HEARING CONVENED AT 10:30 a.m.

PRESENT:

AUDREY ZIBELMAN, CHAIRPERSON

DIANE X. BURMAN, COMMISSIONER

GREGG C. SAYRE, COMMISSIONER

PATRICIA L. ACAMPORA, COMMISSIONER
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THE CHAIR: So we'll be bringing the session of the Public Service Commission to order.

Secretary Burgess, are there any changes you're aware of to the final agenda?

MS. BURGESS: There is one change to the agenda. Item 375 which is case 14-E-0151, which is the Petition of Borrego Solar Systems, on behalf of multiple stakeholders, in relation to net metering is being moved to the non-consent agenda.

THE CHAIR: Okay. Thank you.

So on this last session of 2016, we're going to be making a change to how we normally organize our agenda and I just want everyone to be aware so there's no confusion. As always, we have a regular agenda, and a regular agenda consists of matters that are either major decision matters for the Commission or major policy matters that I believe is -- need to warrant a staff presentation and further discussion and so they will stay on the
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regular agenda. We also have the consent agenda, and the consent agenda consists of matter that all of the Commissioners have agreed to and have indicated they have no further comment or questions and did not involve major policy changes or anything that warrants further discussion so are just going to be taken care of as a group as a voice vote. And then the non-consent agenda consists of matters that normally would be on the consent agenda but that an individual Commissioner or Commissioners believe -- have indicated they're not in total agreement with or have additional questions. And so while there will be no staff presentations on these, we'll take additional questions.

So the way we're going to do this is we're going to start with the non-consent agenda and these -- all the items on the non-consent agenda were items that Commissioner Burman indicated that she had additional questions or would not be agreeing to.
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So before we proceed on those, let me just start off with asking Commissioner Sayre and Commissioner Acampora, are there any items on the consent agenda that you would like to get moved to the non-consent agenda? Either one of you.

COMMR. ACAMPORA: I have read through the various items and was briefed on all of these items, read through them again in case I thought I might have missed something, and I would move to, as far as I'm concerned, back to the consent agenda.

COMMR. SAYRE: And I've been over each of the items on both the consent and the non-consent agenda several times, first when they were initially proposed for the agenda and then with each successive draft of the orders. I've been briefed on them by staff, all my questions have been answered. I've followed my fellow Commissioner's questions and staff's responses to them on each of these items and at this point I do not have any additional questions or issues with these
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items and I'd be fine moving them back to the consent agenda.

THE CHAIR: Commissioner Burman, are there any items on the non-consent agenda that you would like to see moved back to the consent agenda?

COMMR. BURMAN: No.

THE CHAIR: Okay. So with that, let us just then vote on the -- the first thing I'd like to do then is vote on the consent agenda, and all those in favor of the recommendations on the consent agenda, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Opposed?

(No response.)

THE CHAIR: Hearing no opposition, there being no opposition, the recommendations are adopted.

So now we're going to move to the non-consent agenda, and what I'm going to do is just ask the appropriate staff member to just describe what the item is about and then we'll take any questions or comments.
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beginning with Commissioner Burman since
she's the only one whose indicated a
request to discuss them.

So item number 162, Ms. Scherer.

MS. SCHERER: So item number 162 is
case 10-G-0299, Parkline Apartments versus
Brooklyn Union Gas Company and it's the
appeal of an informal hearing decision.

The customer appealed the informal
hearing decision because the customer did
not believe that he was responsible for
$95,000 worth of commodity charges which
were billed by Hudson Energy. He did not
believe he was responsible for the charges
because the contract was not countersigned
by Hudson Energy. The appeal upholds the
informal hearing decision and finds that
the customer is responsible for the 95,000
in unpaid commodity charges, and it also
indicates that the, although loss of meter
adjustment was provided to the customer on
the distribution charges, it really wasn't
warranted and should not be provided to the
customer on the commodity charges.
THE CHAIR: Thank you.

Ms. Burman, your question or comments.

COMMR. BURMAN: Thank you. And I do appreciate, you know, this has been a long time coming in making sure that it's reflective when it says the consent agenda, that if there are things that I or other Commissioners may not fully agree with or still have some questions that it is a way of making sure that that is an opportunity at session and also not to have folks think that we're all in agreement.

But just a clarification, when I ask for something to not be on the consent agenda, it does not necessarily indicate how I may vote and in fact, all of the items whether they're on the consent agenda, non-consent agenda or the discussion, I don't share with anyone how I am going to vote until I actually am voting. I may indicate internally to counsel a particular way, but I reserve right up until the time of my vote, voting
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a certain way. And so any item that's on there should not be a nod to folks to think that I'm either an up or down on any of the items.

So with item 162, when I look at this, my question is really, as I read this, this is a complainant who's a ratepayer with a 30-unit apartment building in Brooklyn and was an ESCO customer, and this complaint was brought in 2009. Ultimately, the complaints against the ESCO was found to not be valid and is being dismissed.

The question I have is this complaint was brought in 2009, the informal hearing decision was in 2010. So I -- is this an outlier in terms of when Commission decisions from an informal hearing come before the Commission? I know that I've seen a number over the last few months that seem to be from 2008, 2009, 2010. I think I even saw one in 2007. And since it also deals with significant monies, that the ratepayer believes he or she might be due,
I am concerned about our backlog, if there is one.

THE CHAIR: Luann, go ahead.

MS. SCHERER: So as we've discussed with you and the other Commissioners, there is a significant backlog in the Appeals Unit. I think at the beginning of 2015 when Mike Corso took over the unit -- or took over the Office of Consumer Services, there was a backlog of 97 appeals. This year we closed more appeals than we opened which is great news. Our goal is to dismiss with the appeals backlog by the end of 2017 due to the support from the Chair and from Tom Congdon. We have formed an inner agency -- or inter/intra agency team of senior staff who's also going to help with appeals. We've hired a manager. We now have four staff so I think we're right-sized for the future and, you know, I think we're on top of it.

This is the -- this Parkline is the oldest appeal that we have so you should expect to see probably four appeals at
least on each session going forward and we're trying to cure the backlog as quickly as possible.

THE CHAIR: May I add to that? So when I came to the Commission, there was a problem with the backlog. Part of the problem is, of course, that these appeals process can be elongated because of complaints from individuals, but also we continue to get more appeals and there was a question of staffing. One of the things that I asked Mr. Corso when he took over and then when Luann took over Operations is that they really focus on removing this backlog and I am pleased with the work they're doing.

The other thing I'm particularly pleased about is that not only are the people in Office of Consumer Services now looking at this, but Luann has also assigned a number of other directors as well to start looking at this. And I even have a Commissioner or two who've agreed to look at these appeals and help us because
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we think it's so important to get through these, and I think that as we found through dedicated action and really making this a priority for the Commission for the first time we're able to work on these things through.

So while I think nobody wants to see a backlog, what we recognize is that it's very important and this is really the renewed focus we have on Consumer Services in the Commission starting with the appointment of our first consumer advocate.

COMMR. ACAMPORA: Can I just --

THE CHAIR: Yeah. Sure.

COMMR. ACAMPORA: I feel like a historian, but since the day I came onto the Commission, I think that there always was a huge backlog, much larger, and Luann, correct me if I'm wrong, larger than what it is now. So I really do commend the Chair, and Luann, and Mike Corso, and all the people who have been involved in trying to whittle these down. And it's always been about staffing problems. That's very
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difficult. And some of these cases do go on and on because after the appeal then there's more appeals all the time. So this really is nothing new and that's why I had no problem and I'm glad that, you know, we're seeing this and we're seeing it again, as you said, whittle down to something that's more manageable.

THE CHAIR: Commissioner Burman.

COMMR. BURMAN: Thank you.

So -- and I am glad to hear that we are sort of whittling down the hearings, the decisions and the backlog. Since I've come on the Commission, I've been laser-focused on that backlog. I would like to see a list of all the pending appeals with the dates of the informal hearing decisions, as well as the money that may be involved and whether or not it's a residential or a commercial customer because I do think it's important that we have a full understanding of the amount of money that may be there, especially if a decision -- the informal hearing decision
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granted relief to the complainant and they are thinking that they are getting money or not having to pay and then later we may disagree with the informal hearing decision. So that shock to the ratepayer, it could be significant, so I would appreciate that. Thank you.

THE CHAIR: Do you have any further comments on this matter?

COMMR. BURMAN: No, not on this one.

THE CHAIR: Okay. All those in favor of item 162, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Opposed?

(No response.)

THE CHAIR: Hearing no opposition, the recommendations are adopted.

The next item is item 169 and that's in the matter of Heating Fuel Oil Supply Coordination with Interruptible Gas Services.

Cindy McCarran, can you just give us a quick overview of this item?
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MS. McCARRAN: Sure. It would be my pleasure to.

So item 169 is case 15-G-0185. It deals with interruptible gas service customers. It implements gas utility supply coordination with interruptible gas service customers. It requires daily communication with demand response customers prior to and during interruptions, and additional unannounced tasks by January 31st of each winter, affidavits of customers attesting to compliance with the utility tariffs, and those affidavits must include the customer's alternate fuel supplier information so that if the utility needs to contact them they have that information.

THE CHAIR: Thank you.

Commissioner Burman, any questions or comments?

COMMR. BURMAN: Thank you.

So, I am glad to see this. I think it's important that we look towards better coordination each and every year, working
with, as we look at our winter reliability issues as well as summer reliability, and to the extent that we need to be laser-focused on the interruptible customers.

I was struck by this item in that when I went back and read the filings that had been put in there, two things sort of struck me about this item which I was glad for the opportunity to look at, is that Consumer Power Advocates which is an alliance of large not-for-profit institutions in the Greater New York region which involve hospitals and universities as well as other large non-profits, they filed initial statements that said due to air quality concerns, natural gas has become the preferred fuel for many large boilers in New York City. So therefore, especially because it's important that hospitals and universities, et cetera, don't have problems with their reliability of their system, it's important that we take into consideration their thoughts on this, and I
was happy to see sort of the diligence of their filing in trying to drill down on it. And then I was also struck by the multiple intervenors comments that was talking about, and I want to make sure I get this right, in their footnote, one of their comments, they said that, "Due to the shortage of available intrastate natural gas capacity, interruptions have been called more frequently and for greater durations." And so that as a result, they believe that interruptible customers have been forced to burn larger amounts of higher cost alternative fuels, and the higher cost of these alternate fuel far offset, in their opinion, any savings obtained from interruptible service during the remainder of the year.

They also called for, in light of their critically important nature of intrastate gas pipeline capacity with respect to reliability, energy affordability and the ability to achieve certain of the state's energy initiatives,
they asked that the Commission institute a
more detailed inquiry into further
consideration and identification of a means
to increase the availability of intrastate
pipeline capacity in New York through a new
proceeding dedicated to addressing those
issues. I don't believe we've opened up a
new proceeding on that but I wondered if
you could talk a little about what we are
doing with that.

MS. McCARRAN: Sure. Yeah. So, you
know that staff every year in the
summertime does what we call the winter
supply review and we meet with all the
utilities and we go over their five-year
plans. So we have those meetings every
year and then that's the basis of our
presentation in October to the Commission
every year, so we do that.

You know, other than that, we have
been having a lot of conversations at the
staff level. There hasn't been an
affirmative decision made yet for a
proceeding but we're certainly continuing
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to look at that and we're certainly, you
know, cognisant of the fact that, you know,
there are several pipeline projects that
are on hold right now, so we're looking at
that situation.

THE CHAIR: Just if I can, because I
think this, you know, we don't normally
speculate on future items we have. The
staff is working with the utilities. We
certainly have in our minds what's gas
requirements not only for this year, in the
future, and certainly if necessary, we
would bring a proceeding in front of the
Commission.

COMMR. BURMAN: And we also have
that old 2012 natural gas proceeding that I
don't think we've seen activity on that.

I did -- you know, the reason this
struck me also was that, you know, again,
multiple intervenors is a large group of
customers, large industrial customers and
so it's important to, especially with our
economic development initiatives, that we
look carefully at that.
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I will say I was also struck, I read the other day that National Grid with the Saratoga Economic Development Corporation as well as -- and I'm blanking on the third party -- oh, Global Boundaries, have also undertaken a study on the reliability of this system up there. Are we involved in that.

THE CHAIR: You know, I'm going to move for a vote on this. I understand you have a lot of questions, but this has nothing to do with this particular matter which because we have a big agenda, I'd like to just move for a vote. So --

COMMR. BURMAN: That's fine. I will just point out that I am reflecting upon the two filings that talked about this in here and is actually in the order says that they, you know, we didn't necessarily drill down and decide those specific items. So I wanted some clarification, but that's fine, we can move for a vote.

THE CHAIR: We are going to move for a vote and it wasn't a subject of this
which is why we didn't address it.

So all those in favor of item 169, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR:  Opposed?

(No response.)

THE CHAIR:  Okay.

MS. BURGESS:  Excuse me. Can I ask the Commissioners just to speak closer to the microphones because sometimes your voices aren't being picked up to those who are hearing outside. Thank you.

THE CHAIR:  Thank you.

The next item is item 170 which is with respect to a Waiver of Certain Tariff Provisions, and Cindy, please proceed.

MS. McCARRAN:  Sure.

Okay. So this is case 16-G-0554, item 170. It's the National Grid New York or what we call also KEDNY, Petition for a Waiver of their Annual Reconciliation of their Gas Adjustment Clause which is a filing that is required to be made per Commission regulations. They ask for a
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waiver of the requirement that the GAC surcharge which would go into effect on January 1st, coincident with KEDNY's rate increase, the regulation requires that the surcharge go into effect on January 1st, they would like to have that waived. Instead, they would like to phase in -- they asked to do something different, but staff is recommending to the Commission that the surcharge be phased in after the first three months of the winter and then collected during the remainder of the year so that the same dollar amount would be collected but it would just be delayed in their implementation. This is being recommended to mitigate bill impacts, and also to allow recovery of what we're actually under collections from last calendar year. Because of the very warm weather, they were not able -- they didn't have the throughput to collect all of their fixed charges.

THE CHAIR: Commissioner Burman.

And please, if you could, just confine
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yourself to the particular proceeding.

COMMR. BURMAN: I am, but okay.

Thank you.

So when I look at this item 170, the draft order says that there -- the case number 15-D -- G-0101, which is a petition by small customer marketer coalition which was brought in February 24th, 2015 to revise the recollect -- reconciliations and was asking to look at that and make some accommodations and was concerned and wanted to have an examination of this. So this order here refers to that order and -- let me make sure I get my page, excuse me -- and says that, "The items that NEMA, National Energy Marketers, NG, and URAC and other interested parties, that the comments that they had regarding gas costs, reconciliation regulations and processes over a generic basis should be further considered, addressed in that proceeding, and that staff shall continue its efforts in that proceeding and report back to the Commission prior to next year's annual
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reconciliation period."

So I have two questions with that.
I'm concerned because this petition which
was brought before this other petition
which we're deciding on today which was
brought in the middle of 2016, wasn't
decided but yet the items seem to be
related and we're saying we're not
addressing those, we'll have staff work
with you and report back and I -- that
seems very open-ended to me and it also is
confusing in terms of regulatory certainty
for those items which also seem to get at
the heart of some of the concerns that NEM
as well as others have in terms of price
and costs, et cetera. So I just wondered
what that process would be, and if
reporting back means reporting openly in
terms of having an item on the session or
just filing something.

THE CHAIR: We'll make -- in terms
of the future procedure, we'll make that
determination after staff completes its
investigation of whether or not additional
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action is warranted. But -- so, I
don't -- I think this is very typical of
the Commission. An item was raised. We
had a particular matter we had to address
which was the adjustment for the utility
and we, you know, the recommended decision
is that we not confuse the two but that
there's a more generic concern around
reconciliations which we're pursuing. So I
don't -- there's nothing to really discuss
on that other than the fact that the order
notes that that is something that the
Commission is directing the staff to
investigate.

I'm going to move for a -- unless
you have a further question, that's very
typical of the Commission.

COMMR. BURMAN: Well, yes. And
because it is the language in the order, to
to me, the orders words in the order are very
important and that I'm very concerned when
I look at orders, I like to make sure that
there is regulatory certainty as well as
making sure that we don't have open-ended
Proceedings processes, and especially when it comes to referring to a generic proceeding, when I look back that that generic proceeding there's been no activity since October 4th, 2015. So for me, it sort of -- it fails the threshold of is this providing regulatory certainty and are we referring to something, especially another order or proceeding, outside the four corners of this order that might -- might cause more confusion and also make it either seem that we're going to be more active on that proceeding or in fact it will still remain inactive.

And because, you know, I do think, and, you know, this has been the history of the Commission, sometimes these generic proceedings have no real life and -- or may pop to life when people least expect it. So I raise that only because for me, that's why I can only concur with this item and not vote with the majority on the draft order because I don't think the language speaks to regulatory certainty.
THE CHAIR: So, that's fine. We're going to move to a vote, and in the future when you have concerns like this, it is always helpful if you can articulate your concerns because we would address things like that in the order.

Let's move to the vote. Item number 170. All those in favor of the recommendation, please indicate by saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur based on my comments at session.

THE CHAIR: We're going to move now to item number 264 which is related to Central Hudson tariff filings. Mike Worden will provide a brief overview.

MR. WORDEN: Good morning.

THE CHAIR: Good morning, Michael.

MR. WORDEN: Good morning, Chair Zibelman and Commissioners. Item 264, it makes permanent Central Hudson Electric and Gas tariff leaves to effectuate the terms for the second year of its rate plan which
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is July 1st, 2016 through June 30th, 2017. As part of this, it's also approving the company's request to continue to use non-prorated electric supply costs for areas of street lights since these customers are billed in advance at the end of the month and it's not possible to prorate. So there are several changes in this but they're essentially mechanical in nature.

THE CHAIR: Great.

Commissioner Burman.

COMMR. BURMAN: Thank you very much. So the item references an underlying order that was done February 26th, 2016, and as you know, I don't always vote with the majority so I always need to check exactly how I did vote and in this case, I concurred on this item and what I had said was that I -- and this was in a concurring separate statement, that "I do note that we have a number of outstanding proceedings that concern resolution of various net metering matters. Normally I would seek to
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resolve such issues together and not in
piecemeal fashion, however, this specific
issue relates to administrative billing
matter that due to the upcoming effective
date to start such billing needs to be
resolved now." So at that time I supported
approval of the petition request for the
reasons cited by Central Hudson, especially
because failure to grant such request would
cause unnecessary time and expense to be
incurred." I believe that we still have
those outstanding proceedings that concern
resolution and various net metering
matters, so I will concur again in light of
my past voting record. Thank you.

THE CHAIR: Thank you.

This is -- just for the record,
again, this is only with respect to time of
billing and as a technical issue.

But -- so all those in favor of item
264, place indicate by saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur as
stated in my comments.
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THE CHAIR: The next item is item 265 which is related to matter of Rate Design Reforms Supporting REV, and Marco Padula -- where is Marco?

MR. PADULA: Right here./

THE CHAIR: Oh, there he is, hiding.

Please proceed.

MR. PADULA: Good morning, Chair and Commissioners. So item 265 is related to case 16-M-0430 which was the case established to consider Rate Design Reforms to Support the Commission's Reforming Energy Vision. In this draft order would adopt with modifications, the compliance tariff filings by all electric utilities aside from Con Edison, to implement standby service, liability credit, and offset tariffs as laid out in the REV Track 2 Order.

THE CHAIR: Just to be clear, the reason why Con Ed's not there is that this is adopting consistent practices that Con Ed had already adopted.

MR. PADULA: Just one clarification
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on that. The Track 2 Order asked Con Ed to implement the change in its rate case filing which it did.

THE CHAIR: Okay. So this --

MR. PADULA: Right.

THE CHAIR: Thank you.

Commissioner Burman.

COMMR. BURMAN: Thank you. And I would also like to thank you for accommodating me and having each staffer give a brief blurb or statement on what the item is about. I think that's very helpful to those who are listening, as well as for the preservation of the transcript. So thank you. I do appreciate that.

265 goes hand-in-hand with 266, so if you want my to speak about them together I will or I will reserve my comments for item 266.

THE CHAIR: No, that's great.

That's great.

So item 266 --

COMMR. BURMAN: Do we want --

THE CHAIR: Yeah, let's do them
MR. PADULA: Sure. So I can just give a brief summary of 266, which is in case 14-M-0101 which is the REV Proceeding. In that draft order would deny the joint utility's position for reconsideration of the reliability credit and extend firsthand by service. And it's the only issue that they asked for reconsideration of the Track 2 Order.

THE CHAIR: Commissioner Burman.


So on page eight of the draft order, it speaks about the Track 2 Order and that -- and I'm just going to read this -- "The Commission stated that the joint utility's further argument that under the as used demand approach, the customer might receive a credit or a higher credit based on external factors such as weather was theoretically correct." It then went on, "The Commission observed, however, that it was unclear whether it was practical to
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normalize external factors in the context of standby rates." And the Commission noted that, "Whether it is practical to normalize external factors in the context of standby rates should be developed further." So that was the language in the Track 2 Order.

We then say in this order, "The petition for reconsideration offers no practical methods for normalizing external factors and we decline to revisit this issue at this time."

So my two questions are, I'm concerned that our Track 2 Order said that, "It should be developed further. We are not accepting the petition for reconsideration at this time because it offers no practical methods for normalizing external factors.", which was also what we didn't do in Track 2 Order. So now we're declining to revisit that issue at this time but in the Track 2 Order, we said we would look at this and develop it further. So I'm just confused about whether that
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language is giving us some certainty about when, where and in what proceeding we may be looking at this issue, and also noting that sometimes I think parties shouldn't be obligated to have to come up with the best solution but maybe they're identifying an issue that needs further collaboration in real time.

THE CHAIR: So your question, just to be clear, is whether or not we will continue to consider that if we are able to discern a way to deal with other factors, and these are factors that may cause something to fail. I'm just trying to make sure --

COMMR. BURMAN: Yeah. I will read again what the order said. The Track 2 Order, which this order refers to, says, "The Commission noted that whether it is practical to normalize external factors in the context of standby rates should be developed further." So the order was recognizing that that issue should be developed further. We then say in this
order, "The petition for reconsideration offers no practical methods for normalizing external factors. We decline to revisit that issue at this time."

So my question is, based on the Track 2 Order which seems to indicate that we think it should be developed further and now we decline to re-visit the issue at this time, what is the trigger to have that looked at and decide it?

THE CHAIR: Right. I understood what we said in the order and I also understand your question. I think the way I -- the reason why I don't think it makes sense to do it at this time is that we're in the process in the value of distributed energy resource practice filing to determine how do we value distributed energy better on the system and including in that the types of performance requirements that we will require for compensation. And so to me, it's the issue that the utilities are asking for, which would be to look at are there ways that you
wished to credit standby resources because of the factor that was unrelated to their performance but was external to it. It's this type of issue that I would expect the value of distributed energy resource to look at.

And so I feel comfortable that it's not appropriate for us to open up a new proceeding to look at this which is I think is a side issue to the bigger issue which is how you value these resources, and that's why at least I'm voting to say let's not do this now. We're not -- I don't think any new information has been brought up to reconsider having putting in place these standby tariffs, and we have a proceeding already that's looking at the evaluation of these resources so no need to open up a new proceeding. That's why I'm voting, correct -- Commissioner Burman or Commissioner Sayre, you can indicate why you think it makes sense.

COMMR. SAYRE: REV has scores and scores of open issues that remain for the
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Commission to decide. They're all interrelated. It's impossible to have a detailed timeframe for each individual issue. We are building the boat as we sail it and we're doing the very best job that we can. I don't think this leaves the utility industry in unreasonable doubt.

COMMR. ACAMPORA: I agree with Commissioner Sayre, and as we've learned from when we did energy efficiency proceedings that when we did REV, we used my favorite word called "flexibility". And so yes, nothing is certain. This is ongoing and I think to jump into something now would lead to more questions than it would answers. So I'm in favor of voting on this now.

COMMR. BURMAN: Thank you.

And to clarify, I wasn't suggesting that we open a new proceeding. What I am suggesting though, is that when we have open issues and when we decline to address it and we actually specifically say that in an order and don't say we will never
address it or it's being -- in this case it's not even saying it should be done in Value D, so people need to know. And the reference to the boat, I don't swim so I'm worried that we're building the boat and I'm going to sink.

So my issue is, is because that when we look at this, I want to make sure that these open issues especially because there are so many proceedings and the pace of what we're doing, it's very easy to drop something that was stated in an order as an open issue, and when we're closing the proceeding, people may not take that and then put it into the Value D and some of the folks who are working on this order, on this proceeding are not necessarily working on the Value D proceeding. So for me, it's clarifying that that issue is likely to pop or be apart of the Value D, and to the extent it needs to if it's not already being incorporated in there and making sure that we've done the proper notice that needs to be done, and that this goes on the
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long tickler list of open issues that need to be addressed. And to the extent that folks feel that nothing is certain, my concern is that our order should strive to have regulatory certainty and especially because there are so many proceedings and so much that needs to be done and we have limited resources, not only in our Commission and agency, but in the parties who are trying to manage and look at all of the different proceedings, they need to know where something may or may not land.

THE CHAIR: So Commissioner Burman, just one thing. Again, and I, you know, I appreciate that, but I think that's why I know for Commissioner Acampora and Commissioner Sayre when they have questions on clarifications of orders, they usually -- we address these during briefings and we will make changes. So if you have concerns like that, I think it's always welcome if you say something's not clear or during your briefings to ask questions of staff. I'm not aware that you
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did that, but maybe -- Mr. Weiner, you may want to address how we're handling this.

MR. WEINER: Yeah. I want to try and avoid some uncertainty, particularly with the respect to internal coordination. Key staff at the director and assistant director level are involved on a cross-cutting basis, not just on issues but also departments. All work streams are being actively tracked so it's true that not every human being is involved in every issue, but in this issue say, for example, Marco is lead and one of the -- on standby, and one of the key team members on Value of DER. Not only that, in some ways more importantly, there is an overlap, a very important contributory overlap with the stakeholders who are involved in these processes, and part of what transpires if not on a daily basis, certainly a weekly basis, is discussion among staff and active stakeholders of where issues are best resolved, what's the best way to do that.

So, I appreciate the observations of
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Commissioners Sayre and Acampora that this is a dynamic process, it is flexible, and I can assure you that there is more than adequate overlap intentionally designed by staff so that we maintain an active view.

COMMR. BURMAN: Thank you.

I'm not going to respond to the comment about giving questions ahead of time. I don't think we should be discussing our internal processes and what conversations I may have with counsel's office, and my silence on that does not mean that I am agreeing that I have not given my thoughts or comments on an item. I just don't think it's appropriate.

But be that as it may, in this case and why I think anyone who knows me knows that I am very clear in what my concerns are generically as well as specifically, and for me, the one thing that is very clear to me, that I think that I will reiterate in case it comes as a shock to folks, my main concern is maintaining the reliability of the system, making sure that
we do not only short-term but long-term planning, and to the extent that we are undertaking an enormous undertaking with many different proceedings. When we look at an order and when we're writing an order, we need to make sure that we're as crystal clear as we can and we should be flagging language in there that is unclear on the pathway forward, and especially when items or language in there indicates that something is an open issue, especially when it does not have an ordering clause that refers that to something. I think it's important that we make sure that those language items yet -- get teed up so that after the order is out, there is some followup somewhere to make sure that it falls in the appropriate place and that the parties that may be interested in that item, that took the time to submit papers on it, know where they need to look for resolution, if there is resolution. So I think we can move forward on 260 -- on these two items.
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THE CHAIR: Well, just so -- for
the -- just to make sure it's clear, I
don't think there's anyone sitting up on
this panel who cares more about reliability
than anyone else. I think we're all very,
very cognisant of that. I think we're also
cognisant of the complexity of what we're
looking to do and the need to deal with
multiple proceedings. I also think that my
comments around having an efficient process
where everyone knows each other's concerns
so we can vote and look to whether or not
there are good ideas is an important part
of having a multiple member commission, and
that was why I say I offer to everyone if
there's a way to improve, we'd like to hear
about it because we always look to improve.

Items 265 and 266 I'll take as a
group. All those in favor, please indicate
by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Opposed?

COMMR. BURMAN: And I concur on both
items per my comments at session.
THE CHAIR: Item 267 is in the matter of the Comprehensive Management and Operations Audit of Avangrid Subsidiaries NYSEG and RG&E, and Doris Stout will be providing a brief overview. Welcome, Doris.

MS. STOUT: Item 267 recommends the Commission issue a request for proposal for an independent third-party consulting firm to conduct management and operations audits of two Avangrid Inc. subsidiaries, New York State Electric and Gas Corporation, and Rochester Gas and Electric Corporations. These audits will focus on construction program planning and operational efficiency with an emphasis on improving performance consistent with Section 6619 of the Public Service Law.

THE CHAIR: Commissioner Burman, do you have questions or comments about this management audit?

COMMR. BURMAN: So the reason that I flagged this is it is -- it's not the first audit to consider REV questions. However,
it is the scope of it and the scope of REV has evolved, and so for me, I flag this because there's a lot of things in REV that are still being worked through and to the extent that the auditors may be having to evaluate whether a particular utility in this case, utilities that we have before us for the management audit, whether or not they're meeting their -- the objectives and the drilling down on whether they have a successful audit or have -- there are some concerns. I want to make sure that the information given to the independent consultant on what the metrics and what the overall objectives and what the REV focus is is very clear, as well as ensuring that it is not following one particular position because there are so many open proceedings. And I wondered how that is going to get done in this audit, and understanding that this is really the first full scope REV dive in an audit.

THE CHAIR: Doris, do you want to respond? Can I -- I'll just offer my
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observations. I think that the issue of a management audit is really about the preparation of the management team to address issues that are either current or forward looking for utilities. I see these audits as an opportunity to look at the processes that the utilities adopt, the way they're managing, the way they're staffing, the capabilities and certainly to the extent an historical audit has found flaws in operations or concerns that we go back and we look to make certain those have been addressed.

I would note that we've did more management audits in the last couple years than we ever have since we reinvigorated that process several years ago, and my informal conversations that I've had with utilities post audits because I meet with each of the utilities every year to talk about operations, is that the utilities themselves find these audits and their depth and scope as to be a great opportunity, frankly, for a new set of eyes.
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to take a look at what's going on and that they can look at as opportunities to improve.

    I think that the, in terms of REV, it's not a particular REV item. It's really thinking about as utilities are looking at a changed world where there's more distributed energy, where we have customers who want more choice, where we have customers who want more information, where you need a different capability around digitalization, where you need a different capability about marketing, where they're worried about things like making sure that they have the right kinds of staff and structure to adapt and be much more at -- to where things are going, that these types of audits give them a sense and us a sense as how the utilities are really rethinking their businesses to deal with a very changed world with the industry.

    So I wouldn't tie this to any particular proceeding. It's really REV as it's become a noun in this industry is
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really about a utility and that is a
distribution system platform providing a
much greater level of services, much more
accommodating to a clean energy future, and
really a very different thinking about how
they will operate and manage their systems.

So I look at this as helping us and
helping the utilities really understand
what changes they've made and what changes
they're contemplating and really then learn
from each other as we do it, and that's
really, to me, these audits are a great
opportunity to shed a light. And, you
know, when we're in rate cases, we often do
investigations of particular issues but we
really don't have the time to do that kind
of broad look and analysis so I feel like
we're very, very fortunate, New York, that
this agency actually has the responsibility
to do these types of management audits
because it really can allow us to set a
standard, operating standard for our
utilities that is actually much higher than
most states.
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And so I think that this is, you know, looking at this and looking forward and thinking about how this -- changes have to be made and how you're organizing is welcome, and I'm appreciate of the fact that the staff in fact is recognizing that and is making sure utilities are thinking about these things as well.

COMMR. BURMAN: And all of that, you know, and make no mistake, I believe strongly that a good, well-balanced and independent management audit can be really good for all the parties but especially the people of New York, and so when I look at this, there is a lot in REV, there is a lot that is still uncertain. The utilities have filed their DCIPs and even in that, there's going to be tension over one utility's DCIP and someone else who might be perceived as an outlier and there might be tension with staff in terms of some of that.

So to the extent that, especially I know Central Hudson, you know, had their
audit completed and, you know, it was -- I believe it was pre the DCIP, but when you look at that, one of it is assessing how the utility is planning on integrating their maintenance and modernization efforts as tied into the efforts of the undistributed service implementation plan.

So I raise it really as a caution as well as making sure that what we give to the -- and the subject matter experts, what they give to the consultants, really needs to be, you know, factual and based on what the orders and the direction of the Commission are and not necessarily, you know, their -- what might still be fuzzy or still being debated or possibly having petitions for a hearing that are out there, so that the audit comes out with clarity as well as helping us to ensure that we are making sure that it is as robust as it can be based on accurate information on the processes of REV, and also identifying where there is still gray areas so that the consultants is making sure that that is not
stepping into the proceeding and making
determinations that may color the utility
either positively or negatively, but
actually just straight up factually.

THE CHAIR: Commissioner Acampora.

COMMR. ACAMPORA: I think, again,
I'm going to be the historian, one of the
first things I looked at when I first came
to the Commission was the fact that there
were no management audits and when I had
the opportunity to Chair the Commission I
instituted those. And I think that make no
mistake, our staff is fully capable of
vetting through an RFP process who will get
the determination of being the group that
goes in and makes these audits and I think
they lay out a very clear map for the
auditors to do what exactly that we are
asking them to do. I don't think we've
ever found an audit that was in any way
fuzzy because they knew what they were
supposed to do, and many times they even
went beyond and brought back things that
were helpful and not detrimental.
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So I think that this item is very clear cut. It's something we've done in the past. It's been one of the best tools we've had in our toolbox over these years and I think as the Chair had said, the company's would agree also and then it gives us something to really depend upon when we are looking at a rate case. These are very valuable when it comes to looking at a rate case which we'll be doing later.

So again, this is clear cut. This is something we've done in the past. Our staff knows how to do the interviews, how to go through the RFP process and I think, you know, there should be no concern about that.

THE CHAIR: Do you have anything to add? Commissioner Sayre.

COMMR. SAYRE: I don't see the proposed audit as in any way a compliance audit with respect to REV or anything else in the way of Commission order compliance. That would be a different kind of audit. This is a management audit to determine
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whether they're prepared for the future and
where we say REV preparation in the future,
as the Chair said, we're looking at a
transformation of the utility industry
that's happening everywhere, not just New
York, with the addition of distributed
energy resources. I think we're ahead of
the curve in New York in making regulatory
preparations for that change but it's
happening anyway, and one of the things
that we're asking the auditors to look at
is whether the utilities are ready for this
transformation.

THE CHAIR: I'm going to move to a
vote on item 267. All those in favor of
the recommendations, please indicate by
saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur based
on my comments at session.

THE CHAIR: The recommendations are
adopted.

Item No. 270 is the proceeding to
Seek Consequences against Atlantic Power
and Gas for violation of the Uniform Business Practices. Luann Scherer, you're back.

MS. SCHERER: So Atlantic Energy is a pretty small ESCO with a comparatively large number of slamming complaints. Staff has been working with Atlantic since July. We issued a notice of apparent failure against Atlantic in July. We got partial responses to the notice and we've since received additional slamming complaints. So the next logical step in the process is for the Commission to do an order to show cause which will require Atlantic to file additional information with the Commission.

Do you have specific questions, Commissioner Burman?

COMMR. BURMAN: No, your summary was sufficient. I will say that I've stated my position that enforcement of bad ESCOs or potentially bad ESCOs are important and that we are not in this order to show cause in any way making a judgement about the actual actions of the ESCO, but really
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doing it to fully inform our decision and
as has been stated before and most recently
at the September session, the staff then
works with the ESCO and I know we have two
that were brought forward at the September
session that staff I believe are still
working through those and we may see them
at some point.

MS. SCHERER: Yeah. There was
actually three on the September session and
we -- they filed additional documents and
we have meetings scheduled with each of
those ESCOs.

COMMR. BURMAN: Okay. Thank you.

THE CHAIR: And I believe your
comments are understood by the other
Commissioners, hence why it was on consent.

All those in favor of item 270,
please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Item 271 is the
proceeding on the motion of the Commission
to consider the rates and charges for
electric and gas for Con Edison.
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Mr. Worden.

MR. WORDEN: Good morning, again.

Item 271 basically extends rate credits for Con Edison customers, gas and electric, until rates are reset by the Commission. There is a pending rate case in front of you that is scheduled to be heard this month, the 11-month period for deciding a rate case. The company has asked for an extension of that period. These credits were expected to expire at the end of this year, so if they expire there would be a rate change and then a subsequent change when you reset rates. So this just keeps them steady until you reset rates when we come you. Simple.

THE CHAIR: Any questions on item 271?

COMMR. BURMAN: I couldn't have said it better myself so I'm comfortable with voting for this item. Thank you, Michael.

MR. WORDEN: Thank you.

THE CHAIR: All right. So all those in favor of item 271, please indicate by
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saying Aye.

(Chorus of Ayes.)

THE CHAIR: Item 362. Michael,

maybe you're charmed.

MR. WORDEN: So I'm on a roll now.

We'll keep going and see how we do.

This item implements tariff filings

on non-wires alternative projects for

Central Hudson. You previously considered

this in July. Central Hudson simply

updated its tariff filing to modify the

wording for cost allocation. That's the

extent of this tariff filing.

THE CHAIR: All those in favor -- do

you have comments on this compliance

filing?

COMMR. BURMAN: I just wanted to

reflect that last time when we had looked

at this item I had issued a concurring

statement and talked about the need that we

are, for me, as the these non-wires

alternative projects can be wonderful and

something that we can look to as part of

our REV processes while we're focused on a
reliable grid that helps to maintain our system reliability and how important again, all of this is, the most important is our system reliability. So, thank you.

THE CHAIR: Again, I think everyone would agree with that.

So all those in favor of 362, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: 365 which is a filing by National Grid to update LED Street Light Wattage. I think we'll just have you do the rest of these, Mr. Worden.

MR. WORDEN: Okay. Good. This one literally updates the wattages available through tariffs that National Grid has and it's based on the bids that it received from providers, suppliers, and the ones that they wanted to select it came from the lowest bidder to those things and they're just updating the wattages simply that customers can sign up for.

THE CHAIR: Any questions on item 365?
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COMMR. BURMAN: I do.

THE CHAIR: All those in favor, please --

COMMR. BURMAN: No, I said I do.

THE CHAIR: Oh, you do. Okay.

COMMR. BURMAN: I would like to know about the ongoing working group with the street lighting, the inter agency working group and working with the different municipalities. So for me, it's focused on making sure that we are looking carefully at all of our different tariffs and the actions that we're taking and working through any challenges. So is that still an ongoing group?

MR. WORDEN: It is ongoing. We do have a number of items that you'll be seeing in the future months on street lighting. We don't have the people here that are leading that today to really kind of brief you on that. It's kind of outside the scope of this.

THE CHAIR: It is. It's not -- right. It's not before us today and
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I'll suggest this, why don't we look for a time that Michael, you can brief all of the Commissioners. Obviously we're happy to do that, Commissioner Burman, but in the interest of efficiency of time today when we have all these people in the room and a lot of matters in front of us, I'd rather just stick to the published agenda. So I'll just take a vote on 365. If you have specific questions about this I'm happy to have someone ask them -- answer them.

THE CHAIR: Hearing none, all those in favor of 365?

(Chorus of Ayes.)

COMMR. BURMAN: And I will concur with the caveat that I would like to see in some fashion a report that helps to summarize the status of street lighting overall and make sure that we are all looking carefully at the different tariffs and different challenges and working through so that we can have a comprehensive policy on street lighting. So, thank you.

THE CHAIR: Thank you. And
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I -- that's not in front of us today but we will offer to brief the Commissioners.

So in moving onto item 375, which is a petition of Borrego Solar for relief from net metering caps. Mr. Worden.

MR. WORDEN: So this item is -- actually, we've been referring to it as Borrego but it's really a petition on behalf of the number of developers and utilities jointly filed with the Commission and what it does, it's really much simpler than it appears. It relieves the developers from a responsibility to get projects in service by the end of 2017 in order to retain monetary credits for net metering. These are credits that you made available back in 2015. You actually, in our briefings we discussed, you did a good job in really kind of animating the market for these projects and through 2015 and '16 we had a large influx of projects. I think I briefed you previously on those projects and because of that, the utilities had difficulty keeping up with the engineering
aspects and the construction aspects. So this commits the developer to pay for the upgrades of the utility system and it commits them to doing their work and it takes them off the hook if the utility is not able to complete their construction work by 2017. So that's in essence what it does.

THE CHAIR: This is -- actually, this item I would just add to Michael's, what my observation is, is that after -- because of the work we've been doing around solar in New York we've had over a 300 percent increase in solar installations and this is one example where, frankly the work of staff collectively with the utilities and the developers and working together to work through what some people would say is a high class problem where we have more solar coming in than we've ever had before and we're looking to address these in a way that's collaboratively as opposed to antagonistic. So I think this item
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reflects really an attitude in New York that we work to get things done rather than thinking things out. So I think it's a good item and I'm pleased to see it.

Any questions or comments on it?

COMMR. BURMAN: My comments are really related to I think that interconnection issues and net metering issues are really very important. I've been consistent in my concerns on the increasing interconnection applications. While that's a positive, we also potentially need to be concerned about what that means on our system reliability as well as the overload in terms of going through the interconnection applications, and at some point needing to have some clarity on those aspects and also address the significant challenges and issues.

I am glad to see that there's an interconnection technical working group. I will though point out that we have many, many different working groups. I'm not really sure the full scope of them or the
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full scope of whether they're active or not and exactly -- and what their overlap is. To the extent that this interconnection working group seems to be now up and running not necessarily for many Commission order that I can find, that we do need to be careful about making sure that we are fully looking at all the different issues and addressing them, especially because folks need clarity and certainty, especially when they're trying to make business decisions on being apart of New York, and the scope of and the increase in the interconnections cause me a great deal of concern.

MR. WORDEN: We actually have two interconnection working groups, an interconnection policy working group and an interconnection technical working group, and we work very closely with the Value of D working groups so to make sure that the two are aligned and that we don't do things to conflict with each other. So those are very important.
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You know, I would point out that, you know, number one for us or for me personally is safety. That's the most important thing that I do. The second most important thing is reliability. So if we do this stuff on a technical things for DG and we don't keep the system reliable, we have a problem, so we fully recognize that.

COMMR. BURMAN: Thank you.

THE CHAIR: I don't think our staff needs to be reminded of these issues.

Any other further questions or comments?

(No response.)

THE CHAIR: So all those in favor of item 375, please indicate by saying Aye.

(Chorus of Ayes.)

THE CHAIR: Item 377 is a tariff filing by Con Edison to modify the Rider T Commercial Demand Response Programs. Marco, you're back on deck.

MR. PADULA: Yup. I'm back.

So item 377 deals with the case 16-E-0543.
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THE CHAIR: Marco, you're fading. I may be fading too.

MR. PADULA: It was me. Sorry. Got it.

And the draft order would adopt the tariff amendments with modifications to be effective for the program year of 2017.

THE CHAIR: Any questions or comments with respect to this item?

COMMR. BURMAN: Yes, I do.

THE CHAIR: Commissioner Burman.

COMMR. BURMAN: So here, again, going back to language, we have on page 13 and then something else on page 15, I'll address the page 13, we're talking about Energy Spectrum's comments. I also want to give kudos to Energy Spectrum for their always willingness to be very detailed and in the weeds on things. It's appreciated by me.

And so here we have that -- we are discussing that, "We view Energy Spectrums's request as an opportunity for the company to offer an enhanced service to
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aggregators who wish to subscribe to the service for an additional fee and we therefore will ask Con Edison and Energy Spectrum to work with Department of Public Service staff to determine if providing realtime updates to forecast is of interest to other aggregators, and if so, to develop the basis of the fee for these information services that we're asking our utilities to develop to support the customer facing activities of aggregators and other market participants." So that to me, means that we're not addressing it here but we're asking folks to work together. It's unclear to me in what context, proceeding and when it may get resolved.

And then on page 15 we say, and this is again, talking about something that Energy Spectrum brought up, that -- this is talking about, "To the extent that net metering -- a net energy metering customer participates in a DER program and provides load reductions during events." This is about double payments of the generators not
operating at the time, and we say, "While the Commission recognizes this conflict, the issue of interactions between NEM and other distributed level markets should be carefully considered on a statewide basis with ample opportunity for stakeholder engagement, therefore, staff shall address this as part of the ongoing value of DER proceeding."

So first, thank for being clear in this to which proceeding it should be, however, I do point this out to make sure because there is no ordering clause that states that this item should be taken care of in Value D, that I laser-focus it for folks that the language that's in the order that talks about that particular item should be in the Value D proceeding. So from that and the other one we'll be addressing I'm not sure exactly where.

THE CHAIR: So let me -- I think the Value of D is clear. On the second one -- just on the first, let me just be clear about that because if it's not, we
can certainly look to clarify the order. I think the determination was that the realtime streaming was not necessary to implement the changes that Con Ed was proposing, nor was it particularly cost effective as a way of updating a DER provider or aggregators in terms of changes in the forecast, but at the same time, under REV, we're always looking for opportunities for the companies to improve services to third-parties. This would be a voluntary activity on the part of Con Ed, not a required activity, but it's a learning opportunity I think, to think about what kind of services that the aggregator may value, may not be of particular value to the utility or other nonparticipating customers, but could be something that provides a source of additional revenues to the utility which then of course would offset their operating expenses which then would yield a benefit in terms of being able to reduce their regulated revenue requirements, all what we
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contemplate in Track 2 of REV.

So I think what the order just notes is that this is an opportunity to develop what we call as these types of fee-based services that are forward leaning, that are customer oriented, not necessary to provide just and reasonable service or reliability services but could be a value add to a new customer base, AKA the aggregator base or the DER provider. So it doesn't need a proceeding. It's really an opportunity for the company to develop a product, but unlike any other product, if it's just one customer who wants it then the it's not much of a market and I would think any vendor would want to do some due diligence in terms of is there a market for this service, is it broader than one entity, and if so, what would they be willing to pay because if you price it wrong nobody will buy it.

So this is really to me, not a proceeding, not anything other than what we would expect utilities to do and say, hey,
we don't see the value of this for doing what we need to do but if there's a market out there, we'll want to explore that potential. So that's the way I -- that's the way the order is written.

Does anyone else have any questions, comments on that?

COMMR. BURMAN: So the way the order is written, it says that, "We ask Con Edison and Energy Spectrum to work with Department of Public Service staff", and then it goes on. So to me, it flagged it as to how it was going to be, a working group --

THE CHAIR: Okay. Nobody can hear you. I don't think it was meant to be a working group. Really it was to me, the way I look at it, I'm -- the reason why I'm recommending that we vote on this and I think it's probably -- is that it's a learning opportunity. We're all learning here on how to think about businesses, think about these opportunities differently. Staff really doesn't need to
be involved but I wanted staff to be involved because it was an opportunity for them to begin to understand how we can develop these new products that we didn't see a value to but the market sees a value to, and we wanted everyone to see this as a learning opportunity but not a full proceeding.

COMMR. BURMAN: Okay.

THE CHAIR: So all those in favor of item 377, please indicate by saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur based on my comments at session.

THE CHAIR: Okay. The next one is 379 and that is the proceeding to seek consequences against Astral Energy, LLC. Ms. Scherer, you are up batting cleanup.

MS. SCHERER: So this is an item which will reinstate Astral Energy's ability to market to commercial customers in New York. As you know, the Commission suspended Astral's ability to market in November 6th, 2015. Since then, they have
revamped all of their marketing processes. They've filed UBP compliant sales agreements, they've hired additional employees to strengthen supervision of third-party marketers, and they've addressed a number of compliance and quality control issues that we've raised with them.

Do you have specific questions, Commissioner Burman.

COMMR. BURMAN: Yes, I do.

THE CHAIR: Proceed.

COMMR. BURMAN: So, page seven of the order states that in its monitoring of Astral, "Should staff find that the company is not in compliance with the UBP, staff shall take swift action and bring such instances of noncompliance to the Commission without delay." And then it goes on, "As provided for in UBP Section 2.D.5, should Astral fail to comply with the UBP, the PSL or the Commission's regulations and orders, the Commission will seriously consider revoking Astral's
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eligibility to operate as an ESCO in New
York State or imposing any other
consequences the Commission may deem
appropriate." I just want to flag to make
sure that it's absolutely clear that it
would be the Commission as the body and
also that there would be proper due process
in line with our UBP and the section
referenced.

THE CHAIR: I think that's clear in
the order.

MS. SCHERER: Yes.

COMMR. BURMAN: Okay.

THE CHAIR: All those in favor of
item 379, please indicate by saying Aye.

(Chorus of Ayes.)

COMMR. BURMAN: And I concur based
on my comments at session.

THE CHAIR: Okay. It's 10
to 12:00. My watch says it's time to stand
but I'm not going to. Do we want to take a
five-minute, ten-minute break and then
we'll come back? Give everyone a minute,
because we're going to go then into the
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regular agenda and then we're going to go through it. Okay. Ten minutes.

(Whereupon, a short recess is taken.)

(Whereupon, the following proceedings were transcribed by Kari L. Reed:)

THE CHAIR: We're now going to proceed for the regular agenda. Our feist -- first, feist, feist, first -- first item today is 101, which is a Joint Proposal for KEDNY and KEDLI rates. It's presented by Administrative Law Judges David Van Ort and James Costello. Mr. Costello has recently joined the agency. And we want to welcome you and also note that we want you to stay, so.

(Laughter.)

THE CHAIR: Mr. Van -- I think, let's see, Cindy McCarran and Doris Stout are also here available for questions. But Mr. Van Ort, you're going to be beginning, right, Judge Van Ort?

ALJ VAN ORT: Yes, correct.

THE CHAIR: Okay. Welcome.

ALJ VAN ORT: Good afternoon, Chair Zibelman and Commissioners.
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You have before you a proposed draft order which was prepared by Judge Costello and myself, which incorporates the input of advisory staff. The order would adopt the terms of a Joint Proposal filed on September 7th, and established three year gas rate plans for KEDNY and KEDLI, covering the calendar years 2017 through 2019. The draft order also resolves five other cases pending before the Commission. However, there are three minor modifications that we are recommending to the Joint Proposal.

The first would involve a requirement for annual reporting regarding implementation of the REV demonstration projects.

The second would require a study of potential impacts of eliminating the declining block rate structure.

And the third would allow individual customers in the SC 2 category who were over-charged between 2008 and 2014 dates to demonstrate actual amounts that they lost greater than the credit that is provided for in the Order, and therefore recover that additional amount.
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The Joint Proposal was executed by the two companies' staff and seven other parties representing a wide array of interests; municipal, environmental, large metropolitan real estate, residential, commercial, consumers and ESCOs. And there are four parties that are opposing the Joint Proposal, mostly on discrete issues.

The proposed order either resolves the issues raised or explains the basis for the opponents' recommendations being rejected.

I'll provide you with some additional background on the two rate cases, and a few salient features of the Joint Proposal and Order. Judge Costello will provide you with additional key elements to the Joint Proposal and Order, and also discuss the Joint Proposal consistency with the Commission's settlement guidelines.

The need for the rate increases was precipitated to a large extent by the fact that KEDLI and KEDNY have not received base rate increases in many years, despite incurring substantial increases in capital and operating costs. The last base rate increase for KEDLI
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took effect in 2008, and that was a one time increase. The last base rate increase for KEDNY occurred more than a decade prior to that time.

As you know, these rate filings were made in January. They were updated in April, and again by the companies in June rebuttal testimony.

If adopted as proposed by the companies in rebuttal, delivery base rates for KEDNY would increase by approximately $331 million or 20 percent, and KEDLI's would increase by approximately $180 million, or 16 percent. These percentages are stated as a net revenue increases as a percentage of total revenues.

The increases also include rolling into base rates recoveries of site investigation remediation costs, or SIR costs, which were previously recovered by an annual surcharge for KEDLI and KEDNY. And since the surcharges would be eliminated, the net revenue increase for KEDNY would be about $269 million, and about $140 million for KEDLI.

Shifting these costs into base rates would not increase the customer bills. And
that's an important point. And I'll talk more about the SIR costs in a moment.

Subsequent to the filing, the parties initiated a review and conducted extensive discovery. Testimony and exhibits in response to the rate proposal were filed by staff and eleven other parties. Staff, however, is the only party that has filed alternative revenue requirement recommendations.

Staff recommended base rate revenue increases of approximately $263 million for KEDNY, and approximately $116 million for KEDLI. And, consistent with the companies' demonstration, staff also included a shifting of SIR cost recovery from surcharge to base rates. That's -- the overall delivery revenue increase for each company would be somewhat less than that.

The parties thereafter initiated settlement negotiations, and several changes were precipitated as a result of the continuing negotiations. The parties were confronted with significant challenges in conducting their negotiations, balancing the interests of the
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various parties against the need for rate increases and the potential financial impact that those increases could have on customers. The signatory parties, however, ultimately reached an agreement on the rate plan, which is embodied in the Joint Proposal.

I should note that there was substantial public comment in these cases. The Commission secretary received a large number of written and opinion like comments from both KEDNY and KEDLI, and the vast majority of those comments expressed opposition to the proposed rate increases. Public comments were also received at six public statement hearings, three held in KEDNY service territory and three held in KEDLI service territory.

That was followed up by the parties submitting statements in support or opposition to the Joint Proposal and reply statements. And then in October we held an evidentiary hearing to allow parties the opportunity to question witnesses for the Joint Proposal proponents and to test the reasonableness of the provisions contained therein. None of the parties chose to
cross examine witnesses sponsored in support of the Joint Proposal. Nonetheless, the hearing record in these cases is extensive. There are -- it's composed of 540 exhibits. The pre-filed testimony, supporting work papers and exhibits filed in these cases constitutes several thousand pages.

The draft order before you, if adopted, would still result in significant delivery rate increases for KEDNY's and KEDLI's customers. On an unlevelized basis, the first year's base rate increase was approximately $272 million for KEDNY, and approximately $112 million for KEDLI. These increases are needed to fund additional capital improvements and various O&M increases.

The base rate increases also include forecast rate year, SIR costs, and recovery of a portion of the deferral amount that will be as of December 31st of this year. Its recovery is at one-tenth. The Joint Proposal and the Order reflect an allowed ROE of nine percent, an equity ratio of 48 percent, and that is for both companies. They also have an earning sharing
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mechanism which would capture earnings above 9.5 percent.

The Order mitigates the impact of these increases on customers through a levelization in each year over the three years. The average annual increase for KEDNY would be approximately 9.3 percent, and for KEDLI 5.1 percent, which is substantially lower than the companies' proposals.

The Order has provisions which also further reduce the impact of these increases on low income customers, those most adversely impacted by rate increases. We believe in totality that these provisions mitigate, to the extent practicable, the potential rate shock that may result from the base rate increases.

Now, just turning back to the SIR issue for a moment, because that's usually the gorilla in the closet, as you know, these costs have plagued many of our regulated utilities. Cost recovery is an extremely complicated issue. Cost timing and the extent of remediation are largely beyond the control of the regulated utility, and may involve other potentially
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responsible parties or PRPs.

The record in this case is extensive in that regard. It illustrates substantial efforts on the part of the companies in seeking contribution for the cleanup costs, identifying other PRPs, obtaining insurance recovery, and litigating other claims. And I just point out with respect to the one-tenth recovery of the deferred SIR cost, that that is not as aggressive as the Commission has provided for in other cases. So that's -- it reduces the impact on customers.

Also note that the SIR costs are forecasted to decrease from after the first year, with the exception of the cleanup of the Gowanis Canal and the Newtown Creek, which are two Superfund sites in the KEDNY service territory. The costs for those projects are as yet unknown.

With that in mind, the parties have fashioned a provision to allow for a surcharge beginning in rate year two of SIR costs that exceed the rate allowance by $25 million. However, there is also a cap on that amount, limited to two percent of the prior year's
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aggregate revenues. And I should note that KEDLI does not have a similar provision because it doesn't have these issues at this point. In the event that it incurs incremental costs for SIR costs, it would be allowed to petition for recovery.

At this point I'll turn the presentation over to my colleague, Judge Costello.

THE CHAIR: Welcome, Judge.

ALJ COSTELLO: Good afternoon, and thank you.

I'm going to focus my comments on two of the programs in which there are large capital expenditure increases. And they're driven basically by policy, Commission policy, the first being the low income discount program.

In May of 2016 the Commission issued its Order in the low income -- generic low income discount proceeding. In which it set as a guide that energy household expenditures be no more than six percent of household income. It also set forth a tiered system of discounts, which would be tied to a recipient's level of benefits
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that they receive under the Home Energy Assistance Program. The companies will be phasing in such programs in the course of these rate plans.

There is significant increases for funding for both companies for them to do so. With KEDNY, funding being increased from 9.8 million to 25 million in the first year, which is 155 percent increase. And with KEDLI, funding being increased from 3.3 million to 5.4 million, or a 64 percent increase in the first year. In the first year, the companies anticipate providing what would be equivalent to the tier one discount level for certain eligible heat -- residential heating and non heating customers, with a $19 per month discount for KEDNY customers, those are the heating customers, and a $41 a month discount for KEDLI heating customers. In the second year the of the program and the third year, the full program as required under your Order would be implemented.

Also, KEDNY intends and will be doing an HRA file matching program no later than the spring of 2017 in order to identify further
eligible customers. And KEDLI anticipates doing the same beginning in January of 2018, contingent upon the Commission's approval of their deferring the cost for implementing the program.

The next program in which there are large capital expenditure increases is for the leak prone pipe replacement program. There are significant increases in funding, which is attempting to bring the companies in line with the Commission's stated goal to have leak prone pipe replaced in the state within twenty years.

Capital spending for the proactive leak prone pipe mileage is being increased significantly. For KEDNY it's going up is 48 million in the first -- which is current to 93 million in the first year or 94 percent increase. It's then going up to 115 million in the second year, or 140 percent increase, and 135 million in the third rate year.

For KEDLI, the amounts will be going from 89 million to 128 million, or a 44 percent increase. Then to 158 million and ultimately the third year to 188 million.

The leak prone pipe total target
mileage is also going up. So that KEDNY's current mileage, in 2016, they retired 47 miles of leak prone pipe. That's going up to 55 miles per year in the first rate year, 60 miles in the second rate year, and 65 in the third rate year.

KEDLI is making significant increases. They are going from 95 miles per year to 115 miles per year in the first rate year; 135 miles per year in the second rate year; and 155 miles in the third rate year.

The Joint Proposal also contains an incentive for the companies to achieve cost -- unit cost savings over the amounts of unit costs that's reflected in rates, base rates.

The companies will continue using their risk ranking algorithm to prioritize the replacement of leak prone pipe. And taking into consideration concerns by the New York City -- by New York City and the Environmental Defense Fund. Beginning in the second year they will also be taking into account, all else being equal, the location of leak prone pipe in flood areas, and they'll be taking into consideration methane -- methane leak flow date data in retiring leak
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They will also be using innovative programs that, if proven successful, will ultimately result in large cost savings. One of those is the cast iron joint ceiling robot or CIC Bot, which allows with one excavation 80 joints to be sealed without the main being put out of service. So that's a benefit for the community in that there's no disruption because it's only one excavation and there's no disruption in the service.

They'll also be using cured in place pipe lining, which allows the refurbishing of one mile of pipe at one half the cost of replacing that pipe.

In addition to these programs, the JP resolves certain other proceedings. One, as Judge Van Ort discussed, is a one time credit for certain KEDNY customers, the SC 2 class. They will be getting a one time credit that will be going to heating customers. Which we recommend be modified so that those customers can come in with actual billing and establish a greater refund amount due, they have the ability to do
so. It will also resolve three tax refund cases, with credits of over $22 million going to customers.

Another benefit for the communities is that under the JP there will be 380 new jobs created.

So, with that, we believe that there's an ample record providing you with a rational basis to determine that the JP has appropriately balanced the interests of the shareholders, of the ratepayers, and of the utilities in such a way that it allows the utilities to provide safe and reliable service at just and reasonable rates.

And basically that concludes our presentation, and we're available for any questions.

THE CHAIR: Thank you, Mr. Costello. So before I have my observations, just a very quick question. I think with respect to the low income discount, I know that the Public Utility Law Project has -- did not join into the JP, but this is not an area of the JP they objected to; is that correct?
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ALJ COSTELLO: That's correct.

THE CHAIR: Okay. You know, one thing that I would note about this particular rate case, and I talked to the advisory staff when it came in, is that this was a case where neither party had -- neither company had bid in for quite some time. That the rates that we're putting in today are actually lower than the rates that were in place in I believe the 2007, 2008, time frame. And what staff told me is, is that the company did a very actually good job of reducing their demand to really the -- their minimum of increases based on cost drivers that they were doing. So, unlike my favorite regulatory term, the normal Kabuki dance between regulators and regulated companies, where everyone sort of comes in high and someone comes in low and then they know where they're going to go, in this case the company in advance really took a look at it and I think tried to limit its request to areas that they knew from a policy perspective the Commission was already had recommended and where our policies were. So in that I frankly commend the company.
Irrespective of that, there's obviously always a concern on the part of this agency when we are looking at rate increases. Energy is essential. And we know -- and we also know that we'd like to maintain its affordability. And as regulators, our job is to make sure that our rates are not set in a level that is higher than necessary but is sufficient for the company to be able to operate its system in a safe and reliable way, as well as attract investment as a reasonable expense. And with that, though, I commend the fact that the parties tried to address really the effect on consumers by looking at a number of different ways to mitigate the impact that this was -- of the change.

Clearly, you know, the types of drivers for this increase, the need to replace leak prone pipe is an area that's very important for the Commission. It's important from the perspective of safety. We want to eliminate leak prone pipe as quickly as possible, we have a policy towards doing that. And I know both companies have been aggressive in helping pursue
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that policy and have placed a lot of capital into effectively replace the pipe. And also, as noted in the JP, are looking at alternative technology ways to be able to address our concerns about safety in a way that's more cost effective and less disruptive. The CYC bot technology is one, I got a chance to see it and it's pretty incredible about what can be done. So I'm appreciative of the work being done there.

The other major cost driver, of course, is the issue of cleanup of Superfund sites. Again, these are often areas that the company might have inherited or is historic. And, frankly, a sound reminder of when we don't pay attention to the environment it can come back and bite us. And the need that really generations today are having to pay for the fact that people didn't pay attention in the past is really the sort of thing we're trying to avoid with the CES and other things that we're doing now.

So, with respect to that, I also know that the Commission previously put in place, again, I think it was maybe even under
Commissioner Acampora's direction, a requirement that we look at these, the Superfund sites and that the staff aggressively pursue making sure that the companies are taking all actions necessary to reduce the impact on consumers. And I think in this case staff reviewed it, they sent interrogatories and felt that, as the judges mentioned, that the company did take all the actions they could, and as a result, were able to substantially reduce the amount of what they -- what otherwise would have been charged for consumers, so that our objective in setting the right types of incentives and pressures.

The last issue with respect to the changes, in addition to those mentioned, was also property taxes have gone up, and that happens when a company replaces old infrastructure with new infrastructure. There are additional property taxes that are associated with it. These are costs that we're required to pass through.

And then in terms of the low income discounts, that's a way for us to avoid, frankly, customers not being able to pay their bill, but
it's certainly a policy of this Commission to maintain energy affordability.

So I think, you know, I'm certainly satisfied that the drivers of this rate increase and the actions that have been taken to minimize the effect were both taken by the company even before they filed, and now through the rate plan in terms of three years rate plan, as well as other actions they're taking to mitigate impacts, really results in a just and reasonable rate. I would notice the return on equity that is baked into this case is actually lower than the return on equity that the company currently has placed today, and is consistent with the returns that we are offering to other utilities.

So I feel very strongly that with these actions, plus the other issues that we are addressing in this JP, such as looking at additional conservation measures to help reduce costs to consumers, again looking at technology as a way of reducing cost to consumers, really, one, is certainly necessary, it's our obligation to provide rates of revenue requirements that are compensatory for costs incurred. The rates, I
believe, the resulting rates are just and reasonable.

And I applaud I know the hard work of the members who worked on the settlement to find solutions. And I know that in any settlement there are individual issues that an individual party may find is not to their liking. But the art of settlement, just like the art of negotiations, in fact, our President Elect wrote a book about that, requires some level of compromise. And so we are going to -- we do need to recognize that this is a package. There may be individual issues that we would have thought about differently, but I think that for me when I looking at, both on balance but actually the particular items, I think that the JP results in a fair result, a necessary result, and I intend to vote to approve it. So thank you.

I'll go -- who wants to go first? Commissioner Sayre.

COMMR. SAYRE: It's certainly not a unanimous settlement, but it does have enough of a critical mass from very diverse parties that it warrants serious consideration. It's really
inevitable that we have got to give these companies a significant base increase because of, as the judges said, one of them hasn't been in for eight years for a base rate increase, and the other been for something substantially over ten years since it had a base rate increase.

The provisions in the settlement that move me to accept it are, as explained by the judges, a very substantial increase in the low income program, which helps ameliorate the impact of the increase for the customers who can least afford it. The significant acceleration in the replacement of local prone pipe. And, in my view, the savings of at least two million dollars of rate case expenses, because at least in my view, one rate case that would otherwise have happened in the future isn't going to happen because we have a three year plan. The three year plan also allows us to gradually feather in the necessary rate increases.

It's tough to approve a big rate case. But we have to balance the public interest, including everybody affected. We have to recognize that utilities are legally entitled
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to an opportunity to earn a reasonable return on
the assets that they've placed prudently in
public service. They're entitled to recover
their expenses that they have prudently made in
the course of public service. I think this
settlement strikes a fair balance and makes --
comes up with a just and reasonable balance.

THE CHAIR: Commissioner Burman.

COMMR. BURMAN: Thank you.

I was nervous when you first started
talking, because, as a former colleague at the
court of appeals, as a former alum, I wanted to
make sure that you did a great job, and you did.
So congratulations.

The question -- I have a couple of
questions related to, and I'm not sure whether
it's you or Mr. Agresta to answer this.

THE CHAIR: Are you speaking to
Mr. Costello or Mr. Van Ort?

COMMR. BURMAN: Mr. Costello, former
alum at the court of appeals.

So what I'm -- what I'm curious about
is what is the legal standard for our approval of
the Joint Proposal? And I understand that, you
know, parties have to make compromises for them to come to agreement and settlement. But then when it comes to us, I just want to be clear on exactly what our role is as a regulator in looking at that Joint Proposal.

THE CHAIR: I'll let Mr. Agresta respond to that.

You have to work today, Paul, I'm sorry.

(Laughter.)

MR. AGRESTA: Okay. So the basic standard of approving rates is the same whether it's a Joint -- can you hear me?

THE CHAIR: Yes.

MR. AGRESTA: The basic standard in approving rates is the same whether it's a Joint Proposal or not. But when there is a Joint Proposal, one of the things you would consider is whether there were competing arguments made by the parties. That the settlement then results in a range of reasonable outcomes if the parties had instead litigated, and whether it's in the public interest. It's as simple as that. But you're primarily trying to decide whether the rates are
just and reasonable.

THE CHAIR: So, just to be clear, our judgment doesn't really change. We have an obligation to ensure the resulting rates are just and reasonable, the terms are just and reasonable, whether there's a settlement or not.

COMMR. BURMAN: And has this Commission ever made modifications to a Joint Proposal after it's been presented at a session?

MR. AGRESTA: Yes.

COMMR. BURMAN: This Commission?

MR. AGRESTA: Well, by this Commission, I don't know if you're talking about these four people sitting up here.

COMMR. BURMAN: Yeah, not the Commission, this Commission.

THE CHAIR: I believe we have. I've had -- we've had certain --

MR. AGRESTA: In my view there's one Commission, it's the Commission.

THE CHAIR: Yes.

COMMR. BURMAN: Okay. So for me, that is important to make sure that we're all on the same page about what we're looking at in
terms of the approval of the Joint Proposal and our objective from looking at it for are the rates just and reasonable.

With the --

MR. AGRESTA: I think you may have made a modification to the Niagara Mohawk rate case at my request when I was an ALJ a few years ago.

THE CHAIR: Yes. Great memory. But I also think that we've also recently made changes to joint proposals that have been in front of us if a particular term was something that we didn't want to see or we wanted to amend.

COMMR. ACAMPORA: Also, with regards to using a levelization, we have many times made modifications in favor of going to levelization when it was not put out there.

COMMR. BURMAN: Okay. So I just wanted to make sure we were all on the same page legally as we walk through this.

So when I look at this, I do have a couple of questions, especially because there does seem to be some folks who have differences
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of opinion in the Joint Proposal that have been filed with us. So from -- when we're looking at this and we're looking at the collaboratives, there are about four or five collaboratives that are coming out of this Joint Proposal; is that correct?

MS. McCARRAN: We have -- if you don't mind, I'll take that. We have an ESCO collaborative, we have a power generation collaborative, we have after an ITTC collaborative, which stands for interruptible temperature controls, and then we have a storm hardening collaborative.

COMMR. BURMAN: Okay.

MS. McCARRAN: So four.

COMMR. BURMAN: So to the extent that some of these collaboratives will be focused on these particular parties, to the extent that it also dovetails into some of our generic proceedings, how does that work? So, for example, the storm hardening collaborative, we've been looking at that generically in storm hardening, but now there's a separate collaborative. And I know Con Edison had its
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collaborative, and then all other utilities were looking at a collaborative, so.

MS. McCARRAN: I guess from my perspective, you know, to the extent something is potentially going to cost the utility money, you have to look at it in terms of their individual rate case. Whereas as a generic case would be more focused on a statewide policy, right. So I think that's the point here is that we're trying to figure out what's it going to cost this particular utility.

COMMR. BURMAN: Okay. So to the extent that some of these collaboratives may overlap with some of our statewide initiatives, I think it's important that the folks that are looking at the collaborative and working on it have a full understanding of what is ongoing or about to be ongoing, and so that we make sure that there is no disconnect, and factor that in. So that's the first.

The other -- the other issue is, I'm trying to understand the REV demos here and the terminology of REV demos. And, you know, there's a -- I think that we've only approved one REV
demo in a rate case before, which was the Central Hudson REV demo. And so here this is the first. No, actually it's the first for three REV demos, but it's also the first for approving natural gas REV demos. So there's a recognition going back to our REV objectives, which were five and then became six. But one of the REV objectives in the original five, I think it was number three, was fuel diversity. So to the extent that now there's a recognition that natural gas is an interconnection in REV demos, I think it's important to point that out from the perspective of fuel diversity and going back to the tenets of -- the basic tenets of our REV objectives from the get-go did provide for that connection.

But to the extent that these REV demos and the process, will they be following the same process that the REV demos follow now, sort of outside the Commission with a -- with implementation and a approval process and a work plan?

MR. WORDEN: So, as you know, while the REV is largely focused in the electric industry but we have been trying to take some of
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the lessons learned as we move forward in the electric industry and apply them to the gas industry, this is an opportunity that we took because the two rate cases were in front of us, to try to have some projects to learn from that, you know, REV stuff that's going on on the gas side of the business. There were specific projects in this case that the company put forward, and so the funding for those was embedded into the rates that we're setting today.

COMMR. BURMAN: Okay.

MR. WORDEN: So it's a little different process than what we are using with the electric REV demos.

COMMR. BURMAN: Okay. I'm just looking for clarity just in making sure that this, the terminology then of the REV demos, don't fit the same as the ones that are ongoing now through that process; is that correct?

MR. WORDEN: That's correct. It's a slightly different process.

COMMR. BURMAN: Okay. All right, thank you.

And then as to the geothermal pilot
project, I am trying to figure out, because the language in the Order talks about doing this as an alternative to natural gas and working with a water company and LIPA and PSE&G on Long Island. So to the extent that I'm trying to understand, is that already in place, are they going to be doing outreach there? And then how does that affect us in terms of our oversight if it involves LIPA and PSE&G, but also on the pending rate case for at least one water company.

MS. McCARRAN: Yeah. I think the intention here -- I shouldn't say I think, I know the intention here and the discussion around this was that to the extent you could get somebody to use geothermal energy to heat their home, you could avoid investment in additional natural gas infrastructure. So that could potentially be a savings to all of the gas ratepayers if you avoided -- and it's very similar to, you know, the same issues on the electric side -- you can avoid that investment that everybody saves a little bit of money. So that's the intention here with, you know, with calling it a demo. The company is going to be looking at it and studying
it. There's nothing that's been decided or, you know, or even, you know -- I don't think even anybody has really had any strong opinions expressed yet about what that's going to look like. It's, you know, the water company was mentioned because there is a project that's being done I think, as you know, with the school on Long Island where.

COMMR. BURMAN: Yes.

MS. MCCARRAN: Where it could potentially be cost savings. So to the extent it's a win win win, where I say a school district can do a geothermal and they save on their fuel costs, but it also eliminates the need to secure additional pipeline capacity for the utility, then it could be very beneficial for everybody.

COMMR. BURMAN: And is that a concern in terms of looking at it from -- so some of the dynamic was that looking at reducing the pipeline capacity, the need for the infrastructure for that? I'm just trying to understand --

THE CHAIR: Yeah.

COMMR. BURMAN: -- the basis of it.

THE CHAIR: I'll tell you why I'm
enthused about it. So I think that geothermal has a huge amount of promise for the state in terms of an alternative non-fossil energy resource, both in terms for heating and cooling. And the example, the project that was done in America Water is really unrelated to this, but it's something I know that Commission Acampora knows -- has spent a lot of time looking at, is an opportunity to really take a look at, from a consumer perspective, how can I really get my needs met in a way that's really more cost effective, and if I have a concern about wanting to reduce carbon emissions, using a renewable resource, in this case water, as a form of heating and cooling. One of the challenges that we have as we take a look at decarbonization is really looking at the opportunity to look at different business models and having existing business models, in this case a gas utility, maybe thinking about how to conserve customers in a different way and how it can create a business model around that maybe alone or in combination with the neighboring electric utility or with the water company. I don't think we have the
details. I think that's to me the value of why we do these demonstrations. It's not so much the technology, because in this case the technology, like in many cases, is clearly proven. It's just that we don't have a business model that really works cost effectively, even though we know that there's a huge consumer benefit and an environmental benefit.

So I really actually applaud the utility because I know that, you know, this is like a non-wires alternative for electricity, this is a non-pipe alternative for heating, but also in this case potentially cooling. And, you know, the experience that we have, and I've had a chance to visit school where it was done, the teaches are delighted because they're able to keep the windows closed and the temperature moderate in the late spring and the early summer, as well as keep the moderate temperature all winter. So, you know, for an old school and for an opportunity to reduce their operating expense, achieve their carbon goals, and keep kids focused because they're not looking out the window or sweating, I think that's -- those are all good
things. So I'm glad that we're going to explore how we can develop a business model around this. And I certainly appreciate that the utility is willing to say hey, we'll see if we can make this work. I think that's pretty much what it's about.

COMMR. BURMAN: So, and again, I'm focused on fuel diversity and looking at things that are technology neutral as we move towards valuing carbon, not just no carbon but low carbon, and ensuring that all our assets are carefully evaluated and obviously working on the overall mix of our fuel and the implications for that on the reliability and the resiliency of our grid and maintaining that. And to the extent that we look at these things and make sure that we are cognizant of that, but also that to the extent that there are these, and this is a pilot, characterized here as pilot, not a REV demo, to the extent that this pilot program is really just and exploring that, but that any potential taxpayer or ratepayer costs may need to be looked at, not only, you know, from a benefit-cost analysis but from to the extent that we are
looking at our entire energy system and what that means and what might be needed. So I'm focused on that aspect of it. I won't speak about the Valley Stream one because I know that that's part of the ongoing proceedings related to that water company, so I am cognizant of that.

When I look at this, I also had questions on the SIR and the recovery mechanisms on going after others to participate in reducing or being a part of the costs as well as the litigation that might be involved in that. To the extent that this was looked at carefully, and ALJ Van Ort and ALJ Costello articulated what is being done on that, I'm very comfortable that we have really been laser focused on that aspect and trying to make sure that we were carefully handling those issues and the recovery that's in there.

What is our role in working through some of those challenges with third party recovery? Is that ours or is that DEC? I'm just I'm just trying to --

THE CHAIR: You can't hear?

You need to speak closer to the mic.
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COMMR. BURMAN: We need to get another mic for me. It always seems to be an issue, I don't know.

(Inaudible.)

COMMR. BURMAN: No, no, I'm glad you spoke up. Everyone who can't hear me, speak up, you know.

(Inaudible.)

COMMR. BURMAN: Right, right, right.

THE CHAIR: Commissioner -- rather, do you want to speak to that, or Cindy or Doris or Judge Van Ort? Which one?

COMMR. BURMAN: I think they're looking at --

THE CHAIR: The question is staff's role in looking at the SIR --

COMMR. BURMAN: Yeah.

THE CHAIR: -- compliance. And Cindy, do you want to talk about it?

MS. McCARRAN: Sure. And, you know, staff has a pretty extensive process. Certainly the gas and water rate section audits, the way that the utilities look to find other parties to the contribute to the cost recovery. And also
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ensuring that the work that's done is work that, you know, where they're finding ways to contain costs and not just writing blank checks to people who are doing the cleanup work. Certainly I think Doris's folks are also auditing those expenditures. I don't know if you want to add anything.

MR. AGRESTA: We should also add the scope of work is something governed by the DEC, not by us.

THE CHAIR: Right.

MR. AGRESTA: So we're looking to see that the company is being as efficient as possible in complying with DEC.

COMMR. ACAMPORA: But excuse me, Paul, aren't also the feds involved in that too?

ALJ VAN ORT: With respect to the Gowanis Canal they are. That one is done on more of an expedited basis because of planned redevelopment for that site. So they are, the EPA is involved in that site.

COMMR. ACAMPORA: Would you say that's one of the reasons this thing is taking so long?
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ALJ VAN ORT: For Gowanis specifically?

COMMR. ACAMPORA: Mm-hmm.

ALJ VAN ORT: Gowanis, I think part of it was the identification of those who were potentially responsible for Gowanis Canal, both Gowanis and Newtown Creek. But it is a factor, yes.

COMMR. ACAMPORA: Thank you.

MS. STOUT: Okay, so accounting and audits and finance staff is involved to the extent that, as part of the generic SIR Order that the Commission issued a few years ago, they required annual reporting requirements of the utilities, and all of them in the state have some degree of SIR responsibility. And so staff in my office is involved in reviewing those annual reports that are filed and compiling a report on all of them.

THE CHAIR: So, and just to be clear, once responsibility for a cleanup site is assigned to the utility by either the DEC or the EPA, that becomes a third party expense, which by law we're required to essentially pass through.
Our issue is always to make sure that they're not spending more than necessarily, so that it's prudent. But we couldn't legally say it was not used and useful in the provision of service; therefore, it's a recoverable expense.

COMMR. BURMAN: Okay, thank you. I really just wanted to make sure that I clarified the different aspects and some of the follow up that would happen and the ongoing process that we would be involved in.

I think that, from my perspective, the integrity and reliability of the energy system is paramount, and that includes in this case, because we're looking at this from the gas perspective, that the integrity and the reliability of the gas system is paramount. And in New York we have been laser focused on ensuring we have a safe, reliable and clean natural gas system. And when we look at that, we have in here, and I think it's a great credit to see throughout this Joint Proposal and the Order, that there are several gas initiatives that are looking at actively being engaged in all three prongs of that, both safe, reliable and clean
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natural gas.

Obviously we always have to look at the reasonable balance, and some of that is the balance on the industry who wants to participate and have opportunity, and the balance for the ratepayer who wants to have safe, reliable and clean energy, but at reasonable cost. And the balance for us as regulators in looking in terms of the just and reasonableness of these rates on all of these things, and ensuring that we have done a deep dive into the fairness of this and the reasonableness and understanding how it all works, and then making sure that we follow through after this in the specific initiatives and projects and aspects of this Order that we have allowed to go forward. And, you know, as from a -- the perspective of, you know, infrastructure and looking at ways that we can be innovative to finance the necessary gas safety and gas infrastructure opportunities is critically important to the ratepayers and to us in the state.

So I am comfortable. I do understand that there are some things that are difficult, as
well as things that we may need to, even if we agree to adopt the Joint Proposal, there were some concerns that were raised that are valid, and we need to look at for ways to minimize that or to incorporate it. And to the extent that there are five different collaboratives that address different ongoing projects, ongoing issues, it's important for us to make sure that they find their proper home, not just with working with this utility but also as it relates to ongoing initiatives on a statewide basis in other proceedings, and making sure that we fully address those and make sure that we have proper staffing and resources dedicated to that. So thank you.

THE CHAIR: Commissioner Acampora.

COMMR. ACAMPORA: Thank you.

I'm going to ask a question of Doris, it's the one I always ask in a rate case, about how this Joint Proposal, how the Street will look at this if it's approved.

MS. STOUT: So, in anticipation of your usual question, I had my staff do a search to see what has specifically been stated in
various analysts' reports about the JP. And I wasn't able to come up with much, but as of last week Fitch did issue their analysis of the companies, and they describe the Joint Proposal as supportive of credit quality, and they reaffirmed the company's bond ratings. Though they were concerned about the pressure on leverage from the extent of capital investment that is included in the Joint Proposal, and they're going to monitor this. So, in light of that being one of the few references, I spent some time reflecting on the elements that are in the Joint Proposal, and there are a large number of good elements in the Joint Proposal from an investor's standpoint, both bond investors and equity investors.

Wall Street generally views our multi-year rate plans favorably, because they eliminate a lot of the regulatory uncertainty for the term of the rate plan, in this case three years. And during that three years we've fixed the ROE at nine percent with a 48 percent equity ratio. And testimony on the record indicates that that should allow KEDNY and KEDLI to
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maintain their investment grade bond ratings.

Some of the other elements to consider is that because the JP is based on forecasted test years, it reflects all of this forecast of increased capital investment and increasing operating budgets. So that provides the relief to the companies over that three year time period, ensuring that they have adequate cash flows.

In addition, as the judges mentioned, there is the surcharge mechanism in place for KEDNY to capture increases in the SIR costs related to Gowanis and Newtown. And that type of surcharge, if it's triggered, would provide additional cash flow relief to the companies in a timely fashion.

Lastly, our joint proposals have a lot of reconciliation mechanisms that reduce the risks to these companies. So the ROE and equity ratio are appropriate in light of those elements. And I think that the JP allows the piecevan companies to stay at the forefront of all of these innovations, the capital investment, they have incentive mechanisms to reduce leak back
logs and increase the number of miles of leak
prone pipe remediated, while reducing the cost
per mile. And other infrastructure enhancements
for -- and other incentive mechanisms for
reducing terminations and uncollectibles. So
there really are a lot of good elements in this
Joint Proposal that somebody investing in the
companies would take comfort in.

COMMR. ACAMPORA: Thank you.

And, Cindy, just for you, because
leak prone pipe has been really on the radar
lately, and, as the judge explained, that this is
an aggressive program to replace some of the old
piping, how does this measure up, this proposal,
with regard to what other companies are doing?

MS. McCARRAN: Yeah. These numbers,
especially for Key Span -- well, National Grid
Long Island, KEDLI, are higher than other
utilities. The KEDNY numbers are about the same
ball park as a few other utilities. But National
Grid Long Island has the biggest inventory of all
the state's gas utilities of leak prone pipe. So
they have a lot of work to do.

COMMR. ACAMPORA: Thank you.
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I think for the record, and Paul, you can correct me if I'm wrong, but the reason why these companies have not been in was because of the agreement in the Key Span grid merger.

MR. AGRESTA: For which I believe I may have been a staff counsel.

COMMR. ACAMPORA: You may have been. And that's when we really did a -- quite a number on the JP.

MR. AGRESTA: But we set up a plan that was designed to be durable over many years.

COMMR. ACAMPORA: Right.

MR. AGRESTA: With revenue sharing and stuff like that to keep them out.

COMMR. ACAMPORA: Right. So I just wanted that for the record. Because normally, any Commissioner that has served here would rather see a multi-year rate case, rather not have a company stay out that long. I think it, you know, it is -- it works better, it's more efficient. And it works well for the company and also the ratepayers that are out there.

You know, when you come into the 20th floor, and I think almost every floor may have
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one, there's a mission statement. And the
mission statement says that our job is to deliver
safe and reliable services at just and reasonable
cost. And no one takes that for granted. It's
important to everyone. And it's always a
balancing act that we have here. And so yes,
there's going to be people who are going to be
pleased with it and there's going to be people
who are not pleased with it. But that's part of
the balancing act that we need to do here, and
because we are required by law to do certain
things.

I'm happy and I think that the low
income proposal is a decent one, and I support
that. And it's also something that we don't take
for granted. We don't throw around other
people's money trying to help everyone else. The
staff is always on top of this in making sure,
our consumer services office, and dealing with
low income folks, making sure that everything is
done in a proper fashion.

And when we go to the SIR, this is
something, if you remember Commissioner Larocca
when he was here, he and I spent weeks trying to
figure out if there was another way we could get around this. Because it's brutal and it hurts. And it was something that was done in the past. And, as the Chair quite eloquently stated, we now have you to pay for the mistakes of those in the past. Fortunately in the Gowanis that we're trying to identify these other parties who are still around. But I can remember as a kid going on the Belt Parkway and crossing the Gowanis Canal, going to New Jersey to visit my father's relatives, it looked like a mess then. And that was a long time ago. And so hopefully this will finally get some resolve to the people who live around that area. It's really -- it's an eyesore, it's an environmental hazard. And I would hope that our people in the Department of Environmental Conservation will lean really hard on the feds and all the parties to get this thing going so that we can see some result to it down the road.

In the JP you state some numbers with regard to seeing an end to SIR down the road, which I think, you know, is very hopeful, because no one wants to pay for the mistakes of the past.
But I think the people of the State of New York are smart enough and want to leave a better environment for the generations to follow. So, as was said before, there's a lot of good things here. There's things that are not as good as you would want them to be. But in balance it does meet our responsibility for delivering -- making sure the companies deliver safe and reliable service at just and reasonable costs. And for those reasons stated I will be voting in the affirmative.

THE CHAIR: Thank you.
I'm going to move to a vote. All those in favor for item 101, please indicate by saying aye.
(Chorus of ayes.)
THE CHAIR: Opposed?
(No response.)
THE CHAIR: All those -- hearing no opposition, there being none, the recommendations are adopted. Thank you, Judges Van Ort, Costello, Cindy and Doris. Not judges, but still very smart people.
COMMR. ACAMPORA: And other staff.
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THE CHAIR: And everyone else.

I do want to actually before -- on this item, I know these take a lot of work, not just the people that are here speaking, a lot of staff, teams have worked on this item, and also the parties themselves. I do want to thank everyone for working through complex, difficult matter, and really helping us get to a good solution. So thank you.

We are going to move now to item 102, which is also a Joint Proposal, regarding a National Gas incident at 310 Page Street in Schenectady. And Administrative Judge Ben Wiles will be presenting this. Good afternoon, Judge Wiles.

ALJ WILES: Good afternoon.

THE CHAIR: You can proceed any time you're ready.

ALJ WILES: Thank you. Am I getting close enough to the mic here?

THE CHAIR: I hear you fine.

ALJ WILES: Good.

This case, or this is a case, or in this case a an action for the recovery of a
Proceedings penalty pursuant to Public Service Law 25A. 25A, PSL 25A was enacted in 2013.

THE CHAIR: You might need to move a little closer.

ALJ WILES: Okay.

In 2013. And this is the first enforcement action in which the Commission has taken under the new statute. Public Service Law 25A gives the Commission the authority to impose an administrative penalty when a combination gas and electric company fails to comply with the requirement of the PSL, or a regulation under the PSL, or an Order of the Commission adopted pursuant to the PSL.

Prior to the adoption of PSL 25A in 2013, the Commission sought to collect penalties pursuant to PSL 25. Under PSL 25, the remedy is obtained through judicial action, in comparison to the PSL 25A, where the Commission can impose a penalty administratively.

With that background, we can turn to the actual circumstances of the case.

310 Page Street is a residential address in Schenectady. On August 10th, 2014,
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there was an explosion at this address which, while not causing any personal injury, completely destroyed the house. The Department conducted an investigation of the explosion to determine what the cause of the explosion was and whether the actions of the gas supplier, Niagara Mohawk, caused or contributed to the accident.

Niagara Mohawk's records indicated that and indicate that the company was first called to 310 Page Street in March of 2013 for a gas meter turn off, and was called again on five more occasions in 2013. Notwithstanding these multiple visits, the company did not turn off the gas at this address.

The staff report identified two potential violations by Niagara Mohawk of our code of gas safety.

First, the investigation determined that Niagara Mohawk failed to, quote, unquote, lock the meter, which is a phrase used to describe the actions taken to discontinue gas over the service line and into the premises.

Two, they failed to lock the meter for the accounts at this address when it received
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a request to discontinue gas service at this address.

There are three ways to lock the meter that are acceptable under the code of gas safety. But Niagara Mohawk failed to do any of these.

Second, staff determined that the company includes the methods for locking the meter in its written procedures. And our code of gas safety requires the company to follow these written procedures. Clearly the company did not do so, so this is the second potential violation.

Under Public Service Law 25A, Niagara Mohawk could be liable for an administrative penalty of $250,000 for each of these violations. A total penalty of $500,000.

On May 15th, 2015, and based on the staff's investigation, the Commission began this case, and directed staff to conduct a hearing and any other procedures needed to resolve the matter.

In May 2015 -- in the May 2015 Order, the Commission suggested that the administrative penalty for these two violations would total
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$500,000, unless the facts adduced at the hearing supported a higher penalty.

Following the Order, Niagara Mohawk and staff conducted settlement discussions. These settlement discussions continued until June 2016, when staff and Niagara Mohawk filed a Joint Proposal for settlement of the case. Under the terms of the Joint Proposal, it's proposed that:

Niagara Mohawk would agree to use -- to use better call scripts and call centers when service is discontinued;

Would monitor accounts more closely for usage on closed accounts; and

Would interact better with municipalities to identify vacant properties.

In addition, Niagara Mohawk would commit to make a greater effort to move meters from inside to outside in the customer's premises.

And, finally, Niagara Mohawk also agreed to support a pilot program to evaluate the use of remote meter valves.

Under the Joint Proposal, the company's support for this pilot program is set
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at $500,000. When the company incurs an expense for the pilot, the company will pay for it, up to a total of $500,000, and not seek the recovery of this amount from ratepayers.

When Niagara Mohawk makes a payment as part of the $500,000, it creates potentially a tax deduction in that same amount. This tax deduction has some value to Niagara Mohawk. So the financial impact of this provision of the Joint Proposal is actually a net impact. And this net financial impact under the Joint Proposal is significantly less than $500,000.

The draft order, characterized and entitled a draft order on consideration of the Joint Proposal. Through this Order, the Commission declines to accept or approve the terms of the Joint Proposal. The Commission's decision does not reject any of the commitments to improve the practices or procedures that Niagara Mohawk has offered to accept in the Joint Proposal. These are the improved scripts, better monitoring of accounts, communications with municipalities, and the movement of meters from inside to outside the premises.
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The Commission's objection, as set forth in the Order or as recommended in the draft Order, is that the tax effects of the Joint Proposal reduce the net financial impact of the settlement on Niagara Mohawk and its shareholders below $500,000. This reduced after tax impact is not consistent with a robust enforcement of our code of gas safety, and of the deterrent effect of potential -- of the penalties described in PSL 25A. The Order -- or the draft order states that the impact of the settlement on the company's shareholders must be as great as the five hundred dollar -- as the impact of the $500,000 penalty would have been.

Accordingly and solely because of the shift in the financial impact caused by the federal and state income tax deductions, the recommendation on this item is that the Joint Proposal cannot be approved.

It is possible, however, for a limitation to be placed on the implementation of the Order, which would make the settlement approvable. If Niagara -- and this is described in the Order, in the draft Order -- if Niagara
Mohawk makes a commitment to forego the tax deduction created by the payments to support the remote meter valve pilot, the full financial impact of the $500,000 payment by Niagara Mohawk would be felt. Under these circumstances, the Joint Proposal would be acceptable. Therefore, the draft order provides that if this acceptable commitment by Niagara Mohawk is made, the Joint Proposal would be approved.

That's the case that we are dealing with, and if there are any questions, I'd be happy to respond.

THE CHAIR: Just a couple of procedural questions.

So this is an example, frankly, where the Commission is not accepting a JP as designed and is making a modification. And I think from my perspective it's an important modification. You know we got lucky in a sense that this was only property damage, although it was obviously a very significant and substantial property damage, which is why I was comfortable directing staff last May to look at the maximum penalty that we could impose under 25A, and maybe do more.
Because, and I -- you know, there are other instances of this. And I do know that the company, I would say in this case National Grid because it's not just National Grid -- it's not just NIMO but the other subsidiaries have had these kind of problems in the past, and has changed its procedures based on -- and has improved in terms of making certain that we don't have homes that are empty where there's live gas flowing. So I think that's very important. I also think that the other terms, including using a technology that would help with these hard turn offs is a great thing.

But I do think that being certain that the full $500,000 effect is on the shareholders was important to me. And that making sure that the tax effect was not a way to minimize that, that was important. So that's why, at least for me, I'm comfortable in accepting the recommended decision and was not comfortable in terms of the JP itself.

In terms of process, I just want to be clear on this. So the company has an opportunity now to make a determination whether
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to accept or reject the decision, because obviously it's not signed onto this decision, it's only signed onto the Joint Proposal. What happens if they accept it? Do they have to come back to the Commission.

ALJ WILES: No.

THE CHAIR: And what happens if they reject it?

ALJ WILES: If they reject it, then we would have to implement the original order. And there would be preparations by both parties for a hearing, there would have to be an evidentiary hearing, and then the result of that hearing would come back to the Commission.

THE CHAIR: Okay. Thank you.

Any further questions or comments on this matter? Yes.

COMMR. SAYRE: As everybody has been saying all day, we take gas safety extremely seriously at the Commission. This item proposes the maximum statutory amount, and I concur with that under these circumstances. In fact, we are getting a $500,000 benefit for ratepayers that we otherwise wouldn't get to fund a pilot program
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that will hopefully prevent this kind of
explosion in the future. I think that's more in
the public interest than putting a penalty amount
into the state's general fund without any
ratepayer benefit, which is really what the
alternative would be. So I support this item.

THE CHAIR: Thank you.

Commissioner Acampora.

COMMR. ACAMPORA: No.

THE CHAIR: Commissioner Burman.

COMMR. BURMAN: Thank you.

First, I would like to thank the
first responders who put their safety above all
in responding to these, and working together to
make sure that they are doing all they can or are
properly trained to respond to these.

The other is, you know, as we've
said, integrity and reliability of our natural
gas system is paramount. And at the core of that
is safety. And, as a state regulator, I am
dedicated to working with all parties to continue
to seek to improve and enhance pipeline safety.
And we have to recognize, with limited resources,
that we must do a great deal. And thus we must
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be laser focused on how best to maximize our resources to achieve our safety goals.

Safety is everyone's business. And enforcement when there is a violation is important. This does send a message that we will vigorously enforce when needed. And we will work through challenges and look to make sure that we are focused on improving and looking at and striving for a zero incident target. I'm very much committed to continuing to work collaboratively with everyone involved to have proper regulations, policies and initiatives in place that provide meaningful advancements for pipeline safety.

I will just point out one thing in here, which is focused on the inside-outside meters. That is also an area that is focused on looking at what it means when we say where feasible, and what are the challenges in inside-outside meters. It's not just this company that is experiencing it, but it is about us as regulators and with the industry as well as with the affected folks to work together but to understand that the primary focus is on safety,
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and what we need to do to ensure and not compromise that safety.

Thank you.

THE CHAIR: Thank you.

We're ready to move for a vote then.

So all those in favor of item 102, please indicate by saying aye.

(Chorus of ayes.)

THE CHAIR: Opposed?

(No response.)

THE CHAIR: Hearing no opposition, the recommendation's adopted.

We're now going to move on to item 201, which is related to energy service companies selling to low income customers. This was Mr. Dwyer, assistant counsel, will be presenting this, and LuAnn Scherer, director of the Office of Consumer Services, is available for questions. And Tom, as soon as you're ready.

This is another form of the Kabuki dance.

MR. DWYER: Good morning, Chair -- or good afternoon, I should say, Chair Zibelman and Commissioners.
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Item 201 relates in part to the orders issued by the Commission in July and September of this year. The September Order adopted a moratorium on ESCO service to low income customers on an emergency basis, and, at the same time, issued a notice of proposed rule making to consider, among other things, converting the moratorium to a prohibition. And that's what the proposed item before you today does.

The item addresses two fundamental concerns. First, that low income ESCO customers are generally paying more for gas and electricity than they would have if they had received full utility service. And, two, that ratepayer and taxpayer funded assistance programs, which provide a subsidy on low income customer bills, are frustrated when the customer receives more expensive ESCO service.

The Commission issued a new SAPA in these proceedings in September, providing parties with an opportunity to comment and provide a basis for the Commission to revisit the actions taken in September. In addition, and separate
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from the efforts to address over-charges to low income customers, there are efforts underway to ensure that the retail markets are resulting in just and reasonable rates for the larger population of mass market customers.

The secretary issued a notice recently that established evidentiary hearings that comprehensively addressed the concerns with the retail market for that larger group of customers. And staff proposes that the issue of ESCO service to low income customers may be revisited once any necessary reforms have been made to the broader retail market pursuant to that process. For the time being, however, the proposed item before you today would stop the dilution of the benefits provided to low income customers.

Staff has continued to work on these issues and has concluded that, despite the effort to implement the Commission's 2014 directives that ESCOs provide real cost savings to low income customers, those customers are still paying more for gas and electricity than they would otherwise pay as full utility service.
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customers.

No comments received pursuant to the most recent SAPA, nor any of the evidence collected as part of staff's investigation have provided any justification that the moratorium should be discontinued. So, accordingly, staff proposes that the moratorium on ESCO service to low income customers be converted to a prohibition. That being said, the proposed item would provide a mechanism whereby an ESCO could request a waiver of the prohibition if it could demonstrate that it can provide a guaranteed savings to low income customers.

Again, the overall goal of this Order is to ensure that customers who receive a subsidy on their energy bills also receive most cost effective service so that those assistance program funds can effectively reduce their energy burden and ensure that the customer maintain essential service.

That concludes my presentation on this item. And LuAnn and I are here to answer any questions you may have.

THE CHAIR: Thank you, Mr. Dwyer.
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So I personally feel like this is a very, very sensible approach. The Commission has made a determination earlier this year that it made no sense for low income customers who are already receiving a subsidy in the form of a federal program or a subsidy in terms of a rate -- a state program through a rate discount to have -- experience higher bills than necessary as a result of taking service from an ESCO and that the -- so, as a result, we placed the moratorium because of the evidence we had, that these customers were being charged more than they would have had had they stayed with the utility.

Since that time, staff has done additional research, which really has confirmed this information. I think LuAnn can talk about the extensive examination they did over many, many months to make sure that they were comparing apples to apples. And that I think close -- we found there's close to a billion dollars, nine hundred million dollars in over-charges statewide through ESCO payments.

That being said, we are very, very committed to figuring out how to create a market
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for residential and small commercial businesses
that ESCOs can provide services that are truly of
value. The Commission, when it opened up these
markets in the 1990s, made a presumption that
adding retailers -- competitive retailers in the
market would provide energy efficiency services
and potentially other pricing programs that would
provide benefits to all consumers. Our study on
this is that it's not been realized. But that
doesn't mean that we don't think there's
potential, but at the same time we're open to the
fact that if we can't get there, we don't want to
continue to expose people to this kind of
dissatisfaction and, frankly, economic harm.

And so I think that the way we are
processing this is to have an evidentiary
proceeding, as well as other actions that the
secretary set out in her notice, so that we can
really look at this market, do the investigation,
and maybe come up, and I hope we do, come up with
real solutions. I've had a number of ESCOs come
to me and talk about, one, their frustration
about the fact that they do not like it when some
of their other people in the market really
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destroy their brand by putting customers in
harm's way. And so they're looking, frankly, for
a better set of rules. I've also had ESCOs talk
about the value they'd like to provide in terms
of energy efficiency and other services, they can
help customers manage their bills and have much
better choice in terms of energy, both
electricity and gas. And so I remain the eternal
optimist here that we will get it right and we'll
be able to get there, but it's going to require
concentrated effort and commitment on all parties
to really come up with solutions. And that's
what this process is about.

In the interim, I don't see any
reason or any justification for putting low
income customers, who are already challenged with
paying bills, in harm's way by forcing them or
unwittingly to pay more for energy, electric and
gas service, than necessary. And certainly it's
also to my mind against the public interest in
having taxpayers whose money is going to support
programs like HEAP, High Energy Assistance
Programs, which I think are very valuable, or low
income discounts, to find that their subsidies,
the value of that subsidy is being diminished because a retailer is making money off of those customers by charging them more money than necessary, more than money than necessary for the same service. So, for that reason, I think the conversion of the moratorium to a permanent prohibition is appropriate.

As in all cases, once we figure out I think the rules for the market at large, we will come back to see how we can apply this to low income. So for those who say well, why would you deprive private low income people of these opportunities, we won't, I don't think we will. But first we need to find what are the opportunities we want to achieve and how do we achieve them in a good way.

In the interim I think that, you know, the Order does provide a limited opportunity for those ESCOs who have come to us and said they're willing to guarantee savings to say if you're willing to guarantee savings and you're capable of showing how you will do that, we will allow you to come in and show us how that can happen. So we don't want to deprive anyone
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of a benefit if it truly can be a benefit. But at the same time I think it's totally appropriate for this Commission to say we will not water down or diminish the value of the discounts nor of these HEAP programs by putting people in harm's way of paying more for electric and gas service than necessary. So I see no reason to revisit that policy determination, and I think that the process that we are now on is the appropriate process, and I would intend to vote for this item.

Any further questions or comments on that? Commissioner Sayre.

COMMR. SAYRE: I completely concur with Chair Zibelman's comments. I've seen nothing in the way of facts or legal arguments to convince me that we took the wrong step in July to put a moratorium on signing up low income customers for ESCO services, and, in fact, the facts that have been coming in indicate that we were right. Unfortunately we have a market failure. And that's the kind of situation where our job is to step in and protect customers. I'm therefore also in support of this item.
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THE CHAIR: Thank you.

Commissioner Burman.

COMMR. BURMAN: So first, I would be remiss if I did not say a few words in honor of Usher Fogel, who I was unfortunately not able to attend his memorial service in Albany today. I have known Usher since about 2007. He was an incredible, dedicated advocate to his clients. Extremely well liked, even from those who may have disagreed vehemently with his substantive positions. He was kind to all. I'm sorry. He was kind to all. Especially those who were new to the energy regulatory world. And it was a gift to all who knew him. His ability to continually do all he could to ensure he gave a hundred ten percent of himself to his clients, his family, his friends, and to staff at the Commission was awe inspiring. May his memory forever be a blessing.

Usher was known in the sort of history of the way we have worked collaboratively with ESCOs. The Commission has historically dealt with different issues that would come up in the retail market. And the way it was done was a
drilling down, working through processes and processes and processes in a collaborative process. And, at the end, being comfortable that there was resolution on important issues and knowing that regulation is always changing, and that we need to work together on the different things that may need to be refined.

This item talks about the importance of protecting the low income ratepayer. I got into the legal field because of my work with the low income community, working in the social work field, dealing with issues related to women who were low income and were in an abused -- in a shelter for abused women and children, and working through the different issues. And energy and addressing those issues was something that was a constant issue.

And I would also be remiss if, because we are so focused on the low income, that we take this time to remind folks that for the 2016-17 regular HEAP benefit, it opened November 14th of 2016. And folks may be eligible for a regular HEAP benefit per program year to help them pay their -- to heat their home. But also,
upcoming, the 2016-17 emergency HEAP benefit opens January 3rd, 2017. And that also is, if they are eligible, a benefit that can help them heat their home if their heat -- or a heat related emergency. And I do hope that our website will be updated to make sure that that information is there, and that we do look at what we can do on our website to highlight the low income initiatives and programs. If you go to the index, you can't find anywhere to direct you if you are looking for information. So I just point that out.

When I look, I think it's important that bad actors in the ESCO market should not be allowed to continue to do business in New York State. That is a important aspect. We need to do all that we can to ensure we have vigorous standards of operating practices in place and that we provide proper oversight, guidance and opportunity to improve performance, such that we help to have a thriving marketplace that protects consumers. This includes addressing quickly when market participants exercise poor or illegal conduct.
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Prior to any regulatory decision, we need to ensure that we have properly established a robust record, ensure due process concerns are addressed, looked at unintended consequences from our actions, and ensure that we will have the tools necessary to properly implement our decision.

Each time that we have looked at these issues, I have made it very clear that bad actors are not something that we want in the marketplace. What I am concerned about is that we have in a broad brush painted the industry in a negative light. We need to carefully take stock of what we have done to not encourage a turnaround in areas of enforcement.

I am concerned that when I read this draft order it takes a broad brush and collectively talks about the ESCOs as if they have not, on any individual basis, been a part of a collaborative process for resolution. In fact, I have taken time to look at each and every collaborative that was on our website, from a webinar perspective, or a transcript perspective, or a summary perspective. And what I have found
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is that there was robust dialogue. There was engagement. In fact, the low income collaborative report had two focuses at the threshold; fixed rates, and savings, guaranteed savings and value added.

The fixed rate aspect seems to have dropped off the table. And I'm trying to understand on that why. So first, maybe if that's the first question we can get some resolution on.

THE CHAIR: First of all, LuAnn, please address the question, I think we did provide the low -- the ESCOs an opportunity to offer a guaranteed savings program.

MS. SCHERER: Yes, we absolutely did. With regard to the guaranteed savings, there was a substantial effort to work with the ESCOs back in 2014 pursuant to a Commission Order, which said the only products that could be offered to low income customers was either a guaranteed savings or an energy related value added. The work of the collaborative resulted in a report that was issued I believe December or November 2015. There was no solutions. And in fact the
vast majority of the ESCOs indicated that they were either unwilling or unable to guarantee savings.

With regard to the fixed rate product, one of the issues that we've been addressing in the collaborative, which is identified in the recent notice as a separate track, is reference pricing, because, you know, along with -- the Commission has recognized that the fixed rate product is a value added. But the -- we need to make sure that the fixed rate product is a product that will benefit low income customers. So there's an effort to work on reference pricing, which is the second track.

THE CHAIR: Okay. So just to be clear, just so -- we have not abandoned fixed rate by any means. I think the challenge that we have, and it's a challenge we want to see addressed, is making sure that when customers are offered a fixed rate, we have a mechanism to ensure that the resulting bill or the rate is just and reasonable. And that's where the discussion of coming up with a reference price, which I would assume would be part of the
discussions moving forward, in fact, I think it's one of the explicit questions in our notice is how to develop that. So I don't think it's been abandoned. And I think the issue is even a fixed price, if it's higher than necessary and higher than it would have been based on a utility average bill, but certainly higher than necessary, would be a concern of mine. Especially in a market that is opaque as energy. It's very hard for customers to understand what's a reasonable price because, unlike going to the grocery store or the drugstore or even going car shopping, it's hard to comparison price. And so looking for ways to do that and provide that customer benefit is really important. But it's also customer certainty. I think nobody ever wants to be in a position where they are put in a position where they are asking to buy something and they don't know if they can get the same product and that they might value at a different price. And so we need to work on how do we provide that clarity to consumers.

COMMR. BURMAN: So with that I would say, and I won't belabor the point of comments
that I have made at other sessions that I think are as true today as they were then, I will incorporate by reference my comments and the discussions at the February 2016 session, the July 2016 session, and the September 2016 session. And I think if folks looked at that and see -- saw some of the questions and dialogue, they would see that there is a pathway. However, part of our difficulty is that we have not had a laser focused on robust enforcement of truly bad actors. And when I look at that, I am concerned that we are spending more time on regulating by press release than we are by actually looking to see what we can do to ensure that we are cleaning up the market as necessary without actually destroying the market. And from my perspective it's important.

As to the fixed rate piece, what confuses me about that more than anything, not only that the low income collaborative report seemed to have no issue among the parties on the fixed rate aspect, but that the prohibition on the fixed rate contract, A, seems odd when after the polar vortex we were very focused on
encouraging ESCOs to move all their customers to fixed rate contract. But the other issue I have, and it's a disconnect that I can't seem to wrap my arms around, is in the community choice aggregation programs I don't believe that the prohibition on fixed rate contracts for low income folks is in place. And I don't understand that.

MR. AGRESTA: So one difference in a community aggregation program is you have a very sophisticated community and/or consultant who is looking at the pricing offerings of the ESCO and coming up with a good deal, something that an ordinary customer doesn't have the advantage of.

COMMR. BURMAN: Okay. So I --

MR. AGRESTA: And then some of your other concerns, I understand them, but as of today we can't tell you what's a good fixed rate product for any customer, what's a good guaranteed rate product for any customer. And, in the meantime, low income customers, who we are subsidizing, are overpaying what they would pay if they were just utility customers. So while we try to sort out how to create these products,
millions of dollars are changing hands from low income customers. And how we can continue to let that go on is beyond me. Which is really the whole gut of this thing. We are going to try to fix the market that failed. But in the interim, we are going to get the low income customers out of the equation so that we can at least stop the bleeding while we try to figure it out. And that's the essence of this.

COMMR. BURMAN: So when I look, though, at the fixed rated part of it in the community choice aggregation, I went to Westchester Power website. And they have in there a piece on fixed rates, discussing in there, and I won't have the right, specific language, but basically discussing that fixed rates may not be, you know, as -- it may be higher than your utility rate. But that the reason you have the fixed rate is for leveling out to make sure that you know what you're paying. And there is no distinction on looking at it from if you're a low income customer you shouldn't be paying a fixed rate price. And the fixed rate price may not necessarily be the best
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benefit for you. However, for some it may be
because they are wanting to have that certainty
in there.

THE CHAIR: I know that everyone
wants to get into a debate on this, but can I
just -- one thing. The issue of fixed versus
variable is not in front of us today. So that's
one. So this is really beyond --

MR. AGRESTA: That's budget billing,
which gives people --

THE CHAIR: Right. And we also
have --

MR. AGRESTA: -- a predictable bill
per month.

THE CHAIR: But there's no question
that when anyone -- someone is looking at a
forward price, going forward as opposed to a
variable price, there's a risk premium. And so
we would expect that that would get added because
there is an effort to remove the risk of variable
volatility in the prices away from the consumer
onto the vendor. That I think we all understand
is sort of basic pricing in the market.

The question, though, becomes in all
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these instances how high a premium, what is the ultimate rate, and how do we make a determination that even on a fixed price that the fixed rate being offered is a just and reasonable one. Hence, our decision or recommendation or thought last spring to look at reference pricing so we had some gauge, and that's been -- it's used in the markets, it's only almost like a circuit breaker, so ESCOs would know that within a certain range we would feel comfortable that what they were offering was just and reasonable. And staff was working with them.

I will -- I'm going to turn to Commissioner Acampora -- but no, let me just finish.

But I do want to take -- I do take issue with you. I do not think we are regulating by headline. We began last spring to begging to work with the ESCOs. We gave them every opportunity to come in and work with us. They made a determination that they were going to sue us, even challenging our very authority to regulate this market on the benefit of consumers. We have been working with them, our door has been
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open. Staff has spent endless hours and collaboratives working, trying to work these things through.

We have an obligation to protect consumers. Consumers have the right to believe that whenever they're charged for anything that is within our jurisdiction, that they're getting value for their dollar, and the price that they're getting is just and reasonable. To suggest that this commission is doing anything but looking at how to execute its obligation to consumers is offensive to the rest of us. We have -- we have -- and so I know you have voted against these matters in the past. I know that you voted against the low income discount. But I will tell you that I am absolutely committed, and I think other Commissioners sitting here are absolutely committed to getting this market rate right. It was a market failure. We are going to address this. And even though the ESCOs want to continue to sue us, we're going to continue to pursue solutions for the benefit of the consumers.

So with that, I just -- you can
disagree with us, you can disagree with our policy, but do not suggest that this commission does anything but execute its responsibility to the people of New York.

COMMR. BURMAN: Respectfully, I would like to respond to this. I think it is very difficult to -- to try to make sure that I do what I need to do as a regulator and as one member of this body. I am well aware that there may be times that what I say may be uncomfortable and not necessarily agreed to by the other Commissioners. But I do have a vote, and I do have a perspective that it is important that we make sure that we have a robust record, that we are not coming here and just going along because it's difficult. That in fact we drill down and we make sure that what we're doing is asking the right questions. And it's not about asking the right questions internally. At times it may be important that the public sees the debate and the discussion. I welcome people to have disagreements with me. In fact, it makes me a better regulator. It makes me go back and drill down and make sure that I have all the
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information I need. And if I don't, then I cannot feel comfortable voting on it without first addressing it.

I have said from day one, and you go back through all the different orders, what's important that we -- that our words mean something and the actions to those words mean something. And if I'm not comfortable, that those -- that this is being done in a way that is actually addressing the issues and may actually have unintended consequences, then I have to raise those issues.

You go back pre February 2016, and you will see that we have had a number of issues where we have ourselves stayed our own ESCO orders, stayed our own ESCO orders, and have on record, in transcript, an admission that maybe we got it wrong and we need to do another deep dive. In fact, at the February 2016 session I did not vote against the reset order. I said I concurred, but I was very concerned, very concerned with the unintended consequences and shutting down an entire industry and causing confusion to the customers who were relying on
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those, those ESCOs.

And my concern is making sure we get it right. I have asked repeatedly, repeatedly, both publicly and internally, for information drill down on the Office of Consumer Services statistics and complaints and making sure that we are focused, very much so, on actually pulling out of that real data and not just taking it to our advantage and using it in a way that's either harmful or positive to the people that we are trying to focus on. In fact, in this very order it cites to a footnote on initial complaints and doing a period of time and capturing that period of time I think of six months where we say we have a thousand complaints -- initial complaints for ESCOs.

My question is this. And I've asked this. Go back to the session September 2016. This is not new. You're not being blind-sided by my questions. In fact, I'm trying to actually make sure that we're doing what we say we are going to do, which is protecting the ratepayers and making sure that through that we have a robust marketplace and we're working on what we
need to do. We can't go forward if we are ourselves are not willing to take stock of our own issues.

    And I take umbrage at the fact that a party may decide that we were wrong and they
decide that they're going to challenge that in court, and that somehow they are then seen as bad actors for doing that. People on all sides of the aisle go to court and sue one party or another if they believe that they were -- that the actions taken by a commission was improper. And in fact, they vote -- two times they were -- they got stays, one in the reset order and one in the low income order.

    And so what I look at that is, I do not want to be on the wrong side of the law. I was very concerned and I said it, and that's to the fact that we were -- we were taking some -- some leaps legally and that we might get harmed because we did not follow the process. Process is very important to me, and making sure that we do what we need to do so that people have the right due process and the right notice. And, in fact, I was right. The court stayed our actions.
And when you stay the action and when you give a TRO, it's not just because you messed up on process. It's also because they think there may be some merit to the underlying substance.

So for me, when I look at this, all I know is we have -- we have TRO's that are telling us that on our order, our reset order and on our low income moratorium order, that we are stayed in that. And that under that, and I can pull out the language, Judge O'Connor was very specific in not doing anything in violation of that order. So somehow now we have taken that, and we may be able to, but somehow we have now taken that, we have based the evidence that we submitted to the court on the staff testimony with the statistics, and we've taken that and we -- overnight we issued a notice opening up a proceeding. That proceeding that was opened before the administrative law judge, that notice last Friday, I read about it in the paper. And so my issue is, what was the drive to do that without telling the Commission as a body and having us vote as a body on whether or not that notice was proper. And, in fact, what I would have said is
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I welcome an administrative law judge looking, an independent administrative law judge looking into these issues, doing a fair evidentiary hearing, doing a fair investigation, doing a fair analysis and making sure that we understand where our challenges are and where our opportunities are and potentially some resolution. I look at that notice, I don't see anything about default pricing.

(Inaudible.)

COMMR. ACAMPORA: Thank you. I think we have a record to stand on here. This has gone on for an awfully long time. And I can safely say that when I first voted to have this moratorium, I felt very secure in the fact that we were doing the right thing.

We all know, ESCOs can be great partners and we want them to be. But we've had a problem in New York. And I don't know how many times we have adjusted our business practice law. And, you know, we've tried to work with people. But we are responsible for the money that is given to help low income people. And that responsibility is a heavy one. And when that
money is literally thrown out the window and is not doing these people any good, we have a responsibility to come in and stop it. If people can't trust their government to work and do the right thing to protect all sides, I mean, no one has worked harder with our Office of Consumer Services than me. I'm actually known far and wide as the consumer commissioner. So I think that we have worked together well. And the fact that maybe there -- the organization is working to say we haven't done the right thing, that's a disagreement that we can continue to have. But we are not shutting the door on anyone. But we have to come to grips with what is wrong.

And so to open this up and let the bad players go out and do the same thing, we know that this happens throughout the whole country. There are people who are out there who know where to go in order to bilk the low income customers, because they know they're disadvantaged. And if we don't take a responsibility to help the disadvantaged, and to help the people who think they're doing a good thing by helping the disadvantaged, we're not doing our job, period.
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So I think that talking about this particular item addresses the fact that we are still going to go out there and protect the low income people until we get this thing right.

And that's all I have to say.

THE CHAIR: I also want to note that our staff has been extremely diligent. We have now done a review of all the ESCOs. We are on the complaints. And to suggest that we are not enforcing our laws is also factually just simply incorrect.

COMMR. BURMAN: I'd like to ask how do we, as the PSC, convert a low income moratorium, which has been stayed by a court order to a prohibition without running afoul of the TRO?

THE CHAIR: Mr. Agresta.

COMMR. BURMAN: How do we issue a notice without it coming to the Commission first to say it's okay, we feel that we have not violated the court order? And how do we make sure that we don't have notices issued without the full body of the Commission -- without the full body of the Commission, it may be you may be
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able to legally, but is it the right thing to do. Should it come back to the Commission.

I'd like to see added to that notice that we look at the default pricing. I'd like to see added to that that we look at a true independent analysis of our own enforcement efforts. I'd like to see an analysis of the community choice aggregation and what's happening there, and how it is able to be a footnote in the orders, be waived from any of the provisions in the reset order and the prohibition on the low income.

THE CHAIR: So just on the third item you're certainly, and I would invite all the Commissioners to ever -- to tell us if there are additional issues that they would like to see in the proceeding and we'll take it under consideration in terms of the investigation. There's a -- so we will do that.

On the issue on the legality of this order today, and even though it's beyond the scope of this order, the Commission -- our -- the ability for the secretary to initiate proceedings, I'll just turn to you, Mr. Agresta,
just for a legal opinion.

MR. AGRESTA: Okay. So there's two issues that you raised that Audrey hasn't addressed.

THE CHAIR: So if you would just speak up.

MR. AGRESTA: Okay. First let me get first to the item that's before us, okay, if that's all right.

When the Commission adopted on an emergency basis the moratorium, at the same time it also approved issuing a SAPA notice to consider whether to make the emergency order permanent. In that SAPA notice it was also noticed to the public and the world that the Commission would also be considering whether or not it should be made a permanent prohibition instead of just a moratorium. That SAPA notice was published in the State Register, people had an opportunity to comment on it. And it reads virtually word for word for what is in the Order before you today. In my many years of working here, that SAPA notice is closer to the order than any SAPA notice has ever been to any other
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order in the history of the Commission. Okay. So I don't believe there's any procedural problems there at all.

The judge did not stay the Commission from taking future actions. The judge cannot stay the Commission from taking future actions. The Commission is a lawful body that has the authority to take actions. So none of these actions that we are proposing today are covered by any stay by anybody.

And as to the notice that went out in these proceedings, I believe it was mentioned at the last session when we talked about this stuff that the Commission was going to be doing further work on the reset order to go forward. And that notice is just the outcome of that, but it was not necessary for the Commission to vote on whether that notice should go out or not. There's ample authority for either the Commission to issue such a notice, the secretary, the chair, or a designated employee who is going to be conducting a hearing. There's -- so there's absolutely no question under the Public Service Law that that was proper and legal. And it is
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totally consistent with everything we have been
saying in public from the beginning, that we are
going to work to try to, first of all, take low
income customers out of the equation, and then
second, fix the markets.

THE CHAIR: I would ask Commissioner
Sayre and Commissioner Acampora, since
Commissioner Burman opined on the additional
proceeding, do you have any concerns or thoughts
about that that you want to express?

COMMR. SAYRE: I agree with
Mr. Agresta that it was not necessarily -- not
necessary to take that kind of initiating order
directly to the Commission. But I'd like the
record to reflect that had it been, which was one
of the options, I would have voted for it.

THE CHAIR: Commissioner Acampora.

COMMR. ACAMPORA: I agree with what
Commissioner Sayre just said, no problem.

COMMR. BURMAN: And I just want to
clarify. I two times raised issues at session
concerned about the notice and the SAPA and the
legality of that and worried about it. And both	imes the court acted staying our orders. So I'm
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particularly sensitive to making sure that we
don't come even close to a violation of the court
order. And here, the particular language that
concerns me is, said order that any entity or
persons acting pursuant to the moratorium order
who receive notice of this order are hereby
temporarily restrained from acting on or
implementing the moratorium order in any way.

Now, be that as it may --

MR. AGRESTA: That refers back to the
order that was previously adopted by the
Commission. Here we are adopting a new order.
That that prior restraint does not apply to a new
action in any way or manner.

COMMR. BURMAN: And we have --

MR. AGRESTA: And a court does not
have the authority to pre-enjoin a body like this
from doing something.

COMMR. BURMAN: I understand, but we
also have the.

MR. AGRESTA: So there's no legal
issue. There's nothing to go with.

COMMR. BURMAN: We have an obligation
to look at how we can tighten up our processes
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and make sure that there is no issue.

MR. AGRESTA: Which we did, and which is why the SAPA notice is virtually word for word what's in this order.

COMMR. BURMAN: And as a commission I would have appreciated, as a member of the commission, as the body, being able to decide that as a body. And even if I was out voted, I'm comfortable with that if we as a body agreed that it was legal or not legal. All I know is a notice was issued on behalf of the Commission without my authority, without my even knowing about it, and without having any opportunity to ensure that as robust a record and as robust in a notice is issued giving direction to the administrative law judge, because I would have asked for other things to be in that so that we would make sure that we had a fair evidentiary process. And I would have also asked if we had checked with the court on the -- on her interpretation or the court's interpretation of whether or not she would see that that was going to be a violation.

THE CHAIR: Okay. Commissioner
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Berman, I think -- I appreciate that, that's your view. But there's two separate issues here, and I think you're conflating the two.

So the issue in terms of the initiation of the proceeding, I think that in my mind the court contemplated additional proceedings. In the TRO they actually said the issue was they wanted us to have additional proceedings. That's why we're having additional proceedings on the issue of how to reset this market.

And the issue in terms of low income, which is the matter in front of us today, you have the ability to vote for it or vote against it. And so I'm going to move to a vote.

All those in favor of the recommendation stated in item 201 to prohibit sales from energy service companies to low income customers as described, please indicate by saying aye.

(Chorus of ayes.)

THE CHAIR: Opposed?

COMMR. BURMAN: And I dissent for a variety of reasons. One, I was not given the
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opportunity today to fully explain my concerns
and to ask for detailed information.

Two, I am concerned that we may have
crossed the line in terms of pushing the bounds
of fair and opportunity for not only the parties
but for the Commission to weigh in on the proper
notice.

Three, I am concerned that the Order
language is not balanced. And, in fact, appears
somewhat, in a very, very broad brush, to cast
the entire industry as bad actors and having not
come to the table to try to resolve these issues.

And, four, at the end of the day I
want to make sure that what we're doing is
actually helpful to the customers, low income,
middle income, and any income. I want to make
sure that we are doing what we need to do to make
sure that we maintain a reliable and robust
energy system. And that means that we have to be
able to have frank conversations and be able to
look carefully and to not take to -- and to not
try to tell a commissioner that he or she should
not be asking these questions in a public forum.

THE CHAIR: First of all, I don't
think anyone has told you you can't ask questions that are relevant. But I will take your opposition. I do note that you've had many minutes now to talk about the reason why you were concerned, so I don't think anyone has kept you from opining.

We are going to move to item 301, which is our last item for today, and that is the petition for rehearing of the Clean Energy Standard, presented by Mr. Paul Agresta.

Paul, please begin.

Don't look so puzzled, you've got me nervous.

MR. AGRESTA: No, it's the number, it was throwing me off because the number changed.

THE CHAIR: It's item -- case 302, item 301.

MR. AGRESTA: Okay. The purpose of today's session item is for the Commission to consider petitions requesting that the Commission rehear or reconsider a number of issues decided on August 1 in the Clean Energy Standard Order. The standards for rehearing is set forth in the Commission's regulations, and they provide that
rehearing is only appropriate when the Commission has committed an error of law or fact, or when new circumstances warrant a different determination.

As a legal matter, the standard is difficult to meet, and it is not unusual for most petitions for rehearing to be denied. The topics covered by most of the petitions before you today include:

Whether certain preexisting hydropower resources should be eligible to satisfy the Renewable Energy Standard mandates;

Whether certain existing hydropower, wind, and other renewable resources should be eligible for additional financial support to ensure that they are maintained as resources that contribute to the baseline of New York's renewable resources;

Whether the current biomass emissions testing requirements for eligibility are too onerous;

Whether biogas technology should be eligible for more financial support than other renewable technologies, to recognize unique
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benefits they may provide;

Whether the Commission really meant for municipal electric customers to contribute towards the Renewable Energy Standard mandates;

Whether imposition of the zero emissions credit requirement or the ZEC requirements exceeds the Commission's procedural or substantive authority under state law; and

Whether the ZEC requirement is within the Commission's authority under federal law.

Now, all of the arguments made in those petitions are summarized in the session item. Staff recommends that the petitioners have not met the rehearing standard, and that therefore the rehearing process is not an appropriate vehicle to consider the matters, and the petition should be denied.

But staff also recommends that there be continued consultation by staff with the parties in a follow on process to ensure -- to further consider eligibility and other issues to promote the deployment and maintenance of energy renewable resources. This recommendation responds to the request of many for further
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consideration sooner than the otherwise planned triennial review of the program, which wouldn't happen for three years.

There is one other petition for your consideration as part of this session item that is somewhat different than the others. Exelon, the owner of the Ginna and Nine Mile nuclear facilities, requests rehearing and removal of the CES order requirement which conditioned the twelve year duration of the ZEC program on transfer of the FitzPatrick nuclear plant by September 1, 2018. The purpose of that condition as it relates to Exelon was to give Exelon an incentive to purchase the FitzPatrick facility. After the CES order was issued, Exelon responded positively to the incentive and entered into a binding contract to purchase the FitzPatrick facility. That is a significant change of circumstances directly related to the requirement.

Exelon now argues, and staff agrees, that continuing the requirement as to Exelon, now that Exelon has done all it can to make the transfer happen, causes a perverse incentive that
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is an incentive that is opposite to the overall intended policy because it discourages Exelon from making multi-year investments in the Ginna and Nine Mile facilities until such time as the twelve year term of the ZECs is assured. So, if you're Exelon, you're not going to want to spend money on a five year project for a plant if you're not sure that after two years you're still going to be around. So it works as a reverse incentive from what we want. We want the plants to stay open for the full twelve years to provide ZECs for the full term.

So, therefore, as to the Exelon petition, staff recommends that it be granted and that upon rehearing, the requirement issued be modified as to how it is applied to Exelon.

This concludes my presentation. And staff is available to answer your questions.

THE CHAIR: Thank you. And just very quickly on that, I am comfortable with the fact that Exelon has now completed the transaction with Entergy plus the fact that I would note that FERC has also approved the transfer. That is a changed circumstance. And we would not want any
uncertainty going forward so they can execute and move forward on retaining Fitz as part of the fleet. So I'm comfortable with making that change.

I also am pleased that we're accelerating the discussions that we were going to have as part of the triennial review in terms of hydro as well as existing renewables in the state. Again, low costs of natural gas is having its impact, both beneficial and harmful depending on what business you happen to be in. But as a result of that, we'll want to look at, because clearly, if in fact there are existing renewable resources that we're taking service from today, that would, because of the prices in the market, would find that they could no -- they couldn't even stay open for three years and we would lose them as a resource and the cost of replacing it would be higher, those are the types of factors I think the Commission needs to consider because our objective, after all, is to implement the Clean Energy Standard at the lowest cost possible to consumers, and this is very consistent with looking at that issue. So I'm comfortable with
the direction we're taking in the rehearing and I intend to vote for it.

Any further questions, comments?

Commissioner Sayre. You're still smiling.

COMMR. SAYRE: I'm still -- yeah, I changed my train reservations.

(Laughter.)

COMMR. SAYRE: Luckily I got the new ones.

I concur with the staff recommendation. I agree that nobody has shown, with the limited exception of the FitzPatrick ownership requirement, nobody demonstrated a mistake of fact or mistake of law or new circumstances that warrants rehearing. So we deny it.

THE CHAIR: Commissioner Burman.

COMMR. BURMAN: So I understand the granting the petition for rehearing on the piece with Exelon in addressing that clause and, you know, sort of the fact that it doesn't make sense to have that in there. I also am very focused on the fact that we have a nuclear fleet that we need to ensure is viable and working with our
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focus on making sure that we have a robust energy system and a reliable one.

I think that there was some -- there is some confusion in my mind on the denial of some of the petitions for rehearing where we seem to suggest that we're denying them, but then at the same time saying -- directing staff to look at how some of these things may be able to be resolved in the future. And to me it seems a little disconnect that if we are acknowledging that some of what they have in there is important in terms of their interest in being a part of the Clean Energy Standard or not, that it may be appropriate to grant rehearing on those aspects separated out and actually have a pathway of real time of addressing them. It concerns me that, again, it goes back to language and clarity and regulatory certainty. And to the extent that we have the discretion to reconsider portions of it and to clarify or to incorporate some of those, that we're not taking that opportunity to do so.

I also think that last session, when we looked at the Public Service Law Section 70 transfer, that there was confusion that we were
deciding the Clean Energy Standard. I made it very clear at session that at that time the Clean Energy Standard was not a part of the decision on the Public Service Law Section 70 transfer. It had nothing to do with any potential state subsidies or other subsidies, and in fact was a straight Section 70 transfer petition before us looking at the four corners of that and that was really all that we were doing.

And so for me, my difficulty is on looking at this and understanding that we have situation with needing to address our nuclear fleet, being supportive of that. But also at the same time, at the August 1st, 2016 session I did not vote with the majority opinion the draft order. What I said at that time, which I still hold today, is that we have -- we're at a critical juncture. We need to look carefully at all that we're doing from the state energy planning process. And we need to move forward in making sure that all of our decisions and the impact that they might have, short and long term, and the real costs and the overload and impact on the reliability and resiliency of
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the system needs to get looked at in our long
term state energy planning. And also
incorporating what the experts outside of our
agency may also be doing with that overall state
policy planning. So that's sort of my dilemma
when I look at this is the petition to rehearing.

MR. AGRESTA: So from my point of
view, none of them met the standard for
rehearing. None of them raised arguments that
weren't already considered when the August
decision was made, if you were going make the
decision again today, I would recommend you make
the same decision you made on August 1st.

The question that they have raised
that concerns us is more one of timing. The
decision doesn't have a review for another three
years. And I think they made a case that maybe
we need to look at this sooner. And so that's
why we have suggested a new process.

THE CHAIR: But I think what I would
add to that is that part of this is that there
are statements that have been made by the various
renewable developers or renewable owners that
they are not able to economically survive in
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these markets. And I think by opening --
starting the discussion now, we're able to look
at the situation, get a better understanding, and
develop the type of record evidence that the
Commission would want to see if it's going to
reverse its decision on Tier 2. So this is --
it's not a rehearing, because we have yet to have
enough information. This is the point of
developing the information earlier rather than --
and, frankly, providing the opportunity for
certainty and addressing their concerns. So I
don't -- I am very comfortable with it. But I
would not be comfortable doing a rehearing right
now because we simply just don't have enough
information.

COMM. BURMAN: So are we then doing
what we did last time, which is petition for
clarification, which is essentially saying we
hear you, we may need to retool this, and
therefore we will look at that?

MR. AGRESTA: Well, the Commission
already said it was going to on a triennial basis
relook at everything.

COMM. BURMAN: But this is speeding
that process up.

MR. AGRESTA: What we're hearing is that there may be some urgency to do it quicker. But we do not have facts before us to even come back with a proposal at this point, and so it needs further --

THE CHAIR: Development.

MR. AGRESTA: Development. And that's the purpose of a consultation.

COMMR. BURMAN: Okay.

THE CHAIR: Okay. Any questions? All right. So let's -- so for that let me move to a vote on item 301. All those in favor, please indicate by saying aye.

(Chorus of ayes.)

THE CHAIR: Opposed?

COMM. BURMAN: And I still have the same position I had at the August 1st session, and raise the concerns that I also believe that some of these aspects should be, as we said, fast tracked to look at, because people do need regulatory certainty and making sure that they actually have a window to look at that and have folks deciding how we should further proceed.
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But I also am very interested in making sure that all of this gets looked at holistically across the board in terms of our diverse fuel and making sure that we do things that are technologically neutral and look at how this impacts the grid itself.

THE CHAIR: Secretary Burgess, yeah, what's your vote, please?

COMM. BURMAN: I'll abstain from vote being based on my previous vote.

THE CHAIR: So that's a no.

COMMR. BURMAN: No, it's not, it's an abstention.

THE CHAIR: An abstention is a no.

So we're going -- is there any other matters in front of us today?

SECRETARY BURGESS: There are no other matters before you today.

THE CHAIR: Okay. Before I close, first of all, any -- I'd like to -- smiling Jack here. I did want to take a couple of minutes.

So, first of all, it is our last session of the year. We're about ready to enter into the holidays. And I think it's important to
take a minute first because for a couple reasons. One, we are I think really fortunate in this state to have a staff at the Department of Public Service that I think is exemplar par none in terms of their dedication to people -- and I know they want to get back to their homes, but I'm going to take a few minutes -- and to people in New York, to their jobs, the sacrifices they make all the time in terms of public service. I think I'm very fortunate to be serving with other Commissioners who are equally dedicated. We have robust debates, as obviously is seen, but that I agree with Commissioner Burman that debates only making us better. I also think we are very fortunate in that the parties who participate in our proceedings add so much. And as a result, as a state we accomplish a huge amount.

And so, you know in -- you know, I took a look and to see -- you know, what -- really I think it's a good opportunity to say at the end of year what have you done. We have done a lot. You know, we started the year, frankly, with the initiation of the CES proceeding, which of course has gotten a -- taken a huge amount of
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time and been recognized as very forward looking across the United States and frankly across the country in what we're doing. But also we started the matter with -- the year with, even back then thinking, about the RG Ginna RSA matter, which was complicated and now just minor comparison.

Throughout the year, just to get to these facts on, these are pure facts, we did eight major rate cases and saved ratepayers approximately $241 million from the activities of this staff and these ratepayers. We of course initiated in REV a number of proceedings. The Clean Energy Standard, the clean energy fund implementation, the work on DCIPS, the work on value of the distributed energy resources, the work on energy interconnections, the work on BSA. All in the order of approximately fourteen orders. We had 24 public information meetings with fourteen communities, and received 4,000 comments just related to REV.

We also were very successful in implementation of a number of the demos throughout the state. Many customers of our utilities, Con Ed, O&R, Central Hudson and RG&E
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now have portals where they can easily look at ways of buying energy efficiency and becoming engaged, something they never had before.

Con Edison has implemented its virtually power plant, which is an incredibly innovative product, that's looking at storage and solar in combination so that you can add them together, and as a result has worked successfully with the fire department in New York in addressing how to use lithium ion batteries, which is going to be a huge value as we integrate solar and other renewable resources.

National Grid implemented its fuel belt product, which is a great project that's looking at how to work with low income consumers and giving them access to solar.

So all of these were just in REV. But we haven't stopped. We did a number of Article 7 proceedings related to building infrastructure. The staff is absolutely committed to getting things done, to do things through reliability, and these things are often not seen by the Commission but it happens every day.
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We completed four management audits. And we began three, more than we've ever done in any single year since we started this in 1988.

In telecommunications we completed the Altice and Cable Vision merger, as well as implemented the Charter merger. So now in New York, thanks to that and Governor Cuomo's broadband, we are going to be the state that provides 300 megabits of broadband and access throughout the state. No other state in the country is offering that type of service. And I think it's something we should be proud of. It's close to a billion dollars of value just coming from the merger alone.

Our consumer services unit had 84 public statement hearings, basically one or two meetings every week that they did. They fielded 60,000 complaints, and had over 51,000 calls. That's in addition to the other processes we've debated at length today, and I'm not going to reopen that.

Pipeline safety handled a total of 659 cases involving damages to underground facilities, and our gas utilities have agreed to
complete more than 447 and a half miles -- we have engineers, we are very precise -- of leak prone pipe because of Commission approved replacement plans. That's nearly 20 percent more than the previous year, and lives up to our commitment to make sure that during our life times we are going to replace this pipe.

So that's last year. And the hits continue to keep on coming. In 2017 there are a lot of things we are going to continue. We expect to see a number of Article 10 proceedings related to wind development and other activities, related to the CES. We'll have our first auctions. We expect to see a 90 megawatt solar energy project in front of us, one of the biggest in the state. And we also will implement and work on the value of distributed energy resource proceeding, I expect to get that as well as completion of our work on the modifying how we do interconnection. So, you know, all in all -- and then in telecommunications we are going to work on our telecommunications study, especially looking at safety issues and how do we close that digital divide, and continued work, as always, on
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gas safety and on the REV demonstrations.

So, you know, we have a big agenda behind us that we completed. I am always amazed at the work of the staff. They grumble like crazy, they complain like crazy, but they get it done and they get it done well.

I've been, as you all know, I spent a great deal of time in my life in the frozen tundra of Minnesota. And in Minnesota there's a little town called Lake Wobegon that Garrison Keillor talks about as the -- and I'll just borrow from that when I talk about the Department. The fact the matter is that I am really fortunate to be part of a state where there's so many committed people. But really feel blessed that we're part of a Department where the women are strong, the men are good looking, and all of the employees are well above average. So thank you, and I wish you all a very happy holiday.

(Appplause.)

THE CHAIR: And that is the close.

(Whereupon, the proceedings were concluded.)
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COUNTY OF RICHMOND )

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Kari L. Reed

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