

Public Service Commission - Procedural Conference
September 21, 2016

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TRANSCRIPT OF THE
PUBLIC SERVICE COMMISSION
PROCEDURAL CONFERENCE
CASES NO. 16-E-0060/16-G-0061

WEDNESDAY, SEPTEMBER 21, 2016

90 CHURCH STREET

BOROUGH OF MANHATTAN

Reported By:

Jennifer Cassella

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HEARING CONVENED AT 10:36 a.m.

PRESENT:

Dakin Lecakes, Administrative Law Judge

Ben Wiles, Administrative Law Judge

Sam Laniado, MTA

George Diamantopoulos, New York Energy Consumers Council

Richard J. Koda, UWUA, Local 1-2

Jeffery Stockholm, SolarCity

John Favreau, DPS Staff

Lindsey Overton, DPS Staff

Thomas Rudebusch, County of Westchester

Chinyere Osuala, Pace

Radina Valova, Pace

Michael Zimmerman, UIU

Kevin Lang, City of New York

Mary Kraveske, Con Edison

Marc Richter, Con Edison

Leticia Remauro, United Plans & Production Workers, Local 175

James Kilkenney, NYICA

Rachel Burd, PULP

Jim Tripp, Environmental Defense Fund

John Dowling, Consumer Power Advocates

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(Continued)

Arthur Adelberg, Time Warner Cable

Leonard Lucas, United States General Services
Administration

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2 ALJ WILES: I think we can begin
3 now. I'm calling the cases which are
4 16-E-0060 and 16-G-0061. This is a
5 procedural conference pursuant to notice.
6 My name is Ben Wiles. I'm the
7 Administrative Law Judge on this case. I
8 want to pass this around just to get
9 people's names for the reporter's benefit,
10 and we can pass it down, back and back.
11 Try and put your name approximately where
12 you are and above all, try and be legible
13 for the reporter.

14 Rather than go around the room for
15 appearances, I'm going to call the roll and
16 give the party you're representing. Please
17 identify yourself, assuming we really only
18 have to identify one person per party,
19 somebody will and we'll have to go through
20 who else is here. First I'm calling a list
21 of parties that identified a few days ago
22 so if you became a party in the interim,
23 please let me know and I'll correct the
24 list.

25 The first party is Acadia Center.

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(No response.)

ALJ WILES: The next is the
Associate for Energy Affordability.

(No response.)

ALJ WILES: City of New York.

THE WITNESS: Yes, your Honor.
Kevin Lang for the City of New York.

ALJ WILES: Thank you.

Community House Improvement Program.

(No response.)

ALJ WILES: Consolidated Edison of
New York.

MR. RICHTER: Your Honor,
Marc Richter for Consolidated Edison
Company of New York, Inc.

ALJ WILES: Thank you.

Consumer Power Advocates.

MR. DOWLING: John Dowling for
Consumer Power Advocates.

ALJ WILES: County of Westchester.

MR. RUDEBUSCH: Tom Rudebusch from
County of Westchester.

ALJ WILES: Cubit Power One Inc.

(No response.)

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2 ALJ WILES: Digital Energy Corp.

3 (No response.)

4 ALJ WILES: Energy Concepts

5 Engineering PC.

6 (No response.)

7 ALJ WILES: The Environmental

8 Defense Fund.

9 MR. TRIPP: Jim Tripp.

10 ALJ WILES: Thank you.

11 Great Eastern Energy.

12 (No response.)

13 ALJ WILES: Joint Supporters.

14 (No response.)

15 ALJ WILES: The MTA, Metropolitan

16 Transportation Authority.

17 MR. LANIADO: Sam Laniado on behalf

18 of the MTA.

19 ALJ WILES: Natural Resources

20 Defense Counsel.

21 (No response.)

22 ALJ WILES: New York Energy

23 Consumers Council, Inc.

24 MR. DIAMANTOPOULOS:

25 George Diamantopoulos for the New York

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2 Energy Consumers Council.

3 ALJ WILES: New York Independent
4 Contractors Alliance.

5 MR. KILKENNY: Jim Kilkenny, New
6 York Independent Contractors Alliance.

7 ALJ WILES: New York Oil Heating
8 Association, Inc.

9 (No response.)

10 ALJ WILES: New York Power
11 Authority.

12 MR. APPELBAUM: David Appelbaum from
13 the New York Power Authority.

14 ALJ WILES: New York State
15 Department of Public Service.

16 MR. FAVFEAU: John Favreau for the
17 Department of Public Service.

18 ALJ WILES: Northeast Clean Heat and
19 Power Initiative.

20 (No response.)

21 ALJ WILES: Pace Energy and Climate
22 Center.

23 MS. OSUALA: Chinyere Osuala for
24 Pace.

25 ALJ WILES: Public Utility Law

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2 Project of New York.

3 MS. BURD: Rachel Burd from PULP.

4 ALJ WILES: R.G. Vanderweil

5 Engineers PC.

6 (No response.)

7 ALJ WILES: Real Estate Board of New

8 York.

9 (No response.)

10 ALJ WILES: Related Companies.

11 (No response.)

12 ALJ WILES: Retail Energy Supply

13 Association.

14 (No response.)

15 ALJ WILES: SolarCity Corporation.

16 MR. STOCKHOLM: Jeffery Stockholm on

17 behalf of SolarCity.

18 ALJ WILES: The E Cubed Company.

19 (No response.)

20 ALJ WILES: Time Warner Cable.

21 MR. ADELBERG: Arthur Adelberg for

22 Time Warner Cable.

23 ALJ WILES: United Plant &

24 Production Workers.

25 (No response.)

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ALJ WILES: United States General
Services Administration.

MR. LUCAS: Leonard Lucas for GSA.

MS. REMAURO: Leticia Remauro. I'm
sorry. United Plant & Production Workers,
Local 175.

ALJ WILES: Utility Intervention
Unit, Department of State.

MR. ZIMMERMAN: Michael Zimmerman
from UIU.

ALJ WILES: Utility Workers Union of
America, AFL-CIO, Local 1-2.

MR. KODA: Richard Koda, Koda
Consulting, Inc., on behalf of U.W.U.A and
Local 1-2.

ALJ WILES: Jeffrey Buss, B-U-S-S.

(No response.)

ALJ WILES: David Ahrens, Energy
Spectrum, Inc.

(No response.)

ALJ WILES: Christopher Halfnight,
Urban Green Council.

(No response.)

ALJ WILES: Will Nicholas, Tesla.

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(No response.)

ALJ WILES: The two parties that were on the list for the gas case but not on the electric, we have Astoria General Company, L.P.

(No response.)

ALJ WILES: And NRG Energy, Inc.

(No response.)

ALJ WILES: Is there anyone here who believes they are a party but I didn't call their name, or that they represent a party but I didn't call their name?

(No response.)

ALJ WILES: At this point, I think would be really, rather than doing it later, to admit parties unless somebody is uncomfortable. All of you I named are recognized in -- deemed as a party but they haven't actually been admitted as a party in a formal way and I'll do that right now on the record unless there's an objection or if someone feels they need more time to -- whether they want to be admitted.

(No response.)

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ALJ WILES: Hearing no objections and seeing no objection, I think by a rule at this time that people I just listed and parties in this case are admitted as parties. We look forward to their participation.

ALJ LECAKES: Hi. I'm Dakin Lecakes. I'm the other Administrative Law Judge in this proceeding. The purpose of today's conference is to recognize the joint proposal that was filed by approximately 20 different parties yesterday, at least that's what I counted in the recitation of the parties that were submitting it.

I did get an e-mail last evening at approximately 6:45 that, among other things, Utility Intervention Unit, Department of State indicated that it was opposing the joint proposal; is that correct, Mr. Zimmerman?

MR. ZIMMERMAN: That's correct.

ALJ LECAKES: In your e-mail, besides proposing a schedule for hearings

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for getting the joint proposal before the Commission or considered by the judges, you also indicated that UIU might be potentially interested in submitting testimony; is that correct?

MR. ZIMMERMAN: Yes, your Honor.

ALJ LECAKES: That is still the case, Mr. Zimmerman?

MR. ZIMMERMAN: Yes.

ALJ LECAKES: Is that a definite or is that we're considering it and we may change and just offer a statement in opposition?

MR. ZIMMERMAN: It's something we intend to do if your Honors will allow it.

ALJ LECAKES: There was some confusion. There was another e-mail from Mr. Rigberg this morning citing a decision from our colleague Judge Phillips in a Suez Water case where I think Mr. Rigberg was trying to indicate that the decision supported the idea that testimony could be submitted. In my opinion, and according to the guidelines, testimony is absolutely

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allowed by either parties supporting the joint proposal or opposing the joint proposal. So you will have the right to submit testimony. The question is on what schedule will that testimony be submitted.

I think the thing that was unusual about Suez in my reading is only that it seems that Judge Phillips was requiring testimony from the supporting parties in that case and I have my ideas about why she felt that was necessary there. Here, I do not see the same circumstances and I do not think that it's necessary to require people to submit additional testimony.

In my experience, what usually happens from the supporters of the joint proposal is they submit statements in support, then they have a panel of witnesses that come up to the hearing table and then adopt the statements and the statements for as their testimony supporting the joint proposal. The testimony that's been pre-filed in this case is often entered in as exhibits in

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2 additional support of the joint proposals.
3 So that's usually where the support comes
4 from. The opposition has the option of
5 either just cross-examining all the
6 testimony, the pre-filed and the statements
7 in support and elements of the joint
8 proposal or in offering its own testimony
9 to oppose. So if that's your plan, I will
10 take that into consideration.

11 There is an issue that the judges
12 have in this case, though, and that's given
13 the restrictions of a Public Service Law
14 requirement on a suspension period, granted
15 that the company did allow for two
16 extensions in this case, we don't have a
17 lot of time to play with to try and get
18 this joint proposal considered by the
19 Commission. Moreover, it's not generally
20 the Commission's favorite practice of
21 taking advantage of all the extensions just
22 because they exist. So we'll try to make a
23 schedule that works. However, there are
24 other problems in October that circle
25 around cases that -- rate cases that are

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before the Commission that I, myself and Judge Wiles are involved with.

So did everyone receive Mr. Zimmerman's e-mail? I'll just read it for the record.

As Mr. Zimmerman indicated, the joint proposal was indeed filed on September 20th. He recommends that statements and supplementary testimony on the joint proposal I think as both in support and opposition, be submitted on October 7th, and any rebuttal testimony, if necessary, be submitted on October 21st, a hearing on the joint proposal be held on November 2nd, and then he provided a briefing schedule of initial briefs on November 23rd and December 7th for reply briefs.

We did not ask for any proposed schedules but I am willing to look at this and then hear other parties.

Does anyone wish to speak on the schedule proposed by Mr. Zimmerman?

MR. FAVREAU: Is the proposal that

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2 there will be testimony in lieu of
3 statements in opposition?

4 ALJ LECAKES: No. I believe what
5 the proposal is is that statements and if
6 there was any testimony wished to be
7 offered by any party, that it would be
8 coming on October 7th. There were no reply
9 statements, as I understand this proposed
10 schedule, but just rebuttal testimony, if
11 necessary, on October 21st.

12 MR. ZIMMERMAN: So on that, we had
13 not intended to put in testimony on the JP
14 as a whole. We were interested in only
15 entering supplemental testimony on the
16 particular narrow technical complex issues
17 that we think can be more fully addressed
18 and we can put explanations on it. That
19 would be just one aspect of our opposition.
20 The remaining aspects we were going to
21 handle in our comprehensive statement which
22 is why we proposed filing those
23 contemporaneously.

24 ALJ LECAKES: You do understand that
25 any witness that provides opposition

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2 testimony would be subject to
3 cross-examination by all the supporting
4 parties?

5 MR. ZIMMERMAN: Yes.

6 ALJ LECAKES: Actually, any party.

7 MR. ZIMMERMAN: Yes.

8 UNIDENTIFIED SPEAKER: I was
9 wondering if I could get clarification on
10 the testimony that UIU is proposing to
11 submit. Specifically, I am aware that UIU
12 did file testimony in this case and that on
13 the issues that I believe that they will be
14 opposing, so I was wondering what the
15 purpose of UIU's testimony is beyond the
16 filing that it has already made.

17 ALJ LECAKES: I'll let Mr. Zimmerman
18 address his own personal view on that for
19 you UIU, but my understanding in general on
20 this issue is that the company files its
21 initial testimony proposing a certain rate
22 plan for the year. Parties come back and
23 they submit testimony replying or
24 responding to the company's case as filed.
25 This testimony that would be contemplated

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on Settlement Guidelines that were included in Mr. Zimmerman's e-mail would deal with issues specifically as they are written and contained in the joint proposal.

So the joint proposal will often have a settlement that is different than what the company initially proposed and that's why testimony now -- the initial proposal as made by the company is not the subject of the testimony but the eventual settlement or the settlements in the JP would be the subject of the testimony. Is that correct, Mr. Zimmerman, for what UIU plans.

MR. ZIMMERMAN: It is. I can also add that during the time between our rebuttal testimony is filed and now, we engaged in extensive discovery with the company and have additional comments on that that would be addressed with the testimony.

ALJ LECAKES: Okay. And if you're prepared to respond to this, could I ask what the issue or issues that UIU has

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2 concerns with in the joint proposal as
3 filed yesterday?

4 MR. ZIMMERMAN: We have concerns
5 with both the electric process service and
6 then the gas process service.

7 ALJ LECAKES: Okay. And so with
8 UIU's position made by the joint proposal
9 in total should be scrapped or not adopted
10 by the Commission, or is it something that
11 these sections alone --

12 MR. ZIMMERMAN: These sections alone
13 but unfortunately they're there.

14 ALJ LECAKES: Well, and then I would
15 turn to the company and staff and any other
16 supporters and say, you know, the joint
17 proposal was initially -- or we -- the
18 judges were told that the joint proposal
19 was initially intended to be filed on the
20 16th. That didn't happen. It came in
21 yesterday, as I haven't had a chance to
22 review it but usually in these joint
23 proposals there's a provision that at the
24 end it indicates the Commission strikes or
25 modifies one of the provisions of the joint

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proposal that the parties that sign the joint proposal are no longer bounded by that. Is that provision in this joint proposal?

MR. RICHTER: It is, your Honor.

ALJ LECAKES: So that would create a problem then that UIU should consider when it's submitting its testimony because if we change allocation issues, you know, there's several parties that may wish to withdraw their support for the joint proposal.

MR. ZIMMERMAN: I understand, your Honor. I would point out that several parties, signatories to the JP indicate that they intend to reserve the right to portions of the JP.

ALJ LECAKES: Well, that brings up another question. Is there any other party here, whether you signed the joint proposal or not, that intends to impose in part or all of the joint proposal?

MR. STOCKHOLM: Yes, your Honor. SolarCity does.

ALJ LECAKES: And if I may,

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Mr. Stockholm, are you prepared to tell us a little bit about the issue that you're concerned with in the joint proposal?

MR. STOCKHOLM: Yes. It deals with the recommendation that we may in our direct testimony, to have an interconnection or earnings adjustment mechanism apply beginning January 1, 2017, and that is not so reflected in the -- it's a little bit complicated because the joint proposal provides a process to talk further about that EAM but it looks to me like that section separates itself from the decision. It may come, Lord knows, after the Commission reviews the joint proposal.

So -- and we stand ready to talk to the parties in that process, but from the standpoint of getting an issue before the Commission as soon as possible, we will oppose the joint proposal if we can't get to an agreement in this side piece before briefs are due here. That's the, by far the biggest single issue for us. There may be a couple of other minor rate design

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issues.

ALJ LECAKES: Okay. I'll note that Mr. Zimmerman's e-mail also indicated that in addition to proposing the schedule as I noted before, that UIU was willing to forego further process such as a recommended decision briefs on exceptions and briefs opposing exceptions. I will tell you right now that Judge Wiles and I have not even considered a recommended decision in this case, so that's not a question.

Yes, Mr. Lang.

MR. LANG: Did you want to hear from other parties --

ALJ LECAKES: I'm about to get there right now.

So again, the schedule as proposed was October 7th for statements and supplementary testimony, October 21st for rebuttal testimony, November 2nd for a hearing, and then a briefing schedule of initial briefs on November 23rd and rebuttal briefs on December 7th.

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Mr. Lang, I'm sorry. Were you talking about opposition of the joint proposal?

MR. LANG: Yeah. You asked if parties were going to be doing it --

ALJ LECAKES: I apologize because I saw the City signed off on the joint proposal so I wasn't sure --

MR. LANG: Well, we actually haven't submitted our signature page yet. We were optimistic we were going to be doing so earlier this week and then recent events have taken away people's attention from this matter. Some other things are going on in the City right now that are kind of higher priority, so we are optimistic we will get our signature page submitted within the next couple of days.

We will be taking exception to certain aspects of the low-income program due to the fact that we have a pending petition for a hearing before the Commission in the generic low-income proceeding. Given the fact that we filed

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2 that petition, we simply can't agree to the
3 dollars and cents that are here. With that
4 said, we have no intention other than
5 raising the issue and noting that it's
6 because of our pending petition. We don't
7 plan on cross-examining anyone formally
8 opposing the joint proposal. There is
9 language, I know you actually haven't had a
10 chance to look at it, that provides if the
11 Commission changes the discount levels for
12 low-income in the generic proceeding, if
13 they effectively will be directly
14 translatable into Con Edison without delay
15 which is satisfactory to us but we just
16 felt we couldn't agree unless they were
17 already disputed.

18 ALJ LECAKES: I understand. Is it
19 your understanding -- I'm not going to hold
20 you to this -- is it your understanding
21 that the provision under the low-income
22 program track the generic order as written
23 without any modification?

24 MR. LANG: Yeah. I mean, there
25 might be a little tinkering around the

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2 edges but as to the discount levels which
3 is the big issue we're concerned with, it
4 does track the generic order and that's
5 where our concern lies. Our concern lies
6 with what the Commission did in the generic
7 order since they are directly tracking to
8 this case. It's the same issue, without
9 getting into the nitty-gritty of the
10 settlement discussion, we understand that
11 is really on the generic side and not this.

12 ALJ LECAKES: Is there any other
13 party that's taken exception to the joint
14 proposal?

15 Yes.

16 MR. KILKENNY: My name is
17 Jim Kilkenney, and I'm the Secretary and
18 Treasurer for the New York Independent
19 Contractor Alliance.

20 NYICA members have been performing
21 satisfactory municipal infrastructure
22 support work for Con Edison for much more
23 than a decade. Our members perform asphalt
24 work and have been the low responsible
25 bidders of Con Edison's asphalt work which

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has set the standard for their budget for that work over the years.

We oppose this rate hike based on language contained in Section E-2 of this joint proposal which passes costs from municipal infrastructure support onto the ratepayer if Con Edison exceeds its target for these expenses. We can attest to the fact that Con Ed is not doing all it can to protect the ratepayer from having to pay additional costs for municipal infrastructure support expenses, and this is why: This year, Con Edison arbitrarily changes its standard terms and conditions for construction contracts to enforce the following language: With respect to work ordered for Con Edison unless otherwise agreed to by Con Edison, contractors shall employ on work at the construction site only union labor from building and trades locals affiliated with the Building and Construction Trades Council of Greater New York, having jurisdiction over the work for the extent such labor is available.

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Now, this language demonstrates favoritism to a contractor signed with members of the private organization, mainly the BCTC. It --

ALJ LECAKES: I'm going to stop you right here. I've heard enough to understand the issue why you're concerned with and I'm just letting you know that although your statement's getting onto the record here, this record is more to establish a procedural schedule and the comments you're continuing to make after this point go more toward reasons that the Commission should look at -- relook at this provision of the joint proposal.

We are going to provide in our schedule an opportunity for parties to submit statements in opposition and that would be the more appropriate time to submit the statement that you're talking about here. Okay. And that will be soon, those statements. We'll talk about that again in a minute.

Is there anyone else who wants to

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take some opposition to -- yes.

MS. OSUALA: Yes, your Honor.

Chinyere Osuala, Pace Energy and Climate Center. Pace Energy and Climate Center submitted a signature page for -- as part of the JP, however, we do have an asterisk and that is concerning similar to UAU, just the issue of a revenue allocation, a very small part of the cost of service methodology concerning the collection of high tension primary additional costs through customer service charges. So -- but we do not intend to formally oppose the JP.

ALJ LECAKES: Okay. That's what I'm interested in.

So when you file a statement on the joint proposal --

MS. OSUALA: It will be in support of the JP and we do not intend to present any supplemental testimony or present any witnesses.

ALJ LECAKES: Okay. Thank you very much.

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MS. OSUALA: Thank you.

MS. REMAURO: Your Honor?

ALJ LECAKES: Yes.

MS. REMAURO: As a representative of United Plant & Production Workers and Local 175, we also intend to oppose the joint proposal on the specific E-2 area where ratepayers would have to pay more if the expenses went up.

ALJ LECAKES: Is there anyone else -- Mr. Rudebusch.

MR. RUDEBUSCH: Yes, your Honor. I just want to clarify for the record that -- declare that -- I mean, I think there will be testimony but we will be not be opposing it.

ALJ LECAKES: I've heard some oppositions, some mixed what I would call support with reservations. That being heard, how many people actually intend on, in a hearing setting, cross-examining witnesses of the company, staff or otherwise, any supporters of the joint proposal?

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2 (Hands are raised.)

3 ALJ LECAKES: So union. UIU?

4 MR. ZIMMERMAN: Likely.

5 UNIDENTIFIED SPEAKER: Your Honor,
6 perhaps a few questions and we're good.

7 ALJ LECAKES: Yes.

8 MR. LANIADO: Can I -- I'd like to
9 comment or actually ask a question about
10 Mr. Zimmerman's proposal, because I think
11 you laid out a standard on how the
12 settlement guidelines might be
13 interpreted --

14 ALJ LECAKES: Can you identify
15 yourself for the record?

16 MR. LANIADO: Sam Laniado on behalf
17 of the MTA.

18 ALJ LECAKES: Thank you.

19 MR. LANIADO: -- and I don't think
20 that that standard was satisfied, at least
21 we didn't get an answer yet. You had asked
22 Mr. Zimmerman what issue does he want to
23 raise and supplemental testimony that is
24 different from the issue that he raised in
25 direct testimony and rebuttal testimony.

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ALJ LECAKES: That's correct. Well,
what I --

MR. LANIADO: And that question
wasn't answered.

ALJ LECAKES: Right. What I said
was that I expected that any opposition
that was raised would be directed toward
how the issue was included or incorporated
in the joint proposal, separate and apart
from how it was either proposed by the
company in its initial testimony, or staff
or one of the other parties in its
testimony later on.

MR. LANIADO: And I'm under the
impression, and I'll stand corrected by the
parties in the room, that the revenue
allocation issues that ended up in the
joint proposal are pretty much what was
filed in the company's direct case, and
therefore, what UIU's direct and rebuttal
testimony should suffice.

ALJ LECAKES: Except that as
Mr. Zimmerman indicated, UIU has continued
to ask IRs as its right in this case up

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2 until -- should this case go into
3 litigation, they would have been able to
4 submit IRs and ask questions on that and
5 conduct cross-examination of the company's
6 witnesses, as witnesses of anyone else to
7 try and make their case on those points.
8 Granted, the time for rebuttal testimony
9 would have been over but now we're at a
10 stage where these Settlement Guidelines do
11 allow testimony as to how the issue was
12 including or incorporated into the joint
13 proposal, and to the extent that it has any
14 difference at all from what's been proposed
15 in any single individual testimony has been
16 addressed in UIU's rebuttal testimony. It
17 does have the right as an organization
18 that's proposing the joint proposal to
19 offer additional testimony.

20 MR. LANG: To that point, the
21 Settlement Guidelines provide that we're in
22 different stages of the hearing now, that
23 it's not a hearing over the underlying
24 testimony. It's a hearing over the
25 reasonableness of the joint proposal --

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ALJ LECAKES: That's correct.

MR. LANG: -- and while it's true that UIU has engaged in discovery, unless it's directly related to the Settlement Agreement it's, not relevant at this stage of the hearing. So they don't seem to have a right to submit whatever testimony they want because they need additional information out of the company.

ALJ LECAKES: Unless the discovery is conducted at the joint proposal or unless the testimony that they're submitting is directed at the joint proposal?

MR. LANG: Right, but their discovery hasn't been on the joint proposal. It's just be on the underlying case.

ALJ LECAKES: Right. Let's -- I mean, we're not -- we're here to hear. I mean, the point is that one of the public interest's prongs that the Commission considers is whether the joint proposal is within the likely range of litigated

1 Proceedings

2 outcomes, and by doing that, by showing
3 that public interest test, parties in
4 support of the joint proposal traditionally
5 point to their own testimony as filed. It
6 doesn't get admitted as testimony but it's
7 often put in as an exhibit in these
8 situations. And to the extent that it
9 exists in the record of the evidentiary
10 hearing for this case, it's in the
11 evidentiary record, it is fair game, but it
12 should be -- the testimony itself that's
13 offered by UIU, as I think Mr. Zimmerman
14 understands, needs to be contained to how
15 the issue is not in a public interest as
16 included in the joint proposal.

17 MS. BURD: Your Honor?

18 ALJ LECAKES: Yes.

19 MS. BURD: As a point of due process
20 and full transparency, the Public Utility
21 Law Project supports the UIU's requests.

22 ALJ LECAKES: Requests?

23 MS. BURD: Request for the
24 additional testimony and --

25 ALJ LECAKES: Well, again, there's

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2 no question that additional testimony is
3 allowed by the Commission Settlement
4 Guidelines. The question is whether what
5 kind of testimony would be proper in this
6 situation.

7 Mr. Diamantopoulos.

8 MR. DIAMANTOPOULOS: Thank you.

9 Your Honor, I think our concern is the same
10 as the City's and MTA's and perhaps I can
11 put it in a different way. I'm don't think
12 anybody here is opposed to UIU
13 cross-examining any witness and certainly
14 on the discovery that it had requested.
15 What is, at least my client would be
16 opposed to, is any improper bolstering of
17 supplementing -- including it through the
18 supplemental testimony for testimony that
19 should have been included on the substance
20 of revenue allocation in its original
21 testimony.

22 ALJ LECAKES: No. I completely
23 appreciate that and I think these are fair
24 statements but they're all hypothetical at
25 this point and they're all premature

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2 because no testimony has been offered.

3 Again, UIU has the right to offer

4 testimony. Once the testimony is offered,

5 any party here has the right to make a

6 motion to strike that testimony as improper

7 and not, you know, within the type of

8 testimony allowed by the Settlement

9 Guidelines, and as untimely, under the

10 initial procedural schedule of this case,

11 you know. That's fair, absolutely.

12 MR. LANIADO: But your Honor, why
13 don't we simply ask, with all due respect,
14 UIU how their proposed testimony is going
15 to differ from their recommendations in
16 their previously filed direct and rebuttal,
17 because if we allow them to file another
18 round, that's equivalent to surrebuttal --

19 ALJ LECAKES: Well --

20 MR. LANIADO: -- and surrebuttal is
21 rarely allowed.

22 ALJ LECAKES: Again, it's premature.
23 It's talking about hypotheticals and I'm
24 not going to make Mr. Zimmerman recite
25 testimony that hasn't even been written

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1 yet. I will let the UIU develop its
2 testimony and make its own judgment's as to
3 the propriety of that testimony and submit
4 it and then I will allow parties as, you
5 know, necessary, to make the motions that
6 they feel are necessary to strike the
7 testimony.
8

9 Yes, in the back.

10 MR. ADELBERG: Arthur Adelberg from
11 Time Warner Cable. Just a clarification
12 question. As noted, we are supporting the
13 joint proposal. There was reference to
14 admitting into the record pre-filed
15 testimony. Some of our support in what we
16 want to support in the joint proposal is
17 not in that testimony. It's just a
18 suggestion that if we can do it as an
19 exhibit, perhaps. Also, can you do so
20 without bringing a witness forward, being
21 personally present in the hearing room?

22 ALJ LECAKES: Yeah. There's many
23 processes and procedures that are used when
24 a joint proposal -- a hearing on a joint
25 proposal is conducted. Some people

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2 actually have the testimony submitted as
3 admissible testimony. I'm of the opinion
4 that only testimony that goes to the joint
5 proposal should be part of the record, of
6 the evidentiary record at that point as
7 testimony, and all pre-filed testimony is
8 usually offered as an exhibit to support
9 the Public Interest Standard of the
10 Commission's case, and when we do that, you
11 can -- sometimes it doesn't even need to be
12 adopted at that point because it's just
13 showing that this testimony was submitted
14 to support one position or another to show
15 the likely range of litigated outcomes.

16 To the extent that Judge Wiles and I
17 discuss it and feel that it should be at
18 least sworn to in some way, we would not
19 require witnesses to show up. We would
20 only require affidavits in the case and
21 submitted along with that testimony.

22 MR. ADELBERG: So we should
23 note -- in our comments we should go to the
24 lines and then -- is that what you're
25 saying?

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ALJ LECAKES: In your statement of support --

MR. ADELBERG: The statement of support, we can make a reference to it.

ALJ LECAKES: What can often be done is a recitation of the Commission Settlement Guidelines and a discussion about the Public Interest Standard, in one of those prongs of the Public Interest Standard is showing that the joint proposal fairly falls within the range of likely litigated outcomes and to show that it's very difficult to cite testimony that exists on DMM right now in the record and say the company had proposed something like this, DPS staff had proposed something like this, and I'm your expert, proposed something like this, the joint proposal comes out in X direction and it's a fair resolution of the three viewpoints here because of Y, something like that.

MR. ADELBERG: Okay. Thank you.

MR. FAVREAU: Your Honor, if I may.

ALJ LECAKES: Yes.

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MR. FAVREAU: Because of the joint proposal, the base of the joint proposal on these issues that UIU is raising are part of the direct cases of the companies, I think it's a very fine line what is surrebuttal or what is actually apart of the joint proposal, and I think you're going to be seeing perhaps from them, probably a lot of motions to strike and just procedurally, would the intention be to have a decision prior to any hearing or would you be making that decision at the hearing which --

ALJ LECAKES: It depends on how quickly the motions come in and it also -- I mean, the fact that this is a concern of the supporting parties gives me a little pause onto the schedule that Judge Wiles and I considered prior to coming here. In other words, you know, if there's more time needed between when that testimony is submitted and when the hearing is held to allow parties to review that testimony, not for the purpose of

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1 necessarily coming up with
2 cross-examination but to actually make a
3 motion on that, I'm sensitive to that. And
4 when we start talking about the proposed
5 schedule and certain dates here, I'm going
6 to take that into consideration and hear
7 what people feel about that.

8
9 Mr. Richter.

10 MR. RICHTER: I had a general
11 comment. In listening to the parties
12 express issues that they may pursue
13 different from what's in the joint
14 proposal, if I heard correctly, I think
15 it's a handful and just a handful that are
16 likely to show up in written statements of
17 opposition and only one that will be the
18 subject of a hearing and cross-examination,
19 recognizing also some of the parties who
20 are proposing certainly limited issues in
21 the settlement and may also want to
22 cross-examine the panels, but typically
23 staff and the company for that to answer
24 all questions about the joint proposal.
25 Given that, I guess, and listening to your

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1 statements earlier about scheduling issues
2 up at the Commission, mentioning the
3 suspension period, you know, the letters
4 that the company had submitted, you know,
5 agreeing to extensions for a month or two
6 subject to certain conditions, I guess
7 before we start talking about the schedule
8 and, your Honor, setting a schedule, again,
9 I would just -- I think -- we're in the
10 middle of September now and I just
11 encourage that we can set a schedule and
12 set dates that will get us to the
13 Commission for the December session, while
14 the Commission -- while, you know, the
15 company made that time available to the
16 Commission subject to certain conditions.

17
18 My perspective in listening to the
19 discussion here today including the UIU
20 issues and what they plan to pursue, to me
21 argues in favor of a schedule that will get
22 us to that timeframe. If for no other
23 reason, also to avoid I think the
24 circumstance which maybe we would all like
25 to avoid, of let's say a decision getting

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2 delayed and all of a sudden we're dealing
3 with customer rates next year where you're
4 loading 12 months worth of revenue
5 requirements into 11 months worth of
6 billing, etc. And I appreciate all of the
7 efforts of all the parties that got us to
8 where we are today. I think, your Honor,
9 considering there's been 20 plus active
10 parties that participated in this case, the
11 comprehensive joint proposal to me is a
12 very limited number of issues to which
13 parties will take exception and only one
14 that plans to put in testimony, I think
15 argues for a schedule for us to -- and
16 recognizing you have other commitments but,
17 you know, pushing to get this thing done in
18 time to go to the Commission in December.

19 ALJ LECAKES: And what I can tell
20 you is Judge Wiles and I are committed to
21 getting it done as quickly as possible
22 recognizing that the initial filing would
23 have had a decision in December by the
24 Commission, recognizing that there are two
25 agreements to extend the suspension period,

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2 however, the Commission favors not
3 compounding rates and trying to keep rate
4 years clean, but there's a lot of other
5 competing interests and we'll try to do it
6 as expeditiously as possible. I cannot
7 guarantee any certain date. There's a lot
8 of factors that play into that, but our
9 intent is not to create a schedule just to
10 take advantage of the fact that my
11 understanding is that we have a Commission
12 decision in February and that would satisfy
13 the extensions but we're not going to take
14 advantage of those just because they exist.

15 MR. RICHTER: Understood and I
16 appreciate that.

17 ALJ LECAKES: Yes.

18 MR. TRIPP: Your Honor?

19 ALJ LECAKES: Behind you first,
20 Mr. Stockholm.

21 MR. TRIPP: My name is Jim Tripp
22 from the Environmental Defense Fund. We're
23 not involved in distributing that issue to
24 the Commission but we are concerned about
25 the schedule. There are a number of

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2 agreements in the joint proposal which are
3 inarguably important for the progress --
4 making progress on achieving the
5 environmental goals that the Commission has
6 adopted, so anything that you can do to
7 press the schedule to start to accelerate
8 it and move to forward so we can get a
9 decision. And I'd like to just give hope
10 there are dates in this joint proposal for
11 doing collaborative work such as on the
12 energy efficiency EAM's, and I guess I
13 would hope that further contesting of this
14 revenue allocation issue wouldn't delay
15 progress on that work.

16 ALJ LECAKES: Okay. I appreciate
17 it. It sounds like we're turning to
18 schedule. Let's look at the proposed
19 schedule by Mr. Zimmerman and UIU. He
20 submits that October 7th would be a proper
21 date for statements in support or
22 opposition, as well as any supplemental
23 testimony on the joint proposal.

24 Are there any parties who wish to
25 discuss that date?

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Mr. Favreau.

MR. FAVREAU: I think that date is, since we just filed the JP yesterday, that date seems to me fairly close. I would propose something maybe like the 14th of October.

ALJ LECAKES: So the 7th is a Friday; is that correct?

MR. FAVREAU: Correct.

ALJ LECAKES: So the 7th would give two and a half weeks. You would propose an additional week from staff.

How do other parties feel about either of those dates, October 7th or October 14th? I'll note that October 10th is Columbus Day weekend. It is Columbus Day, so the 8th, 9th and 10th would be Columbus Day weekend. So Mr. Zimmerman's proposal has statements coming in on the Friday before Columbus Day. Mr. Favreau's suggestion has statements coming in after that, after Columbus Day.

MR. ZIMMERMAN: I'd just like to clarify. We submitted our proposed

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2 schedule just for reference to give us
3 something to work around. We would not
4 object to setting a date for October 14th,
5 so long as we still have ample time for
6 subsequent process after that.

7 ALJ LECAKES: I'll tell you that I
8 have some concerns with the November 2nd
9 date of the hearing on the joint proposal.
10 I think that that is a little bit later
11 than Judge Wiles and I are comfortable with
12 in trying to get the Commission or
13 the -- our recommendations to the
14 Commission, as I said to Mr. Richter, as
15 expeditiously as possible.

16 So I think we're considering
17 something more in the month of October,
18 which if that could help inform people
19 about the dates to get statements in
20 support and opposition in, that might
21 change your minds about how quickly you
22 want them in.

23 Mr. Richter.

24 MR. RICHTER: I was going to say,
25 your Honor, we don't have a problem with a

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2 different date for statements in support or
3 initial testimony in isolation but I don't
4 think we can look at it or we should look
5 at it in isolation just relevant to the
6 remarks you just made. We certainly were
7 looking and hoping for a hearing sometime
8 in October and then maybe with limited
9 process thereafter in terms of briefs to
10 the extent necessary, again, in an effort
11 to close this record and give your Honors
12 and others within the Commission what they
13 need to do. We want a schedule just doing
14 the best we all can to get it to the
15 Commission in December, if at all possible,
16 but we were also very concerned about the
17 November 2nd date that was proposed and two
18 sets of post-hearing briefs after that
19 which is really, to my recollection, not
20 typical on a joint proposal.

21 ALJ LECAKES: Right, and I agree
22 with you. In my experience, you have a
23 statement in support and statement in
24 opposition that basically tries to cover
25 everything that a party wants to either

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support or oppose the joint proposal on.
Then you have the hearing and the briefs
should be limited to anything that came up
in the hearing that wasn't necessarily
covered in those statements, and so I think
that the briefing schedule should
absolutely be accelerated to a single
post-hearing brief without the need for
replies.

It would also, and I think we, it's
Judge Wiles' and my expectation, that those
briefs would be limited and not repeating
things that were put in those statements
in support and opposition. I also don't
think that in any outcome of today, that we
would have any ruling that would include a
briefing date. We usually establish those
at the hearing itself once we see how the
hearing goes. So I hear you on that.

But I think --

MS. BURD: Your Honor?

ALJ LECAKES: Yes.

MS. BURD: PULP would like to bring
to your attention that on the 14th there

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2 are evidentiary hearings in the American
3 Water case and we would greatly appreciate
4 it if the hearings did not overlap.

5 ALJ LECAKES: The one thing -- one
6 of the main things I got out of
7 Mr. Rigberg's e-mail that I don't know that
8 he intended, was I found out that the Suez
9 Water hearings on their joint proposal are
10 scheduled for the same time that
11 I'm -- that my official notice on the NFG
12 hearings is coming out which are the 5th,
13 6th and 7th with potential carryovers to
14 the 13th and 14th. So that week is really
15 difficult for me.

16 The week of the 26th, for other
17 reasons also related to the NFG rate case
18 are difficult because of public statement
19 hearings. I think that Judge Wiles and I
20 are looking at October 19th, 20th and 21st
21 for a hearing date.

22 MR. FAVREAU: Would that be only one
23 round of briefing prior to that?

24 ALJ LECAKES: I would only assume
25 one round of briefing unless parties really

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felt that they needed two rounds of statements.

MR. FAVREAU: So for UIU, they would put in, arguably if they decide to, testimony and there would be no rebuttal testimony, or how does that work?

ALJ LECAKES: Well, what I would say is I think what I would consider at this point is, and again, I'm willing to hear what parties think about this, but statements in support and opposition coming in together just because it's a pretty accelerated schedule getting to the 19th, it's only four weeks away. Statements in support and opposition and any supporting testimony, any additional supporting testimony coming in on say October 12th, the Wednesday which would be halfway between Mr. Zimmerman's proposed 7th and your, Mr. Favreau, proposed 14th.

MR. LANG: Excuse me, your Honor. That's Yom Kippur. Can we possibly take a different day? One day either way would be fine but just not that day. I mean, either

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2 the 11th would work or the 13th.

3 ALJ LECAKES: I think the 11th would
4 be preferable to the judges, and that way
5 people have the benefit of working on
6 Columbus Day weekend if they want but --

7 MR. FAVREAU: Your Honor, is there
8 any way you would reconsider and make it
9 the 13th? The Tuesday after Columbus Day
10 weekend is somewhat difficult.

11 ALJ WILES: You just have to
12 remember that we're working really around
13 the dates for the hearing so if we choose
14 the 13th, it shortens the period between
15 filing those statements and the hearing.
16 If we choose the 11th it makes it a bigger
17 gap. It's the date for the hearing
18 that's --

19 ALJ LECAKES: Right. And the other
20 concern about that is everybody I heard on
21 potentially making a motion on whatever
22 testimony UIU produces on either the 11th
23 or the 13th so you reduce the amount of
24 time if we make it the 13th for matters to
25 make a motion, for people to get -- parties

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2 to get a decision from us prior to the
3 hearing date.

4 Again, I anticipate -- I've heard
5 that there were potentially two or three
6 parties that were looking at
7 cross-examination of any panels put up by
8 in support of the joint proposal, and I'm
9 assuming the company and staff, as to
10 whether, you know, if we accept UIU's
11 testimony, staff, the company or anyone
12 else wants to cross-examine UIU's
13 witnesses, that's a possibility.

14 I'm thinking that this hearing may
15 not be contained within a single day.
16 That's why we were reserving three days.
17 I'm hopeful that it could be finished in
18 two but we would have a lot clearer picture
19 if we knew prior to the 19th what our
20 ruling -- what the judges' ruling is on any
21 motions against UIU testimony, and it would
22 also help people to know who they should be
23 bringing there for those hearings on the
24 19th and 20th.

25 MR. FAVREAU: So I just want to be

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2 clear. So rebuttal testimony or reply
3 statements are not going to be contemplated
4 prior to the hearing?

5 ALJ LECAKES: If it's important to
6 parties to have them considered or to have
7 that option to submit those, especially in
8 light of the fact that an opposition party
9 has indicated that it wants to submit
10 testimony, then I'm willing to push the
11 date back for initial statements in support
12 and opposition and testimony to
13 Mr. Zimmerman's proposed October 7th but no
14 sooner than that, only because I don't want
15 to hamper their ability to provide
16 testimony. In that case, if parties felt
17 it was necessary to have replies, two
18 rounds of statements or an opportunity to
19 submit rebuttal to UIU's testimony, then I
20 would say that the 13th would be the latest
21 we could go on any reply statements but
22 again, that would be up to the parties to
23 consider and the only reason I'm
24 comfortable, you know, offering the option
25 right now is because Mr. Zimmerman has

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2 already proposed that he could get his
3 initial testimony in by October 7th.

4 MR. RICHTER: Just throwing a
5 thought out but not fully thought through,
6 but another way in terms of managing the
7 time here is if it could be as part of your
8 ruling, that to the extent parties felt
9 that there was some reply or rebuttal that
10 should go in from their own witnesses in
11 response to UIU as part of the hearing, you
12 may provide to allow the party to do that
13 live on the stand. In other words, they
14 can do some Q&A on the stand because I
15 think we're all saying there might be some
16 overlap between the joint proposal
17 addressing the issues raised by UIU and
18 what's already been addressed in prior
19 testimony. So to the extent that a party
20 felt there was something new that should be
21 addressed, they could do some live direct
22 on the stand.

23 ALJ LECAKES: I do not have an
24 objection to that but I'll tell you right
25 now, Mr. Richter, if that's what we do,

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then my inclination would be to have that done on Wednesday the 19th and allow UIU to consider what had been requested overnight and then do cross-examination on that testimony and then the other testimony on the 20th. So that would guarantee a two-day hearing, in my opinion, although I haven't consulted with my fellow Judge Wiles on that.

MR. RICHTER: Well, it may also depend on whether or not counsel for UIU felt that was necessary. It may be very limited, it may be something he feels he can handle with his witnesses.

ALJ LECAKES: Mr. Zimmerman, do you have any reaction to that? So the proposal would be that we would still have initial statements on the 11th and 13th with your rebuttal -- I'm sorry, your testimony in opposition coming in, and any rebuttal that was necessary would be offered direct on the stand orally on the 19th.

MR. ZIMMERMAN: So I'm -- my initial reactions are it's more challenging to

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respond to rebuttal testimony when we haven't had the opportunity to review it. It's a part of the reason we do pre-file testimony, to my understanding.

I also -- part of the -- one of the things I am realizing with the schedule is we wanted to ensure that all parties had the same opportunity to file written rebuttal testimony hours up to the testimony, that's why we built in the two weeks.

I understand we're on a compressed timeframe. I think one of the ways to buy an extra week is if your Honors would be willing to consider having the hearing in the last week of October.

ALJ LECAKES: Unfortunately that doesn't work with my schedule.

MR. ZIMMERMAN: I have, unfortunately -- so I have an unmoved booking for the middle two weeks of October. Unfortunately I'm UIU's solo counsel. I know that puts you in a difficult position as well but

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2 it's -- unfortunately it's not --

3 MR. FAVREAU: I'm sorry, your Honor.
4 I missed that. Did Mr. Zimmerman say he's
5 not available on the 19th?

6 ALJ LECAKES: I believe so.

7 MR. ZIMMERMAN: I have a pre-booked
8 schedule that's been on the books for
9 18 months.

10 ALJ LECAKES: Just a moment, please.

11 (Whereupon, there is a discussion
12 off the record.)

13 Mr. Zimmerman, I hate to do this to
14 you but is Ms. O'Hare available during
15 those two weeks?

16 MR. ZIMMERMAN: She is available.
17 It's not me you're doing it to, sir.

18 ALJ LECAKES: I understand.

19 MR. ZIMMERMAN: She'll be here. I
20 mean, I'll point out to your Honors she's
21 not admitted to the Bar. I mean, that puts
22 UIU in a difficult matter.

23 ALJ LECAKES: I appreciate that and
24 I understand.

25 MR. ZIMMERMAN: Is there any

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2 way -- are there any ways to do -- I
3 mean --

4 ALJ LECAKES: I'm not sure that
5 Judge Wiles and I are going to be able to
6 make a decision today. I think that we're
7 going to have to take everything that we
8 hear today under advisement and release a
9 ruling tomorrow so that everybody has
10 sufficient time. I think that
11 notwithstanding that people should be
12 working on their statements in support or
13 opposition and any testimony to offer
14 yesterday so -- but I think we have a lot
15 to consider when it comes to matching
16 schedules up.

17 October, 2016 has proven to be a
18 tremendous month for a lot of different
19 cases and there's a lot of things going on
20 that are being controlled by statutory
21 deadlines and things like that so...

22 MR. ZIMMERMAN: Understood.

23 Can I ask --

24 ALJ LECAKES: Absolutely.

25 MR. ZIMMERMAN: What process were

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you considering following the hearing, two rounds of briefs or one?

ALJ LECAKES: A single round of briefs.

MR. ZIMMERMAN: A single round?

ALJ LECAKES: Yes.

MR. ZIMMERMAN: I mean, if we had a single round of briefs two or three weeks after the hearing, the 2nd or 3rd of November, that would still give the Commission three months to render a decision.

MR. RICHTER: Again, your Honor, just the idea of two or three weeks for a brief, you know, post-hearing in this case, you know, again, I think Judge Lecakes said it earlier, the decision on post-hearing briefs, if at all and what date will be made at that time, you know, but again to the extent we're talking about issues here for which there's already multiple rounds of testimony, the opportunity for everyone to anticipate the position of UIU and their own positions and to lay that out in their

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2 statements in support or opposition, I
3 mean, I think that argues for a very short,
4 you know, single brief limited to matters
5 that weren't already covered or couldn't
6 have already been covered, You know, prior
7 to the hearing.

8 ALJ LECAKES: Yeah. I agree with
9 you.

10 MR. ZIMMERMAN: I agree as well.

11 ALJ LECAKES: So I would think that
12 it would be a quick turnaround on briefs
13 but I think --

14 MR. RICHTER: It sounds like it's a
15 single issue that we're talking about here
16 which is the cost allocation issue and
17 nothing else in terms of the other issues
18 that parties indicated they would wish to
19 make their statement.

20 MR. STOCKHOLM: Your Honor, if I
21 may. I'm with SolarCity. I just want the
22 record to be clear, it was not my intent in
23 giving my best estimate of the process that
24 we would go to, not mentioning direct
25 testimony, but it was not my intent to

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2 waive any right to file testimony in
3 accordance with whatever schedule you may
4 set on the issues that we have.

5 ALJ LECAKES: Right, and I was
6 anticipating that there would be up to
7 three parties that indicated they may be
8 supplying testimony in opposition to the
9 joint proposal as well as potential to
10 cross-examine witnesses. You were one of
11 these parties.

12 MS. OSUALA: Pace would also like to
13 reserve its right to cross, but that's just
14 in terms of preservation but not
15 necessarily any statement in opposition.

16 ALJ LECAKES: And I don't need to
17 know who's intent on cross-examining. I
18 think that reserving the potential for
19 three days will take care of any
20 cross-examination, at least to incur on the
21 joint proposal.

22 I think the question that
23 Judge Wiles and I are struggling with right
24 now is whether even with a single week
25 turnaround, a hearing date of the first

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week of November 2, 3, 4 would work and in which case I think briefs would have to come in on the 10th, with Friday the 11th being a federal holiday.

MR. FAVREAU: And I presume, your Honor, if that is the case that everything is getting shifted, statements in support?

ALJ LECAKES: I think at that point the 13th of October would be fair for initial statements with even an allowance for potential rebuttal and reply on what I was considering the hearing dates of the 19th, 20th, and 21st, somewhere around there.

MR. FAVREAU: And just one other clarification from you guys. I'm still not sure. The parties will have the opportunity to do either or, a statement or testimony, or are you saying they're going to have the opportunity to submit both?

ALJ LECAKES: I think that a fair reading of the Settlement Guidelines is that they can do a statement in opposition which would include anything that you would

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usually put in a brief, legal argument, things like that and then testimony which is factual in nature only as to why the joint proposal provisions that the party is taking opposition to are not in the public interest.

(Whereupon, there is a discussion off the record.)

ALJ WILES: All right. I think we can come back to order. It's clear that we're not going to be able to rule from the bench as to what the schedule should be, but I think -- and Judge Lecakes and I are going to work on that and we'll come up with something and there will be a ruling.

In support of that effort, I think we would like to ask the parties now when they will be able to definitively say A, I'm not putting in anymore testimony or B, I am putting in more testimony; number two, I do intend to cross-examine witnesses, and I believe in any cross-examination we require one hour, four hours, whatever it is, some estimate of a time rate that might

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2 be consumed by cross-examination.

3 So if we could ask you to provide
4 that information to us, let's say in
5 48 hours. Let's say by Friday at noontime.

6 MR. FAVREAU: The second question,
7 it may be a little difficult to answer if
8 we're not sure who is going to be
9 submitting testimony.

10 ALJ WILES: Right. Of course.
11 Because if you did -- apart from the
12 cross-examination of new witnesses or the
13 cross-examination of new testimony, if a
14 party has plans to cross-examine other
15 witnesses or other topics, we need to know
16 what kind of resources would require for
17 that.

18 MR. STOCKHOLM: Your Honor. For
19 SolarCity, we'd be happy to get back to you
20 in 48 hours but making a distinction as to
21 whether to file testimony may require a
22 little bit more time. For example, it may
23 be very possible to get some facts that
24 we're looking for from Con Edison at which
25 point we wouldn't cross-examine them and

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2 might not want to file testimony. It may
3 be sufficient to simply come to the hearing
4 and submit the interrogatories for the
5 record but I'm not certain I can give you
6 an absolute answer on that within 48 hours.

7 MR. RICHTER: Con Ed will work with
8 SolarCity to set a date for that decision.

9 MR. STOCKHOLM: Thank you.

10 ALJ WILES: I hope everyone can work
11 together on this. I appreciate you
12 bringing it up but I can't think of a way
13 we can understand better the resources that
14 are going to be needed and whether they
15 will be needed. The best you can do is
16 going to be helpful. I realize there will
17 be limitations on it.

18 MR. STOCKHOLM: Thank you, your
19 Honor.

20 MR. DIAMANTOPOULOS: Will your Honor
21 be sending out an e-mail to the parties to
22 which the parties can respond or do you
23 want us to just respond based on what you
24 just said?

25 ALJ WILES: I -- you can assume you

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2 should respond, but I think the point is if
3 there are parties not here who are opposing
4 rates we'll be asking this information from
5 them and we'll do that.

6 MR. LANIADO: Your Honor --

7 ALJ WILES: Please give your name.

8 MR. LANIADO: It's Mr. Laniado on
9 behalf of the MTA.

10 As long as you're going to take this
11 back and reconsider and also consider our
12 responses to your questions, I'd like to
13 pose an alternative process which I think
14 is fully protective of the people -- of the
15 parties that may be opposing the JP, and
16 that is the following, that we set a
17 hearing date for cross-examination and
18 there's no filing of initial statements of
19 support or opposition and there's no filing
20 of testimony. And the only reason why I
21 say there's no need to file testimony is
22 going back to what I said before, I believe
23 UIU's issue is basically -- it was
24 expressed in their direct and rebuttal
25 testimony and they can use the additional

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discovery that they have done since then as
aid of cross-examination, and then based on
those one or two days of cross-examination
that all the parties can do of the parties
supporting the Settlement, then we file one
round of briefs and that's it.

ALJ WILES: Does anybody want to
comment on that?

MR. LANIADO: And let me just add we
don't have motions to strike, we don't have
multiple rounds of brief, we don't have
three -- maybe we have two days of
hearings, but it sounds like everyone has
constrained schedules in October and
November.

ALJ WILES: Again, anybody want
to give their opinion on that?

MR. LANG: Your Honor, on behalf of
the City, I think that the approach that
Mr. Laniado is proposing is perfectly
acceptable to us. Also, I can't say in
48 hours to tell you that the City will not
be submitting any additional testimony. We
will be submitting a statement in support

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2 and any hearing we most likely will be
3 cross-examining UIU, Utility Intervention
4 Unit.

5 ALJ LECAKES: I'll just note that
6 the thought that Mr. Laniado proposed is
7 interesting, however, it doesn't solve the
8 problem with the principle attorney of UIU
9 in opposition party of the joint proposal
10 not being available in those two weeks. It
11 doesn't solve the problem that Judge Wiles
12 and I are struggling with on how late we
13 can have a hearing and still work as we
14 need to to get the joint proposal to the
15 Commission as quickly as we can and so --

16 MR. LANIADO: Well, I hope it
17 simplifies it.

18 MR. FAVREAU: I understand the
19 concern but staff would support the MTA's
20 proposal.

21 ALJ LECAKES: But again,
22 Mr. Zimmerman is not available the third
23 week of October and I'm not going to make
24 you and I be here and at NFG hearings. At
25 the same time the second weekend

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2 unfortunately doesn't work. The fourth
3 week of October unfortunately is taken up
4 by NFG as well for public statement
5 hearings so the third week is the issue and
6 the first week in November. I don't think
7 we're going to require that parties turn
8 around and come back next week for a
9 hearing.

10 MR. FAVREAU: And I understand but
11 if it is more efficient -- I think the
12 proposal is more efficient instead of
13 having people do work really for no
14 purpose. So, I mean, whenever the hearing
15 is the hearing is, but we can limit, you
16 know, as proposed.

17 ALJ LECAKES: The purpose being
18 served is that the judges need to write
19 their recommendations and start working on
20 that and that the statements in support
21 very much inform that process and the
22 statements in opposition very much inform
23 that process sooner rather than later.
24 They also help us look at the joint
25 proposal when we get statements prior to

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2 the hearing and let us know what kind of
3 questions we may have in terms of
4 fulfilling those and all in the Public
5 Interest Standard or anything else so that
6 we can ask those questions at the hearing
7 and not have to send out round after round
8 of e-mails after the hearing asking for
9 parties to respond.

10 MR. ZIMMERMAN: Your Honor, we would
11 have -- we don't have a theoretical
12 objection to Mr. Laniado's proposal. I
13 don't mind foregoing statements prior to
14 the hearing. The result is that until
15 these hearings is again the factor which is
16 I would think would be in the beginning of
17 October, that it may otherwise work.

18 ALJ LECAKES: Mr. Richter.

19 MR. RICHTER: I was going to ask
20 with all the listening back and forth, so
21 the first week in October for the hearing
22 is not doable either?

23 ALJ LECAKES: Right. I've already
24 noticed, in fact it's going out within the
25 hour, I think, the 4th, 5th and 6th of

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October for the NFG litigated hearings.

MR. FAVREAU: 5th, 6th and 7th.

ALJ LECAKES: 5th, 6th and 7th. I'm sorry. I don't want to accelerate it any more than it already is. The 5th, 6th and 7th, the Wednesday, Thursday, Friday, and we reserve the 13th and 14th for carryover which is very likely in that case.

If you would like to call the attorneys for National Fuel Gas and ask them to enter into settlement negotiations, it might buy some time.

MR. FAVREAU: I think we would get in some motions from them instead.

ALJ LECAKES: Dealing with a prominent utility in New York State.

MR. LANIADO: Your Honor, what is the date that you would like to receive briefs?

ALJ LECAKES: We don't know. That's one of the things that Judge Wiles and I need to discuss.

MR. LANIADO: Because if we had the hearing, let's say the week of -- did you

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2 say the 24th was taken as well?

3 ALJ LECAKES: Yes, unfortunately.

4 MR. LANIADO: What if we had the
5 hearing on like, let's say the 12th and
6 13th of October?

7 ALJ LECAKES: The problem is the
8 12th and the 13th is right now our holding
9 days for NFG hearings, although it's
10 something that I can consider because there
11 is a possibility of in those litigated
12 hearings of having 5th, 6th and 7th and if
13 we have carryover having more than a week
14 between concluding the first week and then
15 resuming after that, you know.

16 With that being something that I can
17 think about, what -- again though, that
18 doesn't solve your availability problem,
19 does it Mr. Zimmerman, because that week
20 you're unavailable as well?

21 MR. ZIMMERMAN: Yes. I am honestly
22 sorry.

23 MR. LANIADO: So the two weeks
24 you're unavailable are from the 10th --

25 MR. ZIMMERMAN: To the 21st.

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2 MR. LANIADO: -- to the 21st. Okay.

3 MS. BURD: And the 13th is also
4 American Water.

5 ALJ LECAKES: Right. The 26th is
6 also the -- Judge Van Ort's hearing on the
7 joint proposal.

8 MS. KRAYESKE: We can't do the 24th
9 and 25th for the hearing?

10 ALJ WILES: There could be a reason,
11 we just don't remember.

12 ALJ LECAKES: There's a reason and
13 I'm trying to figure out if I could --

14 Can we go off the record for a
15 minute?

16 (Whereupon, there is a discussion
17 off the record.)

18 ALJ LECAKES: Let's go back on the
19 record.

20 While we were off the record, we had
21 a discussion about further process dates
22 and other matters concerning statements in
23 support and whether things could be moved.
24 It's clear to the judges that we're not
25 going to be making a decision on dates at

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this time. Again, we encourage the parties to be working on statements in support and opposition of and any testimony they plan to be offering, and we will be issuing a ruling soon declaring the dates for those statements as well as for a hearing.

ALJ WILES: We should note that since we had a discussion of statements in support and while we're going to be issuing a ruling, choosing a specific date, if it takes us a couple of days to do that, you shouldn't lose those dates that you could be spending preparing testimony. It may be as early as early October that we decide the statements for support or opposition to, and we wouldn't want anybody to be surprised or unprepared.

ALJ LECAKES: That's all I have.

Does anyone have anything else before I close the record?

(No response.)

ALJ LECAKES: Thank you very much.

(Time noted: 12:05 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss:

I, JENNIFER CASSELLA, a Notary Public
within and for the State of New York, do hereby
certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings
to the best of my ability.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 28th day of September, 2016.

JENNIFER CASSELLA

Public Service Commission - Procedural Conference
September 21, 2016

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