

1 NEW YORK STATE PUBLIC SERVICE COMMISSION
 2
 3 In the Matter
 4 -of-
 5 Case No. 01-E-0359 - the Petition of NEW
 6 YORK STATE ELECTRIC & GAS CORPORATION for
 7 Approval of its Electric Price Protection
 8 Plan
 9 and
 10 Case No. 01-M-0404- Joint Petition of Energy
 11 East Corporation, RGS Energy Group, Inc.,
 12 New York State Electric & Gas Corporation,
 13 Rochester Gas and Electric Corporation and
 14 Eagle Merger Corp. for Approval of Merger
 15 and Stock Acquisition.
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EVIDENTIARY HEARING

19th Floor Board Room
Public Service Commission
Three Empire State Plaza
Albany, New York

Tuesday, February 5, 2002
9:30 a.m.

PRESIDING:

JEFFREY E. STOCKHOLM

Administrative Law Judge

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Office of Hearings and
Alternative Dispute Resolution

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P R O C E E D I N G S

1
2 MR. STOCKHOLM: O.K., we're
3 ready to go on the record. I call case
4 01-E-0359, petition of New York State Electric
5 and Gas Corporation for approval of its
6 electric rates protection plan and Case
7 01-M-0404, joint petition of Energy East
8 Corporation, RGS Energy Group, New York State
9 Electric and Gas Corporation, Rochester Gas
10 and Electric Corporation, Eagle Merger Corn.,
11 for approval of merger and stock acquisition.

12 Could we have appearance of
13 Counsel, please?

14 MR. MILLER: For Energy East
15 Corporation, New York State Electric & Gas
16 Corporation and Eagle Merger Corp., the law
17 firm of Huber, Lawrence and Abell, by Frank
18 J. Miller, and also Andrew Irving of the law
19 offices of Robinson, Silverman, Pearce.

20 MR. STOCKHOLM: Mr. Widger.

21 MR. WIDGER: For Rochester Gas
22 & Electric Corporation, Nixon, Peabody LLP by
23 Stanley W. Widger, Jr., also joined by Michael
24 T. Tomaino, General Counsel.

25 MR. MILLER: Your Honor, I also

1 failed to mention, also appearing is Kenneth
2 M. Jasinski, General Counsel for Energy East
3 Corporation.

4 MR. VAN RYN: For Department
5 staff, Leonard Van Ryn, staff counsel,
6 Department of Public Service.

7 MR. BREW: For NUCOR Steel
8 Auburn, Inc., the law firm of Brickfield,
9 Burchette, Ritts & Stone, by James W. Brew.

10 MR. LEVINE: For the New York
11 State Consumer Protection Board, Alfred
12 Levine.

13 MS. LAUDERDALE: For Dynegy
14 Marketing and Trading, Melissa Lauderdale from
15 Brunenkant & Haskell.

16 MR. TOKLAS: For LEPCORP, David
17 Koplak, General Counsel.

18 MR. STOCKHOLM: Any other
19 appearances?

20 O.K. Hearing none, I believe
21 when we left off yesterday that we had
22 concluded the staff witnesses, and that we
23 were about to proceed with the company's
24 witnesses. Mr. Miller?

25 MR. MILLER: That's correct,

1 your Honor.

2 MR. BREW: Excuse me, your
3 Honor. As a preliminary matter, yesterday we
4 had talked about reserving an exhibit for a
5 revised pro forma Income Statement for NUCOR.
6 I'd like to circulate that revised exhibit now
7 if I may. If I may, your Honor, the revised
8 exhibit contains notes indicating the source
9 for the different entries so that parties can
10 address those differences between the NUCOR
11 staff and NYSEG and should also address the
12 concerns that were raised on the record
13 insofar as NUCOR is concerned that Mr. Stewart
14 raised.

15 MR. STOCKHOLM: Understood.
16 The document that counsel is proffering to the
17 parties and a copy of which has been given to
18 the reporter should be marked for
19 identification as Exhibit 118. That was the
20 number reserved yesterday.

21 (The document described was
22 marked for identification as Exhibit 118, this
23 date.)

24 MR. BREW: Thank you, your
25 Honor.

1 MR. STOCKHOLM: Go ahead, Mr.
2 Miller.

3 MR. MILLER: All right, your
4 Honor. We have the panel of the joint
5 petitioners. This is a panel consisting of
6 eight individuals -- panel consisting of eight
7 individuals, seven of whom are appearing on
8 behalf of Energy East, NYSEG and Eagle Merger
9 Corp. One will be sponsored by Mr. Widger on
10 behalf of RGS and RG&E. Of these seven people
11 that are being sponsored by the NYSEG group,
12 all but -- let me see, all but two have
13 already appeared before you in this case. Two
14 of them have submitted testimony, but they
15 were not cross-examined. So their
16 qualifications are on the record but they
17 would have to be sworn in. Those two
18 individuals -- let me identify the panel,
19 first of all.

20 The panel consists of Robert
21 Rude. Perhaps, even better, why don't I have
22 the panel introduce themselves so the court
23 reporter can see which name goes with which
24 person.

25 MR. RUDE: Yes. My name is

1 Robert Rude. I'm Vice-president and
2 Comptroller of Energy East Corporation.

3 MR. TEDESCO: Ralph Tedesco,
4 President and Chief Operating Officer of
5 NYSEG.

6 MS. STRATAKOS: Christine
7 Stratakos, and I'm from NYSEG.

8 MR. RAFFERTY: Sherwood J.
9 Rafferty, Senior Vice-president and Chief
10 Financial Officer, NYSEG.

11 MR. KOLBE: A. Lawrence Kolbe,
12 a principal of the Brattle Group.

13 MR. READ: James A. Read, Jr.,
14 also a principal of the Brattle Group.

15 MR. SEGAL: David Segal,
16 principal of the NorthBridge Group.

17 MR. REDDING: William J.
18 Reddy, Comptroller of RGS Energy Group.

19 MR. STOCKHOLM: Let me at this
20 point ask those who have not -- those who have
21 been previously sworn in this case, I remind
22 you, you are under oath. Those who have not
23 been previously sworn in this case, please
24 raise your right hand. Do you all solemnly
25 swear the testimony you are about to give is

1 the truth and the whole truth.

2 MR. READ: I do.

3 ROBERT RUDE, RALPH TEDESCO, CHRISTINE

4 STRATAKOS, SHERWOOD J. RAFFERTY, A.

5 LAWRENCE KOLBE, JAMES A. READ, JR.,

6 DAVID W. SEGAL AND WILLIAM J. REDDY

7 each having been first duly sworn as a witness

8 in behalf of the Petitioners, were examined

9 and testified as follows:

10 MR. STOCKHOLM: Mr. Miller.

11 MR. MILLER: There are three
12 documents that I propose to tender to the
13 court. The first is the statement of New York
14 State Electric & Gas Corporation, Rochester
15 Gas and Electric Corporation, Energy East
16 Corporation, RGS Energy Group and Eagle Merger
17 Corp., in support of the Joint Proposal. May
18 we have that marked for identification?

19 MR. STOCKHOLM: Should be
20 marked for identification as Exhibit 125, if I
21 have those numbers correctly.

22 (The statement described above
23 was marked for identification as Exhibit 125,
24 this date.)

25 MR. MILLER: Yesterday morning,

1 your Honor, you recall that I distributed to
2 the parties two documents. One is the
3 supplemental testimony of David Segal, and the
4 second document is a corrected form of the
5 NUCOR Appendix A Income Statement. I now
6 would like to tender first the supplemental
7 testimony of David W. Segal. Is it your wish
8 that it be marked as an exhibit or copied into
9 the record as though given orally?

10 MR. STOCKHOLM: Are there any
11 objections? Mr. Brew?

12 MR. BREW: Your Honor, by way
13 of a preface to that, since we were handed
14 this yesterday. A quick question for Mr.
15 Segal, if I might. On page 9 of your
16 testimony --

17 MR. MILLER: Your Honor, is
18 that a procedure that you want to follow?

19 MR. STOCKHOLM: I think it's --
20 I'll allow a little bit of what I consider
21 basically voir dire on this testimony.

22 MR. BREW: Since there was no
23 opportunity to discover heretofore.

24 You refer to your testimony on
25 page 9.

1 MR. SEGAL: Yes.

2 MR. BREW: And on line 20 you
3 say, "In my opinion, many suppliers were very
4 likely to have owned or purchased hedged
5 positions in advance of making their bids."
6 Do you see that?

7 MR. SEGAL: Yes.

8 MR. BREW: Which of the winning
9 bidders in that auction provided you data on
10 hedged positions?

11 MR. STOCKHOLM: Mr. Brew, where
12 are you going with this?

13 MR. BREW: I don't see any
14 basis for this testimony that's not already in
15 the record, your Honor. To the extent that
16 he's offering additional information that's
17 not substantiated by any facts and we have no
18 opportunity to do any discovery on it, I'll
19 object to its entrance.

20 MR. STOCKHOLM: The questions
21 you're asking at this particular point are
22 with regard to voir dire. However, the
23 question you asked is a question of cross-
24 examination, would be entirely appropriate for
25 cross-examination. If you are objecting to

1 taking this evidence into the record, you
2 might like to explain to me the basis of your
3 objection.

4 MR. BREW: Your Honor, my basis
5 for objecting is two-fold. First he's
6 repeating information that's already in the
7 record from the October hearing. Then it's
8 abusive and redundant, particularly without
9 discovery on it. Secondly, he's making new
10 statements for which there is no apparent
11 basis for it and there's no opportunity for
12 discovery. Then there's no foundation for
13 this testimony and I ask that it be stricken.
14 This is to the extent that if the company
15 wished to offer this in their original
16 statement in support where at least we had a
17 week or so to respond to it, that would be one
18 thing. To the extent that they're simply
19 showing up and offering additional information
20 that no one had seen before yesterday where
21 there's no opportunity to explore it, and my
22 question is about the nature of discovery not
23 trying to test his position, just to see if
24 there's anything behind it where I've got no
25 opportunity to pursue it any further. Then

1 I'm objecting that there's no basis to put
2 this testimony in the record.

3 MR. MILLER: Your Honor, may I
4 be heard on that, or do you want to wait until
5 the panel --

6 MR. STOCKHOLM: I believe
7 there's another objection. I will let you
8 handle all of them and then I'll handle them
9 together.

10 Mr. Koplas.

11 MR. KOPLAS: Your Honor,
12 LEPCORP would object to the introduction of
13 this exhibit into the record. I may add that
14 Usher Fogel also indicated that we may enter
15 an objection on his behalf, to the
16 introduction of this testimony.

17 MR. STOCKHOLM: That may be the
18 kiss of death, Mr. Koplas.

19 MR. KOPLAS: By my count,
20 there's 26 substantive questions in this
21 essentially that include phrases like, "do you
22 agree", "do you believe" or "how do you
23 respond"? I think this is unwarranted and
24 should not be introduced, as it is additional
25 rebuttal testimony. Whether it's called

1 supplemental or not, it's a round of
2 additional testimony that the court didn't
3 permit, and in the event that it's allowed in,
4 I think anyone named in it should be allowed
5 to have time to respond, introduce additional
6 testimony which would prolong the proceeding
7 here, and perhaps cross-examine Mr. Segal at a
8 later date when we've had a chance to digest
9 this more fully.

10 The only other thing I'd note,
11 Judge, is there's four questions relating to
12 the statement from National Energy Marketers.
13 Since that wasn't introduced, I would imagine
14 that those responses, if this was to be
15 submitted, should be taken.

16 MR. STOCKHOLM: Let me make
17 myself clear on that last point. It would be
18 my intent to include National Energy
19 Marketers' comments in this record. They are
20 included informally at this point in time. I
21 expect that I will include them formally once
22 I have an opportunity to talk to that party
23 about the necessity for laying an adequate
24 foundation in their affidavit. Be that as it
25 may, so I do expect that to ultimately be in

1 the record.

2 MR. KOPLAS: Thanks for the
3 clarification, Judge.

4 MR. STOCKHOLM: Sure. Mr.
5 Miller.

6 MR. MILLER: Your honor, as
7 yesterday's experience clearly demonstrated,
8 your Honor has a wide ranging group of issues
9 that you wish to discuss. If anything, this
10 supplemental testimony goes to the heart of
11 many of those questions and provides in a
12 succinct way the response of the Joint
13 Petitioners. There's -- there's a lot of
14 material here, your Honor, that needs to be
15 explained. It's not appropriate for
16 cross-examination. The one-day time limit
17 that Mr. Brew refers to is no different than
18 the one-day time limit that you gave the
19 parties to respond to material that we put in
20 last Thursday on a motion to strike, so
21 there's nothing unusual about a one-day time
22 limit. If the interest here is to provide as
23 complete a record as possible, without
24 impairing the parties or the parties' ability
25 to cross-examine, then I think this is totally

1 appropriate.

2 MR. STOCKHOLM: I have read
3 this testimony and it does seem to me that
4 this testimony directly bears on the issues
5 that are being brought up in this proceeding,
6 among others, by me. I also fully recognize
7 that the objections raised to the testimony
8 are meritorious. That leaves me in a very
9 difficult position. It seems to me that the
10 way these proceedings are going in any event,
11 that should I grant the objections and strike
12 the testimony, that somewhere from the panel
13 that was just introduced, we would see that
14 testimony coming back at us in any event. It
15 does seem to me, however, that the opponents
16 to this proposal should have an opportunity to
17 address this rebuttal testimony which
18 otherwise -- or supplemental as the company
19 prefers to call it, which otherwise does not
20 comply with my order concerning the filings
21 that are going to be made.

22 So this is what I'm going to
23 do. I'm going to allow the testimony in the
24 record because it puts the questions in -- and
25 the answers in a succinst location that I can

1 find, or that other parties can find. I will
2 grant the opponents 48 hours from the
3 conclusion of these hearings which I hope will
4 be today, so that will be by close of business
5 Thursday, to submit any opposition they desire
6 to this specific testimony. It better be
7 specific or you will, I am sure, be met with a
8 motion from the company to strike your
9 submittal. If it is specific to this
10 testimony, those filings will also be
11 permitted in the record and under the
12 circumstances, they will not be tested, but
13 such is the vagaries of trying to find the
14 truth.

15 In terms of your question, Mr.
16 Miller, as to whether it ought to be copied in
17 the record, I think that probably would be
18 best.

19 MR. MILLER: O.K.

20 MR. IRVING: Judge.

21 MR. STOCKHOLM: Yes.

22 MR. IRVING: There is a problem
23 that's created by that, and -- and a dilemma.

24 MR. STOCKHOLM: My rulings
25 create a problem?

1 MR. IRVING: And the dilemma
2 that you felt yourself in, I think is itself
3 one that comes out of the vagaries of
4 litigation.

5 Let me back up a minute and
6 explain again why we put this in. We're in a
7 difficult position. There was, given the
8 schedule that you set forth in order to
9 accommodate the parties and the Commission's
10 schedule in order to get this matter before
11 the Commission this month, the schedule that
12 you set was perfectly appropriate and we
13 didn't object to it at all. What we got in
14 the submissions that came in late last week,
15 at least one of which was late, put us in the
16 position where we didn't know what was going
17 to happen. We faced the possibility that we
18 come here to this hearing and there were
19 things that clearly we needed to say in
20 response to what came in. We come to this
21 hearing --

22 MR. STOCKHOLM: You didn't get
23 in your motions to strike?

24 MR. IRVING: That's right. We
25 come to this hearing and nobody cross-examines

1 our witnesses. We have this opportunity -- I
2 mean some of this stuff would be perfect
3 redirect, but we don't know where
4 cross-examination is going. We certainly
5 didn't know where cross-examination was going,
6 so in order to create a complete record, I
7 guess we could have gambled and it turns out
8 the gamble might have worked, in which case
9 your cross-examination certainly has been wide
10 ranging. I expect some other parties will
11 have wide ranging cross-examination, and then
12 as you said a moment ago, either on response
13 to cross or on redirect, this would have come
14 in and that would have been the end of it.
15 That would have been the end of it. The
16 hearing would have closed, and they would have
17 made their arguments. They have their own --
18 their clients or experts here and then
19 whatever closing arguments would have been
20 made that would have been their opportunity to
21 respond to this and then you would proceed to
22 make the recommendation and this matter would
23 be decided; but in a way, because we took the
24 step of giving the parties advance notice on
25 what we intended to do on redirect, if there

1 were redirect, assuming that there was cross,
2 or what they might anticipate they would get
3 on cross, we're now in a position where there
4 is going to be -- well, first they've had 24
5 hours to review this material, O.K., and are
6 perfectly able, as we just heard from Mr.
7 Brew, to cross-examine on this material, but
8 we've now created an opportunity on the part
9 of the -- of the opponents to put in more
10 testimony when there is no opportunity for us
11 to cross, and that strikes me as an an
12 asymmetry that is neither necessary nor
13 particularly fair.

14 In a way, I feel like the
15 proponents are being punished for being
16 forthcoming. So I don't know that there's a
17 need for those additional submissions, to
18 begin with, since they wouldn't have been
19 available had they simply played out on
20 redirect as I described, and if you weren't
21 going to allow them, then, maybe there should
22 be a telephone conference so that we don't
23 have to all convene here, but we should be
24 given 24 hours to give you notice that we
25 would like to have at least, you know, one or

1 two of the filers who put something in
2 presumably that already have been sworn.

3 I don't think this case turns
4 on demeanor testimony particularly, and we
5 could perhaps do this by telephone and engage
6 in some cross-examination and we would let you
7 know within 24 hours after we receive that
8 material that we would like to do that.

9 MR. STOCKHOLM: It seems to me
10 -- my motion is, or my ruling is going to
11 stand. It seems to me that the companies have
12 submitted materials that are not in compliance
13 with my order. I had nevertheless allowed
14 them to stand. If we're going to go back and
15 enforce the order as I wrote it originally, I
16 would strike your motions to strike as
17 improper briefs. I would not permit this
18 testimony at all, but in my judgment, all of
19 the information that has been submitted is
20 useful in trying to determine what is in the
21 public interest. My ruling strictly limits
22 what the opponents can file, gives them a very
23 short time to do so, but it does allow them to
24 craft it in a way that could not be crafted
25 with extemporaneous testimony as the testimony

1 that you are about to enter into the record
2 here has been crafted in writing.

3 I am not going to provide for
4 any additional hearings or any additional
5 cross-examination. Once those documents are
6 filed, the company is free to proceed as it
7 may. I will tell you that it is highly
8 unlikely that I am going to allow any of that
9 testimony to be challenged. The testimony
10 that's going into the record today as I read
11 through it, directly challenges the filings of
12 the opponents. If they -- they are the ones
13 that have the burden from their perspective at
14 least of showing that this deal is not in the
15 public interest. I will allow them the final
16 opportunity to support that position. I do
17 not expect the information outside the four
18 sides of the pieces of paper that you put in
19 today and that's my ruling.

20 MR. MILLER: Your Honor, may I
21 have a moment to confer, please?

22 MR. STOCKHOLM: You may.

23 MR. BREW: Your honor.

24 MR. STOCKHOLM: Mr. Brew.

25 MR. BREW: While they're

1 conferring, can I clarify your ruling that any
2 responsive filings are due electronically by
3 close of business on Thursday.

4 MR. STOCKHOLM: That's correct,
5 to me.

6 MR. MILLER: Your Honor,
7 consistent with your ruling that this is
8 material that should go into the record as
9 testimony, I'll ask Mr. Segal some preliminary
10 questions.

11 MR. STOCKHOLM: Please proceed.

12 BY MR. MILLER: (To the Witness Segal).

13 Q. Mr. Segal, was this document prepared by you
14 or under your direction and supervision?

15 A. Yes.

16 Q. Do you have any corrections or revisions to
17 this document?

18 A. No, we do not.

19 MR. MILLER: Mr. Hearing
20 Officer, may we have the printed testimony of
21 David Segal copied into the record as if given
22 orally?

23 MR. STOCKHOLM: Granted.

24 (Following is the testimony of
25 David W. Segal.)

1 **INTRODUCTION**

2 Q. Are you the same David Segal who provided direct and rebuttal testimony in this
3 proceeding?

4 A. Yes, I am.

5 Q. What is the purpose of your supplemental testimony?

6 A. This testimony responds to various commodity issues raised by several parties in
7 their Statements in Opposition ("Statements") in this proceeding.

8 **I. DEVELOPMENT OF RETAIL ACCESS**

9 Q. In its Statement, LEPCORP alleges that the Joint Proposal will not further the
10 development of a competitive market, and that this plan is inconsistent with the
11 Commission's desire to transition to a fully competitive marketplace. Do you agree
12 with these assertions?

13 A. No I do not. NYSEG's customers desire the flexibility and choices this plan
14 provides. NYSEG will act as one of several participants in the marketplace, and has
15 an ongoing responsibility to provide service to those who wish to continue to receive
16 supply service from the utility. In addition, NYSEG's customers enjoy and continue
17 to desire the option to have a fixed price service from the utility. This plan provides
18 these choices and the associated flexibility while still offering the Company's fixed
19 price service at competitively neutral market-based rates.

20

1 **II. COMMODITY SERVICE TO CUSTOMERS ON SPECIAL CONTRACTS**

2 Q. Several parties contend that requiring SC13 and 14 customers under special contracts
3 to receive commodity from NYSEG is unduly restrictive and anti-competitive. Do
4 you agree?

5 A. No. The Company does not believe that the Commission should abrogate contracts or
6 apply retroactive pricing modifications to contracts. They have not done so in the
7 past. Further, the Joint Proposal allows those customers under special contracts to
8 choose one of the new commodity options upon termination of their contracts.
9 Furthermore, NYSEG's existing tariff provides, "For Service Agreements negotiated
10 after August 1, 1998, NYSEG will not require as a condition of contract that a
11 customer purchase its Electric Power Supply from the Corporation [i.e., NYSEG]."

12 Q. Do you agree with NESPA that NYSEG retains enormous leverage in special contract
13 negotiations?

14 A. No. NYSEG only negotiates new special contracts with those customers it believes
15 have a legitimate threat to reduce demand or leave the service territory. It would be a
16 violation of the tariff for NYSEG to negotiate a special contract to discourage a
17 customer from migrating to an alternative supplier. It is in all remaining customers'
18 interests that NYSEG continues to negotiate the best possible arrangement to
19 minimize lost margins.

20

1 **III. CERTAIN RECOVERY PROVISIONS**

2 Q. In its Statement, NEM argues that recovery of 1.5 and 3.5 of the 2 and 4 mill adders
3 is in violation of the Commission's determination that the 2 and 4 mills are avoidable.
4 Is there precedent for the treatment proposed by the supporters in the Joint Proposal?

5 A. Yes. In the recent Niagara Mohawk rate proceeding, .5 mills were deemed to be
6 avoidable costs, and the balance was recoverable.

7 Q. NEM further argues that recovery of shortfalls in excess of \$4 million is in violation
8 of the Commission's November Order in the Unbundling Track. Do you agree with
9 this?

10 A. No. In fact, a \$4 million threshold is a higher, not lower threshold. The \$4 million
11 threshold is for those lost revenues and/or stranded costs determined in the
12 Unbundling Case, which by definition already incorporates any reasonable
13 productivity and opportunities to mitigate such lost revenues and/or stranded costs.

14

15 **IV. ESCOS ABILITY TO COMPETE WITH FIXED PRICE OFFERING**

16 Q. SCMC argues that because of historical experience with NYSEG gas and the current
17 retail access program in electricity, ESCOs will not be able to effectively compete
18 with the BRO fixed price offering. Do you agree with this assertion?

19 A. No. The BRO pricing process agreed to in the Joint Proposal is the result of
20 extensive discussion and compromise of many issues raised by ESCOs and other
21 parties during the settlement discussions. The pricing is by definition at market, since
22 it is based on concurrent forward price evidence. Statements made by other ESCOs
23 in this proceeding make it clear that ESCOs can offer a two-year product directly

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1 competitive with the BRO offering. And the analogy to the market among NYSEG's
2 gas customers is flawed. NYSEG's gas rate plan did not provide for switching to
3 ESCOs based on a market-based backout or a VRO option allowing customers to
4 switch to unbundled service from an ESCO. Under the Joint Proposal, ESCO-s can
5 still gain customers using the market-based backout option, or by encouraging VRO
6 customers to switch to ERO.

7

8 **V. NON-BYPASSABLE WIRES CHARGE**

9 Q. Several ESCOs make an argument that to provide a fixed Non-Bypassable Wires
10 Charge (NBWC) to BRO customers and a variable NBWC to all others puts ESCOs
11 at a competitive disadvantage. Do you agree with this assertion?

12 A. No. This is absolutely not the case. First, NYSEG takes on risks in offering the fixed
13 NBWC – including ancillary services, transmission revenues, basis differential
14 between regions, and purchased power contract performance. BRO customers are
15 compensating NYSEG for taking on this risk, not other customers. Second, the
16 floating NBWC exactly equals the trajectory of costs incurred by NYSEG. To the
17 extent that an ESCO wishes to fix a total rate to its customers using the ERO rate, it
18 can quote a fixed price for the combination of the NBWC and the commodity. This
19 will be directly comparable to NYSEG's BRO rate. In so doing, the ESCO will take
20 on the identical risk that NYSEG is taking on under the BRO. This is truly an apples
21 to apples comparison. As stated in the Joint Proposal (Section IX (G)(4)) NYSEG
22 will make its annual forecast of the floating NBWC available to ESCOs to help in
23 their marketing efforts.

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1 Q. NEM argues that passing gains and losses from the VRO through the NBWC distorts
2 price signals. How do you respond?

3 A. NYSEG's intention is to pass these gains and losses through only to those customers
4 on the VRO. In this way, VRO customers will receive a true market price
5 passthrough, while ERO and BRO customers' NBWC will not be affected.

6 **VI. THE DURATION OF THE PLAN**

7 Q. Several parties believe the five-year rate plan in the Joint Proposal is too long. Do
8 you agree?

9 A. No. In fact, the five years are broken into a transition year, and two two-year periods.
10 As explained in detail in the Joint Proposal, customers will have the opportunity to
11 make choices at each phase of the plan. Energy and capacity prices will be adjusted
12 to reflect then market conditions and customers can choose from the various service
13 options and suppliers. NYSEG and the signing parties concur that two two-year
14 periods will provide a reasonable tradeoff between rate stability and an accurate
15 reflection of market prices. Plus, customers can at any time leave the BRO and
16 switch to a market-based backout.

17 Q. What types of evaluation of the plan will be conducted during its term?

18 A. As part of its obligations under this plan NYSEG will make annual compliance filings
19 regarding NYSEG's delivery and total earnings levels, calculation of customers'
20 share of earnings above a threshold, a report on service quality performance over the
21 last calendar year, any net uncontrollable costs to be recovered through the ASGA
22 and the ASGA balance. In addition, the compliance report will also contain the
23 annual level of capital expenditures of the Company. In addition, in the normal

1 course of business Staff of the Commission receives monthly financial data from
2 NYSEG. The Outreach and Education plan will undergo review and evaluation to
3 ensure that it is best meeting the needs of its many stakeholders. Finally, the prices
4 under the BRO, along with the calculation of the Fixed NBWC will change based on
5 market conditions before the second enrollment period.

6 **VII. THE JOINT PROPOSAL COMMODITY PLAN IS TOO COMPLICATED**

7 Q. Do you believe the commodity plan is too complicated?

8 A. No. NYSEG has committed to substantially expand on its current successful
9 education and outreach program by undertaking a separate and specialized education
10 and outreach plan as described in the Joint Proposal. The efforts will target
11 customers, aggregators and marketers to build awareness and understanding of the
12 commodity options in the Joint Proposal. NYSEG is committed to working with
13 suppliers and aggregators to do so.

14 **VIII. DURATION OF THE ENROLLMENT PERIOD**

15 Q. Do you believe the enrollment period is too short?

16 A. No. LepCorp asserts that the duration of the enrollment periods is too short. This is
17 simply untrue. The combination of six months prior to the beginning of the
18 enrollment period, three months in the enrollment period, and three more months in
19 the grace period provides a year to market, educate and raise the awareness of retail
20 customers. This is sufficient to enhance retail competition. Even after the grace
21 period ends, ESCO's can continue to build share and penetration rates by moving

1 BRO customers to the market-based backout, or moving VRO customers to ERO
2 service.

3

4 **IX. CURRENT STATE OF NY ELECTRICITY MARKET**

5 Q. Numerous parties have asserted that the current state of the New York electricity
6 market is no longer as unstable nor as volatile as NYSEG predicted it to be. Do you
7 agree?

8 A. No. While the onset of recession and mild weather has helped the markets to perform
9 recently in a more consistent and rational manner, the fundamental conditions of the
10 market have not changed. There have been only modest additions to capacity
11 downstate, and none is currently under construction. The conditions experienced
12 during the past months are likely not indicative of the future. We expect volatile
13 conditions to continue for the term of the plan and the Joint Proposal offers customers
14 protection from such market fluctuations if they desire it.

15

16 **X. BRO RATE OFFERING**

17 Q. Do you agree with NEM that the BRO Rate is "an artificial estimation" of market
18 prices?

19 A. No. The BRO will be developed from actual market quotes from Natsource or a
20 comparable source and will reflect market conditions at that time. It is in no way
21 artificial and parties will be able to observe the data used in the calculations.

1 Furthermore, NYSEG will make available estimates of the BRO price starting in
2 June, four months before the price is actually finalized.

3 Q. Why is the BRO the default option for small customers?

4 A. NYSEG and the signing parties agree that small customers desire price stability, and
5 the BRO provides this for them. Additionally, customers are given a choice of
6 different rate plans during the enrollment period, can switch service during the
7 following three-month grace period, and can always elect ESCO service under a
8 market-based backout. And any customer receiving ESCO service when the
9 Enrollment Period begins can simply elect to continue with that service.

10 Q. Can a customer taking service under the ERO return to the BRO and "game the
11 system"?

12 A. No. SCMC incorrectly asserts that customers taking service under the ERO can
13 return to NYSEG's BRO at any time and "game the system." As explained in the
14 Joint Proposal, customers returning from the ERO to the BRO receive an adjusted
15 rate that reflects the market conditions at that time.

16 Q. Do you believe that the 35% risk premium is appropriate?

17 A. Yes. NESPA takes issue with the 35% risk premium and asserts it is too low. Other
18 parties oppose NESPA and assert the premium is too high. The 35% risk premium is
19 based on evidence from Massachusetts. Third-party suppliers charged on average
20 about 35% above the wholesale power price to serve customers that elected to stay
21 with the incumbent utility. This compensates the Company for both costs and risks.
22 It also compensates NYSEG for the risk it bears in fixing the NBWC. The risk
23 premium provides the appropriate signal to the marketplace about the cost and value

1 of fixed price service, and should enable ESCOs a greater opportunity to compete and
2 thus further facilitate the development of a competitive retail market.

3 Q. Is NYSEG substantially hedged through 2002?

4 A. Yes. For 2002 NYSEG has purchased at fixed prices a substantial proportion of its
5 energy and capacity needs.

6 Q. Is NYSEG hedged beyond 2002 for the BRO?

7 A. NYSEG has fixed price contracts from NYPA, various NUGs and the Nine Mile
8 Point 2 nuclear unit. These contracts represent approximately 60% of the energy
9 quantity needed to serve all of NYSEG's customers and less than 60% of the total
10 capacity needs. NYSEG is not hedged at all for the ancillary service requirements,
11 the level of transmission congestion revenues, the load shape of retail customers, and
12 for the substantial likelihood that prices will change between October 1 and the time
13 that NYSEG becomes fully hedged under the BRO.

14 Q. NUCOR suggests that providing a 35% premium to NYSEG for the BRO service
15 would be double-counting the premium since NYSEG is already somewhat hedged.
16 Do you agree with this assertion?

17 A. No. First much of the 35% adder to the wholesale price is used to pay for real costs –
18 losses, capacity reserves and load shape. Second, we have no evidence regarding to
19 what extent the winners of default service auctions in Massachusetts were hedged at
20 the time they made their bids. In my opinion, many suppliers were very likely to
21 have owned or purchased substantial hedged positions in advance of making their
22 bids.

1 Q. NESPA argues that BRO customers who choose to take service from an ESCO
2 should no longer pay the risk premium. How do you respond?

3 A. In fact, a BRO customer who takes retail access will receive a credit of either 3 or 5
4 mills. This is a substantial part of the risk portion of the premium. Furthermore, if a
5 customer elects this service, NYSEG is still obligated to provide the fixed non-
6 bypassable charge and continues to absorb the risks in doing so – transmission
7 revenues, ancillary services, basis risk between zones within New York, and contract
8 performance.

9 Q. Several parties oppose NYSEG's right to discount the BRO price before the second
10 period in October of 2004. How do you respond?

11 A. NYSEG will set the BRO price in October of 2004 in the same manner used for the
12 first period. Under the plan and based on its own judgment regarding the experience
13 in the first period, and more recent market evidence, it has the right to discount from
14 this price prior to October 1. ESCOs face the same market conditions. Presumably,
15 if NYSEG's judgment is that 35% is too high a premium, competitors can reach the
16 same conclusion. If this is the case customers will reap the benefits.

17 Q. Does this complete your testimony?

18 A. Yes, it does.

1 MR. MILLER: The next document
2 that I'd like to address is the two-page -- is
3 a two-page document that I distributed yester-
4 day. It's NYSEG's corrections, revisions and
5 some comments on the Appendix A that was
6 distributed by NUCOR. We have seen already,
7 your Honor, that this morning NUCOR has put in
8 some revisions to its Appendix A.

9 Yesterday you permitted staff
10 to, through I believe Mr. Stewart, to comment
11 on Appendix A. This is a situation where we
12 believe that putting something in writing this
13 way helps inform the record, and I ask that it
14 be marked for identification.

15 MR. BREW: Your honor, I would
16 object to that as well, particularly given the
17 filing of the document that's been marked as
18 Exhibit 118, that this comparison is
19 meaningless.

20 MR. STOCKHOLM: It does appear
21 that this document does not direct now -- now
22 does not directly address Exhibit 118. How do
23 you respond to that, Mr. Miller?

24 MR. MILLER: Well, your Honor,
25 we could examine the 118 and ask the NYSEG

1 panel to comment on Exhibit 118, now that it
2 contains some revisions that have just been
3 entered into the record right now. Now that
4 we just got it, we have to take some time out
5 to take a look at it, but I believe that we
6 could respond in fairly short order to this
7 revised document. In fact, Mr. --

8 MR. STOCKHOLM: It seems to me
9 that that would provide more useful
10 information for the record, Mr. Miller.

11 MR. MILLER: O.K.

12 MR. STOCKHOLM: I'm going to
13 grant Mr. Brew's objection. This will not be
14 marked for identification.

15 MR. MILLER: Then, your Honor,
16 consistent --

17 MR. STOCKHOLM: But I will give
18 you time.

19 MR. MILLER: I believe that Mr.
20 Rafferty is prepared to address this document
21 right now. And I'd like to conduct some
22 additional direct examination with respect to
23 the Exhibit 118.

24 MR. STOCKHOLM: Please proceed
25 if you're ready to go.

1 DIRECT EXAMINATION BY MR. MILLER: (To the
2 witness Rafferty).

3 Q. Mr. Rafferty, have you taken a look at Exhibit
4 118?

5 A. Yes.

6 Q. Would you please comment on this document? For
7 instance, do you agree with the total revenue
8 line that's shown here within this exhibit?
9 For instance, the \$1,443,000,000. Excuse me.

10 A. Yes, I agree with the billion-443. However,
11 in the -- in the document that NYSEG submitted
12 previously, we showed an adjustment of \$53
13 million to correct that to the proper amount
14 to get to the correct net revenue amount. The
15 \$53 million adjustment that was acknowledged
16 yesterday by Mr. Radigan, is correct.
17 However, it doesn't go far enough. The
18 difference between the 34- and the 53 million
19 is \$19 million. That \$19 million represents
20 transmission revenues that are included twice
21 in this Exhibit 118. The \$19 million is
22 included first on the line "other revenues"
23 and, additionally, it's included as a
24 reduction to the line, "electric fuel and
25 supplemental power" so it's included there as

1 a reduction so that the \$735 million that Mr.
2 Radigan shows in the column in the year 2002
3 under "electric fuel and supplemental power"
4 needs to be increased by that \$19 million, so
5 that it's not a minus account. If the 735 is
6 then changed to \$754 million, the net revenue
7 number would then become 1424, which is the
8 correct number. In addition to that, there
9 are four other areas of significant problems,
10 significant errors.

11 First, with respect to the
12 O & M line, and I am looking at the 2002, '03,
13 and '04 columns, the numbers that this exhibit
14 shows as \$244 million, flat, not increasing at
15 all over those three years, that does not
16 recognize first a proper number for 2001 and
17 secondly, doesn't reflect any inflation
18 whatsoever. The proper numbers shown in
19 NYSEG's paper that we submitted yesterday, the
20 -- and said that these numbers need to be
21 increased by the following three amounts, in
22 2002 by \$21 million dollars to get to 265, in
23 2003 similarly by \$21 million to get to 265,
24 and in 2004, by \$27 million to get to \$271
25 million. Making those adjustments, the O & M

1 number would then be correct.

2 Q. Mr. Rafferty as a starting point in 2001 for
3 O & M, what was the correct number for 2001?

4 A. 2001, the correct number for NYSEG, O & M
5 expenses was \$277 million dollars. Let me
6 just take a moment to explain there the \$277
7 million dollars is different from the 265 for
8 2002, because, excuse me, NYSEG has said that
9 we've increased these expenses by one and a
10 half percent per year for inflation and
11 certain other specific identifiable
12 increases. In the year 2001 NYSEG had \$277
13 million of electric O & M expenses. There are
14 some expenses in there, however, that will not
15 be repeated in 2002. The two most notable
16 items of that nature are Nine Mile II expenses
17 because we sold Nine Mile II and that's about
18 \$25 million. In addition to that, there's
19 about \$20 million of non-recurring
20 amortizations that are in the 2001 numbers,
21 will not be repeated in 2002. If you reduced
22 then, the \$277 million that I mentioned for
23 the 2001 O & M expenses, by those two amounts,
24 \$45 million, you get \$232 million. The \$232
25 million then needs to be increased for known

1 items that the cost in 2002 will be different
2 from 2001. Those items normally fall in the
3 category of about two major items: First, \$8
4 million for salaries, wages and fringe
5 benefits, principally the result of an
6 apprentice program that we began last year and
7 are continuing this year to hire new linemen
8 in the apprentice program; secondly, an
9 additional \$8 million for pension and OPEB
10 costs of -- again of \$8 million. That's 167
11 million; an additional \$5 million for storm
12 costs. And we did have storm costs in 2001.
13 However, it was a very rare year. Our total
14 storm costs in 2001 were \$1 million. The
15 typical year for NYSEG is 6- to \$7 million, so
16 to increase 2002 to a more representative
17 amount would be to add -- we would need to add
18 \$5 million to that.

19 And, finally, the last notable
20 item is an additional \$5 million which is
21 included in 2002 in O & M expenses and in the
22 net ENTAC or NYTAC as the staff has described
23 it. Those four items plus the one and a half
24 inflation and some other miscellaneous items
25 added to the \$232 million will bring you back

1 to the \$265 million that NYSEG has filed in
2 its statement for the year 2002.

3 The next item I'd like to
4 address is the merger benefits. We heard Mr.
5 Radigan's discussion yesterday of how NUCOR
6 has handled that. That's not consistent with
7 the way NYSEG has handled it. In the first
8 year, NYSEG incurs significant costs to
9 achieve. NYSEG has chosen to amortize that
10 over the five-year period and -- of the Joint
11 Proposal, and so that is how it's reflected in
12 NYSEG's statement. Mr. Radigan, on the other
13 hand, I believe netted the cost to achieve
14 against the synergy savings and then he
15 amortized that over a five-year period which
16 is not appropriate.

17 The next item that needs to be
18 adjusted is "other taxes". Mr. Radigan
19 acknowledged yesterday that while he included
20 gross receipts taxes in the other revenue
21 items, he did not include a corresponding
22 amount in operating expenses, so as a
23 consequence, the numbers that are on the line
24 "other taxes" in our column of 167 million, 7
25 million and 10 million, are principally gross

1 receipts taxes as I just described.

2 The final item of significance
3 that's different between NYSEG's filing and
4 this appendix or this schedule 118, is the \$78
5 million that appears at the bottom of the page
6 and that simply is because NUCOR has chosen to
7 use a 40 percent equity ratio and NYSEG, as it
8 has proposed and continues to strive to
9 achieve, the 45 percent equity ratio is
10 reflecting in its filing a 45 percent equity
11 ratio.

12 With those adjustments, the
13 schedule that NUCOR has filed would be
14 reasonably accurate.

15 Q. Mr. Rafferty, the "merger benefits" line,
16 you've offered your analysis, but what should
17 those numbers be instead of the negative \$15
18 million dollars for 2002, 2003 and 2004, what
19 numbers should be there?

20 A. In 2002 there should be a zero, in 2003 there
21 should be a minus 16 and in 2004 it should be
22 minus 21, and that is to reflect the
23 significant synergy benefits that our
24 customers will experience.

25 MR. MILLER: Thank you. The

1 panel is available for cross-examination.

2 MR. WIDGER: Your Honor, just
3 before the commencement of cross-examination,
4 I would like to add that we should qualify Mr.
5 Reddy. Because he's not previously testified.

6 MR. STOCKHOLM: Please proceed,
7 counselor.

8 MR. WIDGER: Thank you, your
9 Honor.

10 DIRECT EXAMINATION BY MR. WIDGER: (To the
11 witness Reddy).

12 Q. Mr. Reddy, would you state your name and
13 business address for the record, please.

14 A. William J. Reddy, 89 East Avenue, Rochester,
15 New York.

16 Q. Now, you indicated earlier that you were
17 Comptroller of RGE Energy Group. Do you hold
18 positions with RG&E?

19 A. Yes. I'm Vice-president and Comptroller of
20 RG&E.

21 Q. And what are your responsibilities?

22 A. I'm responsible for most of the financial
23 services in the company, mainly the accounting
24 analysis, and their strategic planning.

25 Q. How long have you been employed by RG&E?

1 A. 34 years.

2 Q. Could you summarize for the record briefly
3 your educational/professional experience?

4 A. I have a Bachelor of Science degree in
5 accounting from Rochester Institute of
6 Technology and a Master of Business from the
7 University of Rochester. I've been involved
8 in the financial ends of the business and
9 regulatory affairs for most of my 34 years.

10 Q. And is the purpose of your appearance today to
11 support the Statement in Support of the Joint
12 Proposal?

13 A. Yes, it is.

14 Q. Would you describe your responsibilities
15 pertaining to the proposed merger?

16 A. I was involved in the beginning in discussion
17 of the merger with the consultants in the
18 analysis and providing data, did some
19 evaluation on the financial impacts on RG&E as
20 well as the combined companies and
21 participated in all of the subsequent
22 discussions that have taken place.

23 MR. WIDGER: Thank you, Mr.
24 Reddy. Mr. Reddy is also available for
25 cross-examination, your Honor.

1 MR. STOCKHOLM: Thank you,
2 Counselor. Mr. Brew.

3 MR. BREW: Yes, given the
4 change on the exhibit, I thought that NUCOR
5 could go first with respect to that item.

6 MR. STOCKHOLM: NUCOR can go
7 first, period.

8 MR. BREW: Thank you.

9 CROSS-EXAMINATION BY MR. BREW: (To the
10 witness Rafferty).

11 Q. Mr. Rafferty, taking up the items that you
12 just went through, is it correct that in
13 NYSEG's modified filing in October of this
14 year, the company included 28 million more in
15 transmission revenues in your exhibits than in
16 '02, scheduled?

17 A. I'll accept that subject to check.

18 Q. Thank you. The referenced O&M expenses of 234
19 million, two questions. If I follow your math
20 correctly, taking your 2001 number of 277 and
21 removing the non-recurring items you were at
22 232 million?

23 A. That's right.

24 Q. Which is less than the number that NUCOR was
25 using, isn't that right?

1 A. I didn't stop there.

2 Q. I understand that. Secondly the 234 million
3 used by NUCOR, how does that compare with the
4 number used by staff on its statement in
5 support? Well, let me put it a different way.
6 Would you accept that staff has used a figure
7 of \$233 million for 2002 -- 2003, excuse me?

8 A. For 2003.

9 Q. Yes.

10 A. Accept that subject to check.

11 Q. Mr. Rafferty, with respect to the company's
12 electric equity ratio, what would that equity
13 ratio be on a 13-month balance for 2001,
14 average balance?

15 A. I don't know that.

16 MR. BREW: Thank you, that's
17 all I have with respect to that, your Honor.

18 BY MR. BREW: (To the witness Segal).

19 Q. Mr. Segal, getting back to your supplemental
20 testimony, I'd like to repeat the question I
21 asked you earlier with respect to your
22 testimony on page 9 and just to reflect your
23 -- refresh your recollection. how many of
24 the winning suppliers in the Massachusetts
25 auction disclosed to you their hedged

1 positions?

2 A. I think, as I say in the testimony, we don't
3 have any evidence regarding to what extent the
4 winners were hedged, so the answer is none at
5 this point.

6 Q. You have no information on how many of those
7 winners were hedged prior to being selected as
8 winning bidders?

9 A. Yes. Although I would say based on my
10 experience --

11 Q. I asked for your data.

12 MR. MILLER: Your Honor, I --

13 MR. STOCKHOLM: Let's not have
14 an argument, and I direct the witness to
15 listen to the question and answer the question
16 that's asked.

17 MR. BREW: That's all I have,
18 your Honor.

19 MR. IRVING: Can he just be
20 allowed to complete that answer.

21 MR. STOCKHOLM: Only if it's
22 responsive to the question.

23 MR. BREW: The question was
24 what data did he have?

25 MR. IRVING: I wasn't asking

1 him.

2 MR. STOCKHOLM: The witness
3 could respond to the question. Could I have
4 the question reread, please.

5 (The pending question was read
6 by the reporter.)

7 MR. STOCKHOLM: Proceed.

8 MR. SEGAL: Yes. Based on my
9 experience working with utility clients and up
10 to now evaluating some of those bids both for
11 default service and other transactions, it is
12 routine for many of the third parties that are
13 typical bidders in those auctions to hold a
14 substantial portfolio of forward positions
15 and/or to be owning, generating assets and to
16 be making bids based on their ownership
17 positions in those assets.

18 MR. BREW: May I follow up,
19 your Honor?

20 MR. STOCKHOLM: You may.

21 BY MR. BREW:

22 Q. Mr. Segal, do you have any data as to the
23 extent of hedged positions of these parties or
24 are you speculating?

25 MR. IRVING: Objection, that's

1 been asked and answered.

2 MR. STOCKHOLM: I'll allow the
3 question.

4 A. I have no data on the portfolios of these
5 winning bidders.

6 MR. BREW: Thank you.

7 MR. STOCKHOLM: Is there other
8 cross-examination for these witnesses? Then
9 all right. Let me start where -- let me start
10 where they ended.

11 My understanding is that the 35
12 percent which has been called a premium adder
13 in the calculations of BRO rate came from or
14 was based in part at least on the experience
15 in Massachusetts?

16 MR. SEGAL: Yes.

17 MR. STOCKHOLM: Now, in
18 Massachusetts, when those contracts are bid
19 they're bid for a six-month time frame, is
20 that correct?

21 MR. SEGAL: Correct.

22 MR. STOCKHOLM: And what is the
23 purpose for going out for those bids, who gets
24 served as a result of those bids?

25 MR. SEGAL: The -- the

1 restructuring law that was passed in
2 Massachusetts required that utility customers
3 be broken into two types. There are those
4 types that are existing customers and wish to
5 continue to stay and receive service from the
6 utility are called standard offer customers.
7 That is not the kind of customer that these
8 auctions refer to. The other kinds of
9 customers are default customers and they have
10 that status because they've either moved into
11 the territory or they have gone to an ESCO and
12 come back, chosen to come back to the
13 utility. In either of those situations, they
14 are default customers and by law the utilities
15 are required to bid out the provision of
16 service for those customers at the time under
17 six-month contracts.

18 MR. STOCKHOLM: In those bids,
19 in those contracts that are put out for bid,
20 who has the risk of quantity variations, the
21 utility or the bidder?

22 MR. SEGAL: The bidder. It's a
23 full service requirement contract.

24 MR. STOCKHOLM: O.K. From the
25 customer's perspective, if a customer returns

1 to the utility under this service, can the
2 customer leave this service within the
3 six-month time frame?

4 MR. SEGAL: Yes.

5 MR. STOCKHOLM: If the customer
6 leaves this service within the six-month time
7 frame, will the customer continue to pay to
8 the utility or to anyone else, I suppose, any
9 of the costs associated with that bid?

10 MR. SEGAL: No.

11 MR. STOCKHOLM: Under the Joint
12 Proposal, a customer who leaves BRO service,
13 which is the service that we're making an
14 analogy to, I believe, if a customer leaves
15 the BRO service, will the customer continue to
16 pay NYSEG some amounts that are associated
17 with the provision of commodity?

18 MR. SEGAL: Yes. The first
19 thing is that they will avoid either three or
20 five mills if they leave the BRO service for a
21 market-based backout credit.

22 MR. STOCKHOLM: That's correct,
23 but that three or five mills is not for
24 commodity cost, is it? Isn't it for O & M
25 cost?

1 MR. SEGAL: No, that's
2 commodity. That's avoidance of a substantial
3 amount of the -- I would say the profit
4 potential of that 35 percent premium.

5 MR. STOCKHOLM: But the three
6 to five mills have existed long before the
7 premium. I thought the three and five mills
8 were the avoided cost to the company of
9 providing service to the customer, not the
10 avoided cost to the company of the commodity.

11 MR. SEGAL: The current
12 structure is that there's a two to four mill.

13 MR. STOCKHOLM: What's called
14 an adder, right?

15 MR. SEGAL: An adder.

16 MR. STOCKHOLM: Right.

17 MR. SEGAL: The company has
18 changed those to three and five mills and in
19 addition to that is bound by whatever outcome
20 comes out of the unbundling proceeding. In
21 addition to that, the company, by taking on
22 that customer in the first instance, has
23 committed to a fixed non-bypassable charge
24 which means that the company is hedging and
25 fixing their ancillary service charges. The

1 benefit they receive of the transmission
2 revenues that NYSEG receives in congestion
3 contracts, the basis differential between
4 zones in New York and also the performance
5 under many of the contracts that the company
6 has as hedges, the load contracts and the
7 nuclear purchased power, so there are still
8 costs that the company is incurring for the
9 benefit of the customers that do not go away
10 if a customer leaves the BRO during the
11 enrollment period.

12 MR. STOCKHOLM: What happens in
13 Massachusetts with all those costs?

14 MR. SEGAL: Those costs are a
15 part of a transition charge which is separate
16 and apart from this commodity default service
17 price.

18 MR. STOCKHOLM: So the
19 commodity default service price in
20 Massachusetts doesn't include installed
21 capacity or ancillary services or line losses
22 or the difference between zone costs, and so
23 on?

24 MR. SEGAL: No, to be clear, it
25 does -- it does include all of those things.

1 It does not include whatever stranded costs
2 there may be from past contracts and
3 contractual obligations of the utilities.

4 MR. STOCKHOLM: So as a default
5 customer in Massachusetts, when I leave the
6 default service and go and buy from an ESCO,
7 am I still paying all of those costs --

8 MR. SEGAL: You are paying --

9 MR. STOCKHOLM: -- all of those
10 costs that are reflected in the six-month
11 contract bid, or have you completely confused
12 me at this point?

13 MR. SEGAL: No, you have -- you
14 avoid all of the costs that are reflected in
15 that six-month bid.

16 MR. STOCKHOLM: And in that
17 six-month bid are ICAP, ancillary services and
18 the other things we discussed?

19 MR. SEGAL: All except for the
20 -- there are no transmission revenues and
21 typically, we don't include congestion
22 charges.

23 MR. STOCKHOLM: Yes, but the
24 customer, just so that I understand, the
25 customer in Massachusetts avoids all of those

1 charges when it leaves the service. The
2 customer in New York under the BRO does not
3 avoid all of those charges, is that correct?

4 MR. SEGAL: Not quite all,
5 that's correct.

6 MR. STOCKHOLM: Mr. Segal, in
7 your supplemental testimony at page 3, toward
8 the bottom, you -- there's a sentence that
9 says that when you're talking about BRO
10 pricing here, you say that the pricing is by
11 definition at market?

12 MR. SEGAL: Correct.

13 MR. STOCKHOLM: If a customer
14 no longer buys this service, shouldn't there
15 be a market-based backout that equals the
16 market price that he's paying here? I mean if
17 I understand correctly the way this works, if
18 I leave the BRO, the backout I get, the amount
19 that I no longer pay is based on a completely
20 different market. It's not based on the, what
21 you call here the concurrent forward price.

22 MR. SEGAL: Right. The reason
23 that that does not happen is that once a
24 customer elects to be on the BRO, the company
25 takes all the risk of hedging, procuring costs

1 for a two-year period for that customer, and
2 the -- the cost of that hedge with maintaining
3 that hedge over the two-year period on behalf
4 of that customer is difficult and contains a
5 risk. If a customer chooses to leave at any
6 time a market-based backout plus the three and
7 the five mills in addition to that provides a
8 way for the customer to leave at the then
9 appropriate market price which may and is
10 likely to not reflect the market price when
11 the period started and it also provides an
12 additional three to five mills to enable ESCOs
13 to have a margin as they currently have done
14 and are able to do with two to four mills.

15 MR. STOCKHOLM: Well, but it
16 would be fair to say that the company gets to
17 keep the 35 percent markup, does it not?

18 MR. SEGAL: You mean the
19 company --

20 MR. STOCKHOLM: The company has
21 to continue to pay that amount at this time?

22 MR. SEGAL: The company has
23 procured power on their behalf. The vast
24 majority of the 35 percent is incurred in
25 providing and procuring the load shape and the

1 losses and the capacity and all the other
2 components. When that customer leaves, the
3 company has excess power during all of those
4 components.

5 MR. STOCKHOLM: But still has
6 to provide that customer with all those
7 components, doesn't it?

8 MR. SEGAL: No, the customer is
9 left and is being served by another ESCO.

10 MR. STOCKHOLM: So if an ESCO
11 serves the customer, where are the stranded
12 costs recovered? I don't mean stranded costs;
13 where are the ancillary costs recovered?

14 MR. SEGAL: The ancillary
15 costs, the non-recurring costs are recovered
16 by the ESCO. These are the reserves, reserves
17 on capacity, the losses and the load shape
18 that we're talking about.

19 MR. STOCKHOLM: O.K.

20 MR. SEGAL: The company avoids
21 providing all of those components when a
22 customer leaves. The company has already
23 purchased back in the beginning of the period
24 most or all of those products on that
25 customer's behalf, and when that customer

1 leaves, they then would resell that into the
2 marketplace to --

3 MR. STOCKHOLM: But the backout
4 doesn't include all of those costs. It's only
5 the costs of energy, is it not?

6 MR. SEGAL: No, it includes all
7 of those components, energy and capacity, the
8 load shape, the losses and the energy
9 reserves. In that regard this market-based
10 backout would be different from the current
11 market-based backout which does only include
12 energy and initial capacity.

13 MR. STOCKHOLM: O.K. Is there
14 some place in the Joint Proposal that explains
15 that difference?

16 MR. IRVING: Page 30 and page
17 28. They're proposal provisions that were
18 repeated for the two commodity service
19 periods. Section IX, Roman numeral IX, C5 and
20 D5.

21 MR. STOCKHOLM: What I'm
22 looking for, Counselor, is a statement of the
23 amounts that would be backed out in the BRO
24 rate when a customer leaves the BRO, which
25 clearly shows that that backout includes

1 capacity, load shape, and so on.

2 MR. SEGAL: If you go to that
3 paragraph 5 on page 30, I don't know if that's
4 where you are.

5 MR. STOCKHOLM: Yes.

6 MR. SEGAL: The second sentence
7 of that paragraph begins, "The market-based
8 backout will include --"

9 MR. STOCKHOLM: O.K. Now I know
10 where the component is. There's a -- the
11 problem is as they come off the web, they have
12 different page numbers.

13 MR. MILLER: Your Honor, I have
14 the --

15 MR. STOCKHOLM: You're talking
16 about the Joint Proposal, not the --

17 MR. IRVING: Joint Proposal,
18 I'm sorry.

19 MR. STOCKHOLM: I'm sorry, I
20 had the completely wrong document.

21 MR. MILLER: Your Honor, do you
22 have one that's not from the web?

23 MR. STOCKHOLM: The document --
24 yes, I do.

25 MR. MILLER: Your Honor, if you

1 look at page 28, paragraph 5, that gives you
2 the same information for the first period.

3 MR. STOCKHOLM: With regards to
4 calculating the market-based backout and the
5 elements of that backout that include
6 installed capacity, capacity reserves and
7 losses, is that backout based on what is
8 included in the underlying rate for those
9 items. Or is it the current market price for
10 those items?

11 MR. SEGAL: It's the current
12 market price for those items.

13 MR. STOCKHOLM: So in theory,
14 the backout could be greater than the entire ,
15 BRO rate if all of those prices are 35 percent
16 higher than they were when the rate was
17 established?

18 MR. SEGAL: Correct.

19 MR. STOCKHOLM: On page 19 of
20 the company's statement in support, under
21 "Disposition of Earnings Above the Sharing
22 Threshold", there's a sentence that reads --
23 this is page 19 of the document -- a sentence
24 that reads, "If it is determined that the ASGA
25 balance is sufficient the Commission will

1 determine the manner of returning that
2 customer share of earnings." Who is going to
3 determine if the ASGA balance is sufficient?
4 To the entire panel: Who makes that -- who
5 makes that determination?.

6 MR. TEDESCO: Your Honor,
7 there's an annual compliance filing that would
8 -- that would provide the ASGA balance at the
9 end of each rate year, and that balance would
10 also be available for the Department staff
11 review as the -- as NYSEG provides monthly
12 financial information, so that balance is
13 visible and would be easily -- the balance
14 would be easily identified at any time.

15 MR. STOCKHOLM: After the
16 identification of the balance, my question is
17 who makes the determination that the balance
18 is adequate or the word that's actually used
19 in the document, "sufficient"?

20 MR. TEDESCO: Our view that
21 would be the staff of the Commission that
22 would make that determination.

23 MR. STOCKHOLM: Similarly, and
24 this may cut through a number of other
25 questions as well, you made reference to the

1 annual compliance file. My understanding is
2 that that filing will set forth the company's
3 earnings, show what may be appropriate at
4 least from the company's perspective as to
5 sharing. It will also include -- well, let me
6 call them deferrals or recoveries of certain
7 items that are set forth in I believe it's an
8 Appendix F to the Joint Proposal, Category 1,
9 Category 2 costs, and so on. First of all,
10 are there -- are there any deferrals that will
11 not be included in that annual compliance
12 filing, to your knowledge?

13 Mr. TEDESCO: There are none to
14 my knowledge. The -- by the time the new
15 rates are established, I do not believe there
16 will be any deferred balances to begin the
17 plan.

18 MR. STOCKHOLM: O.K. The only
19 item off the top of my head that I'm aware of
20 that I did not put in that last was the
21 true-up for, I believe it's calendar costs for
22 I believe it's Calendar Year 2002. Would that
23 be part of the compliance filing as well in
24 2003?

25 Mr. TEDESCO: Yes, I believe it

1 would, and the other component that I believe
2 is not included is the service quality
3 performance.

4 MR. STOCKHOLM: Yes, I didn't
5 refer to that. So basically everything that
6 the company can make a claim against the ASGA
7 or make a claim against ratepayers for
8 recovery would at the end of each year, be
9 submitted to the Commission in a compliance
10 filing, is that correct?

11 MR. TEDESCO: Yes, that's our
12 understanding.

13 MR. STOCKHOLM: O.K. Is it your
14 understanding that that compliance filing
15 would be subject to the approval of the Public
16 Service Commission?

17 Mr. TEDESCO: Our -- our belief
18 is that the compliance filing would be in
19 compliance with this Joint Proposal and the
20 Commission order approving it. We have filed
21 the compliance filings in the past and there's
22 been no Commission action on those.

23 MR. STOCKHOLM: O.K.

24 Mr. TEDESCO: And we continue.

25 MR. STOCKHOLM: Have you ever

1 filed a compliance filing that the staff
2 disagreed with?

3 Mr. TEDESCO: I believe we
4 received discovery and have responded to
5 discovery, but I'm not aware of -- of a
6 proceeding where there was a disagreement with
7 PSC at least in the previous restructuring
8 agreements.

9 MR. STOCKHOLM: Under the terms
10 of this agreement, what happens if the company
11 -- let's say there's a Category 1 cost and it
12 exceeds the \$250,000 threshold and the company
13 wants to make a claim against the ASGA and for
14 whatever reason staff believes it's improper.
15 Maybe the staff believes it's not a Category
16 1, but under the terms of this deal what
17 happens?

18 Mr. TEDESCO: My understanding
19 and belief is that that would be challenged
20 and ultimately would go to the Commission for
21 -- for review and approval.

22 MR. STOCKHOLM: The company has
23 -- there's no intent under this agreement for
24 the company to be able to claim the right to
25 draw down the ASGA for its own benefit if that

1 is being challenged by the staff.

2 Mr. TEDESCO: You're correct.
3 What this does give the company the right to
4 do is to defer what it believes would be an
5 uncontrollable cost and then we would be at
6 risk of recovering that if there was a
7 dispute.

8 MR. STOCKHOLM: Very good.

9 Would it be fair to say, just
10 to make sure I tie all the ends here, that any
11 dispute that arises under this agreement would
12 be subject to challenge before the
13 Commission? Resolution, I should use the word
14 "resolution" -- that any dispute that can't
15 be resolved among the parties under this
16 agreement could be taken to the Commission for
17 resolution?

18 Mr. TEDESCO: That -- that's a
19 very --

20 MR. STOCKHOLM: Too broad?

21 Mr. TEDESCO: Very broad
22 question. There are specific dispute
23 resolution methods mentioned for some of these
24 items.

25 MR. STOCKHOLM: They are, in my

1 reading, very few and very far between. I
2 only found one, and I don't remember where it
3 was, to be perfectly honest, but we'll go
4 through each one of them. If I can't do it
5 broadly, I'll get to the other ones, but we
6 did get the deferral issues taken care of in
7 that regard.

8 Mr. TEDESCO: I believe so.

9 MR. STOCKHOLM: On page 26 of
10 the statement in -- of your statement in
11 support, there's a reference, are you familiar
12 in the middle of the paragraph, to the market
13 value of the output of owned hydro
14 facilities. How is that market value to be
15 determined?

16 MR. TEDESCO: For the -- for
17 the floating non-bypassable charge it would be
18 based on the actual hourly output of those
19 units.

20 MR. STOCKHOLM: That's quantity
21 market.

22 Mr. TEDESCO: And priced at the
23 day ahead, corresponding day ahead hourly spot
24 pricing in the zone where those hydro
25 facilities are located.

1 MR. STOCKHOLM: Why the daily
2 price rather than the spot price?

3 Mr. TEDESCO: Same, same. The
4 day ahead price is the spot, is one of the
5 spot prices. There's two, an hourly real-
6 time price and a day ahead.

7 MR. STOCKHOLM: Why not an
8 hourly realtime price?

9 Mr. TEDESCO: I guess to make
10 it uniform with the way that the market-based
11 backout is calculated which is on the day
12 ahead basis, and in the same manner of the
13 valuing of other resources in Nine Mile and
14 such would all be at the day ahead, so that
15 it's internally consistent.

16 MR. STOCKHOLM: In that same
17 paragraph, there's a reference to a class
18 deemed, d-e-e-m-e-d, class deemed load shape
19 and class deemed contribution to peak. Would
20 you explain that terminology?

21 Mr. TEDESCO: I'll take a crack
22 at it, and Chris may supplement.

23 MR. STOCKHOLM: Maybe or
24 correct me.

25 Mr. TEDESCO: Because each

1 individual customer doesn't have a realtime
2 meter, this company and almost any other
3 company that has retail access programs has
4 constructed a series of load shapes for
5 customers, classes and there are currently
6 more load shapes than there are classes, and
7 there are 31 and they describe the typical
8 shape of the way that a customer in a certain
9 class or subclass take power, and so when a
10 customer gets a bill for a period of
11 residential 500 kilowatt hours, there is a
12 load shape across that monthly period by hour
13 in which that customer is deemed to have taken
14 those five hundred kilowatt hours, and that is
15 the way that the market-based backout for that
16 class or subclass is valued and that is also
17 the way that -- that ESCOs' responsibility for
18 their customers in terms of load shape by hour
19 is also determined.

20 MR. STOCKHOLM: O.K. This is a
21 calculation that's wholly done by the
22 company.

23 MR. TEDESCO: Yes, the company
24 load shapes. They're available on the
25 company's web site as well.

1 MR. STOCKHOLM: In the next
2 paragraph also under that same section
3 heading, it indicates that the company will
4 supply staff any fixed non-bypassable wires
5 charges in calculations at least 15 days prior
6 to their implementation or promulgation. This
7 again goes back to the dispute issue. I
8 assume that the -- the staff and/or the
9 Commission could contest these numbers and if
10 the staff and the company did not ultimately
11 agree on the appropriate number, it would
12 ultimately be resolved by the Commission, is
13 that correct?

14 MR. SEGAL: While they're
15 talking, I would just add that this
16 calculation will be estimated along with the
17 BRO price that's called for in this document
18 and will be available for a series of months
19 so that I would imagine that any issues or
20 concerns about that number would be known well
21 in advance of 15 days before their
22 implementation. In fact, October 1st is 90
23 days before the actual implementation and that
24 is the date on which this number will be
25 finally fixed in any event.

1 MR. STOCKHOLM: So what you're
2 suggesting is that it might not only be staff
3 who would be contesting this number. My
4 question remains if this number is contested
5 and an agreement cannot otherwise be reached,
6 does the Joint Proposal contemplate that that
7 dispute would be resolved by the Commission?

8 MR. TEDESCO: On page 33 of the
9 Joint Proposal, I'm just struggling with a
10 paragraph reference.

11 MR. STOCKHOLM: Don't worry
12 about that, page 33 is fine. I've got the
13 right pagination.

14 Mr. TEDESCO: It's paragraph 5.

15 MR. STOCKHOLM: M-m h-m-m.

16 Mr. TEDESCO: And this has to
17 do with the development estimates for the BRO
18 and it contains a provision that I believe
19 speaks to the process that you were asking
20 about, and it's our belief that that process
21 would be similar for disagreements related to
22 this. However, on this particular matter this
23 is, we view this as formulating and it's also
24 filed, so if not routine, it would at least be
25 more of a calculation than, you know, than an

1 estimate. But at least this paragraph does
2 speak to that process. That would be followed
3 to the extent that there could not be
4 agreement between NYSEG and staff and that
5 would be referred to the Commission for
6 resolution.

7 MR. STOCKHOLM: I did notice
8 this one instance, but also noted in the
9 margin that it's the only one I found in the
10 agreement where it really defines that, but if
11 your answer is that the establishment of the
12 non-bypassable wires charge is submitted to
13 staff in the event that there is a dispute
14 that the agreement contemplates that that
15 dispute would be resolved by the Commission.
16 That's the way I understood your answer, is
17 that correct?

18 Mr. TEDESCO: Yes. Well, it's
19 correct that it will be limited in our view to
20 the calculation of the methodology of the
21 calculation.

22 MR. STOCKHOLM: Understood O.K.
23 On page 46 of the statement in
24 support, under the title of "uncontrollable
25 costs" -- actually, I apologize. Where I'm

1 actually referring to is going to be on the
2 top of page 47, the clause at the end of the
3 sentence reads, "NYSEG may not (with very
4 limited exceptions) seek to recover
5 uncontrollable costs in any one year to the
6 extent that such recovery would cause earnings
7 after sharing to exceed a delivery or total
8 ROE of 15.5 percent. Can you specifically
9 identify the very limited exceptions?

10 Mr. TEDESCO: I can begin that
11 list. There are, I believe, two. we refer to
12 them as mandated economic development
13 contracts, the lost revenues of which would be
14 recovered through the ASGA. That recovery
15 would be -- would continue regardless of the
16 company's earnings.

17 MR. STOCKHOLM: And those two
18 contracts would be with Corning and with
19 NUCOR.

20 MR. MILLER: Yes.

21 MR. STOCKHOLM: Just out of
22 curiosity, I understand that the budget for
23 economic development is \$8 million at the
24 outset.

25 MR. TEDESCO: The recovery

1 threshold is 8 million.

2 MR. STOCKHOLM: Right, for
3 economic development programs.

4 Mr. TEDESCO: Right. The
5 budget --

6 MR. STOCKHOLM: What determines
7 the --

8 MR. TEDESCO: The budget would
9 really be determined by economic development
10 and the development plan.

11 MR. STOCKHOLM: Understood. I
12 misspoke. Do I correctly assume that none of
13 the -- the costs or lost revenues from Corning
14 and NUCOR would be included within that \$8
15 million amount.

16 Mr. TEDESCO: That's correct.

17 MR. STOCKHOLM: O.K. Please
18 proceed.

19 MR. TEDESCO: The environmental
20 remediation costs are also subject to
21 symmetrical true-up regardless of earnings
22 levels. The Power for Jobs above the GRT
23 credit to the extent that again that credit
24 disappears, then that would also be fully
25 reconciled regardless of the company's

1 earnings. And subject to further check, I
2 believe that is the complete list that, to the
3 extent that there are other contracts that may
4 be ordered similar to the two we've just
5 mentioned, they would be treated in the same
6 way.

7 MR. STOCKHOLM: How do you
8 distinguish those contracts from other
9 economic development rates? I mean why are
10 they in a special category?

11 MR. TEDESCO: There's -- they
12 were ordered by the Commission.

13 MR. STOCKHOLM: So I'll know
14 similar contracts by the existence of a
15 Commission order.

16 MR. TEDESCO: As opposed to a
17 contract that's based on one of NYSEG's
18 existing tariffs.

19 MR. STOCKHOLM: O.K. I noted in
20 -- especially with regard to the
21 environmental costs that the true-up if you
22 will, symmetrically, is the true -- is the
23 true-up or the deferral allowance with regard
24 to the \$8 million of economic development
25 costs also symmetrical?

1 Mr. TEDESCO: Yes, it is.

2 MR. STOCKHOLM: So such that if
3 you do not use it, it is a credit for the
4 ratepayers?

5 MR. TEDESCO: That's correct.
6 We would have to contribute to the SS income.
7 The difference is that the recovery of the
8 environmental remediation costs would continue
9 regardless of earnings. That's not true with
10 the economic development portion. I could use
11 an example.

12 MR. STOCKHOLM: Yeah, I thought
13 I was asking you for exceptions. I thought I
14 was asking you for exceptions to the ability
15 to defer cost if the company's ROE exceeded
16 the sharing threshold and now you're saying
17 the economic development costs are not in that
18 category.

19 Mr. TEDESCO: The economic
20 development cost is, the recovery if the
21 program was \$12 million.

22 MR. STOCKHOLM: Right.

23 Mr. TEDESCO: We would not be
24 able to recover that 4 million if we were over
25 15.5 percent.

1 MR. STOCKHOLM: O.K.

2 Mr. TEDESCO: Which is
3 different from the environmental remediation
4 costs.

5 MR. STOCKHOLM: O.K.

6 Mr. TEDESCO: So they're the
7 same in that they symmetrically true up but
8 they're different in that there are
9 recoverable changes if we go over.

10 MR. STOCKHOLM: Let me go back
11 to what I thought I previously asked you and
12 apparently did not -- there are some
13 exceptions to the company's ability to recover
14 costs in addition to those set forth in its
15 income statement, being capped at 15.5
16 percent, that is to say the trigger on the
17 sharing, earnings sharing. What costs can the
18 company still take from ASGA or otherwise
19 defer for collection from ratepayers even if
20 their ROE is above the sharing trigger?

21 MR. TEDESCO: That would be
22 page 37, a continuation of paragraph 3 on page
23 36.

24 MR. STOCKHOLM: 37 in the Joint
25 Proposal?

1 MR. MILLER: Yes.

2 Mr. TEDESCO: Lists those
3 exceptions.

4 MR. IRVING: The sentence
5 starts at the bottom of 36.

6 MR. STOCKHOLM: O.K. So the
7 only economic development type rate that we're
8 dealing with here is just the Power for Jobs
9 program, is that correct?

10 MR. TEDESCO: Well, as well as
11 these mandated contracts.

12 MR. STOCKHOLM: Oh, O.K. That's
13 fine, yes.

14 Mr. TEDESCO: Right.

15 MR. STOCKHOLM: We're on the
16 same page.

17 On page 47, the company
18 responded to at least a couple of the --
19 actually, it responded to all the questions
20 that I asked. I didn't mean to imply to the
21 contrary, but one of the questions involved a
22 base level expense for storms and you indicate
23 here that that base level is \$6 million. That
24 means, and correct me if this is wrong, that
25 unless the company expends \$250,000 more than

1 \$6 million for a storm, for storms during the
2 year total, that there will not be deferral
3 allowed for storms, is that correct?

4 MR. TEDESCO: The only
5 difference to that is that the 250,000 is a
6 deductible, if you will, for all --

7 MR. STOCKHOLM: For the entire
8 category.

9 Mr. TEDESCO: For the entire
10 category.

11 MR. STOCKHOLM: I was assuming
12 there were zero other expenses in the
13 category. You had 625 -- \$6,250,000 for
14 storms, no other costs in the category, there
15 would be no deferral, is that correct?

16 MR. TEDESCO: That's correct,
17 with that assumption, that's correct.

18 MR. STOCKHOLM: O.K.

19 Then the next item immediately
20 following that \$6 million identification is a
21 total of \$306.7 million that would be subject
22 to the deferral concerning inflation above 4
23 percent, is that correct?

24 MR. TEDESCO: That's correct.

25 MR. STOCKHOLM: And that 306.7

1 million is the base for what year?

2 MR. TEDESCO: 2002.

3 MR. STOCKHOLM: 2002, O.K.

4 Mr. Van Ryn, I just want to
5 sort of advise you in advance and your staff
6 is, I'm sure listening, I want to verify that
7 number with the staff when we get everybody
8 together here, so I will return to that issue
9 and be asking staff that question if they
10 agree with that number.

11 MR. VAN RYN: Yes, your Honor.

12 MR. STOCKHOLM: You then go on
13 to indicate that these expenses will vary
14 annually over the term of the proposal, and I
15 guess what I'd like to know is how you -- how
16 did you calculate this \$306 million at your
17 base; where did these numbers come from; what
18 numbers; are they annuals, are they estimates;
19 are they forecasts and how will I know at the
20 end of 2002, what the base is going to be for
21 2003? Yes, I know Counselor, that was four
22 questions in one. We have good witnesses.

23 Mr. TEDESCO: I'd ask Mr.
24 Rafferty to elaborate on this but it's my
25 understanding that his numbers came out of the

1 2002 coordinates.

2 MR. STOCKHOLM: O.K. So the 306
3 million is a forecast number, it's not an
4 actual number?

5 MR. TEDESCO: That is correct.

6 MR. RAFFERTY: That's correct.
7 That's correct.

8 MR. STOCKHOLM: Do we know the
9 number for 2003 today? We do have income
10 statements for that year.

11 MR. TEDESCO: No, we do not
12 know those numbers yet.

13 MR. STOCKHOLM: Well, we know
14 them, and how will they be calculated? Have I
15 asked a question that nobody has thought about
16 yet? We've been going almost an hour and a
17 half at this point. Let me explain my concern
18 and we'll take a break, and we'll see if we
19 can get something on the record when I come
20 back.

21 My concern is an argument over
22 this space. I would like to identify it. If
23 we can't identify a number, I can understand
24 that as well, but I want to understand the
25 methodology for how the next number is

1 derived. I don't want to have an agreement
2 here that is, in essence, an agreement to
3 agree 12 months from now, and four more shots
4 at that during the term of this deal. I would
5 like to get that nailed down either from a
6 methodology perspective or from a numerical
7 perspective, and with that we'll take about --
8 we'll come back in at quarter after 11:00.

9 (A recess was taken from 10:57
10 a.m. to 11:20 a.m.)

11 MR. STOCKHOLM: O.K. Back on
12 the record.

13 I left the panel with some
14 thoughts about the O & M for future years.
15 Can you shed some light on that issue?

16 MR. TEDESCO: Actually, you
17 left the entire room with that question. At
18 least the staff and the company have discussed
19 the approach to this issue. Those discussions
20 have not been completed.

21 MR. STOCKHOLM: O.K.

22 MR. TEDESCO: I wouldn't
23 characterize that as a disagreement. It's
24 simply, there are -- there are different
25 approaches, and we really have to explore

1 that.

2 MR. STOCKHOLM: Not sign of a
3 disagreement, just the absence of an
4 agreement.

5 MR. TEDESCO: I believe there's
6 definitely an agreement on this as a recovery
7 amount but whether it's actual, whether it's a
8 forecast or whether it's cumulative or not,
9 needs to be discussed.

10 MR. STOCKHOLM: All right.
11 Staying on that same page, 47, following the
12 list of numbers there is a paragraph and I
13 want to ask you about the last sentence, which
14 indicates, which makes reference to Appendix F
15 of the Joint Proposal and refers to, at least
16 as I interpret the sentence, refers to costs
17 under, I think it's Category 1 that are
18 mandates. The word "mandate" is in that
19 sentence. What kind -- would I be correct in
20 assuming that costs which are not specifically
21 mandated do not fall in the category of other
22 uncontrollable costs there?

23 MR. TEDESCO: Category 2 is
24 principally made up of external requirements,
25 mandates, legislation and that's -- included

1 here already is a place albeit to say that
2 this may be one of those that we hadn't
3 contemplated.

4 MR. STOCKHOLM: I apologize.
5 It was Category 2. But I guess my question to
6 you is, on Appendix F on page 2, there is a
7 line item called "all other uncontrollable
8 costs." In your statement in support, you
9 refer to those costs, I believe as a mandate,
10 as the result of a mandate such as a
11 governmental order, for example, and my
12 question is, is the line for all other
13 uncontrollable costs only costs that are the
14 subject of a legal mandate?

15 MR. TEDESCO: The best way
16 really to answer that, it would be a cost that
17 would fit the definition of a category on page
18 1 of 2 of the appendix and also paragraph B2
19 on page 36 of the Joint Proposal. With the
20 exception of inflation, we do refer to the
21 remaining costs as mandatory.

22 MR. STOCKHOLM: Let's assume
23 the company in their annual filing, compliance
24 filing, determined that a cost fell within
25 this category of all other uncontrollable

1 costs and there was a disagreement as to
2 whether they were uncontrollable and/or
3 whether they were mandatory. How would that
4 disagreement be resolved?

5 MR. TEDESCO: It would be
6 resolved in the same way that we discussed
7 earlier for that compliance filing, is subject
8 to review and ultimately could be subject to
9 the approval of the Commission.

10 MR. STOCKHOLM: On page 52, the
11 statement indicates that the Joint Proposal
12 should increase customer migration and enhance
13 the development of a competitive market. By
14 how much do you expect customer migration to
15 be increased?

16 MR. TEDESCO: We don't have an
17 estimate of that. That's -- that's, as has
18 been testified by other parties, that's very
19 difficult to ascertain how that much might
20 change, but we do expect it to increase.

21 MR. STOCKHOLM: Staff indicated
22 yesterday, if I remember their testimony
23 correctly, that 5 percent increase in the
24 amount of migration on an annual basis would
25 be an extremely challenging target. Would you

1 share the opinion that that would be a
2 challenging target?

3 MR. TEDESCO: From my
4 perspective, it's very difficult to give a
5 definitive answer. I think that the change in
6 the retail access market, the number of
7 customers that participate is dependent on a
8 number of factors, including the wholesale
9 electric market, the number of ESCOs that
10 participate, the extent of and success of
11 customer education programs undertaken by both
12 the company, other companies and the ESCOs and
13 so it's very, very difficult to say.

14 MR. STOCKHOLM: But is the
15 company's position nevertheless the customer
16 migration will be increased to some extent as
17 a result of this giant proposal?

18 MR. SEGAL: The company's
19 position is that the customers have additional
20 options available to them under this proposal
21 and that hopefully customers will take
22 advantage of that.

23 MR. STOCKHOLM: They don't have
24 any additional migration options under this
25 proposal, do they? I recognize that they have

1 different rate options to purchase from NYSEG
2 under this proposal, but this proposal doesn't
3 create any new ESCO options for them, does
4 it?

5 MR. TEDESCO: Yes.

6 MR. SEGAL: Yes, it does.

7 Mr. SEGAL: The ERO rate which
8 is an unbundled delivery only rate allows an
9 ESCO to add their own product offering right
10 on top of that delivery product. That is not
11 something that's available today and I would
12 also add that the -- the adder to the market-
13 based backout, which is the primary way today
14 that customers can switch is being increased
15 by 50 percent for large customers and 25
16 percent for small customers and, finally,
17 those customers who elect or are defaulted
18 onto the variable rate option which is NYSEG's
19 offering, would be able to leave at any time
20 for the ESCO rate offering, so that ESCOs have
21 an ongoing ability to market to them and
22 increase their market share.

23 MR. STOCKHOLM: Customers can
24 now leave at any time for an ESCO, can they
25 not?

1 MR. SEGAL: I'm sorry.

2 MR. STOCKHOLM: Customers can
3 now leave for an ESCO at any time, can they
4 not?

5 MR. SEGAL: Yes, yes. With a
6 market-based backout in two to four months.

7 MR. STOCKHOLM: O.K. So
8 basically what you're telling me is that the
9 rate is different than it currently is under
10 this plan but the number of options to the
11 customer, the customer can either buy from
12 ESCO or not, those options aren't increased
13 now, are they?

14 MR. SEGAL: The number of ways
15 that they would buy from an ESCO, the number
16 of ways that they would buy from an ESCO has
17 doubled. They can buy from an ESCO using a
18 market-based backout structure as it exists
19 today only with an improved adder, or they can
20 choose service under the ESCO rate option, the
21 ERO, which does not exist today, and that is
22 they pay NYSEG a delivery charge. They pay a
23 non-bypassable wires charge and then they pay
24 the ESCO whatever commodity the ESCO and the
25 customer negotiate. If you will, that's

1 really an unbundling of the delivery rate for
2 running the risk of utility charge.

3 MR. TEDESCO: If I could add to
4 the question, your Honor, the definition of
5 migration might have to be reconsidered. The
6 initial offering is in effect a migration away
7 from a utility to an open market.

8 MR. STOCKHOLM: Does it improve
9 competition for a customer to change from one
10 NYSEG service to another?

11 MR. TEDESCO: However you're
12 defining that or anyone else would be defining
13 it.

14 MR. STOCKHOLM: Do you think
15 the ESCOs would define that as helping
16 competition?

17 MR. TEDESCO: I can't -- then I
18 can't speak for them. To the extent that it's
19 valuable for customers to see and respond to
20 real price signals, I think it would be
21 helpful.

22 MR. STOCKHOLM: In the next
23 sentence staying on the same page, you
24 indicate that the company will spend a
25 considerable amount of money and time

1 communicating with their customers regarding
2 the choices. Is there a budget set for that
3 effort? Now, maybe I misread the Joint
4 Proposal and correct me if I'm wrong, but I
5 thought I read the Joint Proposal as saying
6 that this budget would be developed in the
7 future after negotiations with the parties and
8 the development of a plan and all those kind
9 of things, or is there a specific budget set
10 forth in the Joint Proposal for this?

11 MR. TEDESCO: Page 27,
12 paragraph B3, assuming this plan is approved,
13 the company would make a filing on April 1st
14 of that budget.

15 MR. STOCKHOLM: O.K. So the
16 only provision really in the Joint Proposal
17 that would give anyone a handle on the, quote,
18 "considerable amount of money", end quote,
19 referenced in your comments, is that anything
20 -- is that any costs in excess of 1.5 million
21 for outreach and education would be taken from
22 the ASGA, otherwise we don't have any idea
23 what that considerable amount of money or
24 effort is, right?

25 MR. SEGAL: There are a variety

1 of sections in the Joint Proposal that speak
2 to customer outreach and education as well as
3 the determination of the success of those
4 programs and whether or not there is success.
5 A sort of follow-up is required.

6 MR. STOCKHOLM: That's correct,
7 but there's no specific commitment of a budget
8 at this point, is that correct.

9 MR. SEGAL: Until we, as my
10 colleague indicated, up until the point we
11 file the details of that, I would say it's
12 included in our year end requirement.

13 MR. TEDESCO: Your Honor, on
14 page 23 it discusses the process for the
15 outreach and education effort for these
16 commodity service options and after that April
17 1st filing there's a review of this by staff
18 and the parties and a final agreement on this
19 by June 15th. Our view is that final
20 agreement is one of the last acts of the plan
21 excluding budget.

22 MR. STOCKHOLM: And I hate to
23 sound like a broken record, but in the event
24 that there isn't an agreement, does the
25 proposal contemplate that the matter could be

1 taken to the Commission for resolution?

2 MR. TEDESCO: I can't imagine
3 there wouldn't be agreement but in that
4 unlikely event.

5 MR. STOCKHOLM: In the unlikely
6 event, yes.

7 MR. TEDESCO: Yes.

8 MR. STOCKHOLM: O.K. Subject
9 to, as I've noted before, going through this,
10 the actual Joint Proposal itself which is what
11 I would propose to do next, subject to the
12 parties wanting to do something differently,
13 those are all the questions that I had based
14 on the filing of the statement in support.
15 Gentlemen, is there any desire on your behalf
16 to redirect or ask additional questions of the
17 panel?

18 MR. MILLER: Just a few, your
19 Honor.

20 MR. STOCKHOLM: You need a
21 break, or are you ready to go?

22 MR. MILLER: Ready to go.

23 MR. STOCKHOLM: Please
24 proceed.

25 MR. MILLER: I may need a

1 break.

2 MR. STOCKHOLM: When you're
3 ready.

4 REDIRECT EXAMINATION BY MR. MILLER: (To the
5 witness Segal).

6 Q. O.K., Mr. Segal, Judge Stockholm asked you
7 some questions about the pricing of the output
8 from NYSEG's hydro facility; do you remember
9 that examination?

10 A. Yes.

11 Q. And to place the output from NYSEG's hydro
12 facilities in proper context, could you
13 contrast NYSEG's total consumption versus the
14 output that it obtains from its hydro
15 facilities?

16 A. Sure. The company's total retail deliveries
17 are about 1400 gigawatt hours in a given
18 year. The output of the hydro is roughly 300
19 gigawatt hours, so it's roughly 2 percent.

20 Q. Judge Stockholm also had some questions about
21 the premium rate, the BRO and switching.
22 Could you elaborate why it's desirable for
23 customers to avoid BRO and switch at any given
24 time?

25 A. Yes, I think there's two things I would point

1 out. First, the evidence in Massachusetts was
2 for a six-month period and, in general, I
3 don't think that there was a whole lot of
4 switching during those six-month periods and
5 bidders got to know that. This is a two-year
6 product, the premium for a two-year product in
7 which customers could switch freely and avoid
8 this BRO rate completely would be
9 substantially higher than 35 percent. I have
10 not calculated that number, but the -- the
11 problem from a policy perspective among other
12 things with doing that is that you would be
13 forced to charge that extra cost of free
14 switching onto the customer's estate so there
15 is a bit of an inequity there.

16 The second thing I would point
17 out is that the company will post its price on
18 October 1st, three months before the beginning
19 of the enrollment period. There then would be
20 an additional three-month grace period during
21 which any customer could switch off of the BRO
22 at no cost. In effect, that total of six
23 months to make decisions and to switch freely
24 without penalty from that BRO price that's
25 posted, so if you want to think about that

1 being equivalent to Massachusetts, that would
2 be appropriate as well.

3 Q. Mr. Segal, also in connection with the 35
4 percent premium, can you tell me if the gross
5 revenue taxes is absorbed within that number?

6 A. Yes, it is one of the expenses that NYSEG
7 would cover.

8 BY MR. MILLER: (To the Witness Rafferty)

9 Q. Next, Mr. Rafferty, in your discussion of the
10 revised NUCOR exhibit, Appendix A, one of the
11 items that you addressed, I believe, were the
12 merger benefits, is that correct?

13 A. Yes.

14 Q. And you made some statements with respect to
15 the assumptions used by Mr. Radigan versus
16 those assumptions that were used in your
17 particular appendix regarding the amortization
18 of synergy savings, is that correct?

19 A. Yes.

20 Q. Does the exhibit that NYSEG attached as its
21 income statement represent the final decision
22 on that amortization issue?

23 A. No.

24 Q. Finally, after reviewing all of the
25 adjustments that you have made to the NUCOR

1 Appendix A, are the ROEs that you would obtain
2 after those adjustments for 2002, 2003, 2004,
3 similar to the ROEs that are in NYSEG's income
4 statement.

5 A. Yes.

6 MR. MILLER: That's all I have,
7 your Honor.

8 MR. STOCKHOLM: Just a question
9 on the finality of the company's decision
10 concerning the amortization of the cost to
11 achieve. Under the terms of the agreement as
12 it currently exists, is it correct that the
13 company can wait until the end of Calendar
14 Year 2002 to get a good idea of its earnings
15 and if its earnings are in excess of 15.5
16 percent, reduce them by deciding to take a
17 certain amount, an amount of whatever may be
18 necessary to reduce the earnings so that there
19 would be no earnings sharing. Does the -- do
20 the terms of the agreement concerning that
21 amortization allow the company to do that?

22 MR. TEDESCO: The agreement
23 allows the company to decide to amortize some
24 or all of the costs. It -- it could make that
25 decision at the end of the year. It's very

1 likely that some of those costs achieved would
2 not be known until the end of the year, but
3 the company would never manage its earnings in
4 that way.

5 MR. STOCKHOLM: So are you
6 suggesting that a decision would not be made
7 -- if the company made, for example, 17.5
8 percent return on equity during Calendar Year
9 2002, are you suggesting that the company
10 would not perform a calculation to determine
11 how much of the cost to achieve should be
12 amortized during 2002 to avoid sharing
13 earnings with the ratepayers.

14 MR. TEDESCO: I was suggesting
15 that the company is not -- would not manage
16 its earnings in that sense. It would attempt
17 to make a decision as to its ability to absorb
18 those costs, and I believe that's a different
19 -- a different approach.

20 MR. STOCKHOLM: Well, under my
21 example, You made 17.5 percent, I assume you
22 could absorb the equivalent of 200 basis
23 points of those costs in that year.

24 MR. TEDESCO: That's possible
25 although the power supply, the large clump of

1 the costs in 2002 are fully reconcilable, but
2 it's really to determine that, to provide the
3 opportunity to match the costs and benefits
4 together in the outer years. That's really
5 the intent of this provision.

6 MR. STOCKHOLM: Let me
7 understand -- let me understand the deferral
8 provision. If -- my understanding of what's
9 in the Joint Proposal, the company can take as
10 much of the costs to achieve as are set forth
11 in Appendix A to the joint -- excuse me. I
12 apologize. Appendix A to the Joint Proposal
13 sets forth costs to achieve. In your Calendar
14 Year 2002 those costs are set forth at \$55
15 million dollars. Does the Joint Proposal
16 allow the company to decide to defer any or
17 all of those costs in year one and whatever
18 may be left over of -- and I just used the
19 wrong word. Let me restate the question.
20 Does the Joint Proposal allow the company to
21 amortize all or any portion of those costs
22 that it wants to in Calendar Year 2002?

23 MR. TEDESCO: Yes, it does.

24 MR. STOCKHOLM: O.K. What if it
25 decides to amortize during the year 2002, does

1 the proposal require the company to amortize
2 on a straight line basis whatever balance you
3 didn't amortize in 2002?

4 MR. TEDESCO: Yes it does.

5 MR. STOCKHOLM: So once the
6 decision is made, you have a one-time decision
7 to be made, as I understand it, in the end of
8 the year 2002 with regard to the amortization
9 of those costs, is that correct?

10 MR. TEDESCO: That's correct.

11 MR. STOCKHOLM: So once that
12 decision is made, you can't better amortize
13 those costs from the following years because
14 those costs are going to be fixed, are they
15 not?

16 MR. TEDESCO: They're fixed for
17 that amortization. There are other costs
18 which we may look for.

19 MR. STOCKHOLM: Right, and as
20 long as we're on that topic, let me ask you to
21 turn to your income statement. Do I read your
22 income statement correctly to show that at
23 least for illustrative purposes, I understand
24 the answer you gave before about it's not a
25 final decision but for illustrative purposes

1 you decided to amortize 33.3 million of costs
2 to achieve in Calendar Year 2002?

3 MR. TEDESCO: Beginning in
4 2002, so the first -- 2002 is the first year
5 of that amortization, and then it continues on
6 a straight line basis.

7 MR. STOCKHOLM: All right, let
8 me back up. You show on a line that says
9 "estimated cost to achieve synergy savings"
10 under Calendar Year 2002, 33.3 million. Let
11 me ask first, why isn't that 55 million?

12 MR. TEDESCO: The balance is
13 capitalized, so it would not appear on the
14 income statement in that amount, so this is
15 converting the cash synergy to an accounting
16 basis.

17 MR. STOCKHOLM: O.K. So the --
18 no, I'm talking about synergies. I'm talking
19 about costs to achieve.

20 MR. TEDESCO: The costs to
21 achieve those synergies would be -- would
22 normally be capitalized.

23 MR. STOCKHOLM: O.K.

24 MR. TEDESCO: And are,
25 therefore, by definition capitalized and

1 amortized. These are the costs that are not
2 expensed.

3 MR. STOCKHOLM: Are you not
4 expensing 33.3 million?

5 MR. TEDESCO: No, we're
6 deferring the 26.6 is the amount of the
7 deferral in that year, and then the 6.7 is the
8 amount that actually would give the income
9 statement in that year so in other words it's
10 showing the cost to achieve as 33, then saying
11 we're going to defer that and that has the
12 effect of reducing that expense, if you will,
13 to the first year amortization of 6.7. The
14 6.7 evolved, and then what we've done purely
15 for convention is to say that we're going to
16 set synergies for zero for that year; we're
17 going to be able to say we're going to be able
18 to offset that cost at 6.7, so it's just
19 purely for illustrative purposes.

20 MR. STOCKHOLM: O.K. But your
21 illustration goes all the way to the end of
22 the term through 2006.

23 MR. TEDESCO: That's correct.

24 MR. STOCKHOLM: And what I
25 can't fathom from the numbers here is how you

1 recover \$74 million of cost to achieve.

2 MR. TEDESCO: There are other
3 costs to achieve that are -- that are
4 capitalized and are included -- that are
5 already netted.

6 MR. STOCKHOLM: O.K. So you've
7 netted the costs to achieve?

8 MR. TEDESCO: Estimating.

9 MR. STOCKHOLM: O.K. So I have
10 to look at all three lines in order to come up
11 with the numbers that you've shown on Appendix
12 A. That is to say when I say all three lines,
13 synergy savings, amortized costs to achieve
14 and energy recapitalization. Have to look at
15 all those lines.

16 MR. TEDESCO: Yes.

17 MR. STOCKHOLM: If I added
18 together all of those lines, would I get at
19 the end of the five years net savings as shown
20 on Appendix A of 74.9 million?.

21 MR. TEDESCO: I would have to
22 take that subject to check. The only slight
23 difference could be costs, again costs that
24 are shown on a cash basis on Appendix A, to
25 the Joint Proposal that are capitalized.

1 MR. STOCKHOLM: O.K. But even
2 though they're capitalized, isn't -- doesn't
3 Appendix A at least imply, at least it does to
4 me. That you're going to amortize those
5 capital costs over the five-year period, then
6 would be zero at the ends of the five year
7 period, no.

8 MR. TEDESCO: I beg your
9 pardon. The costs that are amortized over the
10 five-year period are those costs that would
11 normally be expensed. Other costs could have
12 a longer amortization period.

13 MR. STOCKHOLM: O.K. Let me ask
14 you this question: Some of the costs to
15 achieve may be employee costs, is that
16 correct?

17 MR. TEDESCO: That's correct.

18 MR. STOCKHOLM: O.K. Would some
19 of those costs be associated with the pension,
20 pension costs or OPEBs? They would be
21 expenses to achieve certain synergy
22 objectives.

23 MR. STOCKHOLM: O.K. But none
24 of the costs to achieve would be, for example,
25 the cost of an early retirement program.

1 MR. TEDESCO: That could be --
2 that could be one example.

3 MR. STOCKHOLM: O.K. And isn't
4 the cost of an early retirement program a cost
5 to -- a retirement cost or a pension cost?

6 MR. RAFFERTY: Your Honor, I
7 think generally those are expensed as you go
8 along. They're not considered part of pension
9 expense. Pension expense is for continuing
10 employees that work, for once the employee
11 retires the expense is related to that
12 employee, but the expense to an incentive
13 employee to retire is typically expense that
14 is not a part of pension expense.

15 MR. STOCKHOLM: O.K. Let me see
16 if I can explain my concern. My concern is
17 that there will be costs that will be
18 amortized under this -- costs to achieve will
19 be amortized, maybe even some maybe that are
20 capitalized and that will ultimately be paid
21 for by the ratepayer. I don't want the
22 ratepayer to have to pay twice. If there are
23 costs to the pension system of these costs to
24 achieve and as a result, the cost ratepayers
25 have to pay in order to maintain that pension

1 and retirement system at an appropriate level,
2 the ratepayers would under my scenario have to
3 pay twice and that's why I'm inquiring into
4 this area. So let me ask this question: Is it
5 the intent under this Joint Proposal that the
6 responsibility of the ratepayers to pay for
7 the cost to achieve, that they pay those costs
8 only once and that they are not charged again
9 through increased pension costs?

10 MR. TEDESCO: Pension costs
11 could increase for other reasons.

12 MR. STOCKHOLM: Understood.
13 But one of the reasons they could increase is
14 because the cost to achieve includes pension
15 costs which costs are amortized in rates.

16 MR. TEDESCO: The answer to
17 your question is yes. Where I'm just
18 struggling a bit is the characterization that
19 the customers are paying for the cost to
20 achieve. They're not paying for the cost to
21 achieve in rates. So I'm -- I mean --

22 MR. STOCKHOLM: Aren't costs to
23 achieve in your base rates? They certainly
24 appear to be in your income statement.

25 MR. TEDESCO: They're in our

1 income statements, I don't believe in the
2 staff's.

3 MR. RAFFERTY: Your Honor,
4 they're used as a reduction from the synergies
5 that are achieved.

6 MR. STOCKHOLM: That's correct,
7 and the synergies are effectively a credit for
8 the ratepayers, a benefit for the ratepayers.

9 MR. RAFFERTY: That's right.

10 MR. STOCKHOLM: And the benefit
11 for the ratepayers is reduced pay for the cost
12 to achieve.

13 MR. RAFFERTY: That's correct.

14 MR. STOCKHOLM: So the
15 ratepayers are paying for rate to achieve.

16 MR. RAFFERTY: But having
17 nothing to do with pension expense unless I'm
18 misunderstanding your question.

19 MR. STOCKHOLM: I don't want
20 pension expense to come back at the end of
21 this deal and be increased because there were
22 pension expenses, increased pension expenses
23 caused by the cost to achieve the synergy
24 savings.

25 MR. TEDESCO: Well, to the

1 extent, for example, that we understand that
2 and I believe we agree to that, but similarly,
3 if pension expenses ever decreased as a result
4 of the plan, that would be an example of a
5 synergy that possibly could be shared after
6 the five years.

7 MR. STOCKHOLM: That's a
8 possibility.

9 MR. STOCKHOLM: O.K. I
10 apologize. That went much longer than I
11 intended. Mr. Miller, are there any
12 additional questions?

13 MR. MILLER: No, your Honor.

14 MR. STOCKHOLM: Is there
15 anything further before we bring the staff
16 panels back and we start going through the
17 proposal itself? Yes.

18 MR. STORIE: I'm wondering from
19 NYSEG whether there's any requirement in their
20 agreement for them to actually purchase power
21 to serve the customers.

22 MR. STOCKHOLM: Well, I'll take
23 notice of the obligation to serve under the
24 Public Service Law. I think they have to
25 purchase power to serve those customers.

1 What's your point, Mr. Storie?

2 MR. STORIE: I would be
3 concerned that NYSEG would go unhedged with
4 regard to the 40 percent of its load that is
5 currently not hedged and try to reap the
6 benefit of an unhedged position at the same
7 time potentially avoiding the down side of
8 that by coming back to the ratepayers.

9 MR. STOCKHOLM: Let me ask the
10 panel: Do you understand the question that
11 Mr. Storie is trying to get at?

12 MR. SEGAL: Trying to say that
13 NYSEG has no intention of not hedging the
14 risks under this proposal with respect to the
15 BRO, and while it may not say that here, there
16 are risk management guidelines that NYSEG acts
17 under that would preclude -- preclude buying
18 totally from the spot market. It's measured
19 in terms of an amount of value at risk or cash
20 flow at risk, and the company operates under
21 those guidelines.

22 MR. STOCKHOLM: Mr. Storie, was
23 your question with regard to the "B" as in
24 brother or "V" as in very?

25 MR. STORIE: "B" as in brother.

1 MR. STOCKHOLM: I see. I mis-
2 understood. Anything further?

3 MR. STORIE: I didn't hear an
4 answer whether that's contained in the blue-
5 print or not.

6 MR. STOCKHOLM: Well, the
7 answer -- the answer was that the company
8 operates under certain risk management
9 guidelines and that to be unhedged for BRO
10 service would violate those guidelines and
11 that they would not do that. Let me just ask
12 the company, is that correct? Did I summarize
13 that correctly?

14 MR. SEGAL: Yes. it's not
15 possible to completely hedge itself from all
16 risks under the BRO by any stretch but at the
17 same time risk management guidelines would
18 require that a substantial portion of the
19 energy and capacity and the things that can be
20 hedged would be hedged at the time.

21 MR. STOCKHOLM: Yes, Mr.
22 Storie.

23 MR. STORIE: Whose guidelines
24 are those?

25 MR. RAFFERTY: NYSEG's

1 guidelines.

2 MR. STORIE: Have they been
3 submitted into the record?

4 MR. STOCKHOLM: Not to my
5 knowledge.

6 MR. RAFFERTY: I think there's
7 probably a lot of things that haven't been
8 submitted into the record. That doesn't seem
9 to me to be a normal practice.

10 MR. STOCKHOLM: It may be but
11 the answer to the question is no. I'll get to
12 you in a second, Mr. Brew. Anything further,
13 Mr. Storie?

14 MR. STORIE: No, your Honor.

15 MR. STOCKHOLM: Mr. Brew.

16 MR. BREW: Yes, thank you, your
17 Honor. Apropos of that question, I believe in
18 the October hearings we had a discussion with
19 Mr. Ansaldo and Stewart, and I'd ask Mr. Segal
20 to confirm that according to the company's
21 corporate filings was the company's cash flow
22 at risk that you just described for last year,
23 \$6 million?

24 MR. MILLER: Your Honor, we're
25 going to object to that. It wasn't raised by

1 any cross-examination. It just seems like a
2 fishing expedition.

3 MR. BREW: He raised the cash
4 flow at risk. The question was, had this been
5 discussed on the record. I'm simply asking
6 him to accept the cash flow risk number which
7 is already in the record in this case.

8 MR. MILLER: Then it's in the
9 record, your Honor. I don't understand the
10 purpose of the question then.

11 MR. BREW: Yes, since the
12 question had been posed to staff we have posed
13 the question to Mr. Segal. Mr. Segal, is it
14 your understanding that the company's
15 corporate risk as to cash flow still stands at
16 \$6 million this year.

17 MR. IRVING: I object to that
18 question.

19 MR. STOCKHOLM: I'll allow the
20 question. Do you know the answer to that
21 question?

22 MR. SEGAL: I do not know the
23 answer to that question.

24 MR. BREW: Have you reviewed
25 the company's corporate filings with respect

1 to that issue there?

2 MR. SEGAL: No, I have not.

3 MR. BREW: I have one other
4 question of Mr. Rafferty, your Honor. I heard
5 in your discussion with Mr. Miller changes
6 that you would make in the coverage for NUCOR,
7 and I thought your discussion with Mr. Miller
8 would be along the lines that your returns
9 would be roughly what NYSEG shows on its
10 income statement.

11 MR. RAFFERTY: That's right.

12 MR. BREW: If the company has
13 an average equity ratio of 38 percent rather
14 than 45 percent that you're assuming, would
15 that statement still be the same?

16 MR. MILLER: To what period
17 does the average equity ratio of 38 percent
18 relate to?

19 MR. BREW: Let's assume for the
20 purpose of this question of 2002.

21 MR. MILLER: I don't know that
22 the witness can accept that hypothesis since
23 it doesn't square with reality.

24 MR. STOCKHOLM: We don't have a
25 lot of 2002 reality yet. Hypothetical. If

1 you change the ratio to 38 percent, what
2 impact would that have on the numbers NYSEG
3 showed on its chart?

4 MR. RAFFERTY: We don't know.

5 MR. BREW: Would you accept
6 that your statement is that the NUCOR
7 statement would look similar to what you
8 suggested NYSEG's looked like, when in fact
9 they would look very different?

10 MR. MILLER: Are you asking him
11 to accept that the equity ratio is 38 percent
12 and the achieved ROEs would change?

13 MR. BREW: Yes.

14 MR. MILLER: That's obvious. I
15 mean, if there's an assumption in there that
16 changes, then the numbers change.

17 MR. BREW: Thank you.

18 MR. RAFFERTY: Your Honor, I
19 have also submitted in the testimony, and
20 others previous to my testimony today, the
21 equity ratio number for 2002 is not 38
22 percent.

23 MR. STOCKHOLM: I understand
24 that. What was the average equity ratio for
25 2001?

1 MR. RAFFERTY: I don't know the
2 answer to that. I know that it was 42 percent
3 at the end of 2001.

4 MR. BREW: Mr. Rafferty, prior
5 to the equity infusion in August, wasn't it in
6 the low 30s?

7 MR. RAFFERTY: When?

8 MR. BREW: Prior to the equity
9 infusion in August of last year, the \$100
10 million equity infusion.

11 MR. RAFFERTY: There were times
12 when it was in the low 30s. If you're saying
13 immediately before that, no.

14 MR. BREW: When the company
15 filed its PPP in March, what was it?

16 MR. RAFFERTY: I don't know.

17 MR. BREW: Was it in the low
18 30s then?

19 MR. RAFFERTY: I don't know.
20 Still don't know.

21 MR. STOCKHOLM: Anything else?
22 (There was no response.)

23 MR. STOCKHOLM: O.K. It's
24 almost quarter after noon. Why don't we break
25 for lunch. Let me make one other indication.

1 Actually an offer to the opponents with regard
2 to Mr. Segal's testimony that I allowed into
3 the record over your objections today. If you
4 prefer, I will allow you to recall your
5 witnesses before we conclude these hearings
6 rather than having a filing on Thursday.
7 You're more more than welcome to think about
8 that over lunch. I still want to go through
9 the entire document. However, at the end of
10 the day, I will allow those witnesses to be
11 recalled as an alternative to an additional
12 filing, and that's your choice. We should
13 come back about 1:00 o'clock.

14 (A luncheon recess was taken
15 from 12:12 p.m. until 1:10 p.m.)

16 MR. STOCKHOLM: O.K.. Are we
17 ready to go back on the record? Before I get
18 the staff panels up to go along with the
19 company panels, or panel I should say, is
20 there anything preliminarily?

21 MR. BREW: Yes, your Honor. I
22 wanted to clarify a prior discussion just
23 before the break about NYSEG's cash flow and
24 where it's referenced in the record. The
25 reference I referred to was the transcript of

1 the October hearing, in the testimony of
2 staff, and that refers to the NYSEG cash flow
3 risk of \$6 million.

4 MR. STOCKHOLM: Mr. Levine?

5 MR. LEVINE: I assume unless we
6 envision some other process that I was unaware
7 of or that I thought about, I assume you want
8 all proponents, or do you want just staff and
9 the company in the next phase?

10 MR. STOCKHOLM: Staff and the
11 company are mandatory. The other proponents
12 are voluntarily.

13 MR. MAGER: So just to clarify
14 if we feel a need to interject something,
15 we're free to do so.

16 MR. STOCKHOLM: Yes. I would
17 never prevent counsel from interjecting.

18 MR. MAGER: It's what we do
19 best.

20 MR. STOCKHOLM: O.K. Let's go
21 off the record for a second.

22 (Remarks off the record.)

23 (The two staff panels joined
24 the Petitioners' panel as witnesses.)

25 MR. STOCKHOLM: Why don't we go

1 back on the record.

2 Let me start by asking of the
3 staff witnesses all of whom, along with the
4 company, along with the other proponents I
5 remind you all, you remain under oath.

6 In my conversations with the
7 company concerning various accounting and
8 other related matters, calculation of ROE, et
9 cetera, were there any answers given by the
10 company concerning the intent or the operation
11 of this agreement with which you disagree?

12 MR. STEWART: We don't recall
13 hearing anything disagreeable.

14 MR. STOCKHOLM: And the same
15 thing with the company, I think most, perhaps
16 not all of you, but most I think were here
17 yesterday when I was engaging the staff panel
18 concerning the operations, agreement, various
19 accounting issues and the calculations. Was
20 there anything that staff put on the record in
21 this case that the company disagrees with,
22 with regards to the meaning or the
23 implementation of the Joint Proposal?

24 (Counsel and the panel
25 confer.)

1 MR. TEDESCO: Your Honor, we
2 cannot recall anything either that we disagree
3 with, but if after reviewing the record we
4 find we do see something there that at the
5 moment escapes recollection, we'll so inform
6 you.

7 MR. STOCKHOLM: O.K.
8 If that does occur, would you
9 please inform all the parties.

10 MR. TEDESCO: Yes.

11 MR. ANSALDO: Your Honor, I'm
12 sorry I was late, but I did want to mention
13 that we do have to have a follow-up
14 conversation on the operation of the four
15 percent inflation clause.

16 MR. STOCKHOLM: Yes, that's an
17 open question. I didn't see that as -- there
18 was no -- as I recall the testimony this
19 morning, but as yet no agreement.

20 Let me start on page 5.
21 There's a date for Commission action in the
22 document of January 2002, and I want to ask
23 the company, assuming that the Commission acts
24 in February 2002, is that difference of any
25 significane?

1 MR. KOPLAS: What page?

2 MR. MILLER: 5.

3 MR. STOCKHOLM: Page 5 of the
4 proposal. I'm going just through the proposal
5 now.

6 MR. TEDESCO: No, that -- that
7 date does not create a problem.

8 MR. STOCKHOLM: Thank you.

9 In the text that runs from the
10 bottom of page 5 over to the top of 6, in
11 talking about the treatment of costs of
12 achieving this synergy savings for, I guess,
13 NYSEG Gas as well as RG&E Gas and Electric,
14 the agreement says, that such deferred net
15 savings will be shared between customers and
16 stockholders. Are the net savings that are
17 referred to there, could those also -- could
18 they be positive or negative? Ask the
19 company.

20 MR. TEDESCO: It would depend
21 on how they were treated in that particular
22 rate plan for the three other entities.

23 MR. STOCKHOLM: O.K. So for --
24 at the beginning of the plan, the costs of
25 achieving are greater than the synergy

1 segments in year one.

2 MR. TEDESCO: That's correct.

3 MR. STOCKHOLM: So if there is
4 a certain part of year one that's deferred,
5 the net savings that you refer to in the
6 agreement here would actually be negative.

7 MR. TEDESCO: But again, if,
8 for example in another rate plan, there was a
9 similar ability to defer and amortize, they
10 could turn that into a net positive.

11 MR. STOCKHOLM: O.K.

12 On page 8 of the agreement
13 under the title "market power" it says NYSEG
14 and RG&E shall continue to comply with all
15 applicable Commission policy statements and
16 orders pertaining to market power. Does the
17 exclusion of Commission policy statements and
18 orders other than market power mean that this
19 agreement suggests that it's only in this area
20 that the company is subject to Commission
21 orders.

22 MR. TEDESCO: No, it's governed
23 by the subheading. It's -- and an issue
24 during negotiations and it found its way into
25 the agreement.

1 MR. STOCKHOLM: O.K. Does the
2 company view under this proposal that it is
3 subject to the Commission's policy and orders
4 that would come out of the case OO-M-0504 in
5 this so-called Polar proceeding?

6 MR. MILLER: Your Honor, is
7 that a topic that's addressed on page 10?

8 MR. STOCKHOLM: Page 10
9 addresses the unbundling, thank you, Mr.
10 Miller, but I was referring really to the main
11 part of that case, not the unbundling track.

12 MR. TEDESCO: There's no
13 exclusion of that case.

14 MR. STOCKHOLM: No intent to
15 exclude that in this agreement?

16 On page 11 of the agreement, at
17 the very top of the page, first full sentence
18 says "NYSEG will be permitted to defer for
19 recovery the incremental costs and net revenue
20 shortfalls resulting from the unbundling track
21 that exceed \$4 million in any year," and my
22 question is, what is in -- my question to
23 staff is what is intended in this agreement by
24 the term "net revenue shortfalls", and let me
25 give you an example. Let's say that in a

1 given year, 5 percent of customers migrate and
2 as a result, the company does not achieve
3 revenues from that 5 percent that migrate.
4 Let's also assume that in that same year that
5 the company has a 7 percent growth in overall
6 sales so that at the end of the year the sales
7 are higher than they were originally estimated
8 to be, but lower than they would have been had
9 5 percent of the customers not migrated.
10 Under that kind of a situation, is there a net
11 revenue shortfall?

12 MR. ANSALDO: We're going to
13 confer for a moment. I think you're reading
14 it a little too broadly, but it may be written
15 too broadly.

16 MR. STOCKHOLM: Thank you.

17 MR. ANSALDO: I guess the best
18 answer or the shortest answer is we weren't
19 intending to reconcile sales or we have that
20 there's \$4 million built in the rates to cover
21 losses from the two and four mill adders that
22 are in the rates now. Looking at the results
23 of the unbundling case, we would look at the
24 net lost, and I guess it depends somewhat on
25 what you do in that case. What we're

1 basically saying is the \$4 million are covered
2 by the agreement.

3 MR. STOCKHOLM: What does the
4 word "net" mean, net of what?

5 MR. ANSALDO: Maybe we -- we're
6 trying to be overly cautious, but we were
7 looking for the -- we weren't intending to
8 cover the company for revenues that it might
9 lose if it was also losing costs, so maybe we
10 made it confusing by saying incremental costs
11 and net revenue shortfalls. We were trying to
12 make sure that the company doesn't claim a
13 loss of gross revenues when, in fact, it shed
14 expenses along with them.

15 MR. STOCKHOLM: But you would
16 allow it to recover gross revenues even though
17 it might have revenues due to sales growth
18 that's above projections, is that correct?

19 MR. ANSALDO: That's correct,
20 we were not trying to reconcile sales with
21 this cost so the company is subject to the
22 windfalls and shortfalls of sales, so to
23 speak.

24 MR. MAGER: Your Honor, I'd
25 like to offer perhaps a slightly different

1 interpretation. From the Multiple Intervenors
2 standpoint, I did not believe that that
3 sentence was meant to reconcile actual sales
4 in the traditional sense, but what I
5 interpreted that provision as meaning that net
6 revenue shortfalls, I construed to mean what
7 -- what sometimes is referred to as stranded
8 costs as determined in the unbundling track.
9 That is to say that for 2002, for example, the
10 two mill and four mill adder is not
11 recoverable by NYSEG and would not be
12 considered a net revenue shortfall. However,
13 if let's say during, let's say effective
14 1-1-03 as a result of the unbundling case it
15 was decided that those backout rates should
16 continue but NYSEG's avoided costs were
17 something less and then were entitled to some
18 recovery of that, that was what we understood
19 to be net revenue shortfalls as determined in
20 the unbundling case and essentially what this
21 provision permits NYSEG to do is to defer for
22 recovery, those net revenue shortfalls that
23 exceed 4 million, in other words to the extent
24 the company encouraged \$4 million of net
25 revenue shortfall from the unbundling track

1 that would not be subject to recovery and I
2 think in terms of the provision incremental
3 costs, I think those, at least Multiple
4 Intervenors understanding was any costs that
5 NYSEG was required to incur solely as a result
6 of the unbundling case, to its computer
7 systems, infrastructure or something along
8 those lines. That -- that is Multiple
9 Intervenors' understanding of that provision
10 you inquired about.

11 MR. ANSALDO: I didn't mean to
12 say anything to disagree with that.

13 MR. STOCKHOLM: I didn't see
14 those two things to be unsimilar, although Mr.
15 Mager did give me a little more detail on the
16 unbundling case; but it does appear that this
17 provision provides expense, this and other
18 provisions provide expense protection for the
19 company but no protection for the ratepayers
20 until you get to 15 and a half.

21 Going down to paragraph 3, I
22 want to ask the company. Oh, by the way
23 before I get off this topic, anything else?

24 MR. MAGER: Yes. I'm not sure
25 I heard you correctly, but I may have

1 misunderstood you, but I'm not sure I agree
2 with what you said. At least from Multiple
3 Intervenors standpoint to the extent the
4 utility was directed to do something as a
5 result of the unbundling case under the normal
6 circumstances, they might be able to petition
7 to recover all of those costs, whereas this
8 settlement says that they can petition for --
9 they can defer for recovery costs in excess of
10 \$4 million, so another way of viewing that
11 provision is -- is in essence maybe providing
12 customers with \$4 million of protection from
13 costs incurred as a result of the unbundling
14 case.

15 MR. STOCKHOLM: Unless, of
16 course, you already have \$4 million in base
17 rates for that purpose.

18 MR. MAGER: Yes.

19 MR. ANSALDO: I didn't under --
20 I didn't mean to --

21 MR. VAN RYN: No, no, it would
22 be \$4 million if they -- it would be \$4
23 million. That's what the incremental and the
24 netted means. If they're recovering the costs
25 in rates --

1 MR. STOCKHOLM: They wouldn't
2 in incremental.

3 MR. VAN RYN: -- then they
4 wouldn't be incremental.

5 MR. STOCKHOLM: Mr. Van Ryn is
6 right, because they do not recover, they're
7 going to eat \$4 million in cost. Above that
8 ratepayers would do it.

9 MR. ANSALDO: I'm sorry for my
10 ambiguity there, and I didn't mean by my
11 silence, maybe that covers -- I shouldn't say
12 that.

13 MR. STOCKHOLM: That's fine.
14 Don't worry about my comment. Anything else,
15 anyone?

16 MR. TEDESCO: We agree with
17 those descriptions, your Honor, and in view of
18 the \$4 million is really deductible to the
19 amount of the customer.

20 MR. STOCKHOLM: It is
21 deductible. It's not an amount that's already
22 in base rate.

23 Mr. TEDESCO: That's correct.

24 MR. STOCKHOLM: I did
25 misunderstand you. Anything else on that

1 topic? O.K.

2 In paragraph 3 on this same
3 page 11, there's a discussion with regard --
4 there's a reference here with regard to the
5 company's billing systems, customer
6 information system.

7 MR. ANSALDO: No, I'm sorry, I
8 didn't mean to -- I apologize. I just -- I'm
9 not sure it's important whether we agree on
10 base rates or not. I mean we don't have to
11 agree or we don't. The first \$4 million isn't
12 recoverable. I don't necessarily -- there's a
13 lot of things in the forecast that we did not
14 agree on. The company and us, we agreed to
15 disagree on a lot of things, and I don't want
16 to, for the purpose of muddling any future
17 record or whatever, I wouldn't want to accept
18 the notion that we wouldn't argue that \$4
19 million is already in rates because we might.
20 Just -- I'm sorry to try to confuse matters.
21 I just don't want to necessarily agree with
22 Mr. Rude on that.

23 MR. STOCKHOLM: All right.
24 Well, as long as we're there, let me ask you
25 if you agree with the company's year 2002 base

1 for O & M as set forth in their comments.

2 MR. ANSALDO: Pardon?

3 MR. STOCKHOLM: Do you agree --

4 I had a discussion with the company this
5 morning about the O & M base for the purpose
6 of the deferral in the event inflation
7 exceeded 4 percent and it was about \$306
8 million though I don't have that number right
9 in front of me.

10 MR. ANSALDO: We're going to
11 have a discussion about that in the operation
12 of O & M.

13 MR. STOCKHOLM: Do you agree
14 with the 2002 base? There was no agreement as
15 I understand for the year 2003 and beyond.
16 The company put forth a number, roughly 306
17 million I believe as the 2002 base, but I
18 don't have anything beyond 2002. My question
19 is, does staff agree with the 2002 base?

20 MR. ANSALDO: For the purposes
21 of the inflation costs, yes, we're going to
22 agree with them.

23 MR. STOCKHOLM: Yes. O.K.

24 MR. TEDESCO: Your Honor, if I
25 -- could I clarify a response made previously

1 just in the interest of further clarifying the
2 record and not muddling it?

3 Your question on the Polar
4 proceeding --

5 MR. STOCKHOLM: Yes.

6 MR. TEDESCO: And again, while
7 it's true that there is no exclusion of that
8 proceeding really in any proceeding, it's also
9 our view that if this agreement is found to be
10 in the public interest that the company would
11 be able to offer those commodity service
12 options through 2006 or better said we
13 wouldn't see the Polar proceeding as a
14 reopener on that provision.

15 MR. STOCKHOLM: Understood.

16 MR. TEDESCO: O.K. Thank you.

17 MR. STOCKHOLM: O.K. Paragraph
18 3, Customer Information System. If I read
19 this agreement correctly, the need to modify
20 the customer, NYSEG's Customer Information
21 System in order to handle the new options that
22 are being offered in this Joint Proposal, it
23 self-constrains the ability of that system to
24 do other things such as displaying unbundled
25 rates in whatever format the Commission may

1 ultimately require those, is that correct?

2 MRS. STRATAKOS: In general,
3 yes, the system is constrained and the
4 commodity offerings that we're setting up and
5 would be --

6 MR. STOCKHOLM: It's going to
7 be more constrained under the Joint Proposal
8 than if you didn't have the Joint Proposal, is
9 that correct?

10 MS. STRATAKOS: Definitely.

11 MR. STOCKHOLM: My recollection
12 is that the capacity of that system has been
13 in issue before me previously and my question
14 is this: Is that system going to be upgraded,
15 and if so, when and are there monies in the
16 income statements, and so on, that are in this
17 record that reflect an upgrade to that
18 system?

19 MR. SEGAL: At this point we
20 have no specific plans to upgrade that
21 system. What we are trying to do, and I think
22 what everyone is trying to do so minimize
23 expense to the customer and at the same time
24 provide the information to the extent we can
25 to the extent that the flexibility of this

1 system provides.

2 MR. STOCKHOLM: The information
3 that's going to have priority, however, I
4 assume, are the options that the company is
5 offering, right there.

6 MR. SEGAL: We think that what
7 will have priority are the things that are
8 required under this agreement.

9 MR. TEDESCO: This is more a
10 reflection of sequence, so the priority has
11 more to do with the fact that we have this
12 January 1 date, 2003 that we have to have
13 those options ready so to the extent that
14 there's additional requirements from the
15 unbundling that would have to happen in
16 sequence.

17 MR. STOCKHOLM: O.K. As I
18 understand the Commission's orders in that
19 regard, the unbundled rates are scheduled to
20 go into effect in mid-July of this year before
21 the company's options are going to be put into
22 effect. Does that mean that on a time basis,
23 the outcome of the unbundling case is going to
24 get reflected first?

25 MR. TEDESCO: What we've

1 committed to here is making sure that the
2 customer receives all those benefits. We
3 might have to do it off system, off the CIS
4 system until such time as it's running.

5 MR. STOCKHOLM: On page 12
6 under "Rate Reductions", paragraph number 2, I
7 think I understand how this works but I'm not
8 actually sure given the wording. In paragraph
9 number 2, the second sentence says any
10 difference between that amount, which I assume
11 is \$5 million, is what's intended to be
12 referenced there, and the annual amounts of
13 transmission revenues actually received will
14 be reconciled and either recovered or flowed
15 through the non-bypassable wires charges
16 described, et cetera. I guess my question is,
17 what is being reconciled with what? In looking
18 at staff's income statement, it appears to me
19 the transmission revenues of \$13.9 million are
20 being assumed in order to get to a \$205
21 million rate reduction, but I don't understand
22 the reconciliation. What are you reconciling
23 against what?

24 MR. SEGAL: The total for 2002
25 is forecast to be \$18.9 million, and that

1 total is fully reconcilable under a different
2 section of the power reconciliation section of
3 this Joint Proposal starting in 2003 and the
4 rest of the years in agreement, the company
5 will be fully reconciling for the floating
6 non-bypassable wires charge, total
7 transmission revenues less \$5 million. For
8 those customers taking a fixed non-bypassable
9 charge from the BRO, there will be a forecast
10 of the transmission revenues as part of that
11 and, if that stays at 18 -- if the total
12 forecast stays at 18.9, the amount that would
13 go in the non-bypassable charge would be 13.9
14 and five would stay in the distribution part
15 of the rate. To the extent that either the
16 forecast or the actual transmission revenues
17 move away from 18.9, the difference will be
18 reflected in the non-bypassable charge, not in
19 the delivery revenues.

20 MR. STOCKHOLM: O.K. If I were
21 to insert the words to make it read, in years
22 '02 through '05 will be trued up, does that
23 mean the same thing as the word "reconcile"?
24 Trued up to forecast? I assume you mean
25 reconciled to some forecast for years '02

1 through '05, is that right?

2 Mr. SEGAL: What it means to
3 say is that the first \$5 million transmission
4 revenues will definitely go to the delivery
5 business.

6 MR. STOCKHOLM: O.K.

7 MR. SEGAL: And the difference
8 between the total and \$5 million will be
9 recovered or flowed through the non-bypassable
10 charge.

11 MR. STOCKHOLM: O.K.

12 MR. TEDESCO: Your Honor, if I
13 could just maybe we could take a moment to
14 confer. The intent of this paragraph is that
15 \$5 million is being moved from non-bypassable
16 or transmission to -- as a credit to delivery
17 revenues.

18 MR. STOCKHOLM: Understood.

19 MR. TEDESCO: If that 5 million
20 doesn't exist.

21 MR. STOCKHOLM: Right.

22 MR. TEDESCO: If it's 3, the
23 company is, if you will, protected such that 2
24 million would be added to the non-bypassable
25 wires charge. If it's over 5 million, it will

1 be what it will be, whatever it is, it will --
2 it will lower the non-bypassable wires charge
3 to the extent it's over 5 million. If it's
4 under 5 million, it's reconciled such that the
5 effect of the 5 million is received by the
6 company.

7 MR. STOCKHOLM: O.K. And all of
8 the pluses or minus go through the wires
9 charge.

10 MR. TEDESCO: That's correct.

11 MR. STOCKHOLM: On page 13
12 under the S & COD income, the document
13 indicates that the initial balance is expected
14 to be approximately .06 million. At this
15 point, isn't the initial balance known and if
16 so, do you know what that number is.

17 MR. TEDESCO: My understanding
18 is that we've made a filing yesterday or today
19 with that balance at 110.

20 MR. STOCKHOLM: O.K. The
21 carrying charge on the ASGA is at what rate
22 under this agreement there?

23 MR. TEDESCO: Ten and a half
24 percent.

25 MR. STOCKHOLM: Is that the

1 same carrying charge the company is using for
2 AFUDC?

3 MR. RAFFERTY: I would have to
4 confer on that one. I don't know that it is.

5 MR. STOCKHOLM: Do you know
6 what carrying charge rate is being assumed for
7 AFUDC under this agreement?

8 MR. RAFFERTY: I do not. We
9 have almost no AFUDC, sir.

10 MR. STOCKHOLM: Is there any --
11 the after rate is approximately the after debt
12 rate, approximately.

13 MR. STOCKHOLM: So it's less
14 than ten and a half percent.

15 MR. RAFFERTY: Significantly.

16 MR. TEDESCO: Ten and a half
17 was the negotiated number, your Honor.

18 MR. STOCKHOLM: Understood.
19 Can you assure me during the term of this
20 agreement that the AFUDC rate will not exceed
21 the carrying charge on the ASGA account?

22 MR. TEDESCO: No.

23 MR. RAFFERTY: No.

24 MR. STOCKHOLM: But it might.

25 MR. RAFFERTY: I would say

1 highly unlikely, but it's possible.

2 MR. ANSALDO: Did you want
3 staff's perspective on this?

4 MR. STOCKHOLM: Certainly.

5 MR. ANSALDO: Ten and a half
6 percent was the negotiated number which
7 probably had its origins in any one of -- in
8 our long term cost of capital number, and I
9 think the company's AFUDC rate is probably
10 something they file pursuant to short-term
11 regulations. Now it probably is a short-term
12 debt rate. Now, if the prime rate went to 21
13 percent, AFUDC rate might go to 21 percent but
14 the rate of return on the agreement stays as
15 is; so from our perspective --

16 MR. STOCKHOLM: Thank God at
17 least for that.

18 MR. ANSALDO: Yeah. From our
19 perspective they weren't comfortable, although
20 some other agreements would have made the
21 analogy between the two but in this agreement
22 we did not agree.

23 MR. STOCKHOLM: O.K.

24 MR. TEDESCO: Yes, your Honor,
25 our view is that at least from the company's

1 perspective, in the balance of the agreement
2 this is a benefit to the company.

3 MR. STOCKHOLM: I have -- I
4 have assumed that based on the answers that
5 I've gotten recently. Thank you.

6 MR. TEDESCO: O.K.

7 MR. STOCKHOLM: On page 14,
8 item number 5 refers to deferrals of excess
9 costs, once they exceed the ASGA balance. At
10 what carrying charge will those deferrals be
11 carried?

12 MR. ANSALDO: I'll hang myself
13 first. I'm not sure where you find it in the
14 agreement, but I just think we assumed that
15 everything would be at ten and a half percent.

16 MR. STOCKHOLM: Everything
17 would be at ten and a half percent. Was that
18 the company's understanding as well.

19 MR. TEDESCO: Page 37,
20 paragraph D confirms that.

21 MR. STOCKHOLM: Thank you.
22 With regard to 2002 power supply costs
23 reconciliation, in the first line you indicate
24 that there would be a reconciliation in lieu
25 of certain actual power supply costs. Why the

1 word "certain" there? Does that mean there's
2 other power supply costs that are not going to
3 be trued up and reconciled?

4 MR. SEGAL: I'm not aware of
5 any others that would not be trued. I think
6 this is the entire budget of the company.

7 MR. TEDESCO: That's the intent
8 is the entire budget, yes.

9 MR. STOCKHOLM: Thank you.

10 Mr. TEDESCO: STOCKHOLM:
11 Without getting into the details of exactly
12 how the -- this reconciliation works and the
13 mechanics, in looking through it, it seems to
14 me that the protection afforded to the company
15 under this paragraph would protect the company
16 both against any revenues that you don't
17 receive as a result of either a decline in
18 sales or an increase in costs. Am I right
19 about that?

20 MR. SEGAL: I think the sales
21 are not meant to be included in this
22 reconciliation. That's why -- that's why you
23 see the language about really what we're
24 reconciling are unit costs and not total
25 dollars.

1 MR. STOCKHOLM: Yeah, but you
2 end up multiplying unit costs back towards
3 usage, do you not?

4 MR. SEGAL: For budgeted usage
5 but it doesn't change.

6 MR. STOCKHOLM: Well. O.K. You
7 make me wade in. The text says this
8 adjustment will subtract the actual unit costs
9 in dollar per megawatt hour from the unit
10 cost, the budget unit cost. Now, the full
11 unit cost depends on how many actual units are
12 sold, doesn't it?

13 MR. SEGAL: Yes.

14 MR. STOCKHOLM: So if the
15 actual number of units sold goes down, the
16 actual unit cost goes up.

17 MR. SEGAL: Not necessarily.
18 Depends what you pay or what you avoid paying
19 for the -- for the cost for the sales that you
20 didn't make. You didn't -- you don't have to
21 go out and buy more units of power.

22 MR. STOCKHOLM: Well, let's
23 assume for the sake of argument that the cost
24 of power stays exactly as you budgeted it..

25 MR. SEGAL: O.K.

1 MR. STOCKHOLM: If the unit
2 sales go down, the cost per unit goes up.

3 MR. SEGAL: Well, that would be
4 true, your dollars would stay the same but
5 that just means that some components of your
6 costs was much higher on the unit basis than
7 the forecast.

8 MR. STOCKHOLM: Now, I made the
9 assumption that the cost stays the same.

10 MR. SEGAL: In dollars.

11 MR. STOCKHOLM: Yes.

12 MR. SEGAL: Yes.

13 MR. STOCKHOLM: O.K. So once
14 you've done the calculation and you have found
15 an actual unit cost which is higher than what
16 you assumed because you had one change, the
17 level of sales went down. Are you with me so
18 far? I'm just asking you --

19 MR. SEGAL: Yeah, I understand
20 that.

21 MR. STOCKHOLM: Once you've
22 done that, you now take a higher unit cost and
23 multiply them times your original sales.

24 MR. SEGAL: Yes.

25 MR. STOCKHOLM: And do you not

1 end up getting a deferral?

2 MR. SEGAL: Yes.

3 MR. STOCKHOLM: O.K.. So the
4 deferral results not because your costs have
5 changed, because I asked you to assume they
6 didn't. You get a deferral because your sales
7 have gone down?

8 MR. STEWART: You're saying --
9 I'm listening to the question. You're saying
10 costs. I'm stuck on whether you're saying
11 total costs or unit costs.

12 MR. STOCKHOLM: Total costs.

13 Mr. STEWART: Total costs. The
14 total cost is the same but if the sales go
15 down, then your unit costs have gone up which
16 means, unit costs have gone up, that's
17 precisely what this mechanism is supposed to
18 do.

19 MR. STOCKHOLM: That's correct.

20 MR. STEWART: It's supposed to
21 eliminate, not supposed to consider a sales
22 impact because we did not want to get into the
23 issue of assuring the company anything.

24 MR. STOCKHOLM: You didn't want
25 to.

1 MR. STEWART: No way.

2 MR. STOCKHOLM: You don't want
3 the --

4 MR. STEWART: No.

5 MR. STOCKHOLM: Mr. Stewart,
6 let me, if I may continue that with you just
7 for a second. And I may be completely
8 confused on this but it strikes me that if the
9 total costs stay the same, if actual sales go
10 down, then costs per unit of sales goes up,
11 that's simple mathematics.

12 Mr. STEWART: Right.

13 MR. STOCKHOLM: And if the
14 deferral mechanism then multiplies the cost
15 per unit times the original estimate of units,
16 which is by definition higher, you end up with
17 a positive deferral, is that correct?

18 Mr. STEWART: Price goes up in
19 your scenario.

20 MR. STOCKHOLM: Oh, no, not the
21 price, the cost.

22 Mr. STEWART: The price has to
23 go up. If total cost is staying the same but
24 your sales have gone down, the price has gone
25 up.

1 MR. STOCKHOLM: This is a
2 variable price that recovers these dollars. I
3 mean I saw that I had less sales collected so
4 tomorrow my price goes up. Is this a variable
5 price or a fixed price?

6 MR. STEWART: I think that's
7 what I'm asking you. You're saying if my --
8 the total fuel and purchased power costs stay
9 the same but your sales go down, the cost per
10 sale of fuel and purchased power is higher,
11 the price of fuel and purchased power is
12 higher.

13 MR. STOCKHOLM: That's
14 correct.

15 MR. STEWART: And it was our
16 intent if the price is higher that you have
17 the price changes without at all considering
18 changes in sales because we did not want to
19 trade incentives with the ERAM and it can go
20 either way.

21 MR. STOCKHOLM: I understand it
22 can go either way.

23 MR. SEGAL: If your example --
24 let me try it a different way, if your example
25 came to pass that in dollars the power costs

1 turned out to be exactly as forecast but sales
2 went right down.

3 MR. STOCKHOLM: Right, or down
4 some, right.

5 MR. SEGAL: Or down. To me
6 that would indicate that we were incorrect
7 about some element of the cost structure on a
8 unit basis.

9 MR. STOCKHOLM: O.K.

10 MR. SEGAL: That is what we're
11 trying to true up, the costs on a unit basis.

12 MR. STOCKHOLM: O.K. But am I
13 not correct that under those circumstances the
14 only change being sales go down, your
15 estimates being in error regardless --

16 MR. SEGAL: Well --

17 MR. STOCKHOLM: -- don't you
18 end up getting a deferral but only for the
19 reason that sales go down?

20 MR. STEWART: That's exactly --

21 MR. SEGAL: No, I would
22 characterize what happened as sales were
23 different from forecast and an element of the
24 cost structure was very different from what we
25 had forecast. After all what we -- the way we

1 come up with a forecast on the margin is
2 what's going to be the market price of power
3 per unit. We don't -- we don't think of that
4 in total dollar terms, so if the market price
5 of power, we estimated in this budget at the
6 time we estimated it was \$56.15 a megawatt
7 hour and sales went down, the dollars would go
8 down. The way that the dollars would stay the
9 same is only if the market price went up per
10 unit. That's what would happen first, not the
11 total dollars.

12 MR. STOCKHOLM: Well, I mean
13 all those things can happen to market price.

14 MR. SEGAL: Absolutely can and
15 the intent of this was really to true up on
16 the unit, on changes in the unit cost, not
17 because of changes in the volumes that were
18 being used.

19 Mr. IRVING: Yes, but the way
20 this works you can get a deferral based on a
21 change in volume, can you not?

22 MR. SEGAL: If nothing else
23 happened but a change in volume, I would
24 suggest that there would be new reconciliation
25 because we think of this on a unit cost

1 basis. If the unit costs turned out to be
2 exactly \$56.15, there would be no
3 reconciliation regardless of the sales cost.

4 MR. STOCKHOLM: So why
5 shouldn't this simply be the budgeted power
6 cost per kilowatt minus the actual power cost
7 per kilowatt times the original budget.

8 MR. SEGAL: That's what it is.

9 MR. IRVING: That's what it is.

10 MR. TEDESCO: Your honor, if
11 you could look at Appendix C. Appendix C has
12 that exact equation.

13 MR. STOCKHOLM: I think I
14 understand the equation. I just think I can
15 get a deferral by changing only one item and
16 that is sales, actual sales, but -- but I will
17 not push the matter further, because I'm
18 clearly the only person in the room who thinks
19 that's the case. Mr. Brew.

20 MR. BREW: Your honor, could I
21 just try an example on this to see if I
22 understand it as well.

23 MR. STOCKHOLM: You may.

24 MR. BREW: If the budgeted
25 total cost was 3,000 and you assumed \$39 in

1 your unit cost of a thousand units, but what
2 you actually got was 800 units and you still
3 had a \$3 unit cost, your total is now 2400,
4 not 3,000; you defer 600?

5 MR. SEGAL: No, no, no
6 deferral.

7 MR. BREW: That's what the
8 agreement says.

9 MR. STEWART: Yes.

10 MR. STOCKHOLM: Thank you, Mr.
11 Brew. That was a lot easier than what I was
12 doing. Appreciate that.

13 On page 15, the sentence that
14 runs over to page 16, talking about the SBC,
15 in the funding for the SBC you say that it
16 will continue to be funded from the proceeds
17 realized in NYSEG sale of excess land and
18 resultant program savings. What are resultant
19 program savings?

20 MRS. STRATAKOS: They'd be
21 programs associated with the Power Partner
22 Program that's taking place. There's an
23 expectation that there'll be some savings
24 generated by the program itself.

25 MR. STOCKHOLM: O.K.

1 MRS. STRATAKOS: It's not
2 related to sale of power. It's related to the
3 Power Partner Program.

4 MR. STOCKHOLM: O.K. So the
5 program to some extent pays for itself, is
6 that correct?

7 MS. STRATAKOS: Correct.

8 MR. STOCKHOLM: On page 17 of
9 the agreement, talking about the calculation
10 of delivery earnings and delivery revenues
11 specifically under that paragraph number 2.
12 Do the delivery revenues include SBC revenues?

13 Mr. IRVING: Sad to say you
14 agree with this.

15 MR. ANSALDO: Yes.

16 MR. STOCKHOLM: Does that mean
17 that the SBC is subject to inflation? I'm
18 talking the costs that you're paying out, not
19 the revenue that you're getting in obviously.
20 Is the SBC reflected in O & M expense?

21 MR. RAFFERTY: The SBC is not
22 included in the items that you referred to
23 before as part of the O & M.

24 MR. STOCKHOLM: Excellent;
25 that's exactly my question. Thank you.

1 MR. STOCKHOLM: With regard to
2 transmission revenues, subparagraph d says
3 that beginning in the year '02 delivery
4 revenues will also include 5 million in
5 transmission revenues. What about
6 transmission revenues above 5 million, are
7 those going to be included in revenues?

8 MR. SEGAL: Again, those are in
9 the non-bypassable wires charge.

10 MR. STOCKHOLM: But are they in
11 revenues?

12 MR. SEGAL: They're not in
13 delivery revenues. They're in commodity
14 revenues.

15 MR. STOCKHOLM: So they would
16 not be considered in looking at the 12 and a
17 half percent sharing trigger but they would be
18 considered in looking at the 15 and a half
19 percent sharing trigger, is that correct?

20 MR. SEGAL: That's correct.

21 MR. STOCKHOLM: Staff
22 understand that the same way?

23 Mr. STEWART: Yes.

24 MR. STOCKHOLM: Why aren't --
25 why isn't the non-bypassable wires charge

1 included within the definition of delivery? I
2 always thought wires were part of delivery.

3 MR. SEGAL: I think the
4 components of what is in the non-bypassable
5 wires charge are mostly commodity-related
6 costs. Of above market cost of NUG contracts,
7 the benefit of NYPA, hydro contract costs,
8 Nine Mile, purchase power contract costs and
9 transmission revenues are one component of all
10 of those things, that might be the one that
11 you would think would not be commodity, but it
12 is and has been input in this category for
13 that purpose.

14 MRS. STRATAKOS: I think the
15 term came about because that would be a
16 logical choice for delivery to customers to
17 become a wires charge.

18 MR. STOCKHOLM: It's not a
19 charge for wires.

20 MRS. STRATAKOS: No.

21 MR. STOCKHOLM: Except maybe
22 for transmission wires. Do I read this
23 correctly, that the roughly \$45 million from
24 the ASGA that will go to the company under the
25 year one of this program is not included in

1 revenues, or is it included in revenues?

2 MR. SEGAL: This page and this
3 description of delivery earnings --

4 MR. STOCKHOLM: Yes.

5 MR. SEGAL: -- is really
6 appropriate for the period beginning in 2003
7 and that for the \$5 million ASGA figure that
8 you refer to is -- takes place in 2002.

9 MR. STOCKHOLM: Is -- are those
10 funds considered revenues for the purpose of
11 2002 calculation?.

12 MR. TEDESCO: Yes, I believe it
13 would show up in other revenues.

14 MR. STOCKHOLM: On page 18
15 under "preferred interest and dividends", this
16 is just -- I'm just curious because I've never
17 seen it referred to this way. What is the
18 deferred compensation as part of the capital
19 structure here?

20 MR. RAFFERTY: It's money
21 that's been paid by employees of the company,
22 excuse me, set aside in the deferred account
23 that the company has the opportunity to use
24 the money and they pay the employees an
25 interest rate based on that. So it's monies

1 that are available to the company for use at
2 their discretion, but it's monies that are
3 owed to employees. It's typical deferred
4 compensation.

5 MR. STOCKHOLM: O.K.

6 MR. RAFFERTY: It's another
7 component of debt, your Honor.

8 MR. STOCKHOLM: I do understand
9 how it's looked at, but I have a deferred
10 compensation plan, and I don't think that the
11 state of New York can go get that money but,
12 God knows, maybe they can. I've never seen it
13 put in the utility capital.

14 MR. RAFFERTY: ENRON may have
15 it.

16 MR. STOCKHOLM: Well, if I
17 worked for ENRON I would assume it would be
18 gone, yes.

19 Under excluded items, item
20 number 6, is any portion of NYSEG officers'
21 salaries determined by the Commission to be
22 excessive or abusive when compared to industry
23 norms, et cetera? We used to look at officers'
24 salaries on a routine basis in rate cases
25 here, but what is -- does the company intend

1 to report these as part of its annual
2 compliance fund or how otherwise is it
3 contemplated that these would be reviewed?
4 Staff?

5 MR. VAN RYN: We could ask them
6 for discovery, and we have --

7 MR. STOCKHOLM: So you don't
8 expect any kind of an annual review, but just
9 from time to time?

10 MR. VAN RYN: I don't believe
11 that proposal requires them to file that
12 information but we could ask anything about
13 anything that's in their annual filing and we
14 have done discovery in the past on annual
15 filings and we will do discovery in the future
16 on annual filings.

17 MR. STOCKHOLM: Do you know if
18 the annual PSC report filings requires these
19 things to be listed?

20 Mr. ANSALDO: We used to. I
21 don't know if it's there any more. It's
22 something we're going to have to look for or
23 ask for.

24 MR. STOCKHOLM: O.K.

25 With regard to the Power

1 Partner Program, and I'm looking at page 19
2 under "rate design for year one," there's an
3 assumption there, 22,500 participants, and the
4 reference is to the \$4 per month decrease in
5 the -- in the offsetting the \$4 increase, I
6 should say on the basis of service charge.
7 What happens if there are fewer participants
8 and therefore, there are fewer discounts, are
9 the dollars reconciled back to the ASGA?

10 MRS. STRATAKOS: There's no
11 provision in here for reconciliation but the
12 22,500 constituents is what's expected
13 pursuant to the Commission's order regarding
14 the program.

15 MR. STOCKHOLM: The Commission
16 has many expectations; not all of them are
17 fulfilled. There is no provision with regard
18 to the expenditure of these monies. Do the
19 program costs roll over on -- this a trued-up
20 program overall? Is the Power Partner costs --
21 are the Power Partner costs trued up?

22 MRS. STRATAKOS: I don't
23 believe they're trued up. Maybe somebody can,
24 from staff can help me. I don't believe they
25 are.

1 MR. STOCKHOLM: If the answer
2 is no, the answer is no. I just -- Mr.
3 Insogna?

4 Mr. INSOGNA: Your Honor, with
5 respect to the other Power Partner costs
6 outside of the other expenditures, it's my
7 understanding they are trued up. There was an
8 allowance in the -- in the order authorizing
9 the continuation of the Power Partner program,
10 a continued list of the discount for the
11 customers that the participation rev'ed up to
12 22,500 and that there would be an accounting
13 at the end of that period which I believe ran
14 through 2005. There would be an accounting of
15 the actual expenditures at that time. That
16 did not contemplate the additional increase in
17 the customer charge that would be intimated by
18 this agreement and so there's a need to
19 increase that funding level.

20 MR. STOCKHOLM: All right. Let
21 me ask the company. My understanding the
22 \$1,080,000 is going to be funded out of sales
23 of property, profit on funds from sales of
24 property, is that correct?

25 MS. STRATAKOS: The profit on

1 sales of property is to contribute to the \$2.5
2 million of costs I think associated with Power
3 Partners. This 1,080,000 comes out of the
4 revenue reductions, \$205 million are first
5 offset to allocate \$80,000 to that program.

6 MR. STOCKHOLM: O.K.

7 MRS. STRATAKOS: To increase
8 the discount level to those units.

9 MR. STOCKHOLM: I understand.
10 On page 20 in the rate designed for year two,
11 the second paragraph, it seems to me that
12 these numbers are all known today and could be
13 calculated today, is that right? Or am I
14 misunderstanding what that paragraph says?

15 MS. STRATAKOS: You mean that
16 delivery revenue requirement? That's
17 identified in the table later in the
18 agreement.

19 MR. STOCKHOLM: Yes.

20 MRS. STRATAKOS: As are the
21 overall sales levels for that year.

22 MR. STOCKHOLM: Right. So the
23 actual -- you could fairly easily calculate
24 the rate based on what we already have, right,
25 information we don't have?

1 MRS. STRATAKOS: Well, rates
2 are, if you look further in here the delivery
3 revenue requirements first has to be allocated
4 to classes and that will be based on,
5 partially based on the costs of the cost study
6 of the unbundled delivery component of the
7 cost study. That won't be provided until
8 March 15th.

9 MR. STOCKHOLM: Understood.

10 Assuming that the market for
11 power remains as it is today, can you give me,
12 and I'm not looking for anything precise but
13 just sort of order of magnitude what change
14 would there be in the energy price that is
15 currently being paid -- I don't mean energy
16 price. What is the difference between the
17 price that a residential customer is paying
18 today and the residential price a customer
19 will pay under the BRO option if you assume
20 that energy markets are as they are today.

21 MRS. STRATAKOS: I don't think
22 we can answer that question yet because the --
23 if you assumed that all costs for delivery
24 were allocated appropriately today and that
25 classes were taking the appropriate amount for

1 delivery, you might be able to say that the
2 rates would be similar to those that would be
3 established in year one, but the purpose of
4 the unbundled cost of service study including
5 the delivery function is to look at how those
6 costs of delivery should appropriately be
7 allocated between the classes and that would
8 cause a differing delivery component by class
9 to which you would add those same commodity
10 costs if those were on the table as they are
11 today.

12 MR. STOCKHOLM: All right.
13 Let's make that assumption that the delivery
14 costs, that the rates for delivery and the
15 costs for delivery are appropriately allocated
16 today, so we're just looking at energy costs.
17 Actually let me not be obtuse. This deal, as
18 I understand the claims, claim a 13 percent
19 rate reduction on an annualized basis. I see
20 the potential for a 35 percent rate increase
21 for all those staying on BRO service as of
22 next January. Why is that wrong?

23 MR. SEGAL: Well, the 35
24 percent, a large portion of the 35 percent is
25 real costs. It's not -- not just pure

1 premium, says it right there, that's not true.

2 MR. STOCKHOLM: O.K. So a large
3 percent, but you can't tell me what percent?

4 MR. SEGAL: I -- in the 35, it
5 just comes to mind so even if that were
6 correct it would just be a 35 percent increase
7 on the commodity part of a customer's bill
8 but it is not correct.

9 MR. STOCKHOLM: I have seen it,
10 O.K. But you can't tell me or can you tell me
11 how much of that 35 percent is straight out of
12 pocket costs?

13 MR. SEGAL: I -- I can't tell
14 you off the top of my head, I can't do it.

15 MR. STOCKHOLM: O.K.
16 Recognizing your testimony that some of it is,
17 and you indicated a large amount --

18 MR. SEGAL: Yes.

19 MR. STOCKHOLM: -- I have seen
20 elsewhere I think in this case a rough
21 comparison between commodity and total where
22 the commodity is about 50 percent. I think
23 I've seen statements that the 13 percent rate
24 reduction is the equivalent of a 26 percent
25 rate reduction on delivery. Assuming that

1 rough comparison, the 35 percent recognizing
2 some of those costs, would translate into an
3 overall of about 17 percent, so let's say that
4 half is total cost just for the sake of
5 argument. If half of the 35 percent is total
6 cost, then we're looking at a customer that is
7 currently -- residential customer today that
8 does nothing and, therefore, ends up in the
9 BRO a year from now, gets a 13 percent rate
10 reduction today and that half of the 35
11 percent are out of pocket costs that indeed
12 are already reflected today, they're going to
13 have a 13 percent reduction today and
14 something like a 38 percent increase next
15 January?

16 MR. SEGAL: I mean have you --

17 MR. STOCKHOLM: Is that a
18 possibility?

19 MR. SEGAL: Well, it depends on
20 where the market prices end up next October.
21 It is -- it is a possibility that rates for
22 those customers could go up, including
23 commodity. It's possible that they could go
24 down for those customers, including the
25 commodity.

1 MR. STOCKHOLM: Based on the
2 current commodity rates of the company today,
3 if we went out and bought two-year futures and
4 added 35 percent, there's a chance that that
5 total would be lower than the customers are
6 paying today?

7 MR. SEGAL: It's possible. I
8 haven't -- I haven't run those numbers, so I
9 don't know how to answer that.

10 MR. STOCKHOLM: O.K. On page
11 27, under the title "January 2003 Commodity
12 Service Offerings," you indicate that eligible
13 customers are not those who are receiving an
14 incentive or discounted rate.

15 MRS. STRATAKOS: I'm sorry,
16 could you give me a cite again? I missed it.

17 MR. STOCKHOLM: Page 27 under
18 the title January 2003, Commodity -- paragraph
19 number 2, first sentence. I apologize, second
20 sentence.

21 MRS. STRATAKOS: I see it.
22 Thank you.

23 MR. STOCKHOLM: Are Power
24 Partner customers who are receiving a
25 discounted rate eligible or not?

1 MRS. STRATAKOS: They are
2 eligible.

3 MR. STOCKHOLM: They are
4 eligible. What is the difference between an
5 incentive and a discounted rate?

6 MRS. STRATAKOS: Yeah. it's a
7 method, I guess, by which the economic
8 development incentive was provided but it's
9 really economic development incentive rate.

10 MR. STOCKHOLM: You note at the
11 beginning of this paragraph that eligible
12 customers have three rate options. You then
13 offer a fourth option, which I assume is for
14 customers who are not eligible.

15 MRS. STRATAKOS: No.

16 MR. MAGER: Excuse me, your
17 Honor. I think the fourth option that you're
18 speaking of, I believe should be also
19 available to eligible customers.

20 MR. STOCKHOLM: Right, you
21 should say that all eligible customers have
22 four rate options.

23 MRS. STRATAKOS: That's right,
24 you should say you could have it with a
25 market-based backout or without a market-based

1 backout if you're an eligible customer.

2 MR. STOCKHOLM: O.K. The fourth
3 option which you indicate is for customers
4 participating in the existing retail program,
5 that is to say the fourth option is for
6 customers who are now customers of an ESCO, is
7 that correct?

8 MRS. STRATAKOS: It could also
9 be any customer who now chooses the BRO and
10 then chooses to participate in the retail
11 access program, they would have the option
12 that's available with the retail access
13 program; they would have that rate backout
14 with a 3 and 5 mill adder.

15 MR. STOCKHOLM: Yes, but the
16 agreement sentence says that the fourth option
17 is for customers who are in the retail access
18 program on October 1, 2002, that's before any
19 of the EROs, BROs, VROs, et cetera, kick in,
20 isn't that correct?

21 MRS. STRATAKOS: This deals
22 with the commodity service offering beginning
23 January of 2003.

24 MR. STOCKHOLM: That's correct,
25 but I'm looking at the sentence which

1 describes the fourth option. It says the
2 fourth option applies to customers who are
3 buying from ESCOs as of October 1, 2002.

4 MR. SEGAL: Yes, we added at
5 the request of ESCOs, the ability for, if you
6 will, the paperwork to be simplified for
7 customers who are currently participating in
8 retail access, so that they can simply tell us
9 in four months if they want to continue just
10 as they are today with a market-based backout
11 program.

12 MR. STOCKHOLM: And if that
13 customer does not so indicate, does the
14 customer automatically get switched back to
15 NYSEG BRO service?

16 MR. SEGAL: Yes.

17 MRS. STRATAKOS: They need to
18 affirmatively make a choice.

19 MR. STOCKHOLM: Well, this is
20 more --

21 MR. SEGAL: Depending on --

22 MR. STOCKHOLM: This is more
23 important than a lot of the silly questions
24 I've asked today, so I want to make sure this
25 is clear. A customer who is currently a

1 customer of an ESCO, does nothing on January 1
2 of next year, are they now a customer of NYSEG
3 on the BRO?

4 MS. STRATAKOS: Depends on the
5 type of customer if they're a small customer
6 which is defined as a residential customer or
7 small non-demand bill or S.C. 2 or 71, they
8 would default to the bundle rate option.
9 Larger customers would default to the variable
10 rate option. However, those customers that
11 default or choose the bundled rate option
12 always have the option for market price
13 backout just as they do today at any time
14 during the fee commodity period.

15 MR. STOCKHOLM: Does staff
16 understand this period to automatically move
17 ESCO customers who do not inform the company
18 that they didn't want to make any change --

19 MR. VAN RYN: Your Honor.

20 MR. STOCKHOLM: -- back to the
21 company under BRO service?

22 MR. VAN RYN: Your Honor, the
23 assumption is that you have an ongoing
24 relationship with the ESCO.

25 MR. STOCKHOLM: Yes.

1 MR. VAN RYN: That they'll take
2 care of it. I mean they'll take care of a
3 little form and they'll file it with the
4 company for you.

5 MR. STOCKHOLM: Why do I have
6 to affirm, or why does any customer have to
7 affirmatively inform NYSEG that they do not
8 want to change from buying from Advantage
9 Energy? Why, other than, other than to have
10 the customers who default, who lose the little
11 post card, automatically switch back?

12 MR. VAN RYN: Your Honor. Your
13 Honor, I think what you've hit is a mechanical
14 issue. It's not something that, to be honest,
15 one that I don't think anybody has thought
16 through the mechanics that well. I do this as
17 a mechanical issue, you have an overall
18 default system that's set up, and the overall
19 system here, maybe we should think about
20 making the mechanics work a little better but
21 the case is that an ESCO customer would stay
22 with the company.

23 MR. MAGER: I'd like to agree
24 with Mr. Van Ryn. There's nowhere that an
25 ESCO customer would be automatically

1 transferred back to the company. I think it's
2 fair that where the customer would take care
3 of notifying the company, I think you have a
4 very legitimate concern; I think you want to
5 avoid any unfortunate consequences such as you
6 proposed but it's not an inconsequential
7 detail, not the part of the settling parties,
8 as it happened. I think currently those who
9 are ESCO customers would have to make an
10 election in any event because at the time
11 these commodity offerings go into effect they
12 will, in fact, assuming they want to remain
13 with the ESCO, they will have two choices, one
14 to take service under the ERO and take the
15 unbundled delivery rate and the two mill to
16 four mill add-up or they will, or they can
17 elect to take the BRO with the market-based
18 backout and the three or five mill adder, so I
19 think that in any event, an ESCO customer is
20 going to have to make some type of election
21 and that, yes, it is a little complicated in
22 some respects, but I think that's a function
23 of giving customers multiple choices.

24 MR. SEGAL: Your Honor, if I
25 may, I would also agree with Mr. Mager's

1 characterization.

2 MR. STOCKHOLM: So it was not
3 the intent, it is not the intent of the
4 parties to this agreement that ESCO customers
5 are returned to NYSEG simply because the NYSEG
6 customer does nothing?

7 MR. TEDESCO: I think that's
8 correct.

9 MR. STOCKHOLM: Yes. O.K. Now,
10 Mr. Mager said that an ESCO customer that is a
11 customer that starts off as an ESCO customer
12 is a customer who is an ESCO customer on
13 October 1, 2002, could return under the ERO
14 provision. Is that the company's
15 understanding as well?

16 Mr. IRVING: I don't understand
17 the word "return". Return from where?

18 MR. STOCKHOLM: Excuse me. Let
19 me restate that. Mr. Mager indicated there
20 were two possibilities for an ESCO customer,
21 one that they could take -- they would have to
22 choose somehow, one that they could take
23 service from -- continue to take commodity
24 from the ESCO and get the ERO rate from the
25 company, and my question is, is that your

1 understanding of what the Joint Proposal
2 provides? Because I honestly don't read it
3 that way. I read the last sentence on page 27
4 to say that somebody who is taking service
5 from an ESCO now only has one option.

6 MS. STRATAKOS: No, that's not
7 the intention. They would have to choose ERO.

8 MR. STOCKHOLM: But they would
9 have the option to choose the ERO or the BRO
10 with a backout, am I correct?

11 MRS. STRATAKOS: Yes.

12 MR. SEGAL: Yes, all this
13 really is meant to do is to provide an
14 additional option for those customers who are
15 already with an ESCO to make it easier for
16 them to stay exactly where they are.

17 MRS. STRATAKOS: That's the
18 whole purpose of the sentence, to facilitate
19 those customers who are already attached to an
20 ESCO just continuing.

21 MR. STOCKHOLM: Staying there.

22 O.K.

23 MS. ANDERSEN: And, your Honor,
24 I think we have to consider the ESCOs' own
25 business plan in this situation which, of

1 course, are not known today as to what
2 their business plans are going to be for
3 1-1-2003, and I wouldn't want to necessarily
4 assume that all ESCOs are going to offer both
5 an ERO based service and a backout service.
6 They might, they might not and that remains to
7 be seen.

8 MR. RAFFERTY: I think we agree
9 to that.

10 MR. STOCKHOLM: You mean the
11 backout and service are things that come from
12 NYSEG.

13 MS. ANDERSEN: Right. I'm
14 making THE distinction that if you're on
15 NYSEG's system, you get a decrease and if
16 you're on a variable you get a variable
17 delivery charge and I won't want to state
18 unequivocally that they're going to have to
19 have both of those.

20 MR. STOCKHOLM: Both of those
21 are offered by NYSEG.

22 MS. ANDERSEN: But the
23 commodity service.

24 MR. STOCKHOLM: The
25 supplementary piece of it.

1 Mr. Mager.

2 MR. MAGER: I think I'm going
3 to miss something there, but I see that as the
4 customer selects their buying commodity from
5 the ESCO and they will pay NYSEG delivery
6 charges based on the ERO, the BRO market
7 backout and I would expected ESCOs to supply
8 the commodity whether the customer --
9 regardless of how the customer pays NYSEG for
10 delivery service.

11 Also, earlier, your Honor,
12 before the last question you had a question
13 about page 24 as possibly limiting the BRO
14 with a market based backout to ESCO customers
15 and I just wanted to highlight that other
16 customers are provided the same BRO with a
17 market-based backout option under paragraph 5
18 on page 28.

19 MR. STOCKHOLM: Under paragraph
20 7 on page 28, you make a distinction between
21 small customers who return from service under
22 the ERO are very small customers who return
23 under the market-based backout.

24 In the first case, the customer
25 has the choice of going to the BRO or the VRO

1 and in the second case the customer has to go
2 to the BRO. Why is there a difference in
3 treatment for these customers who are
4 returning to NYSEG?

5 MR. SEGAL: The customer who is
6 on a market-based backout again is a customer
7 who started on the BRO rate and for that
8 reason the company went out and hedged, and to
9 allow them to go back to the BRO would be the
10 same as effectively moving them off of the BRO
11 directly to the VRO.

12 MR. STOCKHOLM: O.K. However,
13 your answer does not contemplate a customer
14 who, before any of this program starts is with
15 an ESCO under a market-based backout.

16 You have a market-based backout
17 today, do you not?

18 MR. SEGAL: Yes.

19 MR. STOCKHOLM: O.K. So I'm
20 taking -- I am under that program today. Can
21 I stay under that program? Now, I want to come
22 back to NYSEG at some point next year
23 perhaps. Do I have no choice? I have to go
24 back to the BRO and, if so, why, because I
25 never signed up for it in the first place so

1 they didn't go out and buy any contracts for
2 me.

3 MR. SEGAL: If that is the
4 choice that you make, the market-based backout
5 choice, under that section on the previous
6 page, then, for the purpose of NYSEG's risk
7 management you look identical to a customer
8 who is taking the BRO.

9 The company has to offer a
10 total fixed price to you minus a market-based
11 backout and in order to manage that risk, the
12 company goes out and hedges an amount of power
13 that you use even though you may never
14 actually take that commodity from the
15 company.

16 MR. ANSALDO: Judge, could we
17 stop.

18 MR. STOCKHOLM: Does staff view
19 that the same way?

20 MS. ANDERSEN: Yes.

21 MR. STOCKHOLM: O.K. You want
22 something else, go ahead.

23 MR. ANSALDO: Yes. I think the
24 court reporters want to change.

25 MR. STOCKHOLM: Oh. We'll take

1 20 minutes. We'll be back at 10 after. We're
2 off the record.

3 (A short recess was taken.)
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1 MR. STOCKHOLM: Let's go back on the record.

2 On page 28, item number six, it discusses a
3 customer who is on the VRO option. And the customer,
4 according to the proposal, can choose to switch from
5 the NYSEG VRO to the NYSEG ERO and then buy commodity
6 from an ESCO.

7 And my question is: Do the rates paid to
8 NYSEG under the ERO option differ from the rates paid
9 to NYSEG for transmission and distribution under the
10 VRO option?

11 MR. SEGAL: No. They are the same, except for
12 the two and four mill adders under the ERO option that
13 are there until and unless they are replaced by the
14 unbundling track.

15 MR. STOCKHOLM: Looking at paragraph seven on
16 page 28, over on to page 29. If I understand this
17 correctly, after the initial balloting period you can
18 nevertheless opt for the BRO option, but the rate that
19 you would be paying would at that point reflect
20 increases in energy costs; is that correct?

21 MR. SEGAL: It could.

22 MR. TEDESCO: Could reflect changes in energy
23 costs.

24 MR. STOCKHOLM: Would it reflect decreases in
25 energy costs?

1 MR. SEGAL: Could reflect decreases, but in
2 any event, no lower than the original BRO rate
3 originally set for the enrollment period.

4 MR. STOCKHOLM: The increase or the decrease I
5 thought was an increase or decrease in energy costs
6 from the original BRO rate.

7 MR. SEGAL: Right. So there is three times
8 within a two year period that the rate will reset every
9 six months.

10 So, it could go up for the first adjustment
11 period, could come back down for the second adjustment
12 period, and go back up again during the third
13 adjustment period.

14 MR. STOCKHOLM: But if energy rates at any
15 time after the first rate is set are lower than they
16 were when the first rate is set, you would not have,
17 under any circumstances, a BRO rate that would be lower
18 than the original BRO rate regardless of energy costs;
19 is that correct?

20 MR. SEGAL: Correct.

21 MR. STOCKHOLM: Why?

22 MR. SEGAL: That was the notion to give ESCOs
23 further opportunity to keep customers--or to remarket
24 to those kinds of customers. Presumably if market
25 prices have come down that only creates more

1 opportunity for them to offer savings versus what the
2 company's BRO could offer.

3 MR. STOCKHOLM: Okay. Do I understand this
4 correct? I am looking at paragraph eight, but I ask
5 you to bear with me because I think it's confusing, all
6 the different possibilities here.

7 Under paragraph eight on page 29 it indicates
8 that large customers who return to NYSEG from ESCO
9 service under the ERO return to the VRO option.

10 Under the same circumstances, small customers
11 who return to NYSEG commodity service from an ESCO
12 under the ERO option go to what?

13 MR. SEGAL: They have a choice. They can
14 return to that VRO or they can return to the bundled
15 rate option.

16 MR. STOCKHOLM: On page 31, under ERO pricing,
17 the second paragraph, the last sentence says, if as a
18 result of Commission Order ERO delivery rates produce
19 different NYSEG annual revenue requirements, how would
20 that come about? What circumstances are intended to be
21 addressed by that? I mean technically the revenue
22 requirement doesn't change, but your revenues might
23 change.

24 MR. RUDE: The revenue requirement could
25 change if costs were considered retail costs for full

1 service offerings. Not part of the, say, distribution
2 function. And they would change the--that could change
3 the revenue requirement. Could happen in the
4 unbundling proceeding.

5 What this is meant to do was basically to
6 restore that for the full service offerings NYSEG would
7 make under this plan.

8 MR. STOCKHOLM: So, if as a result of a
9 Commission Order the ERO rates declined, that would
10 mean that the VRO rate would then be increased?

11 MR. RUDE: VRO rate would stay the same.

12 MR. SEGAL: The commodity portion of the VRO
13 rate would make up that difference.

14 MS. STRATAKOS: Just to reflect the change in
15 the functional nature of the costs. If it's considered
16 a commodity, you know, customer charge related to
17 commodity, that would come out of ERO but go into
18 commodity.

19 MR. STOCKHOLM: In the VRO?

20 MS. STRATAKOS: In that commodity component of
21 the VRO.

22 MR. RUDE: Would have been in the VRO to begin
23 with, just in a different location.

24 MS. STRATAKOS: Would have been in the
25 delivery component.

1 MR. RUDE: See what I am saying? Yes.

2 MR. SEGAL: Paragraph three has a parallel
3 structure for the VRO rate.

4 MR. STOCKHOLM: Under paragraph four on the
5 same page, page 31, it indicates that one and a half
6 and three and a half mills of the two and four mill
7 credits are deemed to be unavoidable and will be
8 recovered as category two uncontrollable costs.

9 What happens if more than a half a mill is
10 actually avoidable? In other words, what happens if
11 the company actually avoids more costs than is assumed
12 in this paragraph? Do they go directly to the bottom
13 line profit?

14 MR. RUDE: Are you saying that--my assumption,
15 if the company avoids more costs then that's what the
16 finding would be in the unbundling case and that these
17 numbers would change?

18 MR. STOCKHOLM: The unbundling case is going
19 to be based on some kind of an estimate I assume in the
20 future, not in the past.

21 My question is: Once you have gone through
22 the year--and the assumption here is you avoid--you can
23 avoid a half a mill of these costs.

24 What if you actually avoid a mill of these
25 costs? Does that just simply increase the profit

1 level?

2 MS. STRATAKOS: Essentially this was put here
3 to recognize that the unbundling track case may not be
4 completed by the beginning of January 2003, so there is
5 likely to be no measure of actual avoided and, in
6 effect, there may be no avoided costs, but this is kind
7 of an administrative provision subject to change when
8 the unbundling track determines how to calculate what
9 is avoidable and what's not.

10 It's only here to protect if the unbundling
11 track is not completed in accordance with its schedule.
12 During the year 2002, the transition year, there is no
13 change. The two and four mill adders stay in place.

14 MR. STOCKHOLM: Let me try one more time from
15 a different angle.

16 Of the credits given, 1.5 and 3.5 mills are
17 being funded from the ASGA; is that correct, until they
18 are changed by the unbundling case?

19 MS. STRATAKOS: Beginning January 1, 2003.

20 MR. STOCKHOLM: 2003, okay.

21 MR. MAGER: Just to clarify: Right now, NYSEG
22 does not recover any part of the two mill and four mill
23 adders. That remains in effect throughout 2002 unless
24 the unbundling case changes it.

25 It's only in January 1, '03 where this

1 paragraph kicks in, absent any guidance from the
2 unbundling case.

3 MR. STOCKHOLM: Does the company agree with
4 that description?

5 MS. STRATAKOS: Yes.

6 MR. VAN RYN: Right now we don't know, and
7 have no way of knowing, how much of the two and four
8 mills is actually avoided.

9 So, what we have done here is made an interim
10 assumption and bound ourselves to the interim
11 assumption until the unbundling proceeding advises us
12 on what the actual avoided costs really are.

13 There are interim measures like this in other
14 joint proposals. Central Hudson has something similar.
15 I believe Niagara Mohawk has something similar. It's
16 just a way of handling an interim period when we don't
17 have the perfect knowledge we would need to arrive at
18 the optimal solution.

19 MR. STOCKHOLM: Understood.

20 MR. MAGER: I believe the amount assumed
21 avoided is the same as what is used in the Niagara
22 Mohawk settlement.

23 MR. STOCKHOLM: At page 32, in calculating the
24 fixed commodity price, you begin with future prices for
25 New York area A. You then later convert them to area

1 C.

2 My question is: Why don't you start with
3 forward prices for area C?

4 MR. SEGAL: NAT Source doesn't trade power on
5 the formed market, only traded on area A in the western
6 part of the state.

7 MR. STOCKHOLM: I assume Enron doesn't offer
8 that either.

9 MR. SEGAL: Enron is now a successor, Enron
10 off line.

11 (Laughter)

12 MR. STOCKHOLM: But your testimony is that
13 these numbers just do not exist for area C right now?

14 MR. SEGAL: That is correct.

15 MR. STOCKHOLM: Under paragraph four on that
16 page you are totalling up the base, if I understand
17 this correctly, to which you add 35 percent. You start
18 with the energy price.

19 MR. SEGAL: Yes.

20 MR. STOCKHOLM: You add capacity price.

21 The sentence then goes on to say that--the
22 next sentence then goes on to say the rates are
23 different by rate class based on class contribution to
24 peak forestalled capacity, relative difference in load
25 shape for energy and losses.

1 Does that mean that the base, before you
2 multiply by 135 percent, includes the costs for load
3 shape and includes the costs for losses?

4 MR. SEGAL: No. What it means is that the
5 base number, which is a wholesale number, would be
6 differentiated by rate class, but it will average out
7 to the sum of the energy and the capacity prices.

8 So, for instance, if the NAT Source energy
9 price is 3.5 cents, and the capacity is point five
10 cents, the total is four cents.

11 That may turn out to be 3.5 cents for large
12 industrial customers, and 4.5 cents for residential
13 customers, but it will average out to four. Each one
14 of the individual numbers would then be multiplied by
15 135 percent to get the final BRO rate by class.

16 MR. SEGAL: That's different than what we
17 heard yesterday. And in conversation between you and I
18 think Mr. Radigan there was discussion of losses being
19 added to that number before 135 percent was multiplied
20 to it.

21 MR. BREW: Are you saying losses are not taken
22 into account there?

23 MR. SEGAL: They are used to allocate the
24 number, but the number still averages out to the
25 wholesale price.

1 MR. STOCKHOLM: Where are line losses
2 accounted for under the Joint Proposal?

3 MR. SEGAL: It's one of--well, for the BRO
4 price, it's one of those costs that I have mentioned.

5 MR. STOCKHOLM: It's within the 35 percent?

6 MR. SEGAL: Part of the 35 percent. For the
7 VRO it would be specifically added as actually
8 incurred.

9 MR. STOCKHOLM: Is that part of the wires
10 charge?

11 MR. SEGAL: No. It would be part of the
12 commodity charge of the VRO, which is a pass through of
13 costs actually incurred.

14 MR. STOCKHOLM: What are the other costs in
15 the 35 percent? I want to make sure I understand this
16 correctly. I have already not understood it correctly.

17 So, we have got line losses. This is for the
18 BRO rate in the 35 adder. Line losses. What else?

19 MR. SEGAL: The cost of load shape, which is
20 the fact that customers who use more energy on peak
21 than they do off peak, and more energy in the summer
22 months than they do in other months, and that the price
23 of that energy is more expensive in those times than it
24 is on average for the year.

25 So, that's load shape.

1 And then the third cost is the reserves on
2 installed capacity that need to be procured to maintain
3 reliability in the New York ISO control area.

4 MR. STOCKHOLM: That's different than the
5 installed capacity that's in the base?

6 MR. SEGAL: Yes. It's in addition to that.
7 There is a reserve component.

8 MR. RUDE: There is also a GRT.

9 MR. SEGAL: And there is a GRT. That's not
10 something that is procured, but it's something that is
11 charged against the revenues in the BRO.

12 MR. STOCKHOLM: That's ultimately going to
13 disappear; is it not?

14 MR. RUDE: We can't speculate on that, Your
15 Honor.

16 MR. STOCKHOLM: That's been the stated intent
17 for some time, to eliminate the GRT; has it not?

18 MR. RUDE: Yes, for it to decline. What this
19 is on the commodity portion so...

20 MR. BREW: Excuse me, Your Honor. Can I ask a
21 clarification on that.

22 MR. STOCKHOLM: Sure.

23 MR. BREW: The 35 percent in your testimony,
24 particularly supplemental, you said that some of that
25 is for the costs you have just outlined; isn't that

1 correct?

2 MR. SEGAL: Yes.

3 MR. BREW: Some of it is a market premium for
4 the company?

5 MR. SEGAL: Some of it would be a premium for
6 absorbing the many risks.

7 MR. BREW: The company component for the
8 market on the commodity is the difference between the
9 12 and a half percent allowed on the delivery side and
10 total electric, 15 and a half percent return on equity,
11 isn't it?

12 MR. SEGAL: I think that's a sharing
13 threshold. There is no guarantee of that.

14 MR. BREW: The company is not required to
15 share anything with rate payers until it's exceeded the
16 15 and a half percent on the total electric; isn't that
17 right?

18 MR. SEGAL: Correct.

19 MR. BREW: So, it's allowed the opportunity to
20 either take advantage of that risk of reward up to
21 threshold level; isn't that right?

22 MR. MILLER: I think this gets to the point
23 that we had briefed earlier, the difference between
24 "allowed" in Mr. Brew's view, and what is allowed in
25 common parlance with respect to rate of return or

1 sharing.

2 The company is not allowed a 15.5. It has an
3 opportunity to retain earnings if it is able to conduct
4 its business in such a way, but the allowed return is
5 not the numbers that Mr. Brew is referring to.

6 MR. BREW: Let me try the question.

7 MR. ANSALDO: The rate payer shares the
8 greater of 12 and a half percent on distribution or 15
9 and a half percent on total company.

10 MR. BREW: Okay. The portion of the 35
11 percent market premium for the company, that's
12 effectively converted into a cost that must be paid,
13 isn't it?

14 MR. SEGAL: The Joint Proposal shows how the
15 BRO rate is calculated. Customers who choose to take
16 service under that rate will pay whatever that charge
17 is.

18 In some outcomes there will be profit
19 underneath that revenue line and in other outcomes
20 there will probably be losses.

21 MR. BREW: The 35 percent contains a portion
22 that is market premium, which is becoming a cost, is it
23 not a cost that must be paid by any bundled rate
24 customer?

25 MR. SEGAL: It's compensation for risk and any

1 risks taken on by the company.

2 MR. BREW: It's a cost that's going to be
3 charged to customers, right? It's not an opportunity
4 to earn a return? It's a cost, right?

5 MR. SEGAL: It's the cost in the sense a cost
6 of capital is a cost. Whether or not you earn it at a
7 risk with the cost of avoidable--

8 MR. BREW: Is it avoidable if it is built into
9 the calculation of a commodity?

10 MR. MILLER: Is what avoidable?

11 MR. BREW: Recovering that cost from the rate
12 payers.

13 MR. KOLBE: Sure. If you don't sell enough,
14 just as if you don't sell enough delivery service you
15 don't necessarily earn the cost of capital. You don't
16 necessarily earn the risk premium.

17 It's a fair computation ex post you don't earn
18 the risk premium you acquire on the commodity earnings.

19 The rate is set to include recovery of all
20 costs, including the cost of capital and delivery and
21 compensation for the risk of the commodity, but whether
22 or not you actually recover the cost ex post as a
23 regulated entity is up to the way things happen to turn
24 out.

25 MR. BREW: You are talking about the recovery

1 of revenues, right?

2 MR. KOLBE: I am saying that whether or not
3 you earn, actually earn, your cost of capital after the
4 fact is uncertain, and whether or not they'll earn the
5 fair risk premium on the commodity business after the
6 fact is also uncertain.

7 There is an allowance to permit that recovery
8 for the cost of capital on the delivery charge, and in
9 the 35 percent as an allowance, as I understand it, to
10 permit recovery of the risk compensation for offering a
11 fixed price with variable commodity.

12 Whether or not it turns out that way is
13 something no one knows until it happens, whether or not
14 it turns out you earn the added compensation is unknown
15 until after the fact, but there is a provision for you
16 to do that in the rate, as there is a provision for you
17 to earn the cost of capital in the rate.

18 MR. BREW: Okay. So, you are being allowed to
19 recover that cost in the market premium and the company
20 is permitted to recover its risks up to the earnings
21 threshold in the other components of the rate as well?

22 MR. MILLER: I am going to object to the
23 questions at this point. This panel was tendered for
24 cross-examination by all of the other parties. This is
25 a subject that in general was addressed.

1 The 35 percent BRO is addressed. As I
2 understand the stage we are at right now is for your
3 Honor to clarify and understand, in your own mind, the
4 various terms of the particular Joint Proposal.

5 I think we have gone way beyond that with the
6 questions we are now getting into.

7 MR. STOCKHOLM: I think you are right. I am
8 going to sustain the objection.

9 Page 34, paragraph number two, which is under
10 the general title of non-bypassable wires charge, I
11 want to ask staff this question.

12 Toward the end of this paragraph, which
13 describes how the non-bypassable wires charge is going
14 to be calculated, after eliciting a number of the
15 different inputs it says the quantity of output will be
16 based on the actual output from the resources over the
17 previous 12 months--which is an objective number I
18 assume--adjusted for changes anticipated in the
19 reasonable judgment of the company.

20 What does that mean, staff, and how are you
21 going to determine whether that judgment is reasonable
22 or not?

23 Or do you, under the terms of this agreement,
24 even have the right to reach a conclusion that the
25 company's judgment was not reasonable?

1 MR. VAN RYN: Your Honor, there is a provision
2 in the agreement providing for staff review of the
3 calculation of the non-bypassable wires charge. We
4 presume at that time we would look into all the
5 components of the charge and how the company exercises
6 reasonable judgment.

7 You do need some sort of provision like that
8 somehow because, as we have seen with the changes that
9 have taken place in the wholesale market, that
10 conditions that existed in the past year may not be
11 present in the coming year. And you need some
12 mechanism when you know that something is going to be
13 different for recognizing what is going to be
14 different.

15 MR. STOCKHOLM: Okay. I guess my question is
16 more narrow than that. I do recognize the need for
17 those changes, but I was not aware that there was a
18 provision in here that the calculation of these charges
19 would be reviewed by staff.

20 MR. VAN RYN: Yes. If you look at the top of
21 page five.

22 MR. STOCKHOLM: Yes, indeed. That language
23 didn't give me solace. All it says is the company is
24 going to supply it to staff.

25 It's staff's understanding that staff will

1 have an opportunity to review this, and at least
2 proffer corrections, and if an agreement wouldn't be
3 reached it would go to the Commission; is that the way
4 staff sees it?

5 MR. VAN RYN: Generally.

6 MR. STOCKHOLM: Is that the way the company
7 sees this as well?

8 MR. TEDESCO: Yes.

9 MR. STOCKHOLM: Similar concern with regard to
10 page 35 under VRO commodity pricing, the second
11 paragraph.

12 In the event that NYSEG determines that it
13 will incur an estimated gain or loss, again, is this
14 determination subject to review by staff and, again, if
15 there is any kind of a dispute that the matter would go
16 to the Commission?

17 MR. RUDE: The company would anticipate that
18 would be the process.

19 MR. STOCKHOLM: Page 36, under deferral and
20 recovery limitation, paragraph three in the first
21 sentence.

22 This indicates that the company agrees to
23 forego deferrals to the extent that--what it says is
24 that delivery or total earnings after sharing for the
25 rate year exceed 15.5 percent.

1 I guess that raises two questions. There is
2 contemplated in this agreement the possibility of total
3 earnings exceeding 15.5 percent, but the trigger for
4 delivery earnings is usually 12.5 percent.

5 What is intended here? I mean, clearly, if
6 delivery earnings are above 15.5, total earnings have
7 got to be above 15.5.

8 MR. RUDE: Not necessarily, if there is a
9 loss. If there is a loss on the commodity side, that
10 would not be true.

11 MR. ANSALDO: Do you want staff's perspective
12 on this?

13 MR. STOCKHOLM: Yes.

14 MR. ANSALDO: I agree with what Mr. Rude said.
15 We tried to use the limit on deferrals.

16 I mean putting the number there makes it
17 look--but a lot of agreements have no limit on deferral
18 of category one or two costs. They have a cap for
19 sharing, but mandates and other things are totally
20 recoverable no matter what the earnings are.

21 We try to put some limit on it. We intend
22 delivery or total earnings, again, the higher of the
23 two things. I mean if delivery earnings are 16, and
24 total earnings are 14, they don't recover these costs.

25 MR. STOCKHOLM: Staff--

1 MR. ANSALDO: Company agree with me on that?

2 MR. RUDE: Yes.

3 MR. STOCKHOLM: Staff doesn't assume there is
4 going to be a loss on the commodity side here, does it?

5 MR. ANSALDO: Whatever I assume will probably
6 be wrong, so, I mean it doesn't --again, we were
7 looking for protection.

8 MR. STOCKHOLM: Why isn't there a total cap on
9 earnings as in some other agreements? I mean if NYSEG
10 earnings are 30 percent, just to pick a certain number,
11 even after sharing they would be earning 22 percent,
12 and that number can go up in there indefinitely.

13 In some other deals there are sharing
14 thresholds, and there is an even higher absolute cap
15 where there is no sharing. It all goes to the rate
16 payers.

17 Why is there no cap here?

18 MR. ANSALDO: As a staff team we never
19 considered, really, a total cap. I hate to give an
20 answer from a personal perspective.

21 I don't like absolute caps because they take
22 away all incentives. I also think that at some level
23 of earnings the agreement becomes unconscionable, but
24 that's an issue that we don't really have to talk
25 about.

1 I think 40 percent, for example, is an absurd
2 level of earnings.

3 MR. STOCKHOLM: And it took a fair period of
4 time to have anything done about that, would you agree?

5 MR. ANSALDO: But I did my best.

6 MR. LEVINE: Although there is no specified
7 level of maximum earnings, and although this clause may
8 not be necessary because the Commission does have
9 inherent authority to determine whether rate levels or
10 revenue earnings adjustments are reasonable, there is a
11 provision on page 49 that restates the Commission's
12 position and authority to look into the matter, and if
13 it concludes that the returns on equity are
14 unreasonable or insufficient for the provision of safe
15 and adequate service adjusted reasonable rates, the
16 Commission can act to restore perspective to the range
17 of earnings envisioned by the Joint Proposal.

18 There is some protection within the agreement
19 to limit earnings, and I guess it's not specific as to
20 what some may consider to be an absurd level of
21 earnings, such as the 22 or 23 percent you are talking
22 about.

23 MR. STOCKHOLM: What range of earnings level
24 is envisioned by the parties under this agreement, Mr.
25 Levine?

1 MR. LEVINE: I guess that's in the
2 interpretation of the beholder at the time it occurs.

3 MR. RUDE: We provided that information in our
4 statement in support as to what that range is.

5 If I could just add to the--just based on our
6 experience, caps on earnings, we don't feel, are the
7 best designed for that because the incentives remain
8 and the sharing mechanisms continue to find
9 efficiencies and benefits, both parties, both the
10 customer and shareholder.

11 We don't feel earnings caps are the right way
12 to go.

13 MR. STOCKHOLM: There are a number of changes
14 of incentives under this agreement. For example,
15 making commodity a profit center is a change; is it
16 not?

17 MR. RUDE: Well, we really feel that this is
18 all delivery service. Haven't had the opportunity to
19 say that, but people are talking about commodity as if
20 it's a production function, generation function. It's
21 not.

22 We are providing a retail product, and because
23 of that we feel it's all part of delivery, but there
24 are, you know, again, there are substantial risks.

25 I think we have also shown, at least from our

1 perspective, we feel we are stepping a bit out of the
2 hole to get up to the--even the allowed delivery
3 return.

4 MR. STOCKHOLM: You are stepping up from a 40
5 percent ROE hole?

6 MR. RUDE: In the income statement we supplied
7 with the statement in support we need to find merger
8 synergies in order to achieve the ten and a half
9 percent return.

10 Others may disagree with that
11 characterization, depending what their view of our
12 direct expenses are, but we have a fair amount of work
13 to do just to achieve that.

14 MR. STOCKHOLM: Without regard to the profits
15 you are going to make on commodity?

16 MR. RUDE: Without regard to those, that is
17 correct.

18 MR. ANSALDO: I wanted to mention--you
19 mentioned a very high level of earnings.

20 One of the decisions we had to make as a staff
21 team when negotiating this agreement was whether to use
22 some assumed rate base that would be calculated now and
23 used for each of the five years, or whether to use
24 actual.

25 We used what the actual rate base would be.

1 Each approach has their pros and cons.

2 MR. STOCKHOLM: The last time we used an
3 assumed rate base the results weren't all that good.

4 MR. ANSALDO: That arguably gives the company
5 incentive not to invest. Using an assumed level of
6 inequity can give incentive not to.

7 We use actual equity capped, capped at 45
8 percent, and used the actual rate base.

9 MR. RUDE: Should not be discounted, the
10 provision on uncontrollable costs. It essentially caps
11 earnings at 15 and a half percent because you can never
12 recover the costs such that you can earn over that. It
13 becomes a cap if there are substantial uncontrollable
14 costs.

15 MR. IRVING: I think for the record, I should
16 just remind the parties and yourself, if you need
17 reminding, that the company rejects the
18 characterization of our earnings under the current
19 restructuring agreement as excessive or somehow
20 inappropriate, for reasons we spelled out in the
21 filings and other statements on the record.

22 I just wanted to observe that continues to be
23 our position.

24 MR. STOCKHOLM: I understand that. Thank you,
25 Counsel.

1 I want to go back to the clause that Mr.
2 Levine pointed out, because I do have a concern about
3 this clause.

4 And seeing as you brought it out, Mr. Levine,
5 let me ask you: Are you familiar with Section 6620 of
6 the Public Service Law that allows the Commission to
7 retroactively order the return of excess profits?

8 MR. LEVINE: Vaguely, your Honor, but I
9 brought the secret document.

10 MR. STOCKHOLM: Very good, sir.

11 As I read the last sentence of this paragraph
12 that you referred to me on page 49, it says that the
13 Commission can act prospectively to reestablish the
14 range of earnings originally envisioned.

15 Is it your intent, in signing this agreement,
16 that the Commission should waive its rights under
17 Section 6620?

18 MR. LEVINE: Your Honor, I would never have
19 the temerity to assume the Commission waives anything
20 in any proceeding at any time, so, no.

21 MR. STOCKHOLM: You weren't urging them to do
22 so?

23 MR. LEVINE: I am urging the Commission to do
24 what the law requires it to do.

25 MR. STOCKHOLM: Mr. Levine, an excellent

1 answer. Thank you.

2 Staff.

3 MR. VAN RYN: I join in Mr. Levine's excellent
4 answer.

5 I would point out that this last sentence of
6 J2 is advisory. It's what the parties intend.

7 MR. STOCKHOLM: So there is no intent,
8 therefore, to constrain the Commission with regard to
9 the exercise of its authority with regard to 6620
10 particularly?

11 MR. VAN RYN: I don't know if 6620 was
12 envisioned in this. This is what the parties believe
13 would be appropriate, and it's advice to the
14 Commission.

15 MR. STOCKHOLM: When the Commission approves
16 it does it bind itself to act only prospectively?

17 MR. VAN RYN: Given that some of that relates
18 to the arguments we have had in this proceeding.

19 MR. STOCKHOLM: Indeed. That's why I am
20 raising it.

21 MR. VAN RYN: This seems to me to be advice
22 rather than binding effect.

23 MR. STOCKHOLM: And the same question for the
24 company.

25 MR. MILLER: The company would abide, of

1 course, with all statutes that pass constitutional
2 muster. And if there is a question about provisions of
3 the proscription and it's retroactive rate making
4 clearly envisioned by this particular provision, 6620,
5 I think we would have more to say.

6 MR. STOCKHOLM: Is it your position if the
7 Commission were to adopt this clause as part of its
8 order in this proceeding that the Commission would be
9 waiving its right to exercise authority under Section
10 6620?

11 MR. RUDE: If I could respond, Your Honor.

12 I point to the two things in the sentence.
13 One is I agree or we agree that it does refer to the
14 parties' intention, as Mr. Van Ryn said.

15 And I will also direct your attention to the
16 use of the word "should" in terms of what the parties
17 believe the Commission should do.

18 MR. STOCKHOLM: That, however, leaves in my
19 mind the question of if the Commission adopts this
20 provision is the Commission indicating to the parties
21 that it will only act prospectively?

22 MR. RUDE: I can't speak for the Commission,
23 and to the extent that requires a legal conclusion
24 here.

25 It seems to me if they adopt it as written

1 then they are understanding and memorializing the
2 intent of the parties.

3 MR. MAGER: Just so the record is complete
4 from Multiple Intervenors' perspective, the Commission
5 is not waiving any of its statutory rights or
6 obligations.

7 MR. STOCKHOLM: Thank you, Mr. Mager.

8 I would like to ask staff, top of page 37, the
9 paragraph that comes over from page 36, and talks about
10 the exceptions to the limitations on the deferrals
11 should the company's earnings exceed 15.5 percent.

12 In the language it makes specific reference to
13 Nucor and Corning and it says to any other similar
14 orders.

15 And in a colloquy I had earlier with the
16 company I was left with the understanding, at least,
17 that we would know when there was a contract like this
18 because there would be a Commission Order.

19 And what I would like to ask you is why is
20 there such an agreement in here that provides an
21 incentive for the company to not negotiate and to force
22 a Commission Order under which they can recover outside
23 of any other of the allowances in here?

24 Doesn't this set up the incentive for the
25 company to not negotiate and, in fact, seek a

1 Commission Order, because then they can recover a
2 hundred percent, where they might not otherwise?

3 MR. VAN RYN: The company has flex rate
4 tariffs. Presumably they'll negotiate in conformance
5 with those tariffs.

6 In instances where the tariff is unclear, then
7 a Commission Order might be required, or if certain
8 industrial customers were to argue that their unique
9 circumstances take them outside the conditions of the
10 tariff, it would be expected that these would be
11 somewhat unusual circumstances.

12 Presumably, the company has negotiated in the
13 past a large number of flex rate contracts in
14 conformance with its tariffs and will continue to do
15 so. To say that there does appear to be some potential
16 for the incentive you raise, but given the overall
17 structure of their tariffs I don't expect that it will
18 be a huge problem.

19 MR. STOCKHOLM: Okay. I would like to ask
20 staff on page 42, in looking at the overall customer
21 satisfaction index, it just strikes me that most
22 satisfaction indices I have seen for utilities are
23 significantly higher than this number.

24 Am I wrong about that?

25 MR. INSOGNA: You may not be, Judge. I don't

1 have numbers for the indices by other utilities. I
2 want to point out each utility uses its own unique
3 survey instrument with its own individual set of
4 questions.

5 That survey is bench marked. The survey is
6 subjected by an independent survey contractor and that
7 the initial surveys are used to set a goal or a target
8 that would be unique to that utility and its particular
9 survey.

10 So, unlike, perhaps, PSC complaints, which
11 perhaps would be more susceptible to across the board
12 comparisons, the comparisons of customer satisfaction
13 surveys might not be so applicable.

14 MR. STOCKHOLM: What about a comparison of
15 these numbers for prior years for NYSEG, how do they
16 compare?

17 MR. INSOGNA: The threshold targets in this
18 agreement, if they were applied over the past several
19 years, let's say since the company's restructuring plan
20 went into effect, under any of those years would not
21 have resulted in the company incurring a penalty.

22 However, they are tighter targets. That is,
23 the thresholds are closer to the company's actual
24 performance than they were on the previous agreement.

25 MR. STOCKHOLM: Can you tell me what the

1 company's actual performance has been, if you have
2 those numbers off the top of your head.

3 MR. INSOGNA: I don't have them off the top of
4 my head. I would hesitate to guess, but they are above
5 the mark where penalties would begin to kick in under
6 this mechanism.

7 MR. STOCKHOLM: Similar question with regard
8 to the complaints in terms of the company's recent
9 history.

10 What is the company's recent history of PSC
11 complaints?

12 MR. INSOGNA: When I last checked, this
13 utility was averaging about one complaint per 100,000
14 customers. Their complaint rate is about the lowest in
15 the state.

16 There are a lot of factors that go into
17 complaint rates. You certainly have to take a look at
18 the company's customer base, the economics of the
19 service territory, the rate plan that's in effect at
20 the time. A lot of factors go into that.

21 So, again, although it's perhaps more
22 susceptible to across the board comparisons than
23 customer satisfaction surveys, I think you still have
24 to take the comparisons with a grain of salt.

25 MR. TEDESCO: To pick up on the point of

1 having the measure of comparability with respect to
2 complaint rate, the characterization of our complaint
3 rate is indeed correct as the best among the New York
4 companies.

5 I think as far as the next nearest company,
6 our target is 3.5 under the assessment. Niagara
7 Mohawk's most recent assessment, I believe, is five,
8 which is to say substantially higher than ours. Con
9 Edison is about seven, almost double ours.

10 And I would also add, if I look at our penalty
11 per customer, despite our outstanding performance with
12 regard to complaint rate, that the penalties per
13 customer are roughly three times the Con Edison revenue
14 effect and roughly five to six times the Niagara
15 penalty.

16 MR. STOCKHOLM: I would like to ask staff, on
17 page 46, under amortizations, this sentence gives the
18 company the right to accelerate the amortization of any
19 regulatory assets and liabilities during the rate plan.

20 Will that provision allow the company to
21 manage its earned return in such a way as to allow it
22 to avoid, in whole or in part, sharing with rate payers
23 earnings above the earnings trigger levels?

24 MR. ANSALDO: I think it effectively does, but
25 if I could explain our rationale for some of these,

1 including the merger saving.

2 Some agreements have a rolling calculation of
3 the ROE. This is an annual calculation of the ROE. We
4 felt if they write something off sooner it just
5 increases the chance they are going to overearn in a
6 subsequent year, since you can only write off a cost
7 one time.

8 MR. STOCKHOLM: Usually.

9 MR. ANSALDO: Well, I think you can only write
10 off a cost one time.

11 So, I am not going to characterize Mr. Rude's
12 statement they would or wouldn't do it, but from our
13 perspective it might happen, but then the cost will be
14 done and the possibility of overearnings later on are
15 there and are more likely.

16 MR. STOCKHOLM: On page 47, under direct
17 charge fees, you indicate that you may suggest on a
18 revenue neutral basis fees to be charged for certain
19 services in addition to what may be on your tariffs
20 today.

21 How are you going to make that revenue
22 neutral? If you start charging for X service, and it's
23 a revenue neutral change, then you have got to change
24 some other charge in a negative way in order to make it
25 revenue neutral.

1 How is that anticipated?

2 MR. RUDE: If we could confer one moment.

3 MR. STOCKHOLM: Sure.

4 MR. ANSALDO: Judge Stockholm, when the
5 company comes back I would like to go back to my prior
6 answer.

7 MR. STOCKHOLM: Sure.

8 MS. STRATAKOS: Just to explain what's meant
9 by revenue neutral in this context. This presumes if
10 we were to propose to more appropriately collect
11 something from an individual customer related to the
12 costs that they cause on our system, something like a
13 recollect fee or something like that, to the extent you
14 are collecting from that individual you would no longer
15 have to collect the dollars from the general body of
16 rate payers.

17 So, there would have to have some provision
18 that would enable us to make sure that the general body
19 of rate payers benefited to the same extent that the
20 customer paid.

21 MR. STOCKHOLM: There is a number of different
22 ways you might do, but that is your intent?

23 MS. STRATAKOS: That would be a part of the
24 proposal we would make at the time we made to proceed
25 to do this.

1 MR. STOCKHOLM: Add revenues to the ASGA or
2 reduce the wires chart?

3 MS. STRATAKOS: It would be included in the
4 proposal which, of course, would be subject to
5 Commission approval.

6 MR. ANSALDO: Did you want to go back to page
7 46 now?

8 MR. STOCKHOLM: You want an opportunity to get
9 in here?

10 MR. ANSALDO: Yes.

11 When I addressed your question in my mind,
12 when I heard regulatory assets I was thinking deferred
13 debits. The clause said regulatory assets and
14 liability. I am thinking the primary liability being
15 ASGA. We do not intend the company to accelerate the
16 amortization of the ASGA.

17 MR. STOCKHOLM: Okay.

18 MR. RUDE: The company agrees with that with
19 the exception of 2002.

20 MR. ANSALDO: As provided for in the
21 agreement.

22 MR. RUDE: As provided for in the agreement.

23 MR. STOCKHOLM: Right.

24 Early in these hearings yesterday Advantaged
25 Energy raised an issue. I asked them about briefly

1 concerning schedule one ISO charges, and there was some
2 confusion and remains some confusion in my mind about
3 how those charges are intended to be recovered, in what
4 rates, and where.

5 Let me ask the company to take a shot at that
6 if they would.

7 MR. SEGAL: If you look on page 34 of the
8 agreement it talks about--carryover of paragraph
9 one--it says, last two sentences, NYSEG will continue
10 its practice of reimbursing ESCOs for all New York ISO
11 ancillary services that NYSEG collects from customers
12 for which ESCOs are charged by the New York ISO.

13 That includes and will continue to include
14 uplift and schedule one charges. The only thing it
15 will not include are charges that may be applied to
16 specific ESCOs because of their individual practices.

17 If the ISO begins to individually penalize
18 load serving entities for underbidding or overbidding,
19 or other kinds of gaming practices, those kinds of
20 things would not be covered.

21 MR. VAN RYN: Your Honor, that raises one
22 question in my mind.

23 MR. STOCKHOLM: Let me get to you in one
24 second, Mr. Van Ryn.

25 The way you phrased that answer it suggests to

1 me that the ISO, so far at least, has not levied such
2 charges directly on individual ESCOs; is that correct?

3 Did you mean--

4 MS. STRATAKOS: No. I believe they actually
5 might be charging directly for underbidding. I am not
6 sure.

7 MR. STOCKHOLM: Is that very recent?

8 MR. STRATAKOS: Yes.

9 MR. VAN RYN: Under the prior rate plan there
10 were some schedule one ISO costs that were recovered
11 directly from the ESCOs, I believe.

12 MS. STRATAKOS: They were--NYSEG did not
13 reimburse for ISO start up cost component of schedule
14 one, but under the Joint Proposal NYSEG would reimburse
15 for those costs as well.

16 MR. VAN RYN: The start up costs are still out
17 there.

18 MR. STRATAKOS: They are still out there, yes.

19 MR. VAN RYN: They are not addressed in the
20 Joint Proposal.

21 MS. STRATAKOS: They are not included as an
22 exception; is that what you mean?

23 MR. VAN RYN: Yes.

24 MS. STRATAKOS: Correct.

25 MR. MAGER: The phrase "all New York ISO

1 ancillary services" includes all schedule one charges.

2 MS. STRATAKOS: I believe the direct charges
3 to LSEs that underbid are part of schedule one, so
4 those are charges that are charged to specific LSEs for
5 the individual behavior. Kind of a penalty-type
6 charge. I think they go through schedule one.

7 MR. MAGER: Except for charges to individual
8 LSEs, ancillary services encompasses all other schedule
9 one charges?

10 MS. STRATAKOS: Right now I believe I don't
11 know of any other individually allocated charges, so,
12 yes.

13 MR. STOCKHOLM: LepCorp raised an issue with
14 regard to the individually negotiated contracts, and I
15 recognize this is not in the Joint Proposal but I want
16 to ask the company this question.

17 I recognize that you have gone out and
18 negotiated contracts that have whatever the terms may
19 be. Why would you not--or would you agree to allow
20 customers under those contracts to buy from the market
21 with a back out equal to the LBMP?

22 It seems to me--and let me explain the
23 question. Seems to me the company ought to be
24 indifferent if the back out is simply the LBMP price.
25 Whatever profits may be locked into your contract would

1 be locked into what the customer would continue to pay
2 and you would only be backing out the LBMP.

3 My question is: Would the company be willing
4 to accept that, or have I misunderstood about your
5 neutrality in that regard?

6 MS. STRATAKOS: Your Honor, I am not sure I
7 can say we would be totally held harmless for each of
8 the contracts. They are all individually negotiated.

9 I think what we considered in the Joint
10 Proposal are the concessions, I guess I will call it.
11 Regardless of when the contract terminates for the
12 customers, they'll have the choice of any option that's
13 available, whether it's an enrollment period or not.

14 NYSEG contracts, a general belief is contracts
15 are contracts, and that the customer signs them with
16 all the terms and conditions that were written into
17 them.

18 And I am not sure that without looking at each
19 individual contract you would be able to determine that
20 we would be held harmless.

21 MR. STOCKHOLM: Okay. Another miscellaneous
22 issue, transmission revenues.

23 Staff was not--staff did not know when I asked
24 them about recent numbers in terms of transmission
25 revenues.

1 Can you give me a range of what the company
2 has seen as transmission revenues over the last three
3 or four years, something like that?

4 MR. RAFFERTY: Most recently, in 2001, we had
5 \$22 million. We forecasted \$19 million for this year,
6 2002. Gone back and looked at the forecast. Try to
7 update, make sure it continues to be reasonable.

8 The 19 continues to be our very best estimate
9 right now going forward. Again, that gets rolled into
10 the non-bypassable wires charge starting in 2003, so
11 it's less relevant, I think, as an issue as long as it
12 exceeds five million dollars.

13 It seems like there shouldn't be much of a
14 concern. For 2002, it's one of the fully recognized
15 estimates in the budget.

16 MR. STOCKHOLM: For 2003.

17 MR. RAFFERTY: You get 205 million. There is
18 only five million dollars of transmission revenues used
19 to achieve the five million dollar rate reduction.

20 MR. STOCKHOLM: That is not what I understood
21 looking at the staff income statement.

22 My understanding from staff's income statement
23 is that the rate reduction in 2003 and beyond would
24 consist of what staff has called a delivery rate
25 reduction of 191.1 rate reduction commodity

1 transmission of 13.9 to get to 205.

2 My understanding is the 13.9 was going to be a
3 SUR credit, such that if the company didn't get an 18.9
4 total--that includes the five, that's why the numbers
5 are different--that, in fact, the rate reduction would
6 be something less than 205.

7 MR. RAFFERTY: I believe that the customer
8 will observe a 205 million dollar delivery reduction
9 regardless of the level of the transmission revenues.

10 The five million dollars that's included in
11 the delivery reduction is trued up in the event it's
12 not equal to five million, as Mr. Rude explained
13 earlier.

14 If the 205 is achieved, irrespective of the
15 level of transmission revenues, the 13.9 million dollar
16 difference between the 18, nine and the five, is simply
17 an additional reduction and in the non-bypassable wires
18 charge, I believe.

19 MR. STOCKHOLM: I understand. And the
20 reduction in the 13.9 million dollar reductions in the
21 non-bypassable wires charge will go down if you do not
22 have--

23 MR. RAFFERTY: But it will not--

24 MR. STOCKHOLM: --if you do not have \$18.9
25 million in total.

1 MR. RAFFERTY: It will go down, but reduce the
2 credit in the non-bypassable wires charge. It will not
3 affect the delivery revenue reduction.

4 MR. STOCKHOLM: Okay. The customer gets 205
5 million, but if you don't have the revenues the
6 non-bypassable wires charge goes up.

7 MR. RAFFERTY: Does not go down by the five
8 million. That's the maximum.

9 MR. STOCKHOLM: No. Let me try it again.
10 You have got a 205 million dollar delivery
11 rate reduction.

12 MR. RAFFERTY: Correct.

13 MR. STOCKHOLM: Over there is \$13 million that
14 are assumed to be in as a credit to the non-bypassable
15 wires charge, and that credit can vary depending on
16 your transmission revenues; is that correct?

17 MR. RAFFERTY: That is correct. Those are two
18 different things.

19 MR. STOCKHOLM: I understand that.

20 MR. RAFFERTY: There is a 205 million dollar
21 delivery revenue reduction, irrespective of the 18.9 or
22 13.9 transmission revenues.

23 MR. STOCKHOLM: Okay.

24 MR. RAFFERTY: To the extent there is 18.9 of
25 transmission revenue there will be a 13.9 million

1 reduction in the non-bypassable wires charge, the other
2 five million used to achieve the 205 in the delivery
3 rate reduction.

4 To the extent that the 18.9 is any number
5 different than that, as long as it's in excess of the
6 five million dollars you still will observe \$205
7 million rate reduction in the delivery revenues, and
8 the non-bypassable wires charge simply would not be
9 reduced by as much.

10 MR. STOCKHOLM: So, on an overall basis, when
11 we add up delivery and transmission and non-bypassable
12 wires charges and commodity, and anything else you
13 have, the rate payers will actually get a 205 million
14 dollar reduction in delivery, plus that additional 13.9
15 million dollar reduction in the charges that are
16 flowing through the non-bypassable wires charge, for a
17 total of a 218 million dollar reduction; is that what
18 you are saying?

19 MR. RAFFERTY: That's what I'm saying.

20 MR. RUDE: The non-bypassable wires charge is
21 going to be calculated according to the agreement. If
22 transmission revenues are 31 that will reduce that even
23 further, but they might only be 10.

24 The point is, the transmission revenues go to
25 mitigate the above--some of the above-market costs in

1 the non-bypassable charge.

2 MR. STOCKHOLM: So, you are basically saying
3 the \$205 million calculated on staff's income statement
4 is not correct because it includes the transmission
5 revenues?

6 MR. RAFFERTY: I think, describing it the way
7 I described it, I am not passing judgment on the
8 correctness of the statement.

9 MR. STOCKHOLM: Let me ask staff. You have
10 heard that colloquy. It seems to me that what I have
11 had described is somewhat different than from the way
12 staff has described it.

13 How would you describe the rate reduction:
14 218, 205, 191?

15 MR. ANSALDO: I am at great risk for doing
16 this without Mr. Stewart by my side. And the confusion
17 is because--if the company would bear with me on this
18 and try to look at this both ways.

19 When we go to page thirteen of the agreement,
20 and we identify the 575 of retail sales revenues--I
21 just need to refresh my recollection of something for a
22 moment.

23 There is a little bit of an ambiguity here.
24 It had to do with how much transmission revenues we
25 added there. Mr. Rafferty is right looking at it one

1 way, and there is another way.

2 MR. STOCKHOLM: One of the things that struck
3 me with Mr. Rafferty's answer is what we are really
4 looking at here is a 218 million dollar rate reduction
5 for the rate payers.

6 If that's correct, it will be the first time
7 ever I have ever seen a company underestimate the
8 benefits that it's providing under an agreement.

9 MR. MAGER: Your Honor, just for the sake of
10 the record--clearly, I might not fully understand all
11 the ramifications of this issue--from Multiple
12 Intervenors' perspective I think we kind of looked at
13 the transmission revenues as customer money to start
14 with and to end with.

15 And in the sense it's more of a--one could say
16 it's more of a 200 million dollar reduction in rates,
17 but really a 205 million dollar reduction in delivery
18 charges.

19 That's kind of how we looked at it. I don't
20 know if that clarifies--

21 MR. STOCKHOLM: There is another option.

22 MR. MAGER: --or muddles things. That's
23 truthfully how we looked at that issue.

24 MR. ANSALDO: There is a correct answer here.
25 I am trying to shut my mouth while I figure it out.

1 MR. STOCKHOLM: That's fine.

2 MR. RUDE: Can I try to dive in.

3 MR. STOCKHOLM: You may.

4 MR. RUDE: I believe we've been able to
5 demonstrate and agree with staff and the parties that,
6 indeed, we have a 205 million dollar reduction. This
7 has not been easy.

8 The confusion may come when you unbundle. And
9 there is a way that you could unbundle where it would
10 produce a number similar to what staff has on the
11 Appendix A.

12 When the company unbundles, we unbundle in a
13 revenue neutral way. What that does is when you
14 unbundle the non-bypassable wires charge from delivery,
15 if you take transmission and put it in non-bypassable
16 wires charge, you have to decrease the delivery revenue
17 requirements.

18 The transmission is lowering what the delivery
19 may have been--when you pull it out, in order to keep
20 the total revenues the same, you have to decrease the
21 delivery revenue requirement and at the same time
22 lowering non-bypassable wires charge. The transmission
23 is lowering the non-bypassable wires charge.

24 If you don't do that, if you don't do that in
25 a revenue neutral way, it will have the effect of

1 depressing what the real rate reduction is by the
2 amount of transmission revenues that you shift.

3 I would maintain, again, and I think staff
4 would agree after caucusing, that the true rate
5 reduction here is 205.

6 MR. STOCKHOLM: Okay.

7 Will the tariffs filed by the company result
8 in \$205 million on an annualized basis less revenues?

9 MS. STRATAKOS: Yes, they would.

10 MR. STOCKHOLM: Will the company collect \$205
11 million less in revenues-- doesn't go there.

12 MR. RUDE: The company will collect \$205
13 million less in delivery revenue.

14 MR. STOCKHOLM: And if your transmission
15 revenues are less than \$18.9 million, the
16 company--whatever it may be less than 18.9, the company
17 will recover increased charges in the non-bypassable
18 wires charge?

19 MR. RUDE: I wouldn't phrase it that way. The
20 non-bypassable wires charge will be what it's going to
21 be.

22 MR. STOCKHOLM: One of the components of the
23 non-bypassable wires charge is transmission revenues
24 above five million, actual transmission revenues above
25 five million?

1 MR. RUDE: Could be higher than eighteen nine
2 or lower. In either case, it has the effect of
3 lowering the non-bypassable wires charge, if that
4 effect will be there.

5 The other--just as the NYPA contracts that are
6 below market will be there, just as the numbers will be
7 there and other costs, whatever that package of costs
8 is in 2003, that's what the non-bypassable wires charge
9 will be.

10 MR. ANSALDO: We agree with that, and subject
11 to review of the record we agree with the way Mr. Rude
12 described it.

13 MR. STOCKHOLM: Let me return to transmission
14 revenues for a second if I can.

15 Mr. Rafferty, I think you told me that last
16 year's transmission revenues were approximately 22
17 million, and your best forecast for this year is about
18 19 million; is that correct?

19 MR. RAFFERTY: Yes.

20 MR. STOCKHOLM: In the last three or four
21 years have your transmission revenues fallen below five
22 million?

23 MR. RAFFERTY: No. In fact, they have been
24 higher than the 22 in recent and prior years. With
25 congestion in the ISO transmission it's been very high.

1 In 2000, I think they were in the 40s, the
2 highest year, came to down to 22 million last year, and
3 we expect them to go down to 19 million this year.

4 MR. STOCKHOLM: Do you expect them to stay in
5 that general range, or do you expect the same kind of
6 volatility?

7 MR. RAFFERTY: It's difficult to predict,
8 because volatility in pricing effects, as well as
9 transmission flows, 19 is about the best I can predict
10 right now.

11 I don't see any reason it should fall below
12 five, though.

13 MR. BREW: Excuse me. You noted earlier when
14 the company filed their support in May to the EPP they
15 were forecasting 38 million.

16 MR. STOCKHOLM: Thank you, Mr. Brew.

17 MR. RAFFERTY: Based on the fact we had just
18 received 47 million in a prior year and, frankly,
19 that's almost a year ago when we filed that.

20 MR. STOCKHOLM: Mr. Rafferty, I appreciate
21 that. And even if you are off by a hundred percent, at
22 least on the high side, or you would be on the low
23 side, it seems to me that the rate payers get the
24 benefit of it, in any event, under the Joint Proposal.

25 MR. RAFFERTY: I think that's absolutely

1 correct.

2 MR. STOCKHOLM: Okay. I believe that I am
3 done with the possible exception of trying to get clear
4 in my mind the transmission revenue rate reduction
5 issue that we just talked about for a few minutes.

6 But what I would like to do is to think about
7 that and take just a very short recess.

8 Mr. Ansaldo.

9 MR. ANSALDO: There was the one issue you
10 raised on the four percent inflation, which we talked
11 to the company about, and since I mush mouthed the last
12 couple days I will let him tell you what the
13 interpretation is.

14 MR. STOCKHOLM: There is an agreement with
15 regard to future O&M basis for the four percent?

16 MR. RAFFERTY: Your Honor, staff and NYSEG
17 have agreed on the number that's on page 47 in the
18 statement of support, which is \$306 million, and we
19 would use that number and then look at the GDP implicit
20 price deflator.

21 To the extent the GDP implicit price deflator
22 is in excess of four percent, the difference between
23 that percentage and four percent, multiplied by the
24 \$306 million on page 47, would be the level of monies
25 that NYSEG would be allowed to defer and recover

1 through the ASGA.

2 And we would do that on a year by year basis.
3 We would make an estimate at the end of the year
4 whether or not the GDP implicit price deflator was in
5 excess of four percent.

6 If it was, we would defer the money, report
7 that when we do the annual filing. Staff would get an
8 opportunity to look at that, we would presumably agree
9 on that, and NYSEG would remove the money from the
10 ASGA.

11 MR. STOCKHOLM: Is the agreement that the 306
12 million dollar number is the same every year for the
13 deal?

14 MR. RAFFERTY: That is correct.

15 MR. ANSALDO: And drawn down from the ASGA
16 would be just for that one year.

17 So, for example, it wouldn't be cumulative.
18 It would be for the one year.

19 MR. STOCKHOLM: Right. Understood.

20 When we come back--and I do want to take just
21 maybe a six or seven minute break, no more than
22 that--when we come back I may have one or two more
23 questions on that transmission revenue.

24 Other than that, I am done. I have indicated
25 earlier that if any of the opponents would like to

1 sponsor testimony today concerning the additional
2 testimony, the supplemental testimony that I allowed in
3 the record this morning, I would permit that.

4 I indicated in my ruling I would allow parties
5 an opportunity for a final oral argument, if they so
6 desire, and we would take that up at

7 that time.

8 MR. VAN RYN: Staff has not had an opportunity
9 to respond to Nucor's arguments on the three year
10 limitation and on their legal argument that the
11 evidence is insufficient.

12 I would like--

13 MR. STOCKHOLM: That is because you didn't
14 make a motion to strike, Mr. Van Ryn.

15 MR. VAN RYN: I would like an opportunity to
16 respond in writing by the same deadline that has been
17 imposed on other parties, Thursday, by 5:00
18 electronically. I would keep the filing short, ten
19 pages or less.

20 MR. STOCKHOLM: It's sounding better all the
21 time, Mr. Van Ryn.

22 Does anyone have any objection to staff's
23 request?

24 MR. MILLER: I would request that the legal
25 argument contained in the motion to strike on the three

1 year issue be converted to a brief, and also be
2 entertained by you at the same time you entertain
3 staff's comments.

4 MR. STOCKHOLM: It will be entertained. The
5 conversion process is not a lot, but it will be
6 considered.

7 Anything else procedurally before we break?

8 MR. BREW: Just to note that Nucor appears to
9 be the only opponent left in the room. Since my
10 witness is unavailable, it seems there will be no oral
11 response to the supplemental testimony today.

12 MR. STOCKHOLM: That's fine. I appreciate you
13 telling us that.

14 Hopefully we will be done very quickly. I
15 want to take a brief recess. We will start promptly at
16 5:00.

17 (Recess taken.)

18 MR. STOCKHOLM: I am going to try to make this
19 very short, but I need to wade back into this so I
20 understand it.

21 Mr. Rude, let me start with what I think you
22 described to me with regard to this rate reduction.

23 As of March 1st of 2002 your rates are still
24 bundled. The tariffs you file will be designed to
25 collect \$205 million on an annual basis, less than what

1 you have in effect today; is that correct?

2 MR. RUDE: Yes. If you--the five million
3 dollars of transmission is really a shift, so...

4 MR. STOCKHOLM: Actually, the tariffs aren't
5 going to reflect the ASGA either?

6 MR. RUDE: The answer is 2002 yes. 205
7 million dollar rate reduction. The tariffs are
8 designed to collect 205 million less in revenue
9 beginning March 1st.

10 MR. STOCKHOLM: Beginning March 1st, correct.

11 As of January 1st of next year, you are
12 unbundling--at least based on the income statements
13 that you filed, you are unbundling your distribution
14 service from other services.

15 Will the tariffs for the distribution services
16 on January 1, 2003 be designed to collect \$205 million
17 less?

18 MR. RUDE: Yes. With that shift of
19 transmission.

20 MR. STOCKHOLM: The five million?

21 MR. RUDE: In other words, the ASGA amount
22 that's used in 2002 will be replaced by additional rate
23 reduction.

24 MR. STOCKHOLM: Correct.

25 MR. RUDE: Additional revenue reduction.

1 MR. STOCKHOLM: Basically out of the company's
2 pocket.

3 MR. RUDE: That's right.

4 MR. STOCKHOLM: Also, as of January 1, 2003
5 all but five million dollars of transmission revenues
6 will be used as a credit in the non-bypassable wires
7 charge; is that correct?

8 MR. RUDE: That is correct.

9 MR. STOCKHOLM: I will accept that, and go no
10 further.

11 Thank you for staying around in any event, Mr.
12 Ansaldo.

13 Okay. A number of exhibits have been
14 identified in the record, not all of them have been
15 entered into evidence.

16 Is there any objection to entering any of the
17 exhibits into evidence?

18 MR. MILLER: No.

19 MR. STOCKHOLM: Hearing none, all of the
20 exhibits that have been identified in these hearings
21 will be entered into evidence.

22 (Exhibits entered in evidence.)

23 Okay. The last thing that I promised the
24 parties was an opportunity for final oral argument.
25 Are any of the parties interested in final oral

1 argument?

2 I will allow the opponents to go first.
3 Seeing as you are alone in that category, I believe at
4 this point, Mr. Brew, do you desire to take up that
5 opportunity, or not?

6 MR. BREW: I will take one minute.

7 It seems, in looking at this settlement
8 overall, apart from the statutory issue that we have
9 raised, the basic issue is for those customers that
10 would take bundled service are the rate reductions that
11 are promised here, A, sufficient and, B, real.

12 And we have suggested in our comments that the
13 answer to both of those is no, particularly because of
14 the uncertainty on the commodity side.

15 That being said, the second piece is that
16 there is an extraordinary effort in this proposal in a
17 very complicated fashion to try to create options and
18 to allow alternative service providers to actually
19 offer a meaningful alternative supply to consumers.

20 The fact that so many of the ESCOs are
21 opposing the agreement strongly suggest they don't
22 expect to see the market really open up.

23 I think those are the two big considerations.
24 Remember: This proposal was offered as an attempt to
25 freeze rates for seven years at the current levels. We

1 have now talked about rate reductions only guaranteed
2 in total for ten months.

3 So, from where we started with what was being
4 offered to rate payers, and where we are now, it's hard
5 to say this is a particular improvement, particularly
6 compared to what would have happened anyway, either
7 under the temporary rates or by the existing tariffs in
8 place.

9 I think looking at this overall there are very
10 serious problems that really aren't addressed,
11 consistent with I think where the Commission wants to
12 go in terms of the unbundling document, in terms of
13 opening the markets, and in terms of the overall rate
14 limits to customers.

15 MR. STOCKHOLM: Thank you, Mr. Brew.

16 Anyone else?

17 MR. MILLER: Your Honor, just a few comments.

18 This is a document that took an extraordinary
19 effort on the part of a diverse group of consumer
20 interests.

21 As you know, one of the standards that the
22 Commission applies in the settlement guidelines to
23 determine whether or not an agreement should be
24 approved and seen as being in the public interest is
25 the execution of the document by parties who would

1 ordinarily be adverse.

2 In this case, we have a document that is
3 signed by staff, by Multiple Intervenors, by the
4 Consumer Protection Board, by MI, and even the Attorney
5 General.

6 Each one of those individual parties had their
7 own particular constituency and looked at the document
8 and determined it's reasonable. There was only one
9 party in the whole proceeding that challenged the
10 revenue requirement issue.

11 When you take a look at the interests
12 protected by staff, staff has a statewide mandate. MI
13 represents more than 60 large companies in the state.
14 Many of the companies have the interests of the ESCOs.

15 They are interested in acquiring service from
16 ESCOs, and therefore some of the concerns that are
17 raised by a number of the ESCOs I think are
18 misunderstood, to a good extent, because we have the MI
19 signing on to this agreement.

20 The Consumer Protection Board represents the
21 interests of residential and small commercial
22 customers. That particular constituency is satisfied
23 by the CPB signing on to the agreement.

24 And probably one of the most remarkable
25 aspects of the agreement is we have the Attorney

1 General signing on to the agreement.

2 Your Honor should note the AG did not sign on
3 to and, in fact, opposed the Nimo-Grid settlement. The
4 AG did not sign on to and, in fact, opposed the Con
5 Edison-Northeast Utilities settlement.

6 The AG signs on to the agreement. I think
7 that speaks volumes.

8 When you take a look at the standards applied
9 from the settlement guidelines, and also take a look at
10 one of the other issues addressed in the guidelines,
11 and that is are the results obtained here between the
12 normal of what could be expected in a litigated
13 outcome.

14 In a litigated outcome, there are substantial
15 litigation risks. Mr. Ansaldo, on several occasions,
16 referred to the substantial litigation risk.

17 Members of the NYSEG panel talked about
18 NYSEG's view that without the agreement it's entitled
19 to continue to operate under the rate and restructuring
20 agreement.

21 A provision of the agreement deals with merger
22 synergies. Under the company's interpretation, the
23 company is entitled to all the synergies.

24 Nevertheless, we sign on to and have foregone what we
25 are entitled to through March 2000. We have not taken

1 all the synergies. We negotiated the synergy issues on
2 the merger.

3 We ask that your recommendation to the
4 Commission be that this be adopted, and ask that you do
5 it as expeditiously as possible so that it can be
6 reached at the Commission's open session in February.

7 Thank you.

8 MR. STOCKHOLM: Thank you, Mr. Miller.

9 Anything further?

10 MR. WIDGER: On behalf of RGS and RG&E, and
11 particularly on the merger-related aspects of the
12 settlement, I would like to echo what Mr. Miller said.

13 It's a remarkable achievement that parties
14 with diverse interests have come together and achieved
15 a common result.

16 I also think--although I am hesitant to read
17 too much into silence--the fact that I don't think
18 there was a single question related to the merger
19 either from your Honor or from the parties during these
20 two days of hearings.

21 MR. STOCKHOLM: Did I overlook those?

22 MR. WIDGER: I say I am hesitant to mention
23 that, but I will anyway.

24 I think that speaks volumes about the solid
25 nature of the settlement as it pertains to the merger.

1 And I think, again, being hesitant to read too much
2 into the parties' silence, I think it does indicate
3 among the signatories, and also parties who may not
4 have signed on and did remain silent on the document
5 itself, that the merger is good for New York.

6 It's good for customers and good for
7 shareholders and warrants approval on an expedited
8 basis.

9 Thank you.

10 MR. STOCKHOLM: Thank you, Mr. Widger.

11 Anything else? Let me just say before we
12 close this record in this case, that's been going on
13 for a very long period of time, that I want to thank
14 the parties especially for the past couple of days.

15 The process and procedures here were
16 complicated, in some cases difficult to follow, and
17 difficult even for the stenographer, I am sure, but
18 without that kind of an approach I couldn't feel
19 comfortable that I understood everything in here, and
20 all the arguments raised pro and con.

21 So, I appreciate very much your attendance,
22 your attention, and your cooperation in those
23 procedures. Regardless of the outcome here, it can
24 only be better, in my view, as a result, not
25 withstanding the difficulty of actually accomplishing

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it.

So, with my thanks, this record is closed.

(Hearing concluded at 5:30 p.m.)

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