STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, November 17, 2016
10:30 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS

AUDREY ZIBELMAN, Chair
GREGG C. SAYRE
PATRICIA L. ACAMPORA
DIANE X. BURMAN
CHAIR ZIBELMAN: Well, good morning, everyone. I'd like to bring the session of the Public Service Commission to order. Secretary Burgess, are there any changes to be made to the agenda today?

MS. BURGESS: Good morning, Chair and Commissioners, there's no changes to this morning's agenda.

CHAIR ZIBELMAN: Okay. So good morning, everyone. And in order for us to have enough time on the regular session, what I'm going to do today is take this a little bit of out of order, and we're going to do the consent agenda first.

So I'd like to ask the Commissioners, are there any comments or questions on the consent agenda?

Ms. Burman?

COMMISSIONER BURMAN: Yes. Could you -- can I have our general counsel just clarify the two C.E.S. consent agenda items?

CHAIR ZIBELMAN: Yes. Mr. Agresta?

MR. AGRESTA: I'd be happy to clarify the clarification.

Okay. So there's two items on -- under C.E.S. Item 370 is a clarification. In the C.E.S. order there was a number stated of 0.6 percent and it wasn't
PSC Monthly meeting - 11-17-2016

clear by the way it was stated in the order what that number was meant to be. That number is the progress towards the goal for 2017. It is not the mandate that the LSEs will have to achieve during 2017. The actual mandate is only 14 percent of that number. The rest of that number is going to be achieved through the New York Sun and the customer sided tier programs.

So the clarification is simply that the LSE mandate is .035 percent rather than point 6 percent. And so that has implications for both the -- the people who hide behind the meter of resources as to how those resources are treated and then also has implications for how much the LSEs have to acquire in 2017.

But the clarification doesn't change any of the numbers. It just clarifies how they're characterized. Is that -- do you have any questions on that one before I go to the next one?

COMMISSIONER BURMAN: You can go to the next one.

MR. AGRESTA: Okay. And the next one is Item 374. And 374 is action on a petition by NYSERDA. NYSERDA's petition is not a petition for rehearing. A number of C.E.S. petitions for rehearing were held -- were submitted. None of those are on the agenda for today.
They'll be dealt with at a future session.

So this one was in the C.E.S. order. The Commission as NYSERDA to submit a petition stating what the administrative cost would be and for both the REC and the ZEC programs so that plans could be made for adders to be put onto the ZEC and REC costs so that those -- in other words, it -- it costs money for NYSERDA to administer those programs. It has to be -- it has to get its costs from the participants in the programs. And so we needed to set an adder prior to the beginning of 2017 for RECs and prior to April 1st for ZECs so that NYSERDA could begin to collect those costs.

NYSERDA's petition proposes that the one-time cost to set up the whole system for the new programs under the C.E.S. order, instead of being collected from rate payers and an adder, actually be paid for by monies that have already been collected from rate payers and that NYSERDA has on hand in a cash balance.

The only -- the recommendation in the -- in the item is that the only additional collections be for the annual administration cost for the ZEC program. And there's an adder in there for that.

Also in that order is a NYSERDA proposed standard contracts that it would enter into with the LSEs
So this is just one of the many implementation steps that will be going on at -- over time as the C.E.S. order is implemented. And there should be -- there will be additional implementation steps in the future.

CHAIR ZIBELMAN: But just to be clear, NYSERDA's petition with respect to the administrative cost was in response to the Commission's directive to identify what those costs would be. So this was their compliance
actually of our decision.

MR. AGRESTA: That's correct.

COMMISSIONER BURMAN: So the Commission will have an opportunity to look further, and Commission as a whole, in the implementation plan and different things that come before us?

MR. AGRESTA: Yeah. The implementation plan is not a single document. It will be a number of implementation steps, and they will come to you over time and you'll get another chance to look at all those things and -- and to vote on them as envisioned by the C.E.S. order.

COMMISSIONER BURMAN: All right. And to clarify, we're not deciding the petitions for rehearing at this time.

MR. AGRESTA: No, not at all.

COMMISSIONER BURMAN: Okay. On those two, I have no further questions.

MR. AGRESTA: Thank you.

COMMISSIONER BURMAN: Thank you.

CHAIR ZIBELMAN: I did want to note for the record, just NYSERDA's done a -- I think a very good job of managing how to implement the -- the C.E.S. program at the lowest cost. So frankly, what they've been able to
accomplish through various efforts, I think, is that they're anticipating that the whole of the program, both the -- the R.E.C. program and the Z.E.C. program on average will cost residential consumers about fifteen cents a year.

So if you think about what we’re doing it's a -- it's a great buy.

So any other further questions on the consent agenda?

COMMISSIONER BURMAN: Yes. I have two. On Item 371, can you just clarify what we're doing on this item?

CHAIR ZIBELMAN: Which item? Can you read it so people know?

COMMISSIONER BURMAN: I'll wait until Paul gets to it. This is addressing the time of use issue.

CHAIR ZIBELMAN: It's a -- Mark -- Marco, why don't you respond to that?

MR. PADULA: Sure. So this item is adopting a voluntary time of use rate for National Grid that was actually submitted in compliance with the Commission order in the rate case 12E0201.

COMMISSIONER BURMAN: Okay. So the -- the issue that I have is this docket was opened in 2012, was
part of the rate case, which was decided. And at that time, when the rate case was decided from a joint proposal, there was in the order a decision not to definitively decide the time of use issue and to have the company work with folks and put together a report, which they did December 20th, 2013.

Thereafter, we, in Tract 2, in our REV proceeding, we were looking at and are still looking at time of use issues. And so my confusion here is since I've looked at the full docket, that there's been nothing in terms of a notice or a SAPA on the report that was issued that was back in 2013. So it seems like for some folks that this might come out of the blue in our decision making on what we're doing here.

And my concern is whether we are being clear in our processes where folks were focused on the Tract 2 order and the time of use issues there and now it sort of pops up what might appear to some folks, myself included, to be out of the blue in decision.

I don't necessarily have a problem with the substance. My concern from a process perspective is what if from the time that that 2013 order was written there've been different thoughts, other parties who may have been interested, and we might benefit from a fuller discussion
to make sure that this is the right place to decide that
since people seem to be focused on deciding it in the
Tract 2 processes including, I think, some of the REV
demos, or at least one REV demo.

So from my perspective, the -- the focus I
have in looking at the regulatory certainty and making
sure that when we are doing things we're not making things
less clear, and in fact, people can follow where we're
deciding or where we may be deciding things and the
opportunity that they may have to weigh in before that
decision because my fear is that afterwards we may hear
from folks who have different thoughts from the report
since we never issued it for a notice or comments.

And as far as I can tell, having looked at
the docket, which had a lot of different documents in
there, there was nothing that indicated people thought
they had an opportunity to -- to comment on it. So for
this item, I'm going to be a no purely on the sense that I
do think we need to make sure that we are fully engaging
all parties, including the public on items that may be
relevant, especially when we can look to other areas that
are already underway examining them.

If this report had been written recently, I
might be less inclined to vote no. But since this report
was back in 2013, I'm really very hesitant to, in a broad
brush, say okay and adopt this going forward, so.

CHAIR ZIBELMAN: So before -- first of all, I -- I don't -- because this was on the consent agenda, I
don't like to have things on the consent agenda where
there's a dissent because people then don't know what
we're talking about. Either Scott, Marco, or Paul, I
think that this thing has been amply noticed and that
people know exact -- had plenty of notice and there's a
lot of good conversation about why we were doing this.

So do any of you want to kind of explain
for the other commissioners why Commissioner Burman's
concerns may not be a concern that others share?

MR. AGRESTA: I'm going to pass that to
Marco. But I want to apologize to Marco because I was the
judge who suggested that this needed to be segmented from
the rate case, and handled separate --

CHAIR ZIBELMAN: We'll blame you?

MR. AGRESTA: -- back when it started. And
I know Marco's aware of that.

MR. PADULA: Thanks.

Just to be clear, the -- the report and --
and the associated draft tariffs were SAPA'd, went
through the full SAPA comment period and there were no
comments provided by any -- any -- anybody in the public.

Just to add a little bit of additional information, you know, everything in the rate design behind the voluntary time of use rate that staff actually worked with the company in developing reflects a lot of what the Commission has expressed in the Tract 2 order under REV in terms of getting both a time differentiated delivery and commodity rate and attempting to reflect cost during periods of time when they incur costs by the utility system.

So in my -- in my opinion, the rate that is before us is very reflective of the direction that REV is moving toward, and I would, you know, fully support adoption of this rate at this time.

CHAIR ZIBELMAN: Thank you, Marco. You're welcome to join us any time, too, up here.

But you know, I -- I agree. I mean, I think -- first of all, I think as we said in the REV proceeding, time of use rates are very important element of giving customers who want the opportunity to engage in activities to reduce their energy use, to see that reduction reflected in their energy bills. And it's probably one of the cheapest ways that we can go forward in looking at gaining energy efficiency and the ability to
get opportune -- you know, an opportunity to actually see this happen in action is something I know that National Grid is really anxious to do.

The other piece I believe of this raise is that it also allows as people add on electric vehicles to get the advantage of seeing what it means to plug in your car at night, which is when prices are low. And this could be advantageous to the system. And so there's nothing but good that comes out of this experience, and certainly I think there's been plenty of a debate and -- and earlier on time of use. And so I -- I don't think there's going to be any confusion. And as we've said frequently at this Commission, there's nothing but experience that can help us get to the future. And so moving on these things as opposed to delaying them, I think are very, very important.

So any other comments on the consent agenda?

COMMISSIONER BURMAN: I -- yes. I do want to follow up. And I thank you. I just want to make sure that folks understand that I'm not substantively opposed to this. In fact, I think that it's a -- necessarily could be a good thing.

My real clear message is, is that we need
to be clear on the different dockets that we're following. And when people are focused on other areas where we're talking about electric vehicles or time of use, especially when it's in a more generic proceeding with the Tract Two and being moved forward in that way. But to the extent that we're now dusting off an old report from 2013, especially when at the time that we made that decision, in -- on the joint proposal with the rate case, we had had robust conversation, discussion on that, and we decided that we needed a fuller record, which was why we had the report.

So to the extent that I’m cognizant of the fact that there are other times where we're moving in one direction in another proceeding and it pops up somewhere else, I think it's very important for me to look and say even if I'm okay with this it may be an opportunity to make sure that folks have had a -- an opportunity to give information in a timely fashion, not a few years later. And since they didn't, I would not like to see that we then are subjected to a not -- having a -- as detailed record as we could to make sure that we're laser focused on those issues.

With that -- that being said, I do look forward to our continued dialogue in the REV Tract 2 as it
relates to timely use and how that may play out, especially as it may affect, you know, the residential sector, a number of different folks, including the low-income.

CHAIR ZIBELMAN: Okay. I understand that's your concern and you don't disagree on the substance of issue, Commissioner Burman. But I'm going to be really clear on this.

There was no procedural objection for us moving forward. In fact, Utility wanted us to move forward so they could implement this and get the experience. And there has been no objections. I don't want any confusion that somehow or another this isn't something that everybody wants us to do.

With that, I'm going to take a vote on the agenda. Do you have any further comments?

COMMISSIONER ACAMPORA: Yeah. I just wanted to pop in on this. I know when I was in the legislature many of the elected officials were really interested in New York moving to a time of use rate as something they thought was beneficial. So as the Chair just said, I think there's a lot more support for this than people may think.

CHAIR ZIBELMAN: Commissioner Sayre? Do
you have anything because --

MR. SAYRE:  I would just say -- .

CHAIR ZIBELMAN:  -- I guess we should have

put this on the regular agenda.

COMMISSIONER SAYRE:  I would just say in
general I'm a strong supporter of voluntarily time of use
rates. And I hope this particular structure will spark
some interest and be a success.

CHAIR ZIBELMAN:  Commissioner Burman?

COMMISSIONER BURMAN:  Yes. I'm -- I'm

going to move to Item 372. Item 372, if you can just give
me a brief explanation on this farm net metering item, I'd
appreciate it.

CHAIR ZIBELMAN:  Who wants to take that?

Michael?

MR. WORDEN:  Sure. I'll take that.

CHAIR ZIBELMAN:  Mr. Worden?

MR. WORDEN:  So the -- the -- the -- the
primary focus of 372 is to raise the cap on farm waste net
metering from 1 megawatt to 2 megawatt to comply with most
recent P.S.L. changes. That's essentially the reason for
this item.

CHAIR ZIBELMAN:  So we're implementing a

statutory change.
MR. WORDEN: Correct. The Power Coalition did raise some concerns about billing that the item offers a -- a way of addressing. You know, we would be addressing these outside of the item if we didn't have an item. But you know, the essence of the item is to raise the cap from 1 to 2 megawatts.

CHAIR ZIBELMAN: Which is something that the agro business, particularly, and agricultural waste is looking for. So and, you know, obviously, that's a very important market because U.S. -- or New York is leading in this area, and -- and many of our farmers are looking at these types of projects that could be beneficial to them.

MR. WORDEN: They're very anxious to get this one to two megawatt cap raised, again, in compliance with the change to the P.S.L.

COMMISSIONER BURMAN: Right. So this P.S.L. Section 66-J I'm very familiar with, and looking at it, I do think that the parties who submitted comments made a compelling argument on their concerns and the need for us to look at ways that we can promote and advance their on-farm anaerobic digester systems and looking at ways that we can work from the perspective of different processes that they're concerned about.

We have in other areas when it comes to
process issues, interconnection issues in particular, which they also raise, we have had an opportunity where we have an ombudsman looking at those issues and working with folks.

I am laser focused on the need to make sure that we fully understand that -- the farmers' concerns here. So I'm highlighting as understanding the importance of it, but also to the extent that it references Public Service Law 66-J, there is a pending petition for a hearing on another aspect of the net metering different from the farmers which has been pending where I did dissent. That dissent does not conflict with my decision to go forward here. In fact, in some ways, to the extent that here we are saying that we can't go further because of the statutory construct that limits us at this time, and we're implementing the statute amendments that are necessary and the tariffs, I do just want to highlight the need to address the ongoing petition for rehearing, which again, with net metering, there are many different proceedings and many different focuses with that.

So to the extent that there may need to be some clarification overall, it's important to me that we're laser focused on making sure that we are taking into consideration all the competing interests and the issues
relevant to that, so thank you.

CHAIR ZIBELMAN: I appreciate your concern on that. Actually, as a matter of fact, I think the order calls out the fact that the -- the issues related to pricing is something that is going -- is being addressed in the value of distributed energy resources docket. We recently received staff's white paper on that and would expect are going to be getting comments and will be looking at that. And I -- and so that's one piece.

The other aspect of concern that folks have raised is -- is around interconnection processes, and we've got numerous activities both at a technical level working with the utilities to address those concerns as well as I know some pending proceedings to make that work better. Plus, of course, we have put in place the ombudsperson to -- to work with distributed energy resource providers as well -- of all types, and as well as NYSERDA's done the same.

And I also want to note that the utilities have also put people in place to work with developers to make sure that there is focus. So I -- I would think that we should all -- you know, one thing that I would say is there's many, many activities that are going on, and people are very focused. It's a -- I think a big
attention on part of our staff but also many others because one thing that's happened in New York as a result of REV is we've really changed the corn -- turn -- turned the corner on this.

And our utilities, rather than looking for ways to impair or impede distributed energy resources, are working very hard to figure out to use -- how to put in place best practices. And I'm hearing from a lot of the utility executives that they're really pushing on their folks to rethink these things and -- and be the smartest people on the block.

So I would say more than laser focused on this. We are definitely advancing well beyond other states in our thinking on how to work with distributing energy resource providers. And that's something I think we should all be proud of.

Mr. Weiner.

MR. WEINER: Yes. I just want to make the point that the agro business interests, specifically cow power, have been and continue to be very active participants in the value of D.E.R. proceeding. Of course, that report was recently issued -- a staff report and recommendations was recently issued. It's been SAPA'd now for comments, and initial comments are due in
a couple weeks.

CHAIR ZIBELMAN: Okay. Thank you.

COMMISSIONER BURMAN: Thank you. That's very helpful.

CHAIR ZIBELMAN: Any other comments on the consent? All right.

So I'm going to move. All those in favor of the items on the consent agenda please indicate by saying aye.

MULTIPLE: Aye.

COMMISSIONER BURMAN: And aye for all except 371. As to the process, I'm dissenting, and as to 370 and 374, these are the C.E.S. related items, and I am concurring as I did in the original majority opinion.

CHAIR ZIBELMAN: Okay. With that in mind, I'm hearing opposition to only one. All the recommendations are adopted, and we can all proceed. So thank you.

So we are going to turn now to the -- to the regular agenda. And before we proceed on that, I do want to note that Senator Ritchie is with us today, and I, you know, certainly want to note my appreciation for the support and continuing support that Senator Ritchie has provided to the Agency and certainly on the topic of the
Fitzpatrick plant, so welcome and -- and thank you for joining us.

So first of all, before we proceed on this matter, I think we've all -- everyone has been Mirandized on the rules of this agency. So you know, I -- we appreciate everyone's attention. We think this is really and a very critical matter. We are appreciative of the fact as an agency we get to contribute so much to this state and welcome everybody here. But would ask that you respect our process and respect each other. So we ask that there be no commentary, no noise, and that if you have a sign you don't block the people behind you. So we would ask you not to lift your signs so that folks who might want to see our gorgeous faces can see them, so.

With that, I'm going to turn to Mr. Belsito who will be introducing the matter. And so on the regular agenda, we're talking about Item 301, which is the joint petition for the transfer of the Fitzpatrick Nuclear Power Plant and declaratory ruling. And Anthony Belsito is in our counsel's office will be presenting this item. And we have staff also available for questions. So Tony, please proceed.

MR. BELSITO: Thank you, Chair,
As you say, the purpose of today's session item is for the Commission to consider the joint petition of Entergy Nuclear Fitzpatrick, LLC and Exelon Generation Company, LLC for the transfer of the James A. Fitzpatrick Nuclear Power Plant from Entergy to Exelon.

This matter has generated a considerable amount of interest by the public. But from a regulatory point of view, the matter before you is relatively straightforward. In fact, your review under the Public Service Law and the state's Environmental Review Law comes down to four essential questions. These tests are the same tests or the same questions that the Commission applies to every Section 70 transfer petition.

First to consider is whether the transfer will cause significant impacts to the environment. Second, does Exelon, the buyer, have the financial and operational capacity to make the transaction economically feasible and to operate the plant in a safe and reliable manner? Third, will Exelon's ownership create the potential for undue market power, Exelon's ownership of the plant as well as its existing assets. And fourth, is it appropriate for Exelon as the new owner to be regulated in the same manner as the existing owner, Entergy?
PSC Monthly meeting - 11-17-2016

As I'll describe, it is staff's recommendation that the proposed -- the proposed transfer passes each of these four tests and is in the public interest. Therefore, joint petitioners under the relevant statutes are entitled to approval of the petition. A little background on the plant -- the Fitzpatrick Nuclear Plant is located in Oswego County and has a generating capacity of approximately 882 megawatts.

We began commercial operation 1975 and is operating under a license from the Nuclear Regulatory Commission that does not expire until 2034.

Fitzpatrick is an important contributor to the state's clean energy electric resource portfolio. And on November 2nd of 2015, Entergy filed a formal notice of intent to retire the Fitzpatrick facility. Exelon wants to purchase the plant and would like to keep it running. On July 22nd, 2016, Entergy reaffirmed that the Fitzpatrick facility will be permanently retired if the transfer to Exelon does not go through.

Regarding the first test, the environmental impact test, approval of the transfer is not expected to have any negative -- significant negative impacts on the environment. To the contrary, the transfer will facilitate continued operation of the facility and
maintenance of an important source of clean energy for the state's retail energy customers.

The transfer does not involve construction or new construction or any physical modification to the environment or to the existing community -- excuse me.

Further, approval of the transfer will not result in the creation of environmental hazards or result in adverse change to natural resources. To the extent approval of the transfer facilitates continued operation of the Fitzpatrick facility, impacts from that continued operation have already been considered when the NRC considered and approved the license through 2034 of the Fitzpatrick facility.

As for the second test, the financial and operational capacity test, Exelon has an investment grade bond rating and has the necessary assets and revenue to be financially qualified. It also has significant nuclear operation and management experience. It currently has ownership interests and operates thirteen nuclear plants consisting of 22 generating facilities including several in New York.

As to the third test regarding market power issues, staff has reviewed the impact of the transfer on the relevant markets and recommends that the Commission
find that no horizontal market power issues or concerns exist that are sufficient to warrant disapproval of the transfer.

As to vertical market power, Exelon does not own any transmission or distribution assets or facilities that would be used to give preference to its generation assets.

As to the fourth test regarding the appropriate regulatory regime, in the past, the Commission has considered at great length the appropriate regulatory regime for nuclear facilities. That regime is currently applied to Entergy's operation of the Fitzpatrick facility. Staff recommends that nothing in this transition alters the reasoning or circumstances relevant to the regulatory regime of the Fitzpatrick facility and that the same regime should be applied to Exelon if the transfer goes through.

The recommended -- the recommendations I have summarized here are described in much greater detail in the proposed order along with an analysis of all the comments that we received regarding the petition. If you vote to approve the recommendations, you'll be voting to approve both a negative declaration regarding the likely environmental impacts of the transfer and approval of the
transfer and regulatory regimes sought in the joint petition.

This concludes my petition. This concludes my presentation, and staff is available to answer any questions you may have.

CHAIR ZIBELMAN: Great. Thank you. Thank you.

So first of all, I -- I agree that -- or note that the factors that, as Tony has talked about, that we talk -- that we look at when there's an asset transfer for determining the public interest are factors that the Commission has applied in many, many asset transfers in terms of what is the public interest, how do you define it when someone's selling a generating plant in a wholesale -- in a competitive wholesale market. And I -- you know, I would think that we could all agree that these factors have withstood the test of time, which is I think probably the best test of whether we're satisfying the public interest when we -- when we look at these types of things.

You know, we -- we do worry about the environmental impact. We worry about whether there's an adverse impact on the competitiveness of the wholesale markets. We certainly worry about whether or not the new owner of the plant is going to be able to operate it in a
reliable and safe manner. Do they have the financial wherewithal.

And of course then, the -- then the other question that's before us today, which I think is whether we should continue to forebear from applying regular -- all aspects of our regulatory authority and oversight in what's relevant in the context when you have a competitive wholesale market and owners of competitive generation and whether or not do those -- that balance that we strike in terms of how best to regulate in this context should continue as is.

Like, as Tony mentioned, that these are very straightforward analyses from our perspective and very consistent. We apply them -- have applied them, and they've worked. And I -- you know, and so from my purpose, it's exactly what we should do here.

I recognize that there's a -- this is a significant transaction for this state, that it's obviously very critical for the state to be able to meet its environmental objectives. But it -- in my opinion, when you have something as significant as this, that is the time for actually consistency and it would be certainly inappropriate for us to vary how we look at these transactions to determine how best to proceed either
because of or in spite of the importance of this transaction to the state.

So I am very comfortable that the requirements that we've imposed are consistent with the requirements and the analysis we've done in the past, and I intend to vote for the recommendation.

Any other questions or comments? Mr. Sayre?

COMMISSIONER SAYRE: This is a business-as-usual case. I concur with staff's recommendation that transfer of ownership here has no negative impacts on the environment and does not create undue market power.

The proposed new owner is fully qualified financially and operationally to run the plant. That's enough under our settled process to approve a transaction like this, and I see no reason in this situation for us to abandon our settled process for determining what is in the public interest.

So I, too, will be in favor of this item.

CHAIR ZIBELMAN: Commissioner Burman?

COMMISSIONER BURMAN: I think I have a question for Warren.

MR. MEYERS: I'm sorry. I spent the entire election season yelling at the TV, so I was watching it on
TV instead. I apologize.

COMMISSIONER BURMAN: We can do it that way if you want. Could you explain the market power test, the horizontal and the vertical, and go through --

MR. MEYERS: Sure.

COMMISSIONER BURMAN: -- the differences for people to understand?

MR. MEYERS: Sure. So horizontal market power is whether or not you have a large enough share of a particular market to withhold some of your output to drive the price up and do it profitably. Vertical market power basically requires horizontal market power in one market and then using it to leverage a related market.

In this case, the -- the most important related market is transmission and gen -- related markets are transmission and generation. And just to get rid of vertical market power quickly, they all note transmission or distribution resources in the state, so that was a no-brainer. They really didn't have an opportunity to leverage the monopolistic ownership of the wires to enhance their profits in the generation market.

Horizontal market power analysis in this case, there -- there was a filing from the joint petitioners that pretty much follows the FERC approach to
horizontal market power analysis, H.H.I. analysis, which is really just sum and squared of market share. So look at the market shares and then square them and sum them. And the reason for squaring them is because it -- it -- it exacerbates or -- or enlarges the large ownership of market share by squaring it. It -- it really emphasizes when one or more parties have too much of a share of the market.

In this case, Entergy currently owns -- in -- in the entire New York generation market, about 7 percent of the market, and Exelon Constellation about 6 percent of the market, which makes them fourth and fifth in line behind larger owners of shares in the market. And it really just swaps a little bit of that. It -- it swaps about two percent on the entire market where the market share form -- from Entergy goes down from 7 to 5 percent, and the market share for Exelon goes up from six to 8 percent. So they just switch positions from 4 and 5 to 5 and 4.

So but we -- we look at -- in -- in New York State, I know I'm a little biased, but I think we do a better job, a more focused job at looking at market power than the FERC does. And so we looked all of the traditional things that we look at for market power given
the specific things we know about each individual
transaction, looked at them here just as we look at them
in any case, including when these were divested or from
the utilities, when -- when the nukes were divested from
the utilities. And it raises, according to all the due
diligence, zero concerns from our office point of view.

COMMISSIONER BURMAN: Thank you. I'm going
to save my -- .

CHAIR ZIBELMAN: Oh, please, please proceed
now because I'm going to ask Commissioner Acampora to go
next.

COMMISSIONER BURMAN: Right. I'm going to
save it for when I vote and my explanation when I vote.

CHAIR ZIBELMAN: I would ask that we just
do our comments now.

COMMISSIONER BURMAN: It's part of my
decision, my vote.

CHAIR ZIBELMAN: Commissioner Acampora.

COMMISSIONER ACAMPORA: Warren, you had
mentioned that, you know, we do our examination better
than FERC. That's no problem. I like to hear that.

However, I -- and I don't know who will
answer this -- are there other agencies that need to look
at this either on a state level or a federal level?
MR. MEYERS: Typically, it's us and FERC who approve this.

COMMISSIONER ACAMPORA: What about the Department of Justice?

MR. MEYERS: Well, they certainly implement the antitrust laws in this country, but there's a lot of state action going on here. So I -- I'm not going to opine on the law. I'll let Paul.

CHAIR ZIBELMAN: Paul?

MR. AGRESTA: They might advise FERC, but I -- I don't think there's an actual approval -- .

COMMISSIONER ACAMPORA: Right. But they advise then FERC. Has -- has that been approved or disapproved?

MR. AGRESTA: Not yet.

COMMISSIONER ACAMPORA: Or when does it go there? Do we know that? It just happens.

CHAIR ZIBELMAN: There's a pending proceeding at FERC, right?

COMMISSIONER ACAMPORA: I would think so, yeah.

CHAIR ZIBELMAN: On -- on the trans -- the same -- under Section 203 of the Federal Power Act there's a petition, and FERC will look at it in due course.
MR. AGRESTA: And they also go to the Nuclear Regulatory Commission, but not for market power issue.

COMMISSIONER ACAMPORA: Right. Yeah. Okay. Well, as Commissioner Sayre and the Chair has already said, I've been here long enough to know that this is a straightforward -- and Tony did a very good job in laying this out. So this is -- this is nothing new under the sun as part of the work product that we do here and have done all through the years. So I will be voting in favor of this item.

CHAIR ZIBELMAN: So now I'm going to move to a vote. Commissioner -- Commissioner Burman, would you like to now comment?

COMMISSIONER BURMAN: Yes. For my explanation on my voting, yes. So I do think that this is a significant item, and when I look at it, it comes to me in what is my obligation as a decision maker. And I have, as my colleagues have, spent tireless hours going through the record and hearing from folks on both sides of the issue.

Public Service Law Section 70 is really the -- the vehicle right now for decision making and the legal standard of review for that. And there's really three
prongs that we have to look at. We have to first look at the financial viability of the buyer and whether they have sufficient financial resources to make the transaction feasible.

The second is whether is they have the ability to render safe, adequate, and reliable service from the facility. And then the third comes down to the market power issues. If those three are met favorably, then the transaction can go forward.

There has been a lot of side issues that are in this proceeding, very important side issues, but the public interest legal standard really comes down to those three. At times, we can get lost in those side issues and there may be opportunities where we address them.

But we also have to look at what our jurisdiction is and what's in our lane. And what's there right now are these three prongs. So for me, when I look at side issues like NYPA's letter of credit or the decommissioning funds, neither of those are under our jurisdiction. Those aspects are not part of the decision today. They're not going to be coming before us.

The same with the NYSERDA agreement -- our decision today is separate and apart from those, and it's
separate and apart from the Clean Energy Standard as a whole. So when I look at this, I'm very mindful of the passion on either side. But I am comfortable in voting for this at this time because the public standard legal review has been done, and I believe that all three aspects -- prongs are met.

And therefore, it's -- it's important to recognize what we've done today with that and understand that it is a transaction under the Public Service Law Section 70. And the other aspects are not under Section 70, and therefore, don't come before us for decision making.

So I want to be clear in what I am voting for, so I concur on that.

CHAIR ZIBELMAN: Thank you.

So first of all, I -- you know, I appreciate all of the work that the staff has done on this as well as parties and the Commissioners' attention. I also want -- appreciate the attention of the folks in this room and your -- your respect for our process.

You know, clearly under the leadership of Governor Cuomo as well as the legislature and responsible administrative agencies we're doing something really important in New York, which is to show that if you pursue
climate change and a reduct -- and in a -- the battle
against climate change in a balanced way, you can achieve
both the environmental objectives and economic objectives.
And that what we can do and what we're doing today with
this type of proceeding is showing that we can get to
where we want to go in terms of reduction of fossil
emissions in a way that's both good for -- and necessary
for the -- the environment and also good for the economic
pocketbook.

You know, it's -- it's -- although we
didn't plan it, just it's interesting that we're -- we're
discussing this matter during a time when people are in
Morocco trying to figure out how do we effectively combat
climate change across the world. And what I'm hoping is
that the leadership that New York is -- is showing, the
path that we're taking, which is to recognize that what's
good for the environment can also be good for the economy,
is a path that I believe can show the rest of the nation
and rest of the world that we can get there when you get
there in a deliberate and planned way.

Now, I -- I recognize that there's some
folks who be -- who would like to see the nuclear plant
close, but that really does, as we said in the C.E.S. --
C.E.S. order, fly against the fact that every time a
nuclear plant has closed it's been replaced by increased fossil emissions. That's what we've seen, certainly are seeing in Germany today and are seeing in -- in -- in the New England states.

And so what we are recognizing is that by maintaining the operation of the Fitzpatrick plant, not only as well as the other nuclear units in the C.E.S. order, not only are we retaining thousands of jobs, we're also helping get to our goal in New York to reduce emissions by 40 percent by 2030 and doing it in a way as the least cost from an economic perspective through the entirety of the C.E.S.

So while -- what I would like to think about because, you know, as we talked about when we approved the C.E.S. order, we really are the last generation that's going to be able to combat climate change. As rather than fighting, let's figure it out. We have a lot of wind we need to develop in New York. We have a lot of solar we want to develop in New York. There are a lot of other renewable resources that we want to develop.

We want to pursue an awful lot around energy efficiency so that we can get to emission reductions. And to me, what we're looking to do in New
York is to make sure through these types of trans -- through today and through our actions in August that in the end what we're going to be able to show is that we can achieve both very important aspects for the environment as well -- and do it in a way that's economical for the state. And I -- I would ask and invite, you know, everyone to, now, let's get on with it and really move forward in -- in where we need to go.

So with that, I am going to move to a vote.

Do you have a further comment?

COMMISSIONER BURMAN: I just want to make clear that as to the pending petitions for rehearing, none of us, including you, have -- are taking a position on that, on pending dockets.

CHAIR ZIBELMAN: No. I'm not taking a position on pending dockets. And thank you for the clarification. I'm really talking today about reiterating why we need to move forward with this transition and why we approved the C.E.S. in the first instance.

So with that -- and thanks for the clarification. I appreciate that. Let me -- all those in favor of the recommendation on -- to approve the transfer and continued lightened regulation as to conscribe, please indicate by saying aye.
MULTIPLE: Aye.

CHAIR ZIBELMAN: Opposed?

Hearing no opposition, the recommendations are adopted. So thank you very much for joining us.

CHAIR ZIBELMAN: We'll take that. But are there any other items that come in front of us today, Secretary Burgess?

MS. BURGESS: There are no further items, and the Commission's next meeting is December 15th in the New York City office.

CHAIR ZIBELMAN: Great. Thank you. Thank you.

(The hearing concluded.)
STATE OF NEW YORK

I, JANET AXTON, 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 39, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 24th day of November, 2016.

JANET AXTON, Reporter