has gone into it. I just had one quick question on the effectiveness of the outreach and it's obviously something you want to continue to do. But I'm
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wondering also, is there an established method for actually measuring the results of -- of the outreach efforts? And I know you have on the other end, such fluctuations with the -- the cost of energy and the use of energy, but is there -- is there a way to establish a control group, or measure the effectiveness of all these various methods of outreach?

MS. SCHERER: I think that's a good point. I think we don't have an established mechanism, but what I will say is we -- as Andrew mentioned, we have a C.V.O. municipal database of about six thousand -- six-thousand contacts and generally, hundreds of those contacts request the outreach materials, year after year.

So, I would say from the municipal and the C.V.O. perspective, the information is -- is useful to them.

COMMISSIONER ALESI: Okay. Thank you.

COMMISSIONER BURMAN: I also just want to recognize that we do, when we look at -- annually the utilities performance, look at the customer satisfaction and factor in a lot of these different issues as well. So, we -- and, you know, if there is a complaint we look at that, as well.
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So there are different pressure points that help us to know if things are going well and how to in -- increase the outreach, not only at our end, but also at the utility end, if it's necessary. And that is part of what we do when we're approving the budgets, too.

CHAIRMAN RHODES: Thank you, very much.

This is not a voting item. It is for information only. That doesn't sound quite right. It's very informative, but it is not a voting item.

Let's move on to the fifth item for discussion. Items 204 through 211, cases 12-M-0476, et al, as they relate to seven petitions for waiver to serve low-income customers, presented by Christine Bosy, Utility Consumer Program Specialist, Luann Scherer, Director of Office of Consumer Services and Tom Dwyer, Assistant Counsel -- I'm sorry, Luann and Tom are available for questions.

Christine, when you're ready, please begin.

MS. BOSY: Good morning, Chairman Rhodes and Commissioners. Today, I'm presenting on seven petitions for waiver of the Commission's December 2016 order on low-income ESCO customers. Item 204 through 211 relate to the waiver petitions, filed by Agway Energy Services, New Wave Energy Corporation, South Bay Energy
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As background, in the order adopting a prohibition on service to low-income customers by energy-service companies, issued on December 16, 2016, the Commission directed a prohibition on ESCO enrollments and renewals of customers, who are participants in utility, low-income assistance programs, customers we refer to as assistant program participants or A.P.P.s.

The December order provided that any ESCO that believes they are able to provide guaranteed savings to A.P.P.s, could petition the Commission for a waiver of the December order, within thirty days of the order, by demonstrating an ability to calculate what the customer would have paid to the utility, a willingness and ability to assure that the customer will be paying no more than what they would have paid to the utility and the appropriate reporting to verify and demonstrate compliance with these assurances.

Petitioners -- I'm sorry. Petitions were received from three ESCOs prior to the January 16th deadline established in the order. An extension of fourteen days was granted to January 30th, 2017, in
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response to an extension requested by the impacted ESCO coalition. Subsequently, nine additional petitions were filed.

Each of the petitions were SAPA'd, comments were received from the Utility Intervention Unit or U.I. - U.I.U., of the New York State Department of State's Division of Consumer Protection, the city of New York, the Public Utility Law Project of New York or PULP and the New York Attorney General's Office, or the A.G.'s Office.

U.I.E.U. -- U.I.U. requested that among other things, a uniform methodology for the ESCO utility price comparison be adopted, to assure that all customers have adequate protection from potential overcharges and that a condition be imposed, that any waiver is effective for one year and renewable upon proof of compliance. In addition, U.I.U. requested that if ESCOs failed to meet these guaranteed-savings program requirements, the waivers would be revoked.

Finally, U.I.U. suggested that the Commission should impose certain reporting requirements, on ESCOs who are granted a waiver. PULP, the A.G.'s Office and the city concur with U.I.U.'s comments.

Each of the seven petitions before you today, were deficient in some respect, or required
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additional clarification. Staff therefore requests --
requested additional information from each of these ESCOs
and had discussions with each, during its review of the
petitions and supporting materials.

Today we are recommending that the
Commission issue a waiver to Zone One Energy, National
Fuel Resources and Just Energy, to allow these ESCOs to
serve low-income customers.

Zone One and National Fuel Resources
currently offer products that result in savings to all of
their residential customers and they have been providing a
savings to the customers for years. Zone One currently
provides that a saving to electric customers in the Con
Edison territory and National Fuel Resources currently
provides a saving to its gas customers in National Fuel
Gas distributions territory.

Just Energy created a new product
specifically for this low-income -- for their low-income
customers that will provide a one percent savings from
what the low-income customer would have paid to the
utility. And in support of their petitions, Zone -- Zone
One, National Fuel Resources and Just Energy provided bill
methodologies, with the supporting calculations, which
replicate -- replicate the utility tariffs. These
calculations will enable each of these ESCOs, on a monthly basis, to closely bill the low-income customer what the utility would have billed the customer.

In response to Staff's multiple requests for additional information, these three ESCOs provided clarifications and very-detailed information, along with calculations used to determine what the customers' monthly bill for bundled utility service would be, to determine what the customer should be billed for their ESCO service, to achieve those guaranteed savings. Moreover, Zone One and National Fuel Resources, provided sample reports demonstrating the actual refunds and savings that their customers have received over the past year.

Just Energy indicated in its supplemental response, that if guaranteed a waiver and with proper notice, it would enroll all of its existing low-income customers into its new guaranteed savings program, to provide their A.P.P. customers immediate savings. Just Energy also clarified that if a low-income customer cancels before the twelve-month term expires, that A.P.P. customer will pay no more for service, than they would have paid as a full-service customer of the -- their utility for that same period.
In the event a credit is due to a low-income customer, all three ESCOs will provide a credit on the customer's bill, to ensure the low-income customer's savings is credited to their utility account. For Just Energy the true-ups are calculated on a monthly basis, with the credit refunded, annually. For Zone One and National Fuel Resources, the true-up will be calculated monthly and the credit will be provided on the following month's utility bill.

The draft orders before you today require that Just Energy, National Fuel Resources and Zone One report semiannually on the status of their guaranteed savings product as it pertains to their low-income customers. The report should also include the number of customers served, the monthly-calculated billed amounts, the alternative amounts that the utility would have charged and the amount of any refunds or credit issued to the customer, to meet the savings guaranteed.

Finally, while the draft orders grant Just Energy, National Fuel Resources and Zone One a petition for waiver, we believe it's appropriate for the Commission to place a time limit on the waivers. We recommend that the waivers expire twenty-four months from the date of this order.
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During that time period, Staff will review Just Energy, National Fuel Resources and Zone One's compliance with these -- the December 2016 order. These three ESCOs will also, at that time, have the opportunity to petition for an extension of their waiver.

After careful review of the information filed for the remaining four ESCO waivers, Staff recommends denying the petitions by Agway Energy Services, New Wave Energy Corporation, South Bay Energy Corporation and Stream Energy New York, L.L.C. We determined that the -- these ESCOs have not complied with the Commission order, which required them to demonstrate that they can provide a guaranteed savings, compared to what the customer would have paid to the utility and to provide appropriate reporting, to verify their compliance with these assurances.

Agway's Energy petition described the benefits of its energy-guard service, that ensures continued safe operation of its customers heating and cooling systems. Agway's petition, however, failed to provide any details on Agway's ability to provide a guaranteed savings, over what the low-income customer would have paid as a full-service utility customer. Further, Agway did not respond to any of Staff's --
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Staff's additional requests for information.

New Wave Energy's petition described offering three guaranteed savings plans, such as free nights and weekends, flat peak hours and a six-month plan that guarantees a savings of one percent. In response to additional information requested by Staff, New Wave filed an amended petition that offered a variable-rate month-to-month guaranteed-savings plan instead of the three products proposed in its original petition.

Although New Wave's amended petition provided a description of the tools it would use to calculate the utility pricing, it failed to provide the details, specifically the supporting calculations to allow Staff to verify its monthly price and how New Wave calculated the true-up to guarantee the savings. In addition, New Wave's sales agreement continued inconsistencies, such as a fixed-rate offer with early termination fees, which directly conflicts with New Wave's amended petition, stating that it would only offer a variable rate month-to-month guaranteed savings plan.

New Wave also provided a proposed-compliance reporting format, that did not include New Wave's charges, or what the utility would have charged the customer for the full service for that amount of time.
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New Wave provided no supporting calculations to validate its proposed guaranteed-savings product.

South Bay's waiver request described their guaranteed-savings plan, as a monthly savings with a variable price that would be one-percent less than the approximated utility price. South Bay's petition also explained generally, how it would track and report its guaranteed-savings plan. South Bay's petition failed to provide details of the actual-rate calculations and methodologies that would be used to determine its monthly rate.

Staff requested from South Bay, its proposed low-income customer contracts, spreadsheet analysis, with detailed supporting calculations, for determining its monthly price, detailed calculations, verifying the customer did not pay more to South Bay than it would have paid to the utility for the same period and a sample of its proposed tracking and reporting of such savings, to verify compliance. South Bay did not respond to either of Staff's requests for additional information.

Stream Energy's waiver request, describes their current guaranteed-savings plan, as one that attempts to match the utility pricing, to calculate its monthly variable rate along with providing a cash-back re
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-- rewards program that would typically result in the low-income customer paying no more than what the customer would have paid as a full-service utility customer. The low-income customer, however, is required to stay with Stream for twelve-consecutive months to qualify for the cash-back reward.

Stream's petition indicated that an annual true-up would be performed and if warranted, a refund would be -- be provided to the customer. Stream will refund the difference between the rate paid to Stream and the rate that the low-income customer would have paid to the utility for full-utility service. For the cash-back reward the amount of the refund would be subtracted from the customer's cash back reward, to -- to determine the final savings. If the refund equals or exceeds the reward no reward would be given. If refund is warranted at Stream's sole discretion, the refund would be provided to the low-income customer by a check, debit card, preloaded credit, or any other mechanism Stream may provide.

Stream provided a spreadsheet that indicated a cash-back credit amount its customers received. However, failed to include what the utility charges would have been for the same period. It also failed to provide the calculations to verify Stream's
monthly charges and how the utility rates were calculated. Moreover, Stream did not provide the calculations necessary for Staff to validate that the cash-back reward makes up the difference between what the low-income paid -- customer paid to Stream and what it would have paid to the utility as a full-service customer.

Stream's proposed reporting mechanisms failed to provide all the information necessary to validate the low-income customer actually -- actually paid less to Stream, than what they would have paid for full utility service.

That concludes my summary. If you have any questions, we'd be happy to answer them.

CHAIRMAN RHODES: Thank you, Christine.

MS. BOSY: You're welcome.

CHAIRMAN RHODES: My own view is that it's important to reaffirm the standard that we're applying, that we require a demonstrated methodology for guaranteeing savings. I appreciate the Staff -- very much, the work that the Staff has done in assessing these seven petitions and agree with the recommendations by the Staff, as to which meet that standard and which do not meet that standard.

So, thank you very much.
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Any comments, Commissioner Sayre?

COMMISSIONER SAYRE: I agree with the Chair and I also commend the Staff for a very thorough analysis. We've made it clear that energy-service companies can serve low-income customers in this state, if they guarantee savings to our satisfaction. We've said both yes and no to requests previously and these items continue our careful analysis of every such request on a case-by-case basis.

I think we've had enough yeses at this point, to -- to make it clear that there is more than one path to yes and to suggest to ESCOs, who either want to come in initially, or want to come again to serve this market, they're welcome to do so, but they need to follow the rules and meet the requirements and answer Staff's data requests.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: Thank you.

So, while my mantra is it is a process and we continue to need to evolve, to meet challenges and opportunities, I'm concerned about this process.

I think Staff and Christine, you have always done complete due diligence and hard work, and you are a -- a -- a exemplary professional. So, this is not a
criticism of any of your fine work. In fact, I do recognize how dedicated all of the Staff is on these issues.

My concern is this. I -- I -- I feel like we're doing these in a silo and while there seems to be and I guess we can take from the different orders from last session and this session, some takeaways on what would fall into the yes category and what would fall into the no category, it's kind of a secret society, right? You don't really know from the outside, what it is because you're not able to look at the information that the -- that we're reviewing. And so we're kind of asking people to tell -- to meet the -- the test, on what the guaranteed savings is, but we really haven't laid out to them what we are expecting as a guaranteed-savings plan, in a way that for me gives me comfort.

I would -- I feel like at the end of the day, it's better if we look at this from a more holistic perspective, where we have one clear guidepost, guidance order, that says this is what it is, here it is and we will work with you. We seem to be able to do that in -- in other areas and we have -- in the past, we've been able to do that.

In the C.C.A.s, we are not telling them
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that they have to come and get approval via petition, to meet their guaranteed-savings plan, to be able to serve low-income customers. They are allowed to, they continue to do so and they're -- they can adopt it going forward.

But there's no -- so, it seems to me, that it's sort of a fundamental unfairness, that we've only allowed now a certain sector. Now, some would say, well, we told them that they could petition and -- and ask for the ability to do this and we would grant them the waiver.

I'm troubled that Agway hasn't responded. I wonder why. I wonder, you know, for me, you know, Agway to me, I'm just curious, you know, did they not respond because they're giving up in this area? Did they think it was futile?

Like I just -- that's really just from my perspective, wanting to know what it is because we, as regulators, should be evolving to produce the best opportunities and choices for all customers. And so, we should be helping to look at what the barriers may be.

Now, I do understand from the process, that we are trying to get there. We are trying to find that pathway. I just don't know that we've done a good-enough job, at this point. The -- the -- sort of the overhanging issue or the elephant in the room, is the ongoing ESCO
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administrative hearing, that has really sucked the life out of all of us, in a way that is not allowing us to get to the sweet spot of collaboration and coming to the table, all of us and throwing away the blame game, of who's at fault and figuring out a solution that might work. And we need to really kind of work and think about how do we work together to find the solutions that are appropriate for us.

And, you know, again, I go back to the history of where, you know, the ESCO-collaborative process used to work really well, you know, for those who were in it. They were in it, you know, down in the weeds in a way that produced real, thoughtful, helpful, appropriate solutions. I get that not everybody is coming to the table with that same mindset, but we've got to figure it out because it is not helpful.

And so, I really hope that the sweet spot is there and that we can unblock the issues and maybe figure out what works. Bad actors, we don't want. Good actors, those that need to have thoughtful regulators working with them to overcome some of the challenges for the opportunities that are presented for the good of consumers, is what we want to get to.

So, for me I'm not going to vote on -- I'm
going to vote no on these items because it is in -- where I come from, in -- in my process review, I don't think that it is appropriate right now to do picking one over another, without sort of a more holistic approach. We have pending petitions for rehearing on some of the items from last month, that may be food for thought on the ones we're denying now, that I’m concerned about. I think we have one further petition for low income.

Maybe this is helpful, that we'll get more petitions for low income. I doubt it, until we figure out the sweet spot for coming together and collaborating and I really would challenge everyone, everyone, that includes us as regulators, to really try to put aside our differences and work together and -- and try to figure out solutions and craft together some things, so that we can get back to the business that we all want to do, which is, you know, our bread and butter.

And so, that's really -- that's it. That's where I come from. I feel passionate that we can get there, if we try to do that.

So, thanks.

CHAIRMAN RHODES: Thank you, Commissioner Burman. Commissioner Alesi?

With that we will proceed to vote, item by
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So, I will call for a vote on Item 204.

My vote is in favor of the recommendation to the -- to deny the petition by Agway Energy Services, L.L.C., for waiver to serve low-income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Calling for a vote on item 205.

My vote is in favor of the recommendation to approve the petition by National Fuel Resources, Inc., for waiver to serve low-income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.
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CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Item 206, my vote is in favor of the recommendation to deny the petition by New Wave Energy Corporation for waiver to serve low-income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Item 207, my vote is in favor of the recommendation to deny the petition by South Bay Energy Corp., for a waiver to serve low income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.
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CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Item 208, my vote is in favor of the recommendation to deny the petition by Stream Energy New York, L.L.C., for a waiver to serve low-income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Item 210, my vote is in favor of the recommendation to approve the petition by Zone One Energy, L.L.C., for a waiver to serve low-income customers as described.

Commissioner Sayre, how do you vote?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.
CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

Item 211, my vote is in favor of the recommendation to approve the petition by Just Energy New York Corporation, for a waiver to serve low-income customers as described. Commissioner Sayre?

COMMISSIONER SAYRE: Aye.

CHAIRMAN RHODES: Commissioner Burman?

COMMISSIONER BURMAN: No.

CHAIRMAN RHODES: Commissioner Alesi?

COMMISSIONER ALESI: Yes.

CHAIRMAN RHODES: The item is approved and the recommendation is adopted.

We will now move to the consent agenda. Do any of my fellow Commissioners wish to recuse from voting on, or do they wish to comment on any items on the consent agenda?

COMMISSIONER SAYRE: No.

COMMISSIONER ALESI: No.

CHAIRMAN RHODES: Okay.

Seeing none, let's move to a call for a vote.

My vote is in favor of the recommendations on the consent agenda.
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Commissioner Sayre?

COMMISSIONER SAYRE:  Aye.

CHAIRMAN RHODES:  Commissioner Burman?

COMMISSIONER BURMAN:  Aye.

CHAIRMAN RHODES:  Commissioner Alesi?

COMMISSIONER ALESI:  Yes.

CHAIRMAN RHODES:  The items are approved and recommendations are adopted.

Secretary Burgess, is there anything further to come before us today?

SECRETARY BURGESS:  There are no further matters to come before you today.

The next Commission session is November 16th and I'll just note, the start time is at two p.m.

CHAIRMAN RHODES:  Thank you very much.

We are adjourned.

(The meeting adjourned.)
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STATE OF NEW YORK

I, HOWARD HUBBARD, 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 81, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 26th day of October, 2017.

HOWARD HUBBARD, Reporter
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