BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :

TECHNICAL CONFERENCE RE: :

NEW YORK INDEPENDENT SYSTEM : DN ER07-521

OPERATOR :

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Hearing Room 3M-2A/B

Federal Energy Regulatory Commission

888 First Street, N.E.

Washington, D. C. 20426

Monday, September 10, 2007

The above-entitled matter came on for technical conference, pursuant to notice, at 10:00 a.m.

BEFORE:

MORRIS MARGOLIS, FERC-OEMR

GREGORY BERSON, FERC-OEMR

LARRY GASTEIGER, FERC-OEMR

COMMISSIONER MOELLER, FERC COMMISSIONER

APPEARANCES:

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P R O C E E D I N G S

(10:00 a.m.)

MR. MARGOLIS: Good morning. I am Morris Margolis from the East Division of the Office of Energy Markets and Reliability. We would like to welcome everybody this morning to the Technical Conference in Docket ER07-521 that Staff is holding as directed by the Commission in its Order of July 27th, 2007.

In directing this conference, the Commission stated that it could not determine whether Guidelines (5) and (7) of Order No. 681, Long-Term Transmission Rights Rulemaking, were satisfied by the NYISO Compliance Proposal on February 5th, 2007.

In this regard, we hope to get answers to all of the questions raised by the Commission in its July 27th Order. Of primary concern to the Commission is the apparent degree of price certainty that the LSEs may be exposed to, and how each LSE's reasonable needs are provided for under the allocation method proposed by the NYISO.

In this regard, Staff would like to explore here today these aspects of NYISO's proposal as well as various possible modifications and alternatives to NYISO's approach that may satisfy the rulemaking guidelines, and the implications for the market and transmission customers that would ensue from each of these approaches.

I would like to briefly outline what we expect to happen today. After introductions, Staff will move directly into exploring the issues highlighted by the Commission. We believe it is not necessary to spend time on opening remarks since each party has already provided an opportunity to articulate its pleadings in NYISO's case in the February 5th filings and answers, and the compliance filing of August 24th.

However, NYISO did request to make a few opening remarks which as soon as we're done with the introductions and once we begin I will let NYISO, for about 10 minutes.

After that, we will investigate Guideline (5) and then move on to Guideline (7). Hopefully we will break for lunch sometime during the Guideline (7) approach and try to finish up by around 3:00 o'clock.

In order to ensure that all parties and all issues are addressed, Staff will permit participation by any party who had previously requested to Intervene in the proceeding, and we will provide opportunities for these parties to further respond or ask questions.

I just wanted to remind everyone that this conference is being transcribed and will be part of the record in this proceeding for the Commission's consideration. Therefore, I ask those who ask questions to please identify themselves and who they represent. Also, we

have a sign-up sheet in the back of the room that I would request that everybody complete.

Additionally, I would like to make it clear that the views and opinions expressed by Staff are just that, simply Staff's views and opinions, and are not necessarily those of the Commission. We do not speak for the Commission.

Before we introduce the Staff members present today, and beginning to address the matters before us, I would like to turn the conference over to Larry Gasteiger, Director of the East Division, who would like to say a few words.

MR. GASTEIGER: Thanks, Morris.

I just have a few comments. First of all I want to thank everyone for their participation in the conference today. I am hopeful that this will be a very useful forum for the Commission in terms of preparing a record for making a decision on the filing that is before us.

I want to thank everyone for the submissions that they submitted in advance. That was very helpful for the staff in trying to prepare for today's conference. I would like to remind everyone that our time is limited today, so I would like to keep the focus squarely on the issues that the Commission identified in the Notice that was sent out, and if we are going to stray into other matters staff is going

to try and reign this back in to keep us on target.

Then lastly, I want to acknowledge that I am aware of the situation of the room temperature. We are trying to address it and hopefully can get it cooled off soon, but please feel free to remove your jackets if you are feeling uncomfortable until the room temperature comes down and we can get it at a comfortable level for everyone.

With that, I am going to turn it back to Morris so we can get started.

MR. MARGOLIS: I would like to just start by having the staff members here today introduce themselves. I would also, after that, like to go around the room just so we can see exactly who is here and who is represented here today. So if everybody could introduce themselves.

MR. BERSON: Hi. I'm Greg Berson, the Group Manager in the East Division.

MR. GASTEIGER: Larry Gasteiger, Director of East for OEMR.

MS. WERNTZ: Heidi Werntz, Senior Attorney, OGC.

MR. SINGH: I'm Harry Singh in OEMR.

MR. WENTWORTH: Roland Wentworth with OEMR.

MS. LICHTENSTEIN: Lynn Lichtenstein, attorney, OGC.

MR. CHERUVELLI: Roy Cheruvelli, East Division, OEMR.

MR. FARRAH: Eli Farrah, LeBoeuf, Lamb, Green & McCrae, on behalf of the New York Transmission Owners.

MR. NACHMIAS: Stuart Nachmias, ConEdison and Orange & Rockland.

MR. BUTTERKLEE: Neil Butterklee, an attorney for ConEdison and Orange & Rockland.

MS. FACENDOLA-ALTOBELL: Deidre Facendola-Altobell, ConEdison and Orange & Rockland.

MR. PICARDI: Matt Picardi, Vice President Regulatory Shell Trading and Coral Power.

MR. LANG: Kevin Lang, Greenberg Traurig, counsel for Coral Power.

MR. McCARTNEY: Glen McCartney, Constellation Energy.

MR. HEINRICH: Bill Heinrich, New York PSC staff.

MR. BLEIWEIS: Bruce Bleiweis, DC Energy.

MR. TATE: Matthew Tate, DC Energy.

MR. McCURLEY: Paul McCurley with the Rural Electric Co-op Association.

MR. BIANCO: Hubert Bianco, Incorporated Village of Freeport for NYAPP.

MR. RUDEBUSCH: Tom Rudebusch, Duncan, Weinberg, Genzer & Pembroke, for the New York Association of Public Power, or NYAPP.

MR. PALLAS: Paul Pallas, Village of Rockville

Center and president of NYAPP.

MR. PATTON: David Patton, Potomac Economics.

MR. FERNANDEZ: Rob Fernandez, General Counsel, New York ISO.

MR. HARVEY: Scott Harvey, LECG, consultant for the New York ISO.

MS. LAMPI: Mollie Lampi, Assistant General Counsel at the New York ISO.

MR. MURPHY: Ted Murphy, Hunton & Williams, outside counsel to the New York ISO.

MR. WARDMAN(?): Bill Wardman, OEMR.

MS. ROBINSON: Elaine Robinson, New York ISO.

MR. BUECHLER: John Buechler, New York ISO.

MR. GONZALES: Rick Gonzales, New York ISO.

MS. FARRELL: Pattie Farrell, New York ISO.

MR. GLASGLOW: Ross Glasglow, OEMR East.

MR. STANLEY: Jason Stanley, Advisor to FERC Commissioner Moeller.

MS. MARTIN: Valerie Martin, OEMR.

MR. ROONEY: Patrick Rooney, OEMR East.

MR. DOUGLAS: Jim Douglas, ISO New England.

MR. MONTALOO: Marc Montaloo, ISO New England.

MS. KALAGE(?): I'm Sue Kalage on behalf of the American Public Power Association.

MR. LANGAN: Joe Langan, PPLEnergy Plus.

MR. YAKOBITIS: John Yakobitis, OEMR East.

MR. WHITE: I'm John White, OEMR East.

MS. SLEASE: Elizabeth Slease, OEMR East.

MR. DAUGHARTY: Patrick Daugharty, VanNess Feldman, LIPA.

MR. ROBERTS: William Roberts, Edison Mission.

MR. CONSIGLA: Lou Consigla, New York Power Authority.

MR. deJESUS: Joel deJesus, National Grid.

MS. MAYWALT: Roxane Maywalt, National Grid.

MR. JONES: Kevin Jones, Long Island Power Authority.

MR. BUSH: Tim Bush, Navigant Consulting, representing the New York Municipal Power Agency.

MR. GREENFIELD: Larry Greenfield with the OGC, FERC.

MR. HENRICHS: Lance Henrichs, Office of Enforcement.

MR. MARGOLIS: I also understand there's some people calling in on the phone, so if they could identify themselves, too.

MR. KENNY [By Phone]: Ray Kenny, New York State Electric & Gas, and Rochester Electric & Gas.

MR. JURESCO [By Phone]: Stan Juresco, ISEG and RG&E.

[Inaudible phone introduction.]

MR. MARGOLIS: Could you speak up a little bit because we didn't catch the last one.

VOICE: Is that Peggy?

VOICE: That's Patty.

THE REPORTER: Patty who?

VOICE: Patty Selector.

MS. WERNTZ: Patty, could you check your phone? We can't hear you. Maybe the volume isn't turned up on your phone--neither is mine?

Patty, can you please turn up the volume on your phone? We can't hear you.

MS. SELECTOR [By Phone]: Is that any better?

MS. WERNTZ: Not really.

[Inaudible.]

(Pause.)

MR. MARGOLIS: Is there anybody else?

MR. WRIGHT [By Phone]: Richard Wright, Federal Hudson Gas & Electric.

MR. MARGOLIS: Okay, before we move into discussions on Guideline (7), I believe New York ISO would like to say a few words.

MS. LAMPI: Good morning. Thank you, Mr. Margolis, for the opportunity to make some opening remarks. My name is Mollie Lampi, and I am the Assistant

General Counsel at the New York ISO.

I would like to give you a very brief overview of the NYISO proposal in light of the questions you've asked. The New York proposal provides Long Term Firm Transmission Rights in a manner that fits the unique design of New York's Retail Access Program.

The NYISO proposal accommodates Retail Access by ensuring ongoing short-term auctions and by maintaining the existing TCC auction revenue distributions to end use and wholesale customers across the Transmission Owners Service Territories.

I will discuss why this revenue distribution is important to retain access in a moment. What is important to understand this morning is that the NYISO proposal accommodates New York's Retail Access design.

Ongoing short-term TCC auctions where market participants can obtain short-term congestion hedges are important to many of NYISO's customers. For instance, competitive LSCs who serve a substantial portion of New York's load have customers that can and do migrate from service provider to service provider.

Customers of the Transmission Owners' regulated load serving entities are also free to migrate into and out of their retail programs. As we have indicated in our filings in this docket, most market participants in New York

have not expressed much interest in obtaining long-term rights.

Most of our market participants prefer the six-month and one-year rights that the NYISO currently makes available through auctions. We can reasonably assume that these short-term auctions allow competitive load-serving entities and marketers to regularly adjust their congestion hedges to match loads that change much more frequently than every ten years.

Short-term auctions also allow power suppliers and marketers to offer load-serving entities power contracts bundled with power delivery. Short-term auctions provide the flexibility to New York's market participants to offer products that meet the needs of load-serving entities operating in a retail access environment.

Municipal entities on the other hand have expressed significant interest in the long-term firm transmission rights. Their customer base--about 2.5 percent of New York's load--is relatively stable. Municipal entities have indicated that they procure power through long-term power contracts, and that they would like an opportunity to hedge these power costs with long-term rights.

To accommodate the needs of municipal systems, the New York proposal offers significant long-term rights to

entities that have historically used the transmission system. This historic use is evidenced by a load-serving entity's previous transmission agreement grandfathered at NYISO's startup.

NYISO offers long-term rights to entities with ongoing grandfathered rights, and also to those entities that had grandfathered rights that have now terminated or expired. Most of the entities eligible for these long-term rights are the wholesale municipal systems, such as those represented in this proceeding by the New York Association of Public Power and the New York Municipal Power Agency.

This offer of long-term rights will allow these entities the opportunity to continue using the transmission capacity they've historically used to serve their load, albeit at a price that reflects the market value of those transmission rights.

As Dr. Harvey will explain, the long-term rights offered municipal systems in the NYISO proposal will cover more than 90 percent of the municipal system's load.

The NYISO wishes to be clear especially because some of the municipal systems in this proceeding have expressed concern on this point that the NYISO recognizes and respects their desire for long-term transmission rights. However, we believe we have accommodated their needs while also maintaining short-term auctions and the auction revenue

distribution scheme that supports New York's Retail Access Program.

As I said, the NYISO Proposal accommodates Retail Access by supporting the transmission congestion charge auction revenue distribution mechanism. That's a mouthful, I know. the distribution mechanism was established at NYISO's startup.

Under this system, transmission owners share the transmission congestion auction revenues--I'll refer to those simply as auction revenues--with their customers. They share these auction revenues with their wholesale customers such as the municipal systems taking service under the OATT by crediting the revenue to their wholesale transmission service charge.

They credit auction revenues to their retail delivery customers by crediting the retail delivery charge that their retail delivery customers pay in their service territory.

The wholesale transmission service charge and the retail delivery charge recover the Transmission Owners' embedded transmission costs. All customers in each service territory contribute equally to the Transmission Owners' embedded costs in this way.

This auction revenue distribution mechanism accommodates retail access by allowing the auction revenues

to automatically follow the retail delivery customers as they migrate from one load-serving entity to another; or from one competitive load-serving entity to the Transmission Owners' retail power supply program.

The vast majority of New York's end users are served under this combination of competitive load-serving entity and transmission owner provided power supply program. As I said, only 2.5 percent of New York's load is served by municipal systems.

Direct allocation of the transmission congestion auction revenues to retail delivery customers has served New York well by avoiding the burdensome administrative mechanisms that are needed when revenues are directly allocated not to end-user customers but to their load-serving entities.

Moving on to your questions on valuation, the NYISO prices its long-term rights at their value in the TCC market. That is, long-term firm transmission rights purchasers will pay an annual price that reflects the value--will pay either an annual price that reflects the value of their purchase in the most recent auction, or a ten-year fixed price that mirrors the market value of the transmission path at the time of the long-term rights purchase inflated over its ten-year life.

Pricing long-term rights at market value prevents

inequitable and potentially dramatic cost shifts. As Dr. Harvey will discuss, inequitable cost shifts can result if long-term firm transmission rights are valued at less than their market value.

This is because such a pricing mechanism reduces the size of the TCC sales revenues. These are the revenues that are used to reduce the amount of embedded costs that retail delivery customers and wholesale customers pay service territory wide.

The NYISO proposal avoids these cost shifts by pricing long-term rights at their market value. As Dr. Harvey will also explain, there are elements of the NYISO's proposal that do look a lot like the PJM Direct Allocation approach.

LSCs that take their long-term rights as a load ratio share of the portion of the transmission system that's not tied up in grandfathered rights will on the whole pay an amount for their long-term rights that matches the revenues their customers receive as auction revenue credits against their transmission service charge.

This is because both the long-term rights to these competitive load-serving entities and the auction revenues that their customers receive are spread based on the load ratio share of their customers in the service territory.

In sum, the NYISO believes its proposal satisfies the Commission's requirements for long-term rights in its entirety. It does not introduce undue discrimination, and most importantly it accommodates the established methods for distributing auction revenue and ensuring short-term auctions that are fundamental to New York's Retail Access Program.

Thank you for your time, and we're ready to move on. Thank you.

MR. MARGOLIS: Thank you.

I would like to now begin discussion of Guideline (5). The NYISO's filing did not specifically define what constitutes "Reasonable Needs." As directed by the Final Rule, the Commission wanted to ensure that each LSE could obtain LTTRs at least equal to its Reasonable Needs to satisfy its service obligations.

While NYISO describes the quantity of long-term rights that it would make available in relation to system capacity, the ISO did not fully explain how this quantity relates to each LSE's customer load-serving obligations.

It is this relationship that forms the basis for the Reasonable Needs standards. And while it may very well be that NYISO's proposal provides LSEs with sufficient long-term rights, there appears to be insufficient information in the record in order to make this determination.

In this regard, the New York ISO in its August 24th filing stated that it would like to prevent an illustration of the amount load-serving load representative municipal systems could hedge with the long-term rights. So staff would like to ask if you wanted to speak to that for a few minutes, for amount ten minutes, if that would be sufficient?

MR. HARVEY: That would be fine, and I will speak to that question about the quantities available.

MS. MURPHY: Before you start, the NYISO made a filing just on Friday which provided some information about the load that representative municipal utility systems can cover with long-term firm transmission rights.

At staff's request, I had brought multiple copies of that filing, since it was filed relatively late in the day on Friday, and I could pass them out if that would be helpful.

MR. MARGOLIS: Okay, yes, if anybody has not seen that or would like a copy.

(Documents distributed.)

MS. MURPHY: What I will pass out, then, will be two documents. One will be the document that we filed on Friday. The second will be a short table that shows some of what went into the filing on Friday.

MR. MARGOLIS: Okay, and if you would like to

take about 10 minutes to go through that.

MR. HARVEY: Because the entitlements under the NYISO proposal are tied to the grandfathered rights that municipal systems and others had at NYISO formation, let me briefly remind you of how those rights originated.

When the NYISO was formed in 1999, it took over operations from the New York Power Pool. There were substantial existing firm transmission service contracts. The amount of capacity covered varied by interface, but around 50 percent to the system was covered by these existing contracts.

It is important that the formation of the NYISO did not abrogate any of those contracts. Those contracts continue to be in force. The entities taking service under those contracts are given the option of either continuing to take firm transmission service and take power without paying congestion charges, or they had the option of converting that from transmission service into a TCC, the equivalent of an FTR.

In either case, the holder was obligated to continue paying the embedded cost right under the tariff, and over the entire term of the tariff. And the total charges for that grandfathered service in some cases, because it was service over the territory of multiple transmission owners, involved pancaked transmission rates.

So that was the system at startup.

In addition, these contracts were held, many by municipal systems. Also, some of them were contracts by one transmission owner paying for service of the territory of another transmission owner, and there were some contracts held by other kinds of entities.

Under the terms of these original contracts, sometimes there was an opportunity to terminate those contracts prior to the expiration date, or there might have been provisions allowing that contract to be rolled over. None of those provisions regarding the right to terminate or roll over those contracts were affected by the formation of the NYISO.

Again, no contracts were disturbed. They continued to roll forward under their terms, and the events since then have reflected the operation of those contracts.

Now to turn to the municipals and their status under those historical contracts, at this point in time five of New York's municipal and cooperative systems have ongoing grandfathered rights, or grandfathered TCCs that stem from those original contracts.

Forty-four municipal or cooperative systems have either terminated their grandfathered contracts or those grandfathered contracts have reached their expiration and have not been renewed. So there are 44 of the municipals

where those contracts are no longer in effect; some of them went out of effect very recently on August 31st.

Presumably these decisions to terminate or not renew reflect, as the New York Association of Public Power said in their filing, the economic evaluation that the embedded cost charges in those contracts were high relative to the value of the grandfathered rights that they received.

These 44 systems now, instead of paying that embedded cost rate under the grandfathered contracts, take transmission service under the NYISO OATT and they pay the TSC of the relevant transmission owner.

Two systems--I spoke to 5 in 44--there are two remaining systems that had no historical grandfathered contracts.

Now it is important in--the NYISO made an effort to compile some data for you regarding the extent of the relationship between these entities' loads and their grandfathered contracts. It is important for this purpose and other purposes for you to keep in mind that the NYISO does not necessarily deal directly with these entities.

And the NYISO does not collect the TSC, the transmission service charge. The access charge is collected by the Transmission Owners. In many cases these munies does not buy the power and deal directly with the NYISO; rather,

the New York Power Authority, or the New York Municipal Power Agency deals with NYISO on their behalf. So we have cooperation from those entities, and we've put together the best information we can on their loads, but we're welcome to revise that given the limitations we had in compiling it.

For those entities that have ongoing grandfathered rights, my understanding is that four are represented in this proceeding by the New York Association of Public Power.

Of these four, their grandfathered rights, according to our calculations, cover in excess of 85 percent of their peak load. If these systems continue to cover--to serve that load, then under the NYISO proposal they would be able to maintain that level of coverage. In other words, 85 percent of their peak load would be covered by long-term FTRs.

Now if we want to think about: How adequate is 85 percent coverage? One way we thought about giving you a benchmark for that was:

Three of these entities are located on Long Island. And if we look at their coverage, they will be able to cover about 88 percent of their peak load under these grandfathered agreements. But since Long Island is a distinct region, we were able to look at: Well, what is the peak load for all the rest of all the other entities on Long

Island, but the Long Island Power Authority and then other smaller entities on the Island compared to their grandfathered rights?

All the other entities on Long Island, their grandfathered rights cover 17 percent of their peak load. So the New York proposal by enabling these entities to continue to take grandfathered service in the amount they are today, enables them to serve five times the amount of their peak load, as all the other entities on Long Island.

Now that was the entities that have ongoing transmission service. There are also, as I said, 44 municipal entities with expired or terminated contracts; 9 are represented, as we understand this case, by the New York Association of Public Power.

Now if these 9 systems were to take advantage of the NYISO proposal and convert these expired rights into long-term FTRs, our calculations indicate that they would be able to cover in excess of 99 percent of their peak load with these grandfathered rights.

If we extend the calculation, not just to the members of the New York Association of Public Power, but to all New York municipal and cooperative systems, including both the New York Association of Public Power and the New York Municipal Power Agency members and others, and if they were to take advantage of the New York ISO proposal, we calculate that the overall -- average over all of them, they would be able to cover 92 percent of their peak load with long-term FTRs.

So, that is our calculation. We handed out a letter and some additional detail in the table, but based on the cooperation we've received from the entities that buy on our behalf, that's our information about the coverage that will be available under the New York Proposal.

MR. MARGOLIS: Before Staff begins its questioning, I wanted to ask the Association of Public Power, if they had any comments specifically to the filing of Friday and the information just presented?

MR. RUDEBUSCH: Thank you, Morris, yes, we do. This is Tom Rudebusch for the New York Association of Public Power.

First of all, I'd like the record to reflect that we did not get a copy of this document before the meeting started, and, in fact, not until Scott finished with most of his remarks.

We did come -- well, first of all, let me say that we appreciate the ISO's recognition of the historic use rights of the municipal and cooperative utilities. I would also -- we appreciate that cooperation very much.

I'd like to point out that we are dealing here with somewhat of a moving target. A lot of the statements that have just been made, are not reflected in the initial compliance filing and are not reflected in the actual tariff leaves that were filed, so that anything that goes forward, even if we stopped right here, would require some sort of a further compliance filing to make sure that the actual tariff leaves reflected some of the commitments and assurances that were made previously.

We'd like to also state that we don't want to interfere. We believe that our direct allocation proposal for long-term transmission rights, does not interfere, and is designed not to interfere with the short-term TCC market.

We have heard some discussion, and I'm sure we'll hear a lot more, under Guideline 7, that somehow the calculation of the retail access program rates, if they were granted, long-term transmission rights, which they don't want, would therefore complicate the proposal so much that you couldn't do what we asked for.

And it seems like there is a very simple solution for that -- restrict the long-term rates for

people who pay the wholesale transmission service charge, namely, load-serving entities that really do have an obligation to serve, not competitive commodity supplying what they call energy service companies or ESCOs, in New York, people who don't have an interest in long-term rights, don't want them.

So, why complicate things and make the whole thing impossible? It seems to be a self-defeating process.

In particular, if you look at the original compliance filing and tariff leaves that were made, it was not stated -- and, if I'm wrong, I'm willing to be corrected -- we are going to be corrected and shown where, but for contracts that had expired and recognized historic continuing uses, in other words, these are feasible uses, because they are continuing, only 23.75 percent of those were originally proposed to be allocated to long-term transmission rights.

If the position now is that 100 percent of that is -- that's encouraging, we welcome that, and if that was always the offer, then, you know, thank you very much.

But if you look at the materials that I handed out for this conference -- and I passed it out to a number of the parties. I know there are some of you at the back of the room that didn't get one. There's a lot more people here than I thought there would be.

It's basically excerpts from the tariffs and other materials that are easily available. But if you could start with halfway through the pages, a blue sheet of paper, and right in front of that, is a document labeled "Draft for Discussion," this is an excerpt from Attachment B to the NYAPP protest filed in February.

And if you look at the top half of the page, it's called Figure B, and that's a representation of the 11 load zones in the New York ISO.

In some of those zones, there are little blue explosions, little blue stars with numbers in them. That is the amount of existing transmission capacity for native load, from which TCCs are created and from which the ISO proposes to create long-term transmission rights.

If you add up those numbers, you'll see that it comes to about 6,000 megawatts, and of that, they are proposing to make 23.7 percent available for long-term transmission rights, absent grandfathered rights, absent what they say they're going to do for grandfathered contracts that have expired.

You'll see that a number of the zones don't have any feasible ETC&L from which long-term rates could be created, and for the amounts that are there, 23.7 percent is about 1500 megawatts out of a system that serves a peak load of 35,000 megawatts and has a capability somewhat above

that.

So, that was the basis for the comment that the reasonable needs of long-term customers, weren't being met.

You will also see on that diagram, that there are some blue arrows that depict, not completely accurately, but good enough for these purposes, depict the historic uses of a number of the municipals.

At the time this draft discussion document was presented, the ISO was discussing making some or all portions of those blue arrows, also available for long-term transmission rights. Again, those rights do represent approximately 90 percent of the Niagara project purchases, not necessarily the peak load, but it represents 90 percent of the municipal and cooperatives' peak -- no, not peak, contract entitlements to Niagara Project power.

So, that is what we're asking for. We're not really asking for more than that. If those were in some fashion, treated as long-term rights, that would go a long way towards meeting our reasonable needs, and the Commission can decide what it wants to do after that.

MR. MARGOLIS: Thank you. Anybody on staff want to begin with some questioning, with specific questions?

MR. SINGH: I'd just be curious if Scott has any response to what Tom just said. Is it the case that the proposal of the New York ISO, has actually changed, or is it

just that you have only illustrated now, what the impact of your original proposal would be on specific LSEs?

MR. MURPHY: This Ted Murphy again, from Hunt and Williams. No, we haven't changed our proposal. We've always offered this conversion of grandfathered rights, 100 percent into fixed price DCCs.

MR. FARRAH: This is Eli Farrah for the New York Transmission Owners. If you look at page 11 of the filing letter for the compliance filing, at the bottom of the page, is a heading, A, which is entitled "Converting Grandfathered Rights Into Fixed-Price TCCs."

And it says "The NYISO is proposing to allow LSEs that hold grandfathered transmission rights, to extend them upon their expiration, or to revive formerly grandfathered transmission rights that have expired since the NYISO commenced operations in 1999, by converting them into fixed-price TCCs. The grandfathered transmission rights that would be eligible for this treatment, would be all of the rights listed on Table 1A of Attachment L to the NYISO OATT as of November 18, 1999."

I won't continue reading, but there's a lengthy discussion that follows.

MR. MURPHY: Ted Murphy again. I would add, in -- I certain that there are multiple references to this fact in our tariff proposal, but the one that I could find

quickly, was Section 2.2 of the NYISO OATT, which is Second Revised Sheet Number 63, which makes this point, that upon the expiration of a customer's grandfathered rights, the customer will be entitled to convert it into a fixed-price TCC, with the duration of ten years.

And, you know, certainly, if there was ambiguity elsewhere, we can take another look elsewhere, but that's our proposal.

MR. MARGOLIS: Did NYISO, in the deliberations leading up to the compliance filing -- have you contemplated what a definition of "reasonable needs" would be, in terms of NLSE's load-serving obligation?

MR. MURPHY: For reasons that we described in our August 24th response, the NYISO did not attempt to create a single universal definition of "reasonable needs," treating all LSEs in exactly the same way, or making exactly the same access to rights available to all LSEs.

And Molly and Scott, as well, have also alluded to some of the reasons why that was so. Our view was that New York faced scarcity conditions in terms of the available capacity for new rights, with half of the system being used to support grandfathered rights.

We certainly couldn't take the example. I think it's important to note that our interpretation of Order 681 and 681(a) is that it provided regional flexibility for

transmission organizations to comply with the Guidelines, including Guideline 5.

And although the LTFTR Orders contain a number of examples of what might constitute reasonable needs, including the one that's frequently seen and including the one that has worked for some other transmission organizations, tying it to the base load for all LSEs, we concluded that we couldn't do that in New York, because, again, 50 percent of the system or so is committed to grandfathered uses and the vast majority of the stakeholders wanted enough additional capacity to always be available to assure the continuing liquidity of the short-term auctions.

So, as we explained in our response of August 24th, what we attempted to do, was to think about reasonable needs in the context of the preferences and the business models of the different types of LSEs.

And what we've structured our proposal to do -- and, in part, it's driven by having the three flavors, as I think of them, of LSEs: One treating active grandfathered rights as long-term FTRs; second, allowing load-serving entities that historically used grandfathered rights, to reactivate them; and, third, making additional capacity available to everyone on a load-ratio-share basis.

The second part of that, by shifting some additional access to long-term firm rights to the LSEs that

had traditionally needed historic rights, we hoped to have a proposal that would do what I think it does, which is make sure that the entities that are most interested in these kinds of rights, have sufficient access to them.

MR. FARRAH: Can I add something to what he said? Again, it's Eli Farrah on behalf of the New York Transmission Owners.

We support the NYISO's position that what's reasonable, has to be reasonable under the circumstances. And a couple circumstances that Ted pointed to, that are particularly relevant, are that we have municipals who have a stable customer base, and on the other hand -- and although they represent a -- in total, a small percentage of the overall market in New York, most of the market in New York, has a customer base that shifts.

Under retail access, customers can move back and forth on a monthly basis, and it's for that reason that other LSEs like transmission owners or ESCOs, would prefer to rely on shorter-term rights like six months or 12 months, because they are better able to match up those rights with their loads, as the loads change from time to time.

And to the extent they want other hedges, I mean, there's other ways to hedge the cost of congestion, without having -- you know, through financial instruments, without having a long-term capacity right.

So, taking into account, you know, the needs of the market, we now have something in excess of 90 percent of the market who prefers to rely on shorter-term rights, having less than half the system, significantly less than half the system available for that, and, on the other hand, the less than ten percent -- I forgot the number Scott had for the munies, in total, whether it was five percent of something like that -- we have those customers who are the ones who want long-term rights, getting somewhere between 85 and, you know, 99 percent of their loads' needs met through long-term capacity rights.

So it's those factors that bear on whether the proposal has set aside a reasonable amount of capacity for long-term rights. To pick a number in a vacuum, without taking into account, the needs of the people who would be buying them, or to take -- to pick a number that doesn't reflect all of these factors, would be completely unreasonable.

So you can't have one definition that's going to fit for every ISO. It's going to depend upon how that market's configured, what the retail access program looks like, who it is that wants long-term rights, and as you asked at the beginning, of the people who want them, what proportion of their load are they able to serve with the long-term rights being proposed to be available?

And when you look at it in that light, I think it would be impossible to find a reasonable amount of capacity has not been made available under this proposal.

MR. GASTEIGER: This is Larry Gasteiger for OMER. I'm trying to get my hands around what the disconnect seems to be between what I'm hearing from you, Tom, which is that the proposal doesn't provide sufficient FTRs to meet the reasonable needs, and from what I'm hearing from the New York ISO, where I'm hearing figures of 90 percent-plus, meeting it, I look at the language that Eli pointed to in the transmittal letter, and I'm trying to figure out, is it your view that if what New York ISO is actually proposing, is described in this top paragraph on page 12, is in fact, the case, is that sufficient to meet the reasonable needs of the LSEs?

Is it that that language is not accurately reflected in the tariff? I'm trying to figure out what the source of the conflict is here.

MR. RUDEBUSCH: Well, I think the historical source of the conflict is that the proposal changed in the last week, before it was actually filed. And I appreciate that Paragraph 12 is there, and if we can get the actual tariff references, if it was page 63 or whatever, that's fine.

The top of page 12 references Table 1-A. Table 1-

A is attached to the materials that I handed out, and shows the existing -- what we call the long-term existing transmission wheeling agreements. You'll see that there are listed about 650 megawatts worth of grandfathered or previously grandfathered agreements for the municipal and cooperative utilities, as well as a few other entities, but the bulk are for in-state munies and coops.

MR. GASTEIGER: So what's not covered under Table 1-A?

MR. RUDEBUSCH: That is enough. For current uses, that's all we would be looking for for the municipals and cooperatives. On a total basis, of course, that's a tiny fraction of the load in New York State, and --

MR. GASTEIGER: So, to be perfectly clear, if Table 1-A is covered under their proposal, then you are satisfied?

MR. RUDEBUSCH: Yes.

MR. GASTEIGER: Is that right?

MR. RUDEBUSCH: Yes.

MR. GASTEIGER: Now, New York ISO, could you please explain to me, how Table 1-A is covered under your proposal, just so we're perfectly clear about this?

MR. FARRAH: This is Eli Farrah. If I could just help, we happen to have the tariff open. And if you look at the Third Revised Sheet 565, you will see that there is a

heading that says "Converting Transmission Capacity Associated with Expired or Expiring ETAs Into TCCs With a Duration of Ten Years."

MR. GASTEIGER: Could you repeat what the cite is to that?

MR. FARRAH: Yes, it's Third Revised Sheet 565.

MR. MURPHY: There are multiple 565 As, Bs, Cs, and Ds, so it may take a second to find it, if you're skimming through the tariff.

MR. FARRAH: Yes, that discussion goes on for, you know, two or three pages of tariff language on how this would work, so I think it's adequately covered in there, but I'm sure, to the extent the Commission felt that there was additional clarity needed, that's an easy fix.

MR. MURPHY: The NYISO would agree with that, and that is our proposal, so if it's inaccurately or confusingly expressed, we can certainly straighten it out.

MR. GASTEIGER: I believe the intention is to provide an opportunity for followup comments, after we finish the technical conference.

What I would suggest -- and it would be very helpful to us -- is if you could provide in the narrative, a very clear description of where in the tariff, you address this issue, and explain how the transmission -- the rights on Table 1-A of Attachment L, would be covered under the

proposal, so that both we and all the rest of the parties can follow that.

MR. MURPHY: We would be happy to do that.

MR. FARRAH: You know, this is Eli Farrah again. Maybe one way to handle that, would be to have the municipals supply changes to the wording in the tariff that they think are necessary to satisfy their needs with -- in particular, with respect to the amount of capacity that they think is necessary to serve their loads.

And maybe along with that, they could respond to the information that Dr. Harvey put on the record with regard to how much of their load is -- would be served by these grandfathered rights converted to LTTRs.

MR. GASTEIGER: What my preference would be, would be for the New York ISO to provide comments explaining how the existing filing satisfies that, and if the munies think that there is any clarification that needs to be done, I'd prefer that they respond in reaction to whatever the New York ISO submits.

MR. MURPHY: That's certainly acceptable to the NYISO.

MR. RUDEBUSCH: One thing we could address, is Original Sheet 565-L, where it says that an LSE exercises this right -- gain a number of AARs equal to 100 percent of the megawatt quantities specified in the contract, for a

duration of one year.

So we're looking for something a little longer than that.

MR. HARVEY: That's a different part of the proposal. Go back to where Eli pointed you to on 565. It couldn't be clearer: "Any LSE that had transmission rights under an ETA that was listed in Table 1-A of Attachment L, on November 18, 1999, but has since expired, shall have a right to obtain TCCs with a duration of ten years, with the same point of injection and withdrawal as ETA, and LSE that currently has transmission rights under an ETA that was listed on Table 1-A, but is not yet expired, shall likewise have a right to obtain TCCs with a duration of ten years and with the same point of injection and point of withdrawal after the ETA's expiration."

We'd be glad to clarify that any further, but it points exactly to that table. Eli is exactly right.

MR. BUTTERKLEE: This is Neal Butterklee from Con Edison O&R. I mean, I'm looking at what Eli and what Dr. Harvey has talked about, and I fail to see what's not in here that the munies want, and I further fail to see, in specific megawatt numbers and specific contracts for specific munies, what is it that they're not getting in the proposal.

They said they didn't like the proposal, but they

haven't said that Muny-X with Y megawatts, isn't getting XF long-term TCCs.

MR. GASTEIGER: Well, I don't want to get into an argument about it at this point right now, but what I understand from what Tom has indicated, is that if the rights currently listed on Table 1-A of Attachment L are covered under this proposal, that that would satisfy their needs.

The New York ISO has told us that they can explain as to how that is the case, so if you could just lay that out, New York ISO, in your comments, and then if there's any need for further clarification, I'm sure that Tom would be more than happy to provide us with that in response, and the Commission can make a determination at that point.

MR. MARGOLIS: Does anybody else from Staff have any questions on the Guideline 5?

(No response.)

MR. BERSON: This is Rick Berson. I was just wondering if there are any other LSEs besides the munies that would be interested in long-term FTRs, or any other market participants, for that matter?

MR. RUDEBUSCH: I think that, off the top of my head, I'm sure that some of the out-of-state municipals and cooperatives that have an entitlement to the Niagara Project

output, would also be interested in long-term transmission rights.

MR. GASTEIGER: Are they represented by anybody?

MS. WERNTZ: They haven't commented.

MR. GASTEIGER: They haven't commented?

MS. WERNTZ: They haven't commented on our proceeding.

MR. RUDEBUSCH: Understood, but I was just answering the question.

MR. MURPHY: And in the same spirit, recognizing that Tom is just answering the question, they weren't participating in our stakeholder process, either, so we haven't heard from them, certainly, to date.

MR. BUTTERKLEE: I think that we have heard, though, is that there are LSEs and other groups that are interested in having sufficient short-term TCCs available to account for the short-term hedging needs and for customer migration.

MS. WERNTZ: We understand and we understand that that's part of the balance that's in the final rule, but our main focus today is ensuring that there are sufficient long-term rights for those who have long-term supply arrangements, that they can covered, but we're also mindful that we don't want to -- we want to keep in mind, the current system in New York.

MR. RUDEBUSCH: If I could, there is another aspect of the reasonable needs question, which doesn't just involve existing uses, but involves future uses.

We think -- NYAPP thinks it's important that a long-term transmission rights process, provide for future long-term rights. There has been a tendency in the stakeholder process in New York, to think that this is a one-time deal; we'll issue these rights, they'll expire in ten years, and the we'll be done with it; there will be nothing new granted, it's a one-time, one-shot operation.

And we think that as load-serving entities acquire long-term, new resources, whether by contract or by ownership, that there should be new long-term rights granted, to the extent that they're feasible, and, otherwise possible.

So, the one caveat that I'd say to what we've talked about so far, in terms of reasonable needs, is that there needs to be provision for future long-term rights, as well.

MS. WERNTZ: Now, what about that 23.7 percent that's going to come from the original residual TCCs and the ETC&L? Would that be available to cover future load growth?

MR. MURPHY: Yes.

MS. WERNTZ: Future contracts?

MR. MURPHY: Yes, it would be.

MR. RUDEBUSCH: I believe those are only available for one year; isn't that correct?

MR. MURPHY: They are rights that are renewable annually, so they allow LSEs that obtain -- that choose to exercise those rights, to have TCCs, not just for one year, but they can renew them ever year indefinitely, in theory.

MR. FARRAH: This is Eli Farrah. There's one other thing I'd like to point out with regard to future needs. There is a provision in our tariff that's been there from the beginning, that allows people to get transmission congestion contracts associated with new capacity, so if you think you're going to need new capacity that's not in the system today, you've got multiple ways of dealing with that:

You can either build it yourself, you can make arrangements with a TO to build it, you can make arrangements with someone who wants to do it on a market basis. And as part of all of that, when the capacity gets added, TCCs will be made available to the people who paid for the cost of that new capacity.

So, you know, if the munies believe that they have future needs that are not covered by the proposal, I think that the very first thing they ought to do, is talk to people who are very interested in building transmission capacity, and I'm sure something could be worked out.

MR. GASTEIGER: I'd suggest again here, there's

an opportunity in the comments after the conference, for you to explain how the proposal would address future needs, and, again, Mr. Rudebusch can point out any deficiencies to us, in his view, in response to that. Thanks.

MR. BERSON: NYISO, too, itself, is planning on filing something about how they will allocate long-term FTRs associated with new capacity, is that correct, by March 1st, I believe?

MR. MURPHY: That's our compliance with Guideline 3 of the LTFTR Orders, yes.

MR. SINGH: The one suggestion would be, when you address future needs comment, you know, I'd go a little bit further than saying to just build your own transmission, because that's really a different guideline and that's pretty much the case in every RTO, that if you do upgrades, you get long-term FTRs.

MR. BUSH: Tim Bush, New York Municipal Power Agency.

The proposal the ISO put forward will allow you to roll over your existing right for ten years. For many of you municipals, their grandfathered rights expire in 2013, their energy contracts from Niagara run out to 2025; that's 12 years.

So it would be useful to be able to match that somehow, either with an ability to renew the ten-year right

in 2021 or whenever that happened to be -- 2023 -- or allow some flexibility in the ten-year period.

MR. GASTEIGER: Could the New York ISO clarify that? I thought the rollover was indefinite. Is it limited to a ten-year period?

MR. MURPHY: Under the proposal, the fixed-price TCC is a single ten-year term.

MR. GASTEIGER: Thank you.

MR. BERSON: But it's true, too, that the load ratio share long-term rights, are renewable indefinitely.

MR. MURPHY: Yes.

(Pause.)

MS. WERNTZ: It might be useful to know, given Mr. Bush's comment, it would be useful to know whether NYISO would consider allowing those ten-year rights, when they expire, to be converted to the rollover program to extend for an additional year or two to cover the contract duration.

MR. MURPHY: We'll comment on that, thank you.

MS. WERNTZ: I actually have another question about the -- I don't know what to call it -- the 23.7 percent that goes for the non-GFA long-term rights.

Since you don't use an historic test year for the non-GFA portion of the long-term TCCs, I was just curious, how are you going to determine which paths were used

historically and which LSEs would be eligible for which sourcing combinations?

MR. HARVEY: The 23.75 percent applies to the ETC&L and original and residual TCCs. Those paths are defined, and those paths are all set out in Attachment L, as well, so this is a known set of rights that was established back on November 18, 1999, and the portions that are not subject to proration, is a known quantity in the settlement calculations for the auctions.

And the only proration of ETC&L is basically into New York City, as we did the representative calculations in our attachment for Zone H, and, I think, Zone C. There's no proration there, so we know what the ETC&L is in the original residual TCCs for all of these areas.

MS. WERNTZ: And since a portion of that is from the ETC&L, which had covered the original -- let's see --

MR. HARVEY: The ETC&L covered -- the grandfathered contracts, are the contracts of one transmission owner or municipal agency or someone to use another entity's transmission capacity.

Some of these related to generation that was built off the footprint of a particular transmission owner, so NYSIG might have built generation in NYMO's service territory and there were transmission upgrades required to bring that power to NYSIG's load, so NYSIG paid NYMO and

entered into a long-term contract covering the embedded cost of that transmission.

So those are contracts that were explicit. We also, at startup, had ConEd, for example, that had Indian Point II generation that they used to meet their load in the City and north of the City.

And that wasn't embodied in the contract, but it was reflected in that they had an entitlement under New York Power Pool Rules to use that transfer capability to meet their load.

So we took those existing rights that weren't reflected in contracts, because, as a transmission owner using their own transmission system, but it was an entitlement, and we created ETC&L to make sure that the transmission customers, the retail customers and wholesale customers were paying the embedded costs for that transmission capability, got the economic benefit.

So the ETC&L is like an auction revenue right in PJM. It was named for the idea of auction revenue rights, and that word came about, but it's really an auction revenue right, and the money, therefore, goes back. The value of those rights goes to the transmission customers that have to pay the embedded cost, but it's just as well defined in terms of quantities, as the grandfathered rights.

Those quantities are known and laid out in

Attachment L. It's just that they weren't reflected in contracts.

So we know what all those rights are, and there's no ambiguity in defining them for the purposes of applying the 23.75. We did it for the two zones, an illustrative calculation; we could do it for all the zones, if we had to.

MS. WERNTZ: And those are still useful in terms of enabling the future holders of these rights, to fulfill long-term service obligations to native load?

MR. HARVEY: Yes, to the extent -- particularly into the City, these are rights that go across the interface into the City. They are very valuable; they're worth a lot of money. If I had a few of those, I could retire.

MR. RUDEBUSCH: If I could add, in the materials I handed out, is Table 3 from Attachment L, Original Sheet 543, and that lists all of the ETC&L that's out there. That's the basis for the short-term TCC auctions now. They total 6,550 megawatts, and of that, is where the 23.75 percent is taken, so, roughly less than a quarter of that is what would be available for long-term transmission rights, not considering the grandfathered or expired grandfathered contracts.

MR. HARVEY: One clarification of that: The amount that's for sale in the auction, is not limited to the

ETC&L and original residual rights. The ETC&L and original residual TCCs, allocate money, the value of rights, specifically to specific transmission customers, to specific transmission owners.

Also, there are other auction revenues collected for rights that go over other constraints that are binding in the auction, and there is a more general auction formula, the flow-based methodology, which allocates that money back to transmission -- the customers of the various transmission owners in New York State.

So, more than just the ETC&L and original residual TCC capacity, is available for sale, but that's the part that is assigned to the customers of specific transmission owners in a relatively straightforward way.

MR. RUDEBUSCH: Well, more capacity than what's listed on Table 3, is available for the TCC auction, but only 23.75 percent of what's listed on Table 3, is available for long-term rights.

MR. MURPHY: That's correct, and that's what we said. The reason for that is -- that's correct, and as we said, the reason for that is because of the stakeholder discussions we had, and the desire of the stakeholders, again, given the context where half of the system is already committed to grandfathered rights, and the need of the largest part of the customers to have liquid, short-term

auctions, that was what the stakeholder consensus -- and it's not a universal consensus, obviously, but the vast majority of the stakeholders supported.

MS. WERNTZ: The part that's still a little difficult for me to get a handle on -- and I appreciate that you gave me a lot of new figures today, Mr. Harvey -- is, I can appreciate that a large percent of the transmission grid is devoted to the grandfathered agreements, but I'm still trying to figure out if it's fairly or equitably distributed among the different municipal entities that would like to have long-term rights. Maybe, Mr. Rudebusch, you could speak to that?

MR. RUDEBUSCH: Well, I hate to speak for Mr. Harvey.

MS. WERNTZ: Or Mr. Harvey can speak to that, too.

MR. HARVEY: Is the question whether the amount that the munies would receive under this proposal, is equitable?

MS. WERNTZ: My question actually goes to, not the -- in terms of determining how equitable the proposal is, I am looking at it from an individual LSE perspective, because it needs to serve each LSE's reasonable needs, and although I can appreciate that on a global basis, it appears that, you know, in some sense, 80 percent, 88 percent --

numbers -- 85 through 90 percent, especially some very valuable congested paths, the munies would be able to have those paths, receive TCCs along these paths.

But I'm trying to figure out whether each individual LSE, municipal LSE, would be covered, reasonable --

MR. HARVEY: I think we can provide that data to the FERC Staff, but the individual customer data is confidential, and that's why we provided aggregate data here.

We received aggregate -- you know, information regarding the actual peak load of the individual customers and used it to compile these aggregate calculations.

But I think we didn't want to provide -- this isn't considered public information for the contract quantities for an individual customer.

MR. MURPHY: That's correct, but we do have additional information we could submit.

MR. SINGH: I guess the one concern that you could have there, is that you made the analogy between ARRs in PJM and the ETC&L. Of course, the question is, in any such mechanism, what is the reference here? How does the past really help you in the future?

So, to the extent that the hedging needs of LSEs that desire long-term rights change going forward, I think

that's an area where you could think a little bit more, because ten years from now, after the rights, the one-shot rights expire, I guess that even in your definition, it's questionable if the reasonable needs would be met, unless you come up with something else.

MR. HARVEY: We weren't trying to work out too much, eight or ten years in the future, because in the discussions of the market participants, everything that happens five or six years out, is going to be tied up in the implementation of the end-state auction, the expansion rules, and there was a desire to not specify in too minute detail here, things that are that far out in time.

I mean, really, 2023 is a little ways away from here, and there may be changes in the industry that dwarf what we're talking about here, by 2023, so we were trying to focus on something that dealt with the more imminent issues of 2013 and the next few years, rather than worrying too much about --

MS. WERNTZ: Long-term.

MR. HARVEY: Yeah, really long-term.

MR. GASTEIGER: Is there an opportunity in the process for somebody down the road, if they were dissatisfied with what the allocation is, in terms of meeting their reasonable needs, to raise that issue, either before the New York ISO or before the Commission?

MR. MURPHY: There's not an express mechanism for that built into the current compliance proposal. I would expect that if there were concerns among stakeholders and LSEs, that, over time, as conditions were changing, that if there needed to be changes, that they could be pursued in the stakeholder process.

The NYISO would continue to be subject to the LTFTR Orders going forward. If it ever came to be that reasonable needs ceased to be met, the NYISO, I think, would have to do something to get back into compliance, and we would then take those requests very seriously, because it is something the customers would want and something the Commission obviously is very concerned about and recognizes is very important.

MR. GASTEIGER: So it would have to arise in the context of the stakeholder process?

MR. MURPHY: Initially, under the current proposal.

MR. HARVEY: And then the stakeholder process -- here, there was a commitment to the stakeholders that were going to come back and talk about how all of this will be affected by the implementation of the long-term, end-state TCC auction, and that that's going to be a discussion that all the stakeholders wanted to have and have it then, and not try to do things that would constrain that, until we

know exactly what they want and the tools.

So there was a commitment to come back and think more about the future in that process.

MR. FARRAH: If I could just add one thing to that, the ISO has a planning process that's ongoing, and basically what it does, is, it looks at what each transmission owner is intending to do to add to their system to meet future load growth.

It looks at new generation that's being added to the system and how that's going to solve some of the transmission constraints, and allow the ISO to continue to meet its reliability needs.

And at the end of all that, it allows the ISO to determine whether, as a combination of all that, the system is going to be able to continue to reasonably meet the needs of the customers, taking into account, you know, load growth and the like, and all reliability rules.

So, that process, I think, creates a forum for an ongoing discussion of these issues. You know, to the extent that municipals or anybody else, feels that the system is not adequate to reliably meet their needs on a going forward basis, there is a provision -- you know, there's a forum there for that to be discussed; there's dispute resolution provisions, and ultimately it will come to the Commission.

So there's a lot of built-in mechanisms, you

know, I think, to deal with this.

MR. PICARDI: I'd like to add a comment. Nat Picardi, with Coral Power. We serve some of the competitive ESCOs. We don't serve the load directly, but we supply -- use these instruments to help a lot of the ESCOs that serve load competitively in the region. We use these instruments to do that.

We felt comfortable with this settlement, because, looking forward, we were hoping that the automation process that would get the ISO to the end state, would help and be kind of a dividing point to be looking at what new, longer-dated products might help in the market.

But, from our perspective, even then you're not going to be looking at products probably, unless there is significant changes in the market and in the rules, you're not going to be looking at products that go out 10, 15, 20 years.

Right now, you know, for meeting our hedging needs, six months to one year does work adequately. Down the road, we might be interested in seeing three-year to five-year products, but right now, with moving forward with some of the uncertainty around the planning and the end state, we think this is an adequate compromise.

MR. MARGOLIS: Does anybody have any other questions regarding Guideline 5?

MR. FARRAH: I just have one for Dr. Harvey, on this chart you handed out. These percentages of the munies' loads, in the aggregate, those are from the grandfathered rights that can be converted?

MR. HARVEY: Yes, the grandfathered rights that we're using in the calculation, are those that can be converted, and the other part of it is their peak load, which, as I said, we got cooperation from the New York Power Authority and the New York Municipal Power Agency, to give us information on their peak load.

But even then, it may be a little overstated, because there were some entities that apparently we couldn't break out. But it's as close as we can get to the ration of the peak load to their grandfathered rights.

MR. FARRAH: But the point I was hoping to clarify, is, when you say, you know, that 90 percent of their load, in the aggregate, or 85 percent of their load, in the aggregate, that's only taking into account, the grandfathered rights that they have or that they can resurrect; it doesn't take into account, you know, their ability to get a portion of the additional capacity that's been made available for long-term rights?

MR. HARVEY: Correct. We're only talking about what the -- the grandfathered right conversion under the fixed-price option. They have additional ability to get

potential ETC&L conversions, as well.

MR. FARRAH: Okay.

MS. LICHTENSTEIN: This is for Mr. Rudebusch, if you know.

The ETC&L doesn't go everywhere. For instance, it doesn't go to Long Island, so, if you know, I mean, how much of these paths are actually going to be useful to munies?

MR. RUDEBUSCH: Well, speaking for the municipals and cooperatives, the amounts that are listed in Table 1-A, we are willing to accept that as a reasonable approximation of what we need currently, not looking to the future, for our reasonable needs.

I think that the -- if the Commission is interested in looking at other LSEs, quote/unquote -- I don't really think of them as LSEs, because they don't really serve load, but these retail entities -- the only opportunities they have for long-term rights, would be, again, the 23.75 percent of the 6,550 megawatts listed on Table 3. That's it.

At the same time, the request has been made to the FERC by the ISO, that you deem the transmission owners' uses of grandfathered rights, which gets you up from the five or six percent of the system to the 50 percent of the system, they want you to treat those as long-term

transmission rights. And we'll talk more about that when we get to pricing in Guideline 7, but I think that's a good segue to get there.

MR. MURPHY: Before we get there --

MS. WERNTZ: I don't think we quite got our question answered, so -- what she wondered was, okay -- this is going to be very basic, but these blue arrows, which is what you want, is that what is not currently covered under your grandfathered agreements?

MR. RUDEBUSCH: For where the existing municipals are located and where their power supply sources are, those blue arrows -- not completely, but that roughly is a rough representation of what we would like.

If there were other --

MS. WERNTZ: When you say that's what you would like, my question is, is that covered under your grandfathered agreements?

MR. RUDEBUSCH: Yes.

MS. WERNTZ: It is?

MR. RUDEBUSCH: Yes.

MS. WERNTZ: Okay.

MR. RUDEBUSCH: Now, in terms of other future needs, could those come out of the ETC&L that's in Table 3, which is, I think, Lynn's question, for the municipals, they are constrained by source and sink, but in terms of future

needs, we would really have to know. Well, we know where the sink is, but we don't know where the source is, necessarily, for new resources.

So it's hard to say whether any of those long-term rights out of the existing ETC&L, would be useful. It's just hard to say.

MR. MURPHY: This is Ted Murphy, and I just wanted to address a few of the things quickly, that Tom had said. First, he referred to the NYISO proposal as treating the TO's grandfathered rights as long-term firm transmission rights.

And, again, there's no customer or entity-type distinction there. LSEs' grandfathered rights, including those held by Tom's own clients, are treated as long-term firm rights.

Similarly, the question was asked about there are some paths across these interfaces, where there isn't any ETC&L.

That is part of the reason why we were attracted in designing our own proposal, to the idea of allowing LSEs to bring back some of these expired or voluntarily terminated grandfathered rights, because there was -- in some cases, that helped out on some interfaces where there wasn't ETC&L, traditionally.

And then, similarly, you know, the question that

came from Staff -- and this is my final point -- was, you know, what about other LSEs? Other LSEs have grandfathered rights, not just municipal utilities have the opportunity to bring them back under the NYISO proposal as fixed-price TCCs.

So I hope that helps, because I know there were the three flavors, and it's tough to keep it all straight.

MR. MARGOLIS: Okay, I'd like to move on to Guideline 7 at this point. With respect to Guideline 7, there's one point that the Commission made in its Order 681, was that the LSEs needed price certainty with respect to the long-term transmission rights.

Staff would like to explore today, how this price certainty could be satisfied with the existing framework of the NYISO market. Staff would also like to explore the fixed-price alternative discussed in the filings and on page 24 of NYISO's August 24th filing.

To begin, would NYISO please describe in a little more detail, how LSEs that are allocated AARs on a load-ratio share, would have an option to price some quantity or all of the TCCs they receive through AAR conversions at a price determined using the fixed-price methodology?

MR. HARVEY: I'm not sure your question is whether the AAR conversion would be at the fixed-price

methodology, the formula, or -- because the NYISO proposal is not that those would be priced according to the formula.

The grandfathered right conversion would be priced according to the fixed-price formula. The conversion of the ETC&L and original residual TCCs, was to be an option to take them as in PJM, where they take a load ratio share and they'd give up the auction -- they pay the auction price, but get it back through the TSC mechanism, so it's --

The intent there is that you need to think about that there are two parts of the transmission process of recovering the embedded costs of the transmission system. Customers pay the TSC, which is determined essentially as the embedded cost of the system, minus the auction revenues.

And then if they want a particular TCC, they pay the auction price. If you take a load ratio share of the ETC&L and original residual TCCs, sinking in that TO's service territory, you're going to pay a TSC, which is embedded costs minus auction price, and if you buy that load ratio share in auction, you're going to pay the auction price, and that is embedded costs minus auction price, plus auction price.

It reduces down to the embedded costs, and that was by design. Now, it's a little bit different design than in PJM, but it's important here to think about retail

access, because this is critical for a municipal entity that's a wholesale customer. You know, it just collapses immediately to that they pay the embedded costs.

For the retail access customers, it's a little different, because you're getting at TCC at a particular point in time. And if you gave it to them for free and said, well, we won't worry about collecting it, because we'll just recover it in the TSC, that LSE is not necessarily serving that transmission customer next month or the month after or the month after.

So what we're trying to do, is set up a system where, if that LSE continues to serve that load on which it got that ETC&L load ratio share, say, on May 1 of 2008, if it continues to serve that load indefinitely, then if you put together the TSC and the auction price of the TCC, it nets back to the embedded costs.

But we have to worry about the situation in a retail access state, but suppose the individual end use customer that was served by that LSE on May 1, 2008, is not served by that LSE in July? Do we want to have the end use customer that is no longer with that LSE, pay a higher TSC, because of a TCC given at an artificially low price to that LSE?

This is a system that's set up so that if it's a wholesale customer, it just nets out back to the embedded

cost, but for retail customers, it only nets out, if that LSE continues to serve that transmission customer over the term.

But we always want to make sure that for retail access to work, we have to have a system where, if that retail customer moves to a different provider, that we don't have an impediment to retail competition, because we don't want the un-priced TCC to stay with an LSE that's no longer serving that load.

And you can have a system where you try to start tracking, okay, well, I gave LSE A some rights for free on May 1, and then he lost some customers to LSE Z and LSE X the next month, so we're to move some of those around, but maybe they don't want them, you know, it becomes very, very administratively complicated to, from NYISO's standpoint, to try to track that kind of movement, if you have a real vibrant retail access market where customers are actually moving around.

So, you know, there's malice aforethought in how this is designed so that it accommodates retail competition. And I think our view is it's neutral for the wholesale customers because they're paying the TSC and the auction price and therefore it immediately nets back to embedded costs, but it is critical to maintain the distinction for the retail customers where that LSC and the retail customer could part ways at any point in time.

MR. SINGH: I guess, Scott, to push that further, the Guideline (7) discussion started because Order 681 had language that directly allocated these to LSCs, but then when people read the language in the Order about 'don't submit a winning bid,' there was some confusion on what that meant, and so on.

I think that most people recognize that the Order 681 as it was written was more along the lines of the PJM approach, so you can directly allocate ARRs or in some other places perhaps directly allocate FTRs. But as you explained the New York ISO model, recognizing retail access works a little bit differently.

So the challenge then is how do you meet essentially the spirit of Guideline (7) and yet give people something that is close?

So then comes the idea of price certainty. And one of the notions there is that, as you explained in the

ETCNL, that if people are paying something to get TCCs or long-term FTRs and they get back essentially the same benefit in paying a lower access charge in the TSC, it's just as good.

So, you know, I understood Morris's question to be that could you explain a little bit better on exactly how under your proposal people who get long-term FTRs would get back I guess a revenue benefit to a lower TSC that would keep him whole?

Or is it not the case? And as I think about it, I'm not so sure if that's exactly what happens because people are paying different prices for the short-term TCCs, and they'll be paying different prices for the long-term FTRs coming from the 23.75 percent of ETCNL conversion.

But if I understand it, there's only one access charge. So there is still not--you know, maybe it's to the benefit of long-term FTRs if you're getting it at a lower price perhaps, in some cases your refund in the TSC could be bigger because there is only one rate.

So I think if you could speak a little bit more on those issues?

MR. HARVEY: There is a little bit complexity to think through, but basically each transmission customer, wholesale transmission customer gets flowed back to it its share of the auction revenues, and that is a mixture of the

auction price of six-month rights and annual rights.

And if you go into the auction and bought that same proportion at each auction of six-month rights and annual rights that correspond to the ETCNL and original or residual TCCs, then that would exactly net out against your TSC credit.

Now if you choose to buy a different mix, you will pay a different price. But you chose to buy a different mix. But if you choose exactly the mix that's in the auction, it exactly cancels out. If you choose something that is less valuable, then you come out ahead. If you choose something that is more valuable, you have to pay a little bit more. But you pay more or less depending on the auction price.

MR. SINGH: I think that is a good explanation, at least in the context of how the TCC auctions work today. So, you know, the six months, and monthly, and longer term. But pushing that logic to address the concerns of the long-term FTR holders, I mean that is going a step further. Because then they would read Order 681 and say that this only deals with long-term FTRs, and everything else that we discussed here about retail access in New York, that's well and good. I mean, those are good issues. But, you know, the narrow focus on Order 681 deals with are we meeting the reasonable needs of load-serving entities that want the

long-term FTRs on both quantity and price. And Guideline (5) was the quantity, so I think we're okay on that one at least for now. And on price, I throw it up to you. What do you have to say?

MR. HARVEY: The question I was asked was about--and I was answering--was about the 23.75 of the original residual TCCs and the ETCNL. I was trying to distinguish. There is also a fixed price provision and that is the provision that would govern the rollover of these grandfathered agreements. And that is a different set of rules.

So if that's what you had--but I had understood the question to concern the ETCNL pricing, not the rollover of the grandfathered rights. The rollover of the grandfathered rights is different. It is a fixed price for the ten-year period. It's a known in advance. And I think David could speak to that, if you want more detail, but there are two different pricing issues here.

MR. RUDEBUSCH: Thank you, Larry. Yes, there's the fixed-price option, but you were asking about the short-term. And sticking with just the wholesale for now--we won't get to the retail--but strictly for the wholesale, and maybe I'm wrong, but in PJM as I understand it municipals and cooperatives or other LSEs would be directly allocated an AAR which, at their option, they can convert into a FTR,

and that FTR--at no extra charge besides embedded costs--and that FTR protects them from congestion.

What we have here is an LSE that would be short-term, have long-term rights, would have to pay the embedded cost right, plus it would have to pay the auction price, whatever it was, or match the auction price to acquire the long-term right.

And then there's this crediting mechanism which is not a crediting mechanism to a transmission customer. The credit, or the revenue goes to the transmission owner. It reduces the TSC but only spread over the whole load. It's not a one-to-one match.

If you pay $500,000 a year in congestion to your local TO, that money goes into a pot and it's allocated to reduce the TSC on a pro rata basis, and you might only get $5,000 or $10,000 or $20,000 as a credit in reduced TSC. That's the part I think is missing from the analogy to PJM.

MR. FARRAH: If I could just chime in here on this point in terms of the way things were set up, the way things were set up has to do with the retail access program in the state. And no LSC was allocated capacity rights. Rather, the capacity was reserved for the benefit of the customers who were paying the embedded cost to the system.

They pay the embedded costs to the system through the TSC, whether they're a retail customer or a wholesale

customer. So they're paying for the embedded costs to the system. If there's capacity to be made available to the market or to people that want it, that's made available through an auction where the market determines what the value of that is.

And then all the money is credited back equally to retail and wholesale customers across the board. And so we don't take--for example in the case of retail customers, we don't take a transmission district apart and say, well, you're served over here by this LSC. We're going to give that LSC some rights that may be more valuable than we give somebody somewhere else, and then we're going to reduce their TSC by the value of those rights, and your TSC by the value of these rights.

We don't do any of that. We say that the customers pay the TSC proportionately, and they get the value of any capacity that's been made available in the market proportionately. And that is one of the problems that there would be if we were to try to switch stuff.

So it doesn't need to be--I mean, we don't have to do away with the equal distribution of the revenues to customers simply because somebody decides they want a long-term right. They're buying a long-term right for what they think is an appropriate price, and they've paid it, and then that money gets flowed back to everybody just the same as if

we were selling any other capacity or have been for the last nine years.

There's no reason that the party that bought the right should get a disproportionate share of the revenue it just paid over other customers. That capacity, the embedded cost to that capacity that they just bought is being paid equally by everybody. And so the revenue from selling it to them through a long-term right should be spread back equally to the people who were paying the embedded cost to the system.

And again another reason for doing this was that LSCs have load-shifting from time to time, from month to month, and they also deal on a competitive basis. In other words, if you were to give them the capacity, it would be their capacity; it wouldn't be the end user's capacity. You know, their obligations to the end user are entirely by contract.

And so the end user may or may not get the benefit of that capacity. So what we did differently was said end use customers will pay for the system; end use customers get the credit from the sale of any capacity that's available. LSCs are out of that mix. LSCs are commodity servers.

What they do is they go out and contract to purchase commodity which they think they can do on a better

basis than the transmission owner or somebody else, or some other supplier, but in terms of the transmission system it is paid for by everybody, equal retail and wholesale customers, and they all equally get the benefit of any capacity that is able to be made available in the market.

And that system has been tied up in retail rate agreements, as well, because you get into questions about, in a rate case about, well, what should we assume for the value of these credits from the TCC auctions on a going forward basis?

And if somebody wants to enter into a multi-year retail rate agreement, you have to figure out how to deal with that issue. You know, should we assume that the credit is going to be the same as it has been in the past? Should we assume it is going to be different? Should we remove that risk, or allocate that risk to one party or another?

And so with regard to the delivery charge, the TSC for the transmission system, and then the distribution rate at the retail level, there are agreements covering both those pieces that are different for each of the companies because they were negotiated separately, but they are multi-year agreements that deal with the assumptions that need to be made with respect to how much credit the customers are going to get from the TCC auctions.

So if we were to change this system and go away

from the way it was set up in the beginning, all of that would have to be undone. Not only would it be disruptive, but it would require cost shifts among customers. If you departed from the system that all customers who pay the cost of the system don't get an equal share of the revenues from the capacity, there would be major cost shifts there.

If you changed the system and you said okay we're going to allocate these transmission rights to LSEs who may or may not, you know, give the benefit to the end-use customers, you're going to have to figure out what the value of that is. And it's got to be subtracted from the embedded cost to the system, the TSC, and then you have to do that for only the customers that that particular LSE is serving, and then that changes on a month-to-month basis.

And a final point. If you look at it just from the muni standpoint, or wholesale customers, right now we have postage stamp rates. So if you go across four transmission districts from, for example, Niagara Power up in Niagara Falls all the way down to Long Island, you're going through multiple systems, you only pay one TFC.

If we were to, and some of those TFC revenues get shifted around, if they all of a sudden were given those capacity rates and were not given them in the form of TCCs that might get distributed differently, it's going to have to adjust that one TSC rate at the point of withdrawal,

which is the only TSC they'd be paying.

So if we go to a capacity system, that would be another cost shift between the TSC where you're actually delivering the power on Long Island versus everything that happened in between. Whereas, now there might be TCCs that are sold between Niagara and Long Island to accommodate that service, and those revenues are being sifted back to the customers of multiple transmission owners.

So there is an awful lot that--we would have to totally overhaul the system to change. But to get back to Tom's point, the final thing, there doesn't need to be a correlation between what one customer pays for a long-term TCC and what share of that revenue they get.

They paid it because they thought it was the appropriate price. It was the appropriate thing for them to do. Then that revenue gets credited back to everybody who is paying for the embedded cost of the system.

MR. GASTEIGER: Let me get back to a basic point that I still frankly don't have a firm understanding on. What we're trying to accomplish here I thought was to achieve price certainty for the LSEs so that they know what it is that they're paying for the rights over an extended period of time.

I am trying to get an understanding of how it is that they know what the price is that they're going to be

paying for that extended period of time with any degree of certainty; or is the price fluctuating on them throughout the period of time to which they have the rights?

There's a point in here where it says that--

MR. HARVEY: Well, once again--

MR. GASTEIGER: --excuse me, let me finish.

There's a point in here where it says that for a ten-year period the amount is fixed, even though the size of the actual payments would differ year to year because of the inflation forecast.

I am trying to figure out how does that work so that they know for say the ten-year period that they would have the rights what the amount is that they would have to pay, yet the amount fluctuates throughout the course of that ten-year period? Or do I misunderstand the scheme on that?

MR. PATTON: Could you repeat the question real quick?

MR. GASTEIGER: Yes. I'm just trying to get an understanding of the description that's actually on page 13 of the transmittal letter that was sent in. It says that the LSC would know at the time that they make the election to convert to GFAs the price would remain fixed over the 10-year period even though the size of the actual annual payments would differ from year to year in step with forecasted inflation.

I'm trying to understand how that would work. Do they know at the end of 10 years how much it is that they'll be paying for these rights?

MR. PATTON: Yes. They know at the time of the election. The election is based on an estimate of the market value of the TCC based on the previous two years of both the auction revenues for the TCCs and the actual payouts.

And the reason that we average both of those is to diversify as much as possible the estimate of what they're worth so that, to the extent that there's any anomalies in either the auction results or in the congestion that actually occurred, those would--the variability would be minimized.

So the formula produces an estimate of what the TCC is currently worth. And then that amount is adjusted for inflation going forward for the next 10 years. So that it would be fairly straightforward to estimate what the stream of payments would be.

MR. GASTEIGER: I would like to ask the LSE parties, is that your understanding? You view that as being a fixed amount for that time period?

MR. BUSH: If I might, Tim Bush for the New York Municipal Power Agency. We don't think it's fair and reasonable.

MR. GASTEIGER: Does it provide you with price certainty, though? Do you know what the price is?

MR. BUSH: I guess you could consider it price certainty, sure. I mean, they average their auction price and they put some credits in there and then they apply an inflation factor so you know what you're paying up front.

Our view--and--well, let me back up a little bit. First I want to thank Eli for confirming what Tom said, which is not what Scott said. The embedded cost doesn't balance out because of the difference in the ratios that you use, so I'll get back to the other point.

The New York ISO markets, or LMP markets in general, were designed to be very short-term spot markets. In those terms, a 6-month TCC, a party can probably estimate about what the congestion amounts on the system are going to be. They can make a reasonable estimate of what you did for a TCC.

When you get out as far as 10 years, it's clearly not marginal anymore. It's practically impossible to make a reasonable estimate of what congestion is going to be over that time frame; whether or not the amount you're going to pay for this long-term TCC is indeed reasonable.

The whole issue here is what do you pay for this right which you're going to roll over? Our view is, traditional ratemaking has made that an embedded cost rate.

You paid some kind of a rate from the point you were going to take power at to the point you wanted to deliver it. It may have been a pancake rate. It may have been developed under some other ratemaking scheme, but clearly over a long-term period that is a more reasonable way to do things when it reflects the embedded costs to the transmission system, which it's been pointed out we pay for, than trying to come up with some estimate of what the marginal use of the transmission is going to be over the long term.

That does not make sense in a long-term bilateral contract. It doesn't make sense if it is not a short-term spot-market transaction.

Thank you.

MR. BERSON: Can you explore that a bit? How do you know what the embedded cost of a TCC is if you're paying the embedded costs through the TSC already? What cost is associated with a long-term FTR, what embedded cost?

MR. BUSH: You would probably have to reflect some--I haven't thought it out all that much, other than it's my view, my client's view that the marginal price, the auction price, is not reasonable for that amount of time. I mean, in the past you paid the transmission rate for the areas that you went through. If I was taking power from Niagara, I would deliver it to Niagara-Mohawk, perhaps to New York State Electric & Gas, I would pay both rates for

that.

MR. BERSON: Right.

MR. BUSH: But it was a fixed price, and you knew what it was up front. You know, you could arrange to get your power delivered.

It's not the municipals' desire to try and get money out of the congestion market. Some people speculate in the short term. They buy a TCC in hopes that they bid low enough that they're going to make some money. That's not our view.

Our desire is simply to get our energy from Niagara, and for some customers from Ontario, some from New England, delivered without being exposed to high congestion prices. That's the simple mechanism that we desire over the long term. And in the long term, we don't view marginal prices as being appropriate. So we need to develop a rate for that transaction from the point of delivery to a point of receipt on some embedded cost basis, and I'm not a rate maker so I don't know, you know I don't really know how to do that.

MR. BERSON: I don't either.

MR. SINGH: I would just observe there that Order 681 doesn't say to do away with marginal pricing. It says that you play in the market and it only deals with the rather narrow question of making available long-term FTRs.

So I appreciate your points, but it will be helpful if people stick to why what we're doing does not fit with Order 681.

MR. MARGOLIS: I think Tom had a point here, too.

MR. RUDEBUSCH: Yes. Well I agree with what Tim says. But to answer the question, Larry, I mean to the extent that there is a price, however it's determined--and I agree with them that the way that price is determined is not just and reasonable--but to the extent that there is a price fixed up front that does have an inflation factor that also has the premium, which wasn't mentioned, which may or may not be just and reasonable, there is certainty over that 10-year period--we think. That's what they keep saying.

There was a dispute, if you look at pages 33 and 34 of our protest, and there was some response from the ISO, it's not clear that that's what the tariff language actually says, but they have stated their intention is to use the average price from a set of auctions, four auctions, to determine a price, and that would be the price going forward, adjusted for inflation, plus the premium.

MR. GASTEIGER: Tom, could I just follow up on that? Do you agree with what Harry indicated, which is that the rulemaking doesn't specify the methodology to be used for pricing for rights?

MR. RUDEBUSCH: My view is that Congress intended

that those historic customers who are paying for the embedded costs of the system as in PJM should be allocated a right that protects them from inflation--from congestion at no extra cost as long as they're not benefitting from the congestion. That's not the case with the proposal here in New York.

MR. FARRAH: If I could just add something, I disagree with that statement. I think it is. We have an embedded cost system. It happens to be the embedded cost system that we have had in place for the entire life of the ISO. And in fact, even before that.

You know there were--the cost to the system on an embedded basis has always been done on an average basis. You don't split it apart and say I'm serving this customer here, this retail customer, so let's figure out what part of the system he's using.

You have an embedded cost to the system. And then you have credits to that that reduce it equally for everybody. That's what's been done.

Now here we have a system were, if somebody all of a sudden we're being told to make a portion of the system available on a long-term basis to other people who desire that, and we have to figure out a way to price that to reflect the value.

When we do that, all the money that comes back

from these long-term rights, not just for a particular customer but all of them in total will be credited back to everybody that pays the system.

So in total, in total everybody is going to continue to be paying an embedded cost rate. The point is here, though, we're not going to give a preference to a customer who pays a--buys a particular long-term right who is trying to somehow get the bigger portion of the credit back to offset the value of that long-term right that only they are getting.

MR. MARGOLIS: Thanks, Eli.

I would like at this point to interrupt for just a minute to acknowledge that Commissioner Moeller has come in to attend the meeting and provide him with the opportunity to provide any remarks that he would like to at this point.

COMMISSIONER MOELLER: Thanks, Larry.

I don't want to disrupt the obviously intense argument that's going on here, but I do want to express appreciation for everybody being here. I know there is a lot of interest. These are tough issues to work through, and we have a talented staff that is going to try and make that happen.

But again this is a market that I have an affinity for. I've spent some time in your neck of the

woods, and my assistant for this, Jason, he's from Long Island, so he's a New Yorker anyway, but I want to thank you and wish you productive discussions for the next few hours, hoping that you can solve some of these tough issues. I know you're starting with two of the toughest. So good luck. Be productive. And I'm over scheduled today, so I will have to hear about the rest of the day from the rest of you. Thanks for letting me interrupt you.

(Commissioner Moeller leaves the room.)

MR. MARGOLIS: Thanks Commissioner.

Do any of the staff members have additional questions regarding this?

MS. LICHTENSTEIN: I think Mr. Harvey made the comment that what the LSE, or what the muni pays is netted back to embedded cost. I would like to ask you two questions.

One is about Attachment N. You also said, I think, that ETCNL, the revenues are credited back to the specific transmission owner, but there are lot of other revenues from the rest of the TCCs that go under Attachment N.

So there is a formula there, full-based facility formula, I believe, and I would like to know generally, if I buy a TCC and it goes from Niagara to Long Island, and I'm going through three different transmission owner

territories, what percentage actually gets credited to each one? And if you want specific ones, I would say NYPA, ConEd, and Long Island.

MR. HARVEY: There are a couple of elements here. One is to understand that ETCNL from Indian Point II, for example, into Zone J, has a price that's determined in the auction. And that price is determined regardless of whether anybody buys a TCC from Indian Point II into Zone J, because it's valued in the auction because the auction simultaneously prices all the possible TCCs in New York State based on what people offer to buy those TCCs. And the calculation actually is basically, for any location it is the impact of a TCC at that source to that sink on the constraints that are actually binding in the auction. And those constraints each have shadow prices.

So if I had a TCC from Niagara that sank in Zone J, even though it doesn't source at the same point as Indian Point II, it's going to go across the cable interface into ConEd just like that Indian Point II ETCNL.

So the value--part of the value of that TCC, the price of that TCC from Niagara to Zone J, part of its price is going to reflect the shadow price of the constraints into the city. And that part we're going to charge say $80,000 for that TCC, and $60,000 of that is because of the shadow price into New York City, and that money is basically

isolated in those calculations and it goes to the ConEd transmission customers.

The other $20,000, hypothetically--I'm just making these numbers up--part of that may be because of the price of, the shadow price of Central East, because it's going across Central East. And that is also captured in ETCNL entitlements that go to NYSEG, and NYMO, and the various transmission owners, and that then gets credited back to their customers. So maybe that's another $15,000. Maybe there's $5,000 that's in Western New York and it doesn't affect any of the constraints that are actually embodied in ETCNL.

That money would go under the flow-based methodology that you mentioned, and that is what I was referring to earlier when I spoke about the very complicated method for allocating revenues that don't get mapped to a specific TO through original residual TCCs or ETCNL.

And that looks at the shadow prices of constraints and the changes of flows between the entitlements that include the grandfathered rights and the ETCNL, and then what we put in at the end of the auction, the additional flows.

It is a reasonable estimate to try to say: Here's where that additional value is created on the transmission system, and this specific transmission owner

owns those assets that created that value. It's approximate, but that's--

MS. LICHTENSTEIN: So am I correct in understanding then that under the way the revenues are credited, a large proportion of the revenue will be credited outside Long Island to other transmission owners? I mean, you didn't give the exact--

MR. HARVEY: I mean if your hypothetical is sinking in Long Island, it's a little difficult because the reality is that all the capacity in the Long Island is accounted for by basically grandfathered rights. And I'm not sure there's--so it's easier to talk about like into ConEd where there's a lot of ETCNL into the City that's getting priced. And there, the amount that goes to each transmission owner is either determined by--it goes to pay the ETCNL holder because it's using up ETCNL capacity into the City. When you buy that right from Niagara into the City, you're using up the same capacity that the ETCNL uses, and that money goes to ConEd.

Maybe I'm not doing a good job of explaining this, but the ETCNL has an impact on constraints into the City. It defines an entitlement to use the constraints into the City. And it's saying that the money associated with those constraints goes to the ConEd transmission customers, gets credited against their wholesale TSC. And you don't

actually have to buy a TCC matching that ETCNL for that to happen.

Mathematically what happens in the auction is your TCC, if it goes into ConEd, you are going to use up some of the space on those constraints that the ETCNL uses, and the auction price says here is the charge for how much of that you used, and that money goes to ConEd, or whatever transmission owner it is that has that ETCNL entitlement.

So there's an assignment of part of that value of that hypothetical TCC that goes to transmission owners because the reason it's for sale, the reason that capacity is for sale, is because it uses up ETCNL.

Another way of thinking about is, if we blocked off the ETCNL and said that wasn't for sale, you couldn't buy that TCC into the City. It is only feasible because we're making some of that ETCNL available for sale, and the value of that ETCNL then goes to relevant customers. But there is some value that isn't captured by the ETCNL because we do not use up those initial assignments of the right of which transmission customers gets the value of which transmission constraint in New York doesn't essentially use up every transmission constraint to New York.

There is capacity--on a given constraint, we might have some constraints. If we took all the ETCNL and grandfathered rights and original residual TCCs, those flows

might only use up 85 percent of the constraint. So there's 15 percent of the constraint that hasn't been promised to the transmission customers of any specific TO.

If that constraint is then binding in the auction, 15 percent of the capacity of that line times the shadow price is going to go into a pot that doesn't get flow out to anybody else. It isn't going to get assigned to anybody's ETCNL or original residual TCCs. And that is what gets allocated using the flow-based method. And that is why the flow-based method is basically looking at where are the additional flows in the system beyond the flows that are associated with the original residual TCCs, the grandfathered rights, and the ETCNL, because that's where the extra money comes from.

And as an added level of complexity, you know, since January 2004 would be the allocation of the Outage Rights to the TOs. That is particularly true because if there's a reduction in revenues because of an outage, that cost gets assigned back to the customers of that specific TO. So shortages and surpluses are due to unsold capacity on some of these constraints, on capacity that isn't assigned to any transmission owner due to rights that are stated in Attachment L.

Now you're not giving me an expression that says--

MS. LICHTENSTEIN: I understand it perfectly now.

(Laughter.)

MS. LICHTENSTEIN: I mean, actually what I do understand is that some portion of it doesn't get credited to wherever the sink is. That much I understand.

MR. HARVEY: Yes, potentially none of it would get credited to the sink. If there's no constraints--it doesn't affect any constraints in the area in which that TCC sinks and if all the constraints that are binding are in some other entity's service territory, all of the money could go to the ratepayers of those other customers. It totally depends on what constraints are binding in the auction determines for how much you pay.

It is important to remember that if you want a TCC that doesn't create--doesn't use up space on any constraint that someone else wants to pay for, if there's a constraint on the auctions, only 95 percent used in the auction solution, the price is zero. It is zero. We never charge for anything except when there are more people that want to use that constraint than there is constraint.

So if you have a TCC that sinks somewhere and it doesn't use up any constraints that there's excess demand for, the price is zero. And if you have a right that sinks in a particular service territory of a particular customer, maybe RG&E, and there's no congestion in any constraint

that RG&E has an entitlement to, RG&E ratepayers will not get any credit. And yet it could go over a constraint that someone else has.

MS. LICHTENSTEIN: There's one other thing I'd like to know. ETCNL is about 20 percent of the system. And I think grandfathered rights are about 40 percent. So that's--

MR. HARVEY: Again, interface by interface. And you need, you know, some interfaces it might be 90 or 100, and others--but on average across New York, those are--

MS. LICHTENSTEIN: I'm talking about the whole system. So it seems as though there are 35 or 40 percent of the system that is not taken up by grandfathered rights or ETCNL. Is it correct that that is sold in the TCC auctions?

MR. HARVEY: It's available for sale. There are interfaces where basically there isn't excess demand, and the price is going to be zero for capacity across those constraints. A lot of the--a lot of the money and effort in allocating these rights went to where back in 1998-97 the thought was this is where most of the value is going to be, so it is important to allocate it back to the individual transmission customers.

If there are interfaces where it is not expected there is muni congestion and there isn't going to be much money to be allocated, not as much effort when into

allocating all that money back to the relevant zone.

MR. MARGOLIS: I'm thinking this might be a good time to take a break. If maybe 45 minutes is okay with everybody we would reconvene at about 12:50.

(Whereupon, at 12:00 noon, the meeting was recessed for lunch, to reconvene at 12:50 p.m., this same day.)

AFTERNOON SESSION

(12:50 p.m.)

MR. MURPHY: Before we start, could I ask or make a suggestion?

MR. MARGOLIS: Sure.

MR. MURPHY: If it's all right with you, just because I think there was a little bit of confusion in the tail end of the discussion this morning on two points, if we could have just a couple of minutes to make two statements that I think could be clarifying and helpful?

The first is just to reaffirm that under the NYISO's fixed-price, ten-year TCC proposal, the long-term FTRs that are created from expired rights that are restored, that those are, in fact, creating rights where the price is known up front.

The amount of the actual payment may vary from year to year, over the course of the ten-year term, but the customer will know up front, what the total bill is, and, in that way, have certainty.

If necessary, David Patton could address that quickly, again.

Secondly, just to make sure that it's coming across clearly, because I recognize it's a complicated subject, I thought that I might ask Scott to just speak for a minute or two, to explain again, how it is that under the

NYISO's proposal, with respect to the long-term FTRs that are created from the conversions of ETC&L, the 23.75 percent kind, how they provide certainty within the context of the NYISO model, compared to how certainty is provided, say, under the PJM system.

First, David?

MR. PATTON: All right, yes, we just wanted to clarify, because, you know, I think we were sensing that there was some confusion between the two services, the ten-year fixed-price service that's available to the expiring grandfathered rights, versus the ECT&L-related service that Scott had talked about previously.

With regard to the ten-year fixed-price option, at a high level, the formula that's proposed by the NYISO is intended to reflect the market value of the right that's being sold, but to be a price that is known in advance.

So, while the formula creates a known market-based value, based on the last two years, we charge on an annual basis, and the only change from year to year -- it does change year to year, but the only change is related to inflation, so that you know at the time you execute the option to acquire the ten-year right, you know what your stream of payments is going to be for the next ten years, and, therefore, it's certain.

And I would say that all the controversy is

related to whether you charge something that looks like a market value for that, or whether you charge embedded costs, which could be higher or could be lower than the market value. That's where the cost-shifting issues come in, that I think we may talk about later.

And that's entirely distinct from the ECT&L service, where the pricing is very similar to the PJM proposal, and that's what Scott would cover.

MR. HARVEY: Yes, to draw the analogy to the PJM approach for AARs, you could think about PJM and their treatment of Tier-1 AARs. If you have five percent of a load in a zone, you're going to pay five percent of the embedded costs and you're going to have the right to five percent of the Tier-1 AARs, which you can then choose to convert into FTRs or not.

If you think about those parts of the costs, you pay the embedded cost, and then you -- if you convert your AARs into FTRs, you, in effect, give up the option to take that auction and reduce your embedded costs by that amount, so you end up just paying the embedded costs.

If you exercise that option, you end up paying the embedded cost, minus -- if you don't exercise that option and take the money, you pay the embedded cost, minus the value of those AARs in the auction.

Under the NYISO approach, it works basically the

same way, because if you -- but it's just different in terms of how retail access is handled, because the TSC, you pay the embedded cost, five percent of the embedded cost of your zone, and then that's reduced by five percent of the auction revenues, the ETC&L and original TCC value.

If you chose this FTR, the long-term FTR conversion option for the ETC&L, you'd have to pay the auction price for that, so you'd have the embedded costs minus the credit that goes against the TSC, but then you'd have to pay the auction price, so it nets to the embedded cost.

If you did not choose that option, you'd pay the embedded cost minus the value in the auction, so that works out exactly the same as in PJM. It's just different in terms of the historical difference of how the retail access programs were set up, that the NYISO does it through the TSC that goes to the retail access customer.

But for a wholesale customer, where the payer in the TSC and the payer in the auction are the same, it doesn't make any difference.

MR. SINGH: Scott, I just want to make sure I understand you correctly. You said it's exactly the same.

Is it really exactly the same, or is it roughly the same? When we had the discussion in the past, we were talking about the credit back from the TSC being the same

for all LSEs, and then, you know, people not necessarily having the right mix of long-term, short-term, six-month.

So what they are paying in the auction --

MR. HARVEY: Well, if you buy -- again, it's -- if you choose to buy exactly five percent of the same durations that are sold in the auction, then it's going to net out.

And for TOs with multiple zones, there's going to be a slight, you know, averaging, too. But, if you think about -- if you had a single zone TO like Long Island, and you took exactly five percent of the same durations that are sold in the auction, everything would net out.

And as long as you continue to -- especially for a wholesale customer that continues to serve their customers forever. And you wouldn't get it all at once, because there's a time value, money in adjustment of the TSC. You'd get it back over the duration of the -- you held the TCCs.

MR. BUSH: I don't see how that happens, Scott, because if my load is 500 and the load in my transmission district is a thousand -- say I got half the load --

MR. HARVEY: It's simple, we can keep it in mind.

MR. BUSH: You know, and if I have 100-megawatt grandfather right, then --

MR. HARVEY: We're not talking about the grandfathered rights. They are a fixed price. We're

talking about the ETC&L conversion.

MR. BUSH: You basically said either way, you end up paying the embedded costs.

MR. HARVEY: No, we said that for the --

MR. BUSH: If I take 100 megawatts of the ETC&L, which is less than the thousand total load in the district, all right, so I pay that price, which is the auction price. That gets rolled back into the TSC and that gets distributed on the basis of that whole thousand megawatts.

MR. HARVEY: Look, if you have 50 percent of the load, you pay 50 percent of the embedded costs, and you get 50 percent of the credit for the auction revenues.

If you buy 50 percent of the ETC&L --

MR. BUSH: That's what I paid.

MR. HARVEY: If you --

MR. BUSH: -- 50 percent back on what I paid.

MR. HARVEY: You get -- but if you only buy, you buy 50 percent of the ETC&L, you've paid for 50 percent and you get 50 percent of all the money back.

MR. BUSH: If I'm the only one that buys, say, 100 megawatts --

MR. HARVEY: If you're the only one who bought it and there were no constraints --

(Simultaneous discussion.)

MR. BUSH: -- I pay the 100 megawatts, that goes

into the TSC, I get half of that back.

MR. HARVEY: No. If there was 1000 megawatts of capacity into the zone, and people only bought 500, the price would be zero; you'd pay zero and you'd get zero credit.

The only way it has a price, is if the constraint is binding and all thousand megawatts sell. So a thousand megawatts get sold, if you bought 500, you paid for half of it, half of the money goes back to you.

You pay for half the embedded costs and you get half the money back. If you --

(Simultaneous discussion.)

MR. HARVEY: And the point is that if the constraint isn't binding, if we don't need to sell all thousand, if there isn't demand for all thousand megawatts, you pay nothing, which is a great deal.

MR. BUSH: Supposing the ETC&L is only a hundred, okay? So there's a binding constraint. I buy that hundred all for me. I pay the money for that 100, it goes into the TSC, and it gets allocated back across the load, which is a thousand megawatts.

MR. HARVEY: But you said -- okay, and now you said you got all of the ETC&L; you took all the transmission rights and you had -- and you've only got half of it back, where you could have taken half the transmission rights, it

would have netted out. But, of course, if you get all of it, that means someone else got none of it.

Why should they get nothing, if you get all the rights?

MR. BUSH: The ETC&L is less than the load, so, if you -- no matter who pays for it, it gets allocated on the basis of the total load share. You can't possibly get all your money back.

MR. HARVEY: No, you get your share of the money back, Tim, you get your share.

MR. BUSH: That's the point. You're saying it nets to embedded costs. It does not.

MR. HARVEY: Yes, it does. Look at this: If there's a hundred megawatts of rights into the system, the total credit against the embedded costs, is the value of that hundred.

And if you have 50 percent of the load --

(Simultaneous discussion.)

MR. BUSH: -- the other hundred megawatts of load and didn't buy any, where does the money that he gets as a credit to the TSC, come from? It comes from me.

MR. HARVEY: Right, because you took all of it.

MR. BUSH: I did not get all of it.

MR. HARVEY: No, you got your load ratio --

MR. BUSH: No.

MR. HARVEY: No, you didn't listen to what we said. We said if you bought your share, if you have 50 percent of the load, and you take 50 percent of the rights, that's what it is in PJM, too.

If you have 50 percent of the load, you don't get 100 percent of the AARs and get to take all the FTRs into that zone; you get 50 percent.

MR. BUSH: If the load is greater than the ETC&L, it can not net out.

MR. HARVEY: No, your share nets out. That's right, there isn't enough -- if there's not more transfer capability than load, there's going to be congestion, but you get your share of those rights --

MR. BUSH: But --

MR. MARGOLIS: Let's not talk over each other. One at a time.

MR. SINGH: Let me try to ask that a different way. So, in that example where there was 1,000 megawatts of ETC&L, and, let's say, the long-term FTR-holder got 500 of it, and the other 500 was sold in monthly auctions and annual auctions, the shorter-term TCCs, for very different prices, so the credit back mechanism in the TSC, doesn't really have different buckets.

And I guess maybe that's -- is that one of --

MR. BUSH: That's the point.

MR. SINGH: So the concern was that when the credit flows back, it's not -- you know, he isn't getting paid exactly what he paid for the long-term FTR or anything.

Your point is that somehow that's okay, because what you are buying, is not exactly what you should be buying in the first place.

MR. HARVEY: Let's forget about duration, to keep it simple, because I think the difference is simpler than that.

We have a thousand megawatts of load in a zone and we have 500 megawatts of transfer capability into it, in ETC&L, which means that 500 megawatts of the load hs tas to be met with generation located in the zone.

And in either PJM or New York, there is only going to be rights for 500 megawatts into that zone. If PJM, if you have 50 percent of the load, you can take 50 percent of the rights, so that if you -- you can get 250 megawatts of rights.

If you want to buy all 500, you're going to have to pay for the extra 250. It won't net out; you'll only get auction revenue rights for half of it, and you'll have to pay the rest and you'll end up paying more than embedded costs, because you'll get half for embedded costs.

And if you want all of it, you've got to pay more; you've got to pay the auction price, because there is

somebody else who has 50 percent of the load in that zone, and you're getting all their rights.

So you have to pay them what they think is a market value. Essentially, you're paying more than they want to pay in the auction, and that's the way it works in New York, too, because if you have 50 percent of the load, you're going to get 50 percent of the auction revenues from the ETC&L credited back to you.

And, yeah, if you have 50 percent of the load, you're not going to get 100 percent of the rights. So, somebody, in the end, if there's only 500 megawatts of transfer capability into the zone and there's 1,000 megawatts of load, the unfortunate reality is, somebody has to meet 500 megawatts of that load with local generation.

And there's no way around that; that's a given. And somebody has to pay for the local generation. There's only --

MR. BUSH: That's not the issue. Suppose my share of the rights is 250 megawatts, okay, and I opt to convert those to TCCs. I pay for 250, I pay the auction price, that gets rolled into the TSC equation.

There's a thousand megawatts of load in the district, I get 250 over 1,000 of that back.

MR. HARVEY: No. If there's a thousand -- this is a point that -- if there's a thousand megawatts of rights

in -- let's keep it -- okay, you have -- there's 500 megawatts of rights in, you could buy 250. Someone else buys 250, too, so there's a total of 500 that are paid for.

So if you get half of it back, you get the price of 250 back, so you paid for 250 and you got 250 back.

MR. BUSH: And I only get 25 percent back, because that's my share of the load.

MR. HARVEY: I thought you had 50 percent. You keep changing. Scott?

MR. FARRAH: Can I chime in here for a minute? I think you're talking past each other, but if I hear Tim, what he's saying is that if he buys a long-term right in the auction and pays a certain amount of money back, he thinks that should all come back to him as a credit.

MR. BUSH: No, no, no.

MR. HARVEY: That's what it sounds like.

MR. BUSH: That's what Scott is saying happens. I'm saying it doesn't.

MR. FARRAH: No, what happens is, the system -- if there's a constraint on the system -- let's just pick Niagara Mohawk -- there's a constraint on the system, and someone's looking for a long-term hedge and they're willing to buy it, because they want price certainty, okay?

That system is owned by everybody who's paying the TSC, which is the embedded costs to the system.

So, however you figure out what the price should be for the long-term right that provides a right to essentially use the system when it's constrained for a fixed price, that money has got to go back to everybody that's paying for the system, not just the person who paid, you know, the value of it to get it across during the constraint.

MR. BUSH: Nobody is saying anything else. I don't know where you're getting the idea --

MR. PATTON: I think the confusion is between the level of the load and the level of the imports, and I think what Scott is saying, is right, in that, you know, if you're taking a load ratio share of the import capability and you buy the same load ratio share of the import capability, you know, as you have of the load inside, then that's out to embedded costs.

For example, in your example, I think we started with Scott, the load is a thousand, the import capability is 500, you bought 250, right?

Do you have half the load in this example?

MR. BUSH: I don't know.

MR. PATTON: You were saying you get a quarter of it back, which would imply that you have a quarter of the load. But let's say you have half the load.

MR. BUSH: Okay.

MR. PATTON: Okay, you bought half of the ETC&L?

MR. BUSH: Okay.

MR. PATTON: Or the import capability, you pay the auction price, by definition, you paid half of all auction revenues coming in, because you have the capability. Because you have half the load, you get the half the auction revenues coming back, so, by definition, you have the same amount coming back as you paid in, because you're getting, you know, the --

You paid 250 out of 500, and you get back, based on having half the load, 500 out of a thousand, so you paid 50 percent, you got 50 percent back.

I think what's causing the confusion, is that we're transposing, you know, we're throwing the -- you know, like, when you said 250 out of a thousand is a quarter, then you're putting import capability on the -- you know, in the top and load on the bottom, but if you keep it straight, I think you do get the same.

MR. BUSH: I think you're right. My apologies, Scott.

MR. SINGH: So, one of the things I heard there, was that if someone buys more long-term FTRs than their load ratio share, then in that case, they will not get enough --

MR. PATTON: They pay the market price.

MR. SINGH: They pay the market price for

whatever excess they buy.

MR. HARVEY: Because they have to make whole, the other load-serving entity that was entitled to that, that's willing to give it up.

MR. PATTON: And they would in PJM, as well, because that's over and above their allocation.

MR. SINGH: Okay, so, in our simple example, I think we understand that. Is that an accurate picture of all that is involved in the flow back of congestion revenue credits through the TSC, or is it really more complicated than that, because of multiple duration, TCCs, maybe multiple interfaces into a particular zone?

MR. HARVEY: Yes, it's more complicated. There's multiple original residual TCCs. If you only wanted to take five percent -- you had five percent of the load and took five percent of some of the original TCCs, that would net out and you'd get money for the part you didn't want, so that you could choose.

Also, as we said earlier, for the entities that have multiple zones within -- the transmission owners that have multiple zones, because of the way the TSC formula is right now, where, as Eli said, it's not calculated separately for each zone, there's one, so there's some averaging going on there.

And if you wanted to have a different duration

than the average, essentially, if you take your five percent load ratio share of all the durations, it perfectly nets out. If you want a different duration, if you want zero percent of the six-month duration and ten percent of the annual duration, then you're going to -- and to the extent they are at different prices, you'll pay a little bit more or less, because you aren't taking exactly your load ratio share.

So, yeah, there's little adjustments to the extent that you want something that's different from exactly the load ratio share, but we're trying to stick with the principle that if you take exactly your load ratio share, it will cancel out.

MR. SINGH: The question is then, as a practical matter, the effect of all of these complexities that don't make this an exact wash, is that small enough, you know, for people like Tom and others to be comfortable, or if it's a big deal, you know, what can be done about it?

We can pursue that later in further questioning after other people.

MR. HARVEY: Also remember that there's another part of the proposal, which is the fixed rights. So we think we're addressing Tom's need, and what we heard this morning, is, all the needs -- you know, the amount that we've set aside in the fixed-price proposal, is sufficient

to cover those existing needs.

MR. SINGH: Remind me again. In the fixed price -- if I'm getting the fixed-price, long-term, ten-year right, I'm not -- am I not paying the TSC, then? Or am I still paying the TSC with the credit? I am.

So, I mean, you know, in looking back, I think that there was quite a bit of evolution of the New York ISO proposal, because in its initial from, people said, I got to pay a price that I don't know what it will be every year, so people said, okay, we'll come up with a price that you'll know for, you know, the next ten years.

But, I mean, that certainly -- it looks like an improvement, if you look at it that way, but if you think of the net price that is being paid as a combination of what you're paying in the auction, whether it's fixed of ten years or varies every year, and the credit back you get through the TSC, you know, you could argue that in that sense, it's not any more certain with this change, because, I mean, if it's a wash, as fine before, maybe it's less of a wash now.

I don't know, because, you know, those are questions --

MR. HARVEY: What we're doing, is giving certain entities more than their load ratio share of those grandfathered rights, so we're saying for those -- and this

goes back to what Ted said about adopting a flexible, you know, definition of "reasonable needs," that's tailored to the specific entities, so the municipals are getting more than their load ratio share of the grandfathered rights, at a fixed price, and that is our way of responding to their reasonable needs.

And for the other entities, then we've got the other approach, so, yeah, it would be more similar if we drastically reduced the amount of rights that were available to the munies. But we're giving them a hundred percent of their grandfathered rights.

MR. FARRAH: Unless I missed something, there were two -- the two questions that come out of the rule, are, they want to know that there's a reasonable amount of capacity that's been set aside. I think we all agree today, that there is, because the only parties that were objecting on that issue, are getting in excess of 90 percent of their needs met with the long-term rights that are being made available.

The next question was whether they're getting them at a fixed price with price certainty, and I think Tom, while me may not like the price, said, yes, you know, there is certainty, you can figure out what you're going to pay for these things over the ten years.

So that gets us down to an issue that I'm not

even sure is here, which is the price. In other words, the rule doesn't speak to what the price is or how you set the price.

MS. WERNTZ: You always have to make sure that rates are just and reasonable and not unduly discriminatory.

MR. FARRAH: But the Commission -- our whole tariff is based on competitive auctions. I mean, all the pricing under the ISO tariff, is based on competitive markets, so we've passed that Rubicon a long time ago.

And so if what we're saying is that we have a constraint on the system and we're going to give somebody a free pass, okay, and we're going to determine that by letting the people that want it, bid on it, if that's not just and reasonable, then we're going to have to go back and re-look at the whole tariff structure.

MR. SINGH: Well, I mean, Eli, I don't want to disagree with what you're saying, but Order 681, if you read it, a lot of people come to the conclusion that it's really a little bit at odds with the New York ISO design of the TCC market, because early on in the debate of how to set up these markets, people said, should we allocate FTRs, TCCs, to load-serving entities, or should we have auctions?

And, you know, California, in its initial market, and New York went the approach of auctions. Other places, California MRTU, PJM, MISO, followed the approach of direct

allocation.

And Order 681 basically said that for long-term FTRs, people ought to be allocated these things directly.

PARTICIPANT: No, it doesn't.

MR. SINGH: I wrote it; I should know.

(Laughter.)

MR. SINGH: But now the language in that Order, because of the need to include things like ARRs and, you know, you get ARRs, even if you don't get direct allocation of FTRs, so you do participate in an auction. The language was a little bit confusing to some, and I guess people have made use of that in trying to accommodate the designs that don't directly fit in that framework.

I'm not saying that's a bad thing or a good thing. I mean, certainly, we don't want to overturn a market design that's working for most people pretty well, but at the same time, I don't want to, you know, have people create, I guess, an incorrect impression of what Order 681 says.

Some of my colleagues who were closer to this issue, are no longer here, so I feel, even though I wasn't always in the same page, I feel obligated to speak for them and at least set the records straight there.

So that's why we're struggling with how do we comply with Order 681, which says that people, at least for

their reasonable needs and whatever their share is, no more than load ratio share, if that's the right criteria, ought to be able to essentially be directly allocated long-term FTRs, without having to participate in an auction.

And all the meetings that I have had with New York ISO, essentially make the case that, practically speaking, we get there, because you're paying an auction price, but you're getting a credit back, so it looks different, but it's not a big deal, and, therefore, don't change, don't overturn the market design because the optics are different.

What we're trying to understand, is, is that right?

MS. LAMPI: I think the whole crux of the question you ask, is, based on how the LSEs who are getting long-term rights, are allocated them.

And if we were to, I think, as someone suggested a moment ago, if we were to allocate to all load-serving entities -- municipals, competitive LSEs -- their load ratio share of the transmission capacity we wanted to make available for long-term rights, 50 percent of our system, let's say, if they all got a load ratio share basis of the allocated LTFTRs, they would, as in the PJM world, get a net revenue equal to their costs and they would be paying essentially embedded costs.

What we tried to do, because not everybody was interested in an equal load ratio share, was to give to the municipals, as much as they wanted, as reflected in their previous transmission agreements, and as someone also has said here, when you get as much as you want, as much as you need, 90 percent of your service, it is more than your load ratio share entitlement in your service territory, and, sure, for the difference between your load ratio share and that amount that meets your reasonable needs, you will pay the market price.

MR. FARRAH: And let me add one thing to that, Molly. And the money will go back to the people who would have gotten that allocation, you know, had they elected to take it and not make it available to you.

The other people are going to get the -- the other people in the system, the rest of the load, is going to get that credit for what you pay above your load ratio share, as they should.

In other words, they're giving it up and letting you take it, but they've got to get something for it. You can't get it for free.

MR. GASTEIGER: Tom, I'm seeing your reaction to it. Could you just respond to what the New York ISO and Eli have said, so we can get your take on it?

MR. RUDEBUSCH: Let's take a slightly different

example. Let's say there's a thousand megawatts of load in a district, and 100 is a municipal or cooperative and there's a 500 megawatt limit.

The 100 megawatts of muni-coop load has 100 megawatts allocated to it, but in addition to paying congestion, it has to pay this auction price based on past congestion prices. The other 900 megawatts of load is served by somebody, and they have a GFA for which they pay a share of the TSC for that 400 megawatts, but they don't have to pay any congestion.

So, the auction price that we paid for that 100 megawatts, is then credited through the TSC to all of the load in that district, so that we are only getting ten percent of the credit back.

MR. FARRAH: How is it possible that you're paying for congestion, if they're not paying for congestion? In other words, why would you be buying a congestion hedge in a situation where the rest of the load is not paying for any congestion?

The other part of the load --

MR. RUDEBUSCH: No, you're paying for the congestion through the TUC, but what the TCC gives you, is protection for the congestion costs, but in addition to -- but to get that TCC, the hundred megawatts of load had to pay an extra market rate, based on past congestion costs.

MR. FARRAH: Sure, and the rest of the load is not getting a hedge. They're going to pay the congestion, whatever it is, as they go along.

MR. RUDEBUSCH: No, they have the 400 megawatts of grandfathered rights, that all they have to pay for is the TSC.

MR. HARVEY: That's not right. That's what I started with this morning. Everybody that does a grandfathered right, pays that embedded cost charge.

And if you go and look, it's Attachment H, isn't it, of the tariff, where it goes through there and you can look and see that in the determination of the TSC, we add in -- the embedded charges are added in, and the value of those embedded costs, grandfathered TCCs, is subtracted out.

Those grandfathered TCCs are held by the transmission owner, not the load-serving entities, and those costs and benefits flow back to all ratepayers in the district, in the load zone, or the service territory, through the TSC. It does not just go to the end use customers of that particular transmission owner.

And that's the critical difference. If you hold it as an LSE, such as the munies, they pay their charges and they get the benefit for their customers.

These other grandfathered agreements, most of which I suspect they'd gladly give to you, if you wanted to

take on the embedded costs, the embedded costs and the benefits flow back to all of the transmission customers.

MR. MARGOLIS: Okay, I think I'd like to move on a little bit. Roland, I think you had a line of questions.

MR. WENTWORTH: Just to try to understand this a little better, I wanted to explore the idea of a direct allocation of rights.

Perhaps it might be easier to think of it in terms of, say, allocating the munies' auction revenue rights that correspond to their grandfathered agreement rights, and then have them pay on an annual basis, similar to the way it works in PJM, the costs of those rights that they've been -- to which they have been given auction revenue rights.

I'm trying to get a handle on what damage that does to the system that exists in New York with regard to the energy services companies and the retail access and so forth, and how it -- well, number one, how does it result in cost-shifting, and, number two, how does it complicate the system's software or whatever is in place right now, if we went that route?

MR. PATTON: Well, just to clarify, what do they pay?

MR. WENTWORTH: Let's assume that they continue to pay an embedded cost charge similar to what they've paid in the past. It might even be a pancaked rate or something

like that, but assume that their contribution to embedded costs, is held fixed, essentially.

MR. PATTON: Okay, well, yeah, and this is the cost-shifting discussion that we had, related to the long-term transmission right, that if the embedded costs are higher than the anticipated value of the right, they are clearly not going to take those rights, or, if they're rationale, they're not going to take those rights.

In those cases where the embedded cost is substantially lower than the value of the rights, they will take the rights. Now, keep in mind that every right that they take, is a right that otherwise would be sold in the auction and would go to help pay for the embedded costs of the transmission system, so, if you grant that sort of economic property right to them, the right to acquire a long-term FTR at a price that is substantially lower than the market value of that right, every dollar of discount you're giving to them, is being paid by the other transmission customers through higher TSCs, so it's a fairly direct cost shift, and, so that's why we keep coming back to the same issue, which is, are they -- is the issue of whether they're entitled to the right at a price that's lower than market, or not.

You know, that's a valuable economic property right, and that's a pretty fundamental question that needs

to be answered, I think. If the answer is, yes, they're entitled to a -- they're not only entitled to have the right, they're entitled to have it at a price that's less than market, then, you know, I think it's probably not consistent with what we're proposing, but, you know, that's going to -- there's no free lunch.

That's going to come at the expense of all the other customers in New York.

MR. SINGH: Let me step in here for a moment. They're getting that right, which is more valuable, only because their load is at a particular place.

You can't just go and get any valuable FTR in the system, even in PJM. Any approach of direct allocation, I guess, is built on the premise that the system was integrated, there was a transition to LMP, and people in load pockets suddenly faced higher prices, because that's where they're located.

So, you know, people came up with the idea that to keep them whole, you essentially allocate them FTRs.

Now, if that's cost-shifting, you know, I mean, I don't know, that is certainly a policy that was the undercurrent in Order 681.

MR. HARVEY: Wait a minute. Let's think about this in the terms we're talking about. On Long Island, the numbers I gave you this morning, you know, the vast majority

of the load, has grandfathered agreements and is hedged for 17 percent of their peak, whereas the municipals are hedged for 85 percent of their peak load.

Now, why should the entities that are hedged for 85 percent -- it's not a matter of just location. They're all on Long Island.

The question is, why should the vast -- the 97.5 or 98.5 percent of the Long Island load, that's only got -- only gets a benefit flowed through in the TSC for, you know, 17 percent of their load, why should they subsidize the other 1.5 percent of the load that's going to be hedged for 85 percent at a below-market price?

It's not just people in different locations. We're talking about people at the same location in the same service territory, and do some get it for nothing or a below-market rate, with the difference being absorbed by the other customers?

You know, the buck stops, you know, and someone's got to pick it up.

MS. WERNTZ: It sounds like there's a tradeoff here and you're offering more rights, but at a different valuation price.

MR. SINGH: No, the answer to Scott's question is simple. You have that mismatch, the subsidy between those customers on Long Island who have the short-term rights,

whereas, those who have long-term rights, only because this paradigm shift of how you allocate these rights, is being made for long-term rights.

If you changed your entire system to allocate rights directly to load-serving entities, you wouldn't have that problem, but then it comes down to you don't want to do that.

MR. HARVEY: On Long Island, all those other rights are also held on a long-term basis. So it's long-term rights.

But in the end, someone has to pay the embedded costs, and if you're saying, well, these people are going to get it for less than the embedded costs and it's not going to be picked up in their TSC, well, it's going to go into the cost borne by the LIPA customers who are also long-term customers.

I mean, that's why, in Long Island, it's particularly evident. It's all long-term customers.

So you're saying that long-term customer gets it cheap and that long-term customer pays five times as much.

MR. BUTTERKLEE: This is Neil Butterklee from ConEd. To emphasize what Scott's saying, there's three munies on Long Island -- Freeport, Rockville Center, and Greenport. Those are the three in question.

And under the scenario that you're postulating,

you would have those three munies be able to acquire long-term rights at a lower price than the other long-term customers of LIPA.

So the question Scott is asking, is, why should we set up an entire system so three munies, which are less than five percent of the load on Long Island, get a better price than the other 95 percent, and which are all similarly situated as far as long-term coverage or not?

MR. RUDEBUSCH: Well, they are not all similarly situated. There's three wholesale customers and then there's a bunch of retail customers.

MR. BUTTERKLEE: The question is, why should the three munies get special treatment, as opposed to the other customers?

MR. RUDEBUSCH: Because they are contributing to the historic cost of the system, to the TSC, on the same basis as everybody else is. The question is, what price is the hedge for congestion for the long-term right?

MR. BUTTERKLEE: That's actually not true, because, as you know, the contract rate that the three munies pay, is less than the embedded costs that the could otherwise pay, if the contract went away.

MR. RUDEBUSCH: That's not true.

MS. WERNTZ: I have a question. Why would the other entities on Long Island, don't want long-term rights?

They'd still want to be in the short-term market?

MR. JONES: Maybe I can -- Kevin Jones, with Long Island Power Authority. I mean, I think the point that we're missing, is that all of the rights on Long Island are fully subscribed.

So, the municipals on Long Island, although they're a small portion of the load, have a higher proportion of their load covered by grandfathered rights than LIPA, which serves the rest of the customers, and is also a public power entity, and we have, you know, the remainder of the rights, but it's a much smaller percentage of our total load.

David, I think, said 17 percent. I can't remember the exact value that goes to us, but, I mean, the point here is that -- I mean, there isn't any more of the transmission system that you can divide up between the people here.

We have -- you know, everything onto Long Island is fully subscribed today, so, I mean, I think that coming to the issue of price, you know, I mean, if you're offering something at a discount, yeah, we'd like something at a discount.

We have resources off Long Island, and, you know, but we understand, as a transmission owner, that that doesn't just come about without taking money out of other

people's pockets.

One of the options when you have a fully-subscribed system, is to actually put some money into some new investment. Now, that's one of the things that LIPA has done, and has built two merchant cables onto Long Island, and only our load-serving entity customers pay those costs.

The other entities on Long Island, do not pay for that in their TSC. So, I mean, you know, to some extent, it's a -- I think you're talking a shell game here, if you're looking at trying to, you know, necessarily have someone get -- pay less than the market price.

As David and Scott and others have pointed out, that means that other customers are going to be harmed by doing that. So, we support the NYISO's proposal, because we think it's a fair way to provide some certainty in terms of if you want -- if we wanted to extend our grandfathered rights -- and we have grandfathered rights that expire, too -- we would have the option, if we thought that was beneficial to us, to pay the price that a -- a known and certain price to do that.

We also have the option, if we don't think that that's, you know, the best thing for us to do, to make other investments in the system and those are things that we've done.

So, I mean, it's -- Long Island, I think, is, you

know -- I don't know if it's a good example or a bad example, because the system is fully subscribed, so you can't -- there's nothing else there that you can, you know, make available to someone over a long-term basis.

MR. SINGH: You said that there are some investments for which only your customers pay and the TSC --

MR. JONES: I didn't say in the TSC. I said one of the options when you have a fully-utilized system and you want to bring, you know, additional, you know, energy, you know, at a lower cost to your customers, is to expand the system.

MR. SINGH: Yes.

MR. JONES: And that's what LIPA has done through merchant facilities that are only paid for our retail customers, but are not collected for in our transmission rates, so other entities on Long Island do not pay for those.

MR. SINGH: I'm asking because there was a discussion of having different TSCs for different LSEs, so I was just wondering if that's an example. It's not an example?

MR. HARVEY: TSC and the retail -- the load-serving entity, also is entered into contracts for these new transmission assets, but his point is, that's not in the

TSC.

MR. SINGH: Okay.

MS. WERNTZ: You've got FTRs for that?

MR. JONES: No, because they're external facilities, so we don't, you know -- not to open up that can of worms.

MS. WERNTZ: Oh, okay.

MR. WENTWORTH: They're not profitable.

MR. RUDEBUSCH: So we don't pay for them, but we don't get the right to use them, either.

MR. JONES: Well, actually, you can, if you wanted to pay the transmission rates, but all loads on Long Island, have benefitted by the investments of the customers of the Long Island Power Authority, because we brought down prices on Long Island, both in the pass-through market and in the energy market, by expanding the system, but those are only paid for by our retail customers, not all customers on Long Island.

MR. BERSON: Tom, could you clarify for me, what the munies' objection is to NYISO's proposal? What is the munies' objection to the NYISO's proposal?

MR. RUDEBUSCH: On the pricing?

MR. BERSON: On the pricing, right.

MR. RUDEBUSCH: We think that we're, unlike other ISOs, that we are, instead of getting a share of congestion

protection for the price of our share of the embedded cost system, that we also have to pay a market-based value on top of the embedded cost value, to be able to get that protection. That's the basic objection.

MR. BERSON: But you would be subject to crediting for the TSC.

MR. RUDEBUSCH: I heard Scott's explanation, but I am not convinced that that's correct. I still think that we pay more in congestion and the credit is distributed among all users of the system, and you don't get back the money you put in, on a pro rata basis.

MR. PATTON: Just to clarify some of the confusion, I think that in your prior comment, you were talking about the ten-year rights that you bought, you know, like the 100 megawatt example.

That's a different service, so if your grandfathered rights that reflect a much larger share of the import capability than your load is, then, you know, what you get back, is not going to come anywhere close to matching what you paid.

The example where it does net out, is the ETC&L-related service, so we've always got to keep those two separate. But back to the embedded costs versus market, I think the -- you know, that really is the threshold question, is, does the fact that I had a grandfathered agreement that terminates in 2012 or whatever, give me an indefinite economic property right that, for some interfaces, is extremely valuable, going indefinitely beyond the termination of my agreement.

So, you know, I could give you my personal opinion, but, you know, you'd have to come up with some argument on what is the justification for granting that sort of right?

MR. FARRAH: Along these lines, if I could make a comment, you know, I think the issue here, stems from two things: One, we have a very different market structure in New York than PJM has.

The second really different and driving force here, is that we have a small amount of the load that wants a disproportionate share of the long-term rights. And we have a large share of the load who doesn't want them.

And the question is, well, what do you do about that? Do you make them available to the people who want them? Our answer is yes.

But do you make them pay for them, you know, the value of them, and give a piece of the money back to other people who really have an entitlement to them, but who have chosen to allow them to have them, rather than use them themselves?

And our answer to that is yes, they have -- you know, they're not going to get them for free. We're going to give them a disproportionate amount of the long-term rights, because they're the ones that have a need for them and want them, but we're not going to give them to them for

free and ask the rest of the customers to subsidize that.

MR. BERSON: If the munies were given only their load ratio share of rights for free, would that satisfy the munies?

MR. FARRAH: No, giving them anything for free, would not, you know, satisfy me, but --

MR. BERSON: I'm hearing, though, that that is essentially what happens, if you only take your load ratio share, because the credits --

MR. FARRAH: You get back -- if you take your load ratio share, you'd be getting the rights for the embedded cost of the system, because the TSC is an embedded cost rate, and then it has a credit for the money that you pay for your load ratio share that comes back and essentially, you know, reduces the embedded cost rate by the revenue that came in, but it's still an embedded cost rate, so you'd be paying an embedded cost rate, if you take your load ratio share.

If you take more than that, then you no longer necessarily pay the embedded cost; you may be paying more, you may be paying less, depending upon what the value of those are in the marketplace.

And then whatever the marketplace says they're worth, you get your load ratio share of those revenues back, and the rest of them, for the portion that exceeded your

load ratio, those revenues go back to the people that owned them.

And in this regard, you know, Roxie Maywalt from National Grid, was nice enough to hand me a copy of Order 681, and in there, I just will have, you know, Harry, you, in particular, take a look at Paragraph 100 through 105, because there's a large discussion in there about allowing for regional flexibility, you know, for several reasons:

One, obviously, is the fundamental differences in market design, which is what we're trying to address here. And then the second one was this comment specific to New York, which said, well, not everybody wants these things.

And the Commission said, well, that's a design characteristic, you know, that's subject to regional flexibility. You've got to make them available, but we're not saying that you've got to give them to everybody, and figure that out yourself.

And that's what we've tried to do. And I think the ISO has done it in a way that's fair to everybody, and, you know, sure, I'd -- you know, I'm sure that some of my clients would like to have a proposal that would favor their customers in their load districts, too, but, you know, that's not really fair, either.

We're trying to come up with something, you know, that gives the rights to people who need them, while still

being fair to people who are not insisting on getting them.

MR. BERSON: I'm trying to understand what's unfair, if the munies have to pay something for more than their load ratio share of rights.

MR. FARRAH: I don't think there's anything unfair about that.

MR. BERSON: Tom, what's unfair about that? What's --

MR. RUDEBUSCH: My view is that it's not a load ratio share. You're paying for what rights you have on the system. You're paying that share of the embedded cost system.

It's not based on your load, necessarily, but whatever you're paying for, that's what you should have the long-term rights to go along with it.

MS. LAMPI: But outside of transmission agreements, Tom, is it not true that your share of an embedded cost rate, is your load ratio share? If you have no transmission agreements, and you were paying a TSC as a wholesale customer, your share would be your load ratio share, not the share that was previously existing under your transmission agreement.

MR. RUDEBUSCH: Right, and I think that if you're paying more than the load ratio share, as -- and I hate to pick on Allen, because I like LIPA and their public entity,

as well, but they're paying more than -- they're paying for more rights than their load ratio share of the Island.

MR. PATTON: I mean, I think this comes down to I have a grandfathered agreement that goes way beyond my load ratio share and I currently am paying something far below market, and my grandfathered agreement is expiring; what kind of rights do I have to continue to pay less than market?

MR. SINGH: Order 681 doesn't go to how many grandfathered rights you have, because your rights, at least in the language in Order 681, to receive any direct allocation of long-term FTRs, is a function of your load, not of how many transmission contracts you have.

So, if you have transmission contracts far in excess of your load ratio share, you know, that's going to come to an end at some time or the other.

So, one question I'd ask Tom to consider, is, let's say we did implement a system that had direct allocation of long-term FTRs? I believe the New York ISO, at one point, even considered that approach, and then heard from transmission owners, the complexity of having different tiers of transmission service charges.

Well, I mean, is it really going to make that much of a difference to you in the end, because you'll get the up-front allocation, but then you're going to have to

pay a higher TSC.

There will be assumptions that go into the calculation of the TSC that may not make it an exact wash. I mean, the same questions will come up there, and how should the calculation -- all the debate we're having here on what the price should be for the long-term FTR, all of those issues will come up in how should we calculate the different tiers of the TSC, and should it just be recalculated every year on the fly? Should you fix it? Is this worth the trouble?

MR. RUDEBUSCH: Well, I think you've got two questions there. I think, to cut to the chase, for the --

MR. SINGH: At least two.

MR. RUDEBUSCH: At least two, that's right. The answer to the one question, is yes; I think that the ISO's designed a system that no one will ever use. I think that's pretty clear.

But the other point, the complexity point, we haven't gotten there yet, but I just don't think that there's anything to the idea that there's this complexity introduced into the billing or settlement system, because of retail access, because I think that the charges that are paid by the wholesale TSC -- and if you look at the materials that we passed out, I have an excerpt behind the blue page, that has what's called the Wholesale TSC, in

Attachment H, starting on Tariff Sheet 388.

And it specifically provides that retail service is not covered by this wholesale TSC. There is a crediting mechanism for congestion rents and there's a crediting mechanism for auction revenues in the wholesale TSC.

When you turn to the retail rates, the rates that people in the retail access programs pay, that's behind the L Sheet of paper. You can see that the TSC is deemed to be included in the same delivery rates that all of the customers pay.

There is not a special rate, there's not a special delivery rate that people in the retail access program pay. There were some -- there's not a recalculation every month, like there is in the wholesale TSC for the congestion rent piece, and for the auction revenue piece.

Instead --

PARTICIPANT: That's not true.

MR. RUDEBUSCH: -- instead -- well, you can look at the tariffs and make your own decision. And one of them is attached, for example, Niagara Mohawk's tariff is right there. It's behind -- it's just before the green sheet.

It just says the delivery service charges will continue to apply, the same delivery charges that the other customers pay. And there's not this continual recalculation

of what the credit is for each individual end use customer or each individual ESCO or LSE or whatever you want to call it.

So, I don't think the complexity is there. How the retail rates were developed, were that they basically have these long-term retail rate plans of the Public Service Commission, where there are certain estimates up front, for what the credits would be and what the revenues would be, going way into the future.

And so there's not a continual process every month of calculating a new TSC that's applicable to them.

MR. NACHMIAS: Can I just address that? This is Stuart Nachmias from Con Edison. I guess when we read Order 681. It talks about LSEs and providing for long-term service applications for LSEs, not muni LSEs separate from other LSEs.

And for LSEs, they do not pay the TSC, but the TSC is charged through the delivery rates by the TO. There is a credit back every month, based on TCC auction revenues that are received from the NYISO, to all customers.

If we had -- if there was an allocation, even for a load ratio share, to each of those LSEs, that's where we get into all of the complexities that were discussed earlier, I think, by the NYISO, because what would happen, is, one LSE might show up and say I have this amount of

load for the next three, four, five years, and, therefore, I need these long-term obligations and an allocation of rights, but that could change at any point in time, for a variety of reasons.

Customers can, you know, maybe change. I don't know the contractual arrangements between particular LSEs and their customers, and so it would become really impossible as a TO. First of all, we don't have the facility to have different charges for transmission in our delivery rates, depending on which LSE serves a particular customer.

We charge the same rate to all our customers, and so our systems can't accommodate having a different rate, if you're served by LSE-1 versus LSE-2 versus LSE-3.

MR. SINGH: I want to stop you right there. Yeah, you don't have that today, but did you consider what it would cost or how long it would take to make a transition, if one had to be made?

MR. NACHMIAS: We basically take that as a significant change to all of our billing systems and tracking systems. We have not scoped that out, but that would be an immense task to change and not something that we think would be easy to do.

We would also then have to track if customers moved, does that right go with the LSE or with the customer,

for example. I mean, it gets very, very complicated in terms of what happens.

The alternative, which is what the ISO has proposed and what we support, basically allows, effectively, the same thing to happen, but uses the mechanism that is in place today and allows those auction -- the revenues, to be distributed to all customers, as we have done that today.

We think that makes sense. It supports the environment we have for our customers, their ability to switch LSEs, and treats all customers on an equal basis, no matter what LSE they're being served by.

MS. LICHTENSTEIN: What if you treated the munies who are a separate group and are the only ones paying the wholesale TSC, what if you treated them separately and you left the rest of your system the way it is now? The munies are fairly small, especially with regard to the -- I'm thinking of the fixed-price TCC, the ten-year one.

How much of an effect would that have on your billing and accounting system?

MR. NACHMIAS: I'm going to -- I see National Grid. We don't have in our territory, munies in New York City, but National Grid -- we have contracts that go to Long Island, but maybe Roxane Maywalt from National Grid --

MR. FARRAH: Before we go there, can I just add

something to what Stu just said on the answer to the other question?

It would not just be accounting problems and the like; it would be much worse than that, because these companies have agreements, multi-year agreements at the state level, that make assumptions about all this stuff. So those would have to be reopened.

In addition, they don't price their system and their TSC, you know, according to different portions of their system, so let's say they have an LSE in the Eastern portion of their system, who wants to buy a long-term rate over there.

That's very valuable. Another LSE wants -- you know, in the western portion of the system, wants to buy a different -- or wants to have an entitlement to a long-term right on that portion of the system. Those two long-term rights have different values.

Each LSC represents different end-use customers. So are going to have to unwind the average embedded cost TSC that we have and somehow try to figure out how to make both of those sets of customers whole. And even if you could do that, then you've got the migration issue. So that every time it migrates maybe you've got to change again.

So it's just not really practical to even think that we could do this--certainly no time soon.

MR. GASTEIGER: Could I suggest in any comments that you file after this that you really elaborate on the difficulties and complexities of adjustments that would be required to your billing process or any other problems that you would anticipate if we went to a type of a two-tiered system as we were talking about?

Because up until this point, the pleadings have alluded to, or made a stray reference to it but they really haven't given us much detail on what those problems would be. I think that would be helpful.

MR. FARRAH: Okay, sure.

MS. MAYWALT: Roxane Maywalt from National Grid.

I'll stand. Maybe you can hear me better. Agreeing with what Eli said--you know, he's my counsel as well here--but a couple of points specific to Niagara-Mohawk's System and National Grid, a lot of the focus has been today on the down-state entities' systems, Long Island

and New York City areas, which are slightly different than Upstate.

Niagara-Mohawk, just as a quick run-through to understand this, we have service territory over 8 zones, or 9, 8 zones. We have 29 municipalities that are served, most of which are still under grandfathered contracts.

I've been trying to sit here and figure out which ones have expired already. We also have wholesale--I stuck my hand up when I heard the idea from Lynn about having the different wholesale TCCs, TSCs, rather, I'm sorry, for just the municipalities because they are a small portion of our system.

Well that's at least 29 different customers, right now several of which are under separate contracts, and there is a billing set up for that. So in one sense, okay, we do sort of do that already, but to the extent that those customers would pay a TSC today, everybody in our system across eight zones pays the same TSC.

We also have beyond the municipalities other wholesale customers. We have wholesale charges with some industrial customers--I can't tell you how many. We have ESCOs, which are not municipalities, which pay some TSCs, some don't.

So I can't tell you the exact number because I didn't bring that kind of data, but I could find it out if

we needed to. But it would get incredibly complex because if you wanted us to have different TSCs for each municipality in each different zone, we're talking myriad of rates.

And to counteract what Tom said, I disagree entirely. Our TSC does change in our retail delivery rates every single month based on what the TSC calculation is at the Wholesale level. That is embedded into our retail rate changing monthly. So it is not as simple as some people are trying to make it sound, least of all for a system as large as Niagara-Mohawk.

MR. JONES: Could I just add that it might not be--to the extent that there's some special, you know, below-market rate that's available, I think LIPA wants access to it, too. And we're not a small amount of load. And I wouldn't be surprised if NYPA wouldn't want it, and there may be other entities that have long-term load relationships that want access to this, too.

Now we have been supportive of the NYISO proposal. We think it's fair. We think it meets what FERC was looking for. But to the extent we're carving something out where we're going to have some below market ability to transmit power from our upstate resources to our downstate load, we want access to that, too.

MR. BUSH: I think we're kind of beating around

the question--Tim Bush from New York Municipal Power Agency. The question in my mind is whether you can really determine what the market value is of this long-term TCC, this 10-year TCC based on 2 year's worth of auction results.

I don't think you can. I mean, that is the proposal. That is my problem. I don't think that is a true reflection of what the market value is over 10 years. Ten years is clearly not marginal. It's long term. Therefore I think some other pricing mechanism is more appropriate. I don't know off the top of my head what that will be, or should be.

MS. WERNTZ: Well given that there's no auction yet for long-term rates today, what would you recommend?

MR. BUSH: That's a very good question. I don't know. I think traditional embedded cost rate making works in those terms, but, you know, like I said before I'm not a rate maker.

MR. RUDEBUSCH: Well one of the options that was proposed, at least in some of the working groups, was that entities who paid the embedded cost rate for a long-term right wouldn't get the credit for the auction revenues that are TSC.

MR. FARRAH: Could you repeat that? Is that what we were just talking about, which is giving all the money back to the company that paid it even though they got a

disproportionate amount of them? So in other words, you would get essentially a disproportionate amount of the long-term rights for nothing?

MR. RUDEBUSCH: No, for paying your share of the embedded cost system without whatever revenue credit you get for the auction revenues.

MS. WERNTZ: Or an alternative would be that they wouldn't get that full 90, 88 percent coverage, that they only get 50 percent coverage or something less?

MR. SINGH: No, what Tom is saying is essentially what we've been discussing, that it involves having different TSCs. Because he wants the direct allocation, and in exchange he's willing to pay a higher TSC.

But then, Tom, I heard different things. You said that it's not so complicated because you don't have to update assumptions every month necessarily. Roxane said you do have to update them. But either way, I mean if you updated them regularly then it's very complicated. And if you don't update them as often as you suggest might be the case, you're going to have a problem that the assumptions are not going to be perfect.

So the TSC that they'll charge you because of the assumptions they make every six months or every year is not going to be exactly the one that you would like based on your FTR allocations. It doesn't seem to me to be worth it

to go that way.

MR. RUDEBUSCH: Okay, well we'll consider that. But again I think in terms of the billing complexity--you're right about the uncertainty part of it from the customers point of view. From the billing complexity part of it, I think if you restrict the option, the wholesale, people will pay the wholesale TSC, then you don't have the same volume of customers.

And my suggestion again is that the retail customers pay the same delivery rate as everybody else. And the company may get a credit from the ISO, but I'm not sure it's flowed through. I don't see it in the tariffs that the PSC has on file.

MR. SINGH: Okay. Another thing that the staff had thrown out was the notion of--

MS. WERNTZ: Just one quick--

MR. PATTON: I think the quantity matters a lot in terms of this idea because if we go back to the idea that they're only entitled to their load ratio share, if they get their load ratio share and for that they basically don't get their allocated--the credit towards the embedded costs, then they're essentially--that's exactly the same as paying market and getting the credit back.

Where it starts to differ is if they're getting and if they're entitled to something that's quite a bit

higher than the load ratio share.

MS. LICHTENSTEIN: Just to clarify, when you say "load ratio share," are you talking about load ratio share at the peak, load ratio share as an average over the year baseload? What does it mean?

MR. PATTON: Well I guess generically I'm talking about the same, however you calculate the ratio from the perspective of the obligation to pay the embedded costs of the system and the credit back of revenues that are gotten in the auction. So that's the ratio that matters from the perspective of whether what you pay in is what you get back out.

So obviously if you use a different load ratio share in terms of what are they entitled to get versus the load ratio share you're using to rebate back revenue, then there would be a mismatch there. But just in general terms, if you're calculating that load ratio on the same basis, then the proposal that Tom is talking about is exactly the same as just telling them to buy it at market and we'll rebate you back what's collected in the auction.

So it is hard for me to believe that they're going to find that attractive. I think there must be an assumption they're getting more rights than that.

MS. WERNTZ: I think Roxane wanted to add something.

MS. MAYWALT: Thank you. For the reporter's sake, Roxane Maywalt again, National Grid.

Another thought in talking about the load ratio share that hit me is that at least for the municipalities in Niagara-Mohawk's territory--I can't cite for what happens on Long Island--what the municipalities right now have allocated under their long-term grandfathered agreements tends to be--and I don't have data specific to each one--but tends to be a contract demand higher than their load ratio share at a peak level.

They tend to have a contract demand that they are only using perhaps 75 or 80 percent of on a load basis. So, you know, we were willing in working with the New York ISO on developing this proposal to allow them to have that extra right to continue even if they're not actually using that amount of load based on their grandfathered contract demand.

So I think that's, you know, something we tried to consider. And again it may be different in other zones or utilities, you know, the municipalities and other utilities, but, you know--I don't know where I'm going with this--load ratio share may actually be less of a right than what we were offering in some cases for some municipalities in this proposal.

I wanted to add one other quick thing on a different little note. Back to the rate issue, the rate

complexity issue, at least for Niagara-Mohawk we can't make a change--God forbid the PSC does something else to us in the next couple of months--but our current rate plan has established our retail rates through 2012 or 2013, I forget what the exact date is. So we couldn't even make a change that, Harry, I think you were suggesting, where we would have different types of TSCs to affect different even wholesale rates because our company would have to defer that into basically what we call a deferral account right now on the retail side, and try to accommodate and recover that cost from our other customers in our next retail rate case.

And, you know, we don't have a current way to deal with that to make it fair to where Niagara-Mohawk shareholders are not paying.

MR. GASTEIGER: I would just like to point out, my fellow staff members, that the clock is running out. We have about 50 to 55 minutes left on this. So if you have further questions, I would like you to push forward, and I would like everyone to please keep their responses as succinct as possible for the remaining amount of time we've got. Thank you.

MR. MARGOLIS: Roland, did you have any more?

MR. WENTWORTH: Nothing specific at this point.

MS. WERNTZ: I actually have a few perhaps tedious questions on how the fixed price TCCs are going to

be valued.

Originally, holders of grandfathered agreements had a choice that they could either continue to have grandfathered rights, or they could convert them to grandfathered TCCs. I was just curious.

MR. PATTON: You mean when the market was first formed?

MS. WERNTZ: Right.

MR. PATTON: Okay.

MS. WERNTZ: So what I'm trying to figure out now is whether there's a benchmark of those prior two years' auctions for all of those grandfathered rights, holders of grandfathered rights that may not have converted them into TCCs now are going to perhaps elect to have TCCs, long-term TCCs, and the way that they're going to be valued for the fixed-price option will be based on the auction results for the prior two years, the four auction results for the prior two years.

I guess I want to be assured that at least portions of those paths have been auctioned off before. Do you see what I'm saying? Have those paths been auctioned off before that they've been valued?

MR. PATTON: Yes. Yes, I mean I think I understand. Is that succinct enough?

(Laughter.)

MR. PATTON: I think I understand what you're saying. But in the TCC auctions, when you run a TCC auction you have a representation of the network, and when certain constraints are binding you will get positive prices for TCCs. And so the grandfathered rights from point A to point B, you know by definition, are using the same capability of the system so that, you know, whatever constraints are binding in the TCC auction that creates a TCC price, you could back out a price for the grandfathered agreement equivalent TCC even if nothing has ever been bought or sold at those points.

MS. WERNTZ: Okay. That answers my question.

MR. HARVEY: You should remember, though, that for Long Island there are restrictions on what TCCs we sell sinking on Long Island because of the tax issues. And there are separate provisions that don't involve long-term auction prices regarding the pricing of the Long Island TCCs because there aren't prices there.

MS. WERNTZ: I remember that's in the filing, yes. And, let's see, and Dr. Patton I know you also discuss this in your affidavit, but do you mind going over the difference between a risk premium and an option premium? And why you think it is acceptable to include an option premium rather than a risk premium?

MR. PATTON: I think what I said is it's not

exactly an option premium but we're calling it an option premium.

An option premium is something you would charge somebody who gets an option, whether they exercise it or don't exercise it because it's valuable to have the choice rights. So if you give me a choice of--stock options are easy examples--if you give me a choice, you know a year from now to buy IBM at some price, it may be out of the money and I may not exercise it, it may be in the money and then it's really profitable. So you charge me an expected value of the array of potential payouts to that choice.

Now in this case the same thing can happen. At the time that somebody is exercising their option, it may be fairly clear to them that the price is higher than what they expect congestion to be, in which case they're not going to exercise it.

It can also be the case that we're offering them a price that looks like it's trading at a substantial discount, in which case they will exercise it.

Now we're not really charging them an option premium in that case because a true option would be a charge that would go to them even if they choose not to exercise it. In this case we only charge it if they do exercise it. So it's not exactly an option premium. But it is intended to reflect the fact that these things are only

going to be exercised when they appear to be underpriced and therefore there's a bias toward shifting cost to the other customers.

So that even if on average we were pricing this thing perfectly, they're only going to be exercised half of the time when we're underpricing them, in which case they're being funded by everybody else. So that is really what the premiums were intended to address.

MS. WERNTZ: Last question, I think, or second-to-last. Let's see, NYISO's prior experience with long-term FTR auctions was that they resulted in a fire sale. I was just curious how NYISO can be sure, as sure as it can be, and the Commission be assured that the averaging of the prior four auctions over a two-year period plus adjustments will properly value those long-term rights. Your best case.

MR. PATTON: You're looking at the lawyers.

(Laughter.)

MR. PATTON: I'd love to hear what they have to say.

MS. WERNTZ: As a lawyer I think I can safely say it's an economic question.

MR. PATTON: I think what you would worry about in terms of the price not being representative of the value of the right is that generally happens in illiquid markets. I think that may have been what you were referring to as the

prior experience.

But the values that we are going to be using over the past two years to value this right are coming from fairly highly liquid markets. In fact, on a yearly basis in the state of the market report we look at how the TCC prices correspond to the congestion that actually occurs, and how quickly when congestion increases on a path do the TCC prices increase to reflect that, which is sort of a reflection of whether the markets are performing properly.

So we're choosing values from markets that we think are liquid, at least for half of it, and then to further guard against the fact, the potential that the prices coming out of those TCC auctions could be anomalously high or low, we're using the actual payouts to the TCCs the last two years of payouts.

So if for some reason--and who knows why--the TCC auction produced a very high or very low price, nonrepresentative of what the value of the TCC is, of course there's lots of arbitragers that would be looking for those sorts of opportunities--some of them are sitting in this room--so the more of them there are, the less likely it is that this would ever happen.

But to the extent that that may happen, using the congestion payouts further reduces the probability that you would get something that is not representative.

MR. SINGH: What about the going-forward part? Do you worry that using just a few years in the past, I mean there could be some upgrades coming, there could be a lot of changes. And also did you look at--there's a rich history in PJM and New York now. Congestion has increased even on a per-unit basis over the years, so the escalation factor sort of fits in with the logic that, absent any upgrades, things are going to get more expensive.

But was there any--I mean, this was just your best guess at pricing method?

MR. PATTON: Well we never "guess."

MR. SINGH: It is market based, but it is not--

MR. PATTON: Yes, that's right. The--

MR. SINGH: --giving me a lot of comfort.

MR. PATTON: Well, I mean if you look at the history there's history going in both directions on various interfaces. And when Athens was put in the capital zone, it greatly increased congestion coming south.

On the other hand, we just had 1000 megawatts put in New York City that basically contributed to congestion coming into and within New York City getting cut in half. And those are generation investments, right? We're not even talking about transmission upgrades.

So I think what we said in the pleading was it's very complicated to try to forecast over 10 years what is

going to happen to congestion. And if you were going to try to do that, certainly you would have to do it on an interface-by-interface basis because there's no one pattern of congestion that appears to be happening everywhere.

So if you restrict yourself to one methodology that has to be applied everywhere, we've made the argument--and I think it's right--that using the recent history on congestion is the most unbiased indicator we could come up with that would apply to--that would be applicable to all interfaces.

MR. SINGH: I can't think of anything better, either, but I mean this is a price that we're going to have to rule is just and reasonable, and it comes out of--

MS. WERNTZ: Supports long term--

MR. SINGH: Yes.

MS. WERNTZ: --made in plan.

MR. SINGH: The other part would be better, I guess, but it's coming out a market that is valuing things for the next year. The market is not speaking to--and the congestion payments are not speaking to what is coming five years from now, what's coming six years from now.

So in that sense it's a little questionable on the relationship of this price for the instrument that is being sold.

MR. PATTON: Well, I mean a couple of other

things. Certainly there's a better idea out there. I think we're open minded. But keep in mind that they are only going to be exercised when the person who is buying them believes that the price that they're paying is less than the market value--in other words, less than their other opportunities to buy similar rights.

So that by definition if their expectation of what the competitive value of the right is in the future is just and reasonable, this has to be just and reasonable.

MR. SINGH: Thank you.

MR. BERSON: I have a question for you concerning page 24 of your original application where we're talking about the fixed price option and possibly applying them to the load ratio share ETCNL.

Could you explain how you would do that exactly? Would you use the same method as you're doing for the grandfathered? And would you do it for all the long-term rights that are available to the ETCNL?

MR. PATTON: Say this again? I'm not sure which--

MR. BERSON: Okay, on page 24--no this isn't the July 27th, this is your original. Page 24. I'm sorry, it's the Response, the September 24th response--August 24th, thank you. I'll get it right here eventually.

On page 24 of it, the third paragraph, it says:

"If the Commission nevertheless determines that NYISO should not link access to new fixed price rights to entities that formerly held grandfathered transmission rights," that you could implement the following alternative and could give an option to price some quantity of the TCCs they received through AAR conversations at a fixed price, essentially.

Could you explain that a bit more how you do that and if that presented any problems? Because one of the concerns I have is with price certainty. And if you use the auctions to price these rights, then you don't really have the price certainty. But if you have a fixed price determination somewhere to the conversion of the grandfathered rights, then you would have a price certainty. So is that a viable option?

MS. MURPHY: To be clear, David wasn't involved in the preparation of that response with that particular proposal, so if he's responding to it I think he needs a second to think about it, and we can't say that he is the owner of it certainly. The NYISO did it, the NYISO staff.

MR. PATTON: You're asking a clarifying question of how would this be done, right?

MR. BERSON: To me it has quite a bit of appeal because it provides price certainties. I'm interested, if we were to order that would it present any problems?

MR. FARRAH: Am I reading this wrong? The

paragraph that you're pointing to says: If the Commission nevertheless determines?

MR. BERSON: Right.

MR. FARRAH: I read that to say that, you know, if you don't link it to grandfathered rights and you therefore make it available on a load-ratio basis, you could still make it available in the same way that the long-term rights are being proposed under this filing. Isn't that what it says?

MR. BERSON: Well, it's speaking to the pricing. Rather than use auction prices for the load ratio shares of long-term rights, you use a fixed price.

MR. FARRAH: Yeah, but it says a fixed price determined using the proposed methodology for fixed price TCCs.

MS. MURPHY: Yes, the intention is right, for the formula that we had initially proposed to use for the fixed price option 10-year TCCs could be adapted and used for this purpose. It's not a different pricing proposal.

MR. BERSON: Okay, so it's the same thing.

MS. MURPHY: It's the same pricing proposal.

MR. BERSON: Okay, these rights would be renewable annually as opposed to a 10-year fixed price determination?

MS. LAMPI: No, I think the proposal was to,

rather than just let the grandfathered rights holders have the fixed price, we would say, okay, they don't--they're not the only ones that get the fixed price. Instead, all load-serving entities getting a long-term right would have the opportunity to fix some portion, and we don't know what portion, but grandfathered rights converters to long-term FTRs and LSEs converting ETCNL to long-term FTRs would get an equal portion of the LTFTRs they bought available at a fixed price. And the balance, if they wanted to buy them, would be priced at the annual price.

We don't know yet what that percentage would be, but it would apply equally to all buyers. And, yes, our internal ISO TCC staff have suggested that if there are two prices available, we can spread them to all LTFTR buyers. We just don't want more than two kinds of pricing available. We can manage two, we can't manage more than two.

MR. BERSON: And the two would be?

MS. LAMPI: Fixed price--

MR. BERSON: Right.

MS. LAMPI: --and the annual renewable price.

MR. BERSON: Okay, this is a substitute for the annual renewable price.

MS. LAMPI: It would be for those eligible only for the annual renewable price for a portion of it. They would not, under the alternative, be able to buy a portion

of the LTFTRs they're going to buy at a fixed price, the same price the grandfathered rights holders pay.

MR. BERSON: And why only a portion as opposed to all?

MS. LAMPI: Because I think this piece of the filing is dedicated to the proposition that we think it is financially dangerous to make the fixed price available for all FTRs who are selling.

MR. HARVEY: We could implement it if we were ordered to do it. It isn't something that's impossible to implement, but the paragraphs above say the outcome might not be pretty if we were ordered to do it.

See, we've analyzed--we've looked at the potential downside of misvaluing and understating the profits on the fixed price option as it is expressed there. We are not saying that if that formula is applied we would get a change in the world where prices go up or down or something that we might have really bad outcomes if that option were available to thousands of megawatts of valuable rights into New York City, and certain entities were able to take that right and it goes to the LSC and not to the ultimate customer, and the ultimate customer ends up being stranded because the LSC is given rights at a cheap price that don't flow through to the customers.

I mean, we talk above that about there could be

really bad, bad downsides. But it is something we could implement. It's like we could put the gun in our mouth and pull the trigger, but--- you know, we could implement that. It's not necessarily a good idea.

(Laughter.)

MR. BERSON: So there isn't a whole lot of faith in your fixed price is what I'm hearing. I don't think that's what you're saying.

MR. PATTON: Well I don't think that's what we're saying at all.

MR. FARRAH: You have to look at the answer in relation to the question. The question said, you're giving all the fixed price options to the munies that have the grandfathered contracts.

You know, what if you did it--you know, could you do it differently and give it to all LSEs? And I think the answer is, we're giving it to the ones that want it. But if we were ordered to give it to everybody, we could figure out a way to allocate those to people, but it's not a different price that's being suggested. It's just a different allocation of the long-term fixed price options.

MR. PATTON: Well the other thing is, I could be completely off base with sort of what you have in mind and what Molly was saying, but under the current proposal, the ETCNL as we discussed, essentially the customer is paying

the embedded cost for its load ratio share.

The ETCNL if it chooses to buy more, then it's essentially paying a market-based price. I think in all likelihood we would view that as superior. For the portion that is above the load ratio share, we would certainly view it as superior that they pay the actual market price rather than our calculated fixed price. There doesn't seem to be any reason, if you're trying to charge somebody a market-based price, for a one-year product, why you want to use the price that already exists in the market, why you would use this price.

While we have faith that this is a reasonable way to calculate the fixed price, the only reason we're using something that's not coming out of an auction is because we don't have a 10-year auction.

So we have to use this. But if you're talking about the ETCNL conversion, we have one-year TCCs and there's no reason not to charge that price.

MR. MARGOLIS: Does staff have any more questions?

MS. LICHTENSTEIN: One more try on this load ratio share.

Any idea how it relates to reasonable needs as defined in Order 681, which was base load, or zonal base load, I think.

MS. MURPHY: We addressed that question, I thought, earlier this morning from the legal perspective in that we didn't try to adopt a definition that reflected the load ratio share of each LSE in our proposal.

We tried to conceptualize reasonable needs in terms of what the different characteristics of different kinds of LSEs are.

MS. LAMPI: Were you asking how would each LSE's loads be met, if instead of giving the grandfathered rights holders all of their grandfathered rights, we gave them only their load ratio share that any LSE in their service territory would be entitled to? Was that your question? Do we know how much of their reasonable needs, rather than the 90 percent that we're giving them today, if we said, no, you can't have all your grandfathered rights as long-term FTRs, you can only have your load ratio share of any paths historically used that sink in your load zone, how much of that load would that cover? We don't know the answer to that question.

MS. LICHTENSTEIN: That's the answer.

MR. PATTON: Well, can I take a shot, even though she's agreed that's the answer? Maybe I can dissuade you.

(Laughter.)

MR. PATTON: I think it varies by location, but for example if somebody told me 85 percent of your peak load

is covered by this allocation which is not load ratio share, then that's far above the base load.

In fact, in something like 95 percent of the hours, that allocation would cover your entire load, because the peak is so severe.

MS. LICHTENSTEIN: But what I'm getting at is really not quantity. What I'm getting at was your prior discussion of the revenues that come back, the credit. And you said, well, as long as you do everything according to your load ratio share, you get a proportionate share of revenues.

So my question is: Order 681 talks in terms of reasonable needs. It doesn't talk in terms of load ratio share. So can you relate to me what a load ratio share is in terms of the 681 standard? The answer was, no, we don't really know that.

MR. PATTON: Well the other observation I was going to make is that it depends on the import capability that is available to acquire relative to the load. So in Long Island, for example, I think what you heard is that, you know, if you'd put the 17 percent for LYPA together with the 85 percent, maybe you could say that the important capability that's available is 19 percent of the peak, something like that.

So if we gave everyone 19 percent of their peak

load, that's probably less than what you would normally say is baseload. But that's Long Island, and the relationship with the import capability on Long Island to the load on Long Island is different than it would be for New York City and it's different than it would be for areas upstate.

There if you give a load ratio share of the import capability, you might come up with a much higher percentage. So I'm not sure there's one answer that fits everywhere.

MR. FARRAH: Am I mishearing you, Lynn? If the munies represent let's say 5 percent of the load, but they're using long-term rights to meet in excess of 90 percent of their load, if we went to a load ratio share, they're going to drop down to 5 percent. So they're going to be getting 85 percent less of their needs met with long-term rights.

By the same token, the rest of the load who is not really indicated in the interest in these would be getting some portion of the long-term rights, including the fixed price ones, and it might be 10 or 20 percent of their load, whatever the number is, but it is more than they've asked for, and they'd be getting less than they've asked for.

So that's sort of why we didn't go that way.

MR. PATTON: Yes, I guess what I was saying is,

you know, load ratio share--if the import capability that's available is 20 percent of the load inside and you give them a load ratio share, by definition you're giving them 20 percent of their peak load in terms of what they can cover with the long-term rights that they've gotten coming in.

Now for Long Island Municipals that's far less than what we're offering to give them, given that what we're offering covers whatever we said, 85 percent of their peak load. So that 20 percent, if you looked at that relative to base load, most people would probably say that looks low, but it's only low because the import capability you have available to allocate is low relative to the load. And that may not be the case in other locations.

MR. MARGOLIS: Okay, I think we would like to take a short break. So maybe we could reconvene in about 10 minutes.

MR. GASTEIGER: It's going to be a very short break, so don't go too far.

(Recess.)

MR. MARGOLIS: Okay, we'd like to reconvene. We'd like to finish up by about 3:15, to accommodate some flight schedules, so we have a few items that I think we want to bring up and hopefully close out.

So, Roland, did you have one item?

MR. WENTWORTH: I just want to throw out some practical ideas, I guess. I know the ISO is moving toward this end-state auction idea at some point in the future, and I guess -- I imagine a lot of what gets decided in this proceeding here, may be reopened perhaps when that comes about, or at least certain aspects of it might be reconsidered.

I'm thinking of how to get from here to that point, and I was just wondering if there could be any kind of a transition pricing mechanism where perhaps we'd give some weight to the notion that -- well, I guess, the munies' position is that they are entitled to these long-term rights, in exchange for paying embedded costs.

And the ISO's position is that on the ten-year TCCs, they can get the rights, if they pay the price determined according to the fixed-price formula. I'm wondering if there is someplace in between that might be a middle ground way of pricing, until we get to a point where, you know, with the end-state auction, everything was all nicely in place and we could take another look and go

forward from there. I just wonder what people's thoughts are on that?

MR. MURPHY: We don't have an initial answer to that here today. We think it's an interesting idea and we're open to exploring it, and perhaps that's another topic that we could respond to in written comments, that get our people thinking together and thinking about whether there's a way to bridge the gap, as you say.

MR. RUDEBUSCH: Well, that's a useful suggestion. I mean, I think it's something that may get us out of whatever conundrum we're in, because we do need some creative mechanism to resolve this somehow.

MR. BUTTERKLEE: Could I give a followup answer? Neil Butterklee from ConEdison. I mean, exploring is one thing, but we also have the concern that now there's a standard of undue discrimination, and we don't want to unduly discriminate in favor of the munies, at the expense of all of the other customers.

So, while providing some sort of added incentive or price benefit to the munies, the price becomes a cost to someone else. So, I guess, from an undue discrimination point of view, I think we've got to be careful not to harm others.

MS. WERNTZ: Go ahead.

MR. PATTON: Okay, so maybe I'll jump in on that

point, although I'm enjoying this candy bar.

(Laughter.)

MS. WERNTZ: Make sure that's on the record.

(Laughter.)

MR. PATTON: What makes something in between, difficult, is, you know, there's this threshold question that I have raised a couple of times, and that is, are people entitled to something below market or not?

If you say, yes, they're entitled to an embedded cost price, even if that's, you know, well below market, then, yeah, that's a policy determination.

If it's -- if the idea is, but that involves shifting cost to other customers, so that's the cost of that determination -- if you decide that they're not entitled to something below market, then the issue is, really, have you -- is what we're proposing, as good as we can do at trying to come up with a market-based price, or is there some way to tweak it?

I don't know what policy guidance would get us to something in between those two, I guess, is where I'm going.

MS. WERNTZ: I have another suggestion for you to consider. It also goes to trying to come up with the best or better market valuation approach.

And so what if this were also for the fixed-price TCC option? For the fixed-price TCC, what if holders

elected to take -- that elect to take the fixed-price TCC option, elect for that price that's fixed for ten years, but when they get to the fifth year, they have the option that the price could be reevaluated.

So they could either elect to keep with the price that they entered into for the first -- for ten years, originally, or the price could be reevaluated, based on what had happened during the prior five years of experience with that long-term rate.

For the first idea, for the first five years, the risk of forecasting error, would fall more towards the long-term rightsholder, and for the second five years, perhaps the risk falls slightly more towards -- I see you reaching for your microphone, but they have an -- there's a possibility that it could take into account, events, things that happen after the first five years, like new generation, new transmission, outages, terrorism.

MR. PICARDI: Excuse me, but I'll jump in there, because, as a marketer, I'd love that option.

I'm sorry, I'm Matt Picardi, with Coral. I'd love, as a load-serving entity that serves load, the right to take a look five years out. That's within my -- coming close to my company's time horizon, and so if you're going to give that to them, I'd like the same look.

MR. FARRAH: And I don't know why it would be a

one-way thing. Either it's priced for five years and you have a right to another five years at the new five-year price, or not, but it shouldn't be that you get to keep the first price, if you like it, but you get to give it back, if you don't like it.

MS. WERNTZ: Well, that's a possibility, too, but I'm just talking about price certainty and price certainty over the life of the right.

MR. PATTON: I don't think it is an option, what he just said. But that was the point I was going to make, is, this is becoming an increasingly valuable option, if it only ratchets in one direction.

In other words, if it's clear it's been underpriced and you just get to keep it, so that there's no readjustment upward in the price, you can only, at the five-year point, adjust downward, then it seems like, by definition, we're not charging enough for it. You know, maybe we'd have to increase the premium or whatever, but if it ratchets in both directions, the problem with that is, we then are violating the Commission's guidance that it has to be known at the beginning of the term, what they're going to pay, because, by definition, they only know for the first five years.

So, at that point, you're just talking about a rolling set of five-year products, rather than a ten-year

product.

MR. BUTTERKLEE: I think, to follow up on what -- Neil Butterklee from Con Edison -- to follow up on what Dr. Patton said, I think that if you have a one-way pricing option whereby, at the end of five years, the holder, the LSE, the entity who bought the TCC, can reevaluate, and if the price is low, get it at a lower price, you know, it's one thing if you have it that way, but you have to put a premium up front, because, all of a sudden, as Dr. Patton says, it becomes more valuable, because the person has a five-year out or a five-year re-accounting at a lower price, so you've got to factor in, up front, a little bit of -- I think what he talked about before -- an option premium. See, David, I was listening.

(Laughter.)

MR. PATTON: I think the thing that people have to remember here, is that this is a hedge against congestion, but the congestion is going to be there, and it's going to have a price.

So if it turns out to be a good deal for them, it's a bad deal for somebody else. In other words, somebody else is going to pay that congestion, some other portion of the load.

And so, you know, you have to wonder, really, what the point is of doing that, making the deal very

attractive and really helping one set of customers on a protection on the downside, at the expense of another set of customers who are assuming the risk.

I think the better way to do it, is to -- you know, if you want a ten-year product, you have to take your best shot at pricing the ten-year product. And if you don't want it and then you want two series of five-year products, then that's what you want.

But the notion of giving somebody a ten-year product at a deal that can only be a great deal for them at somebody else's expense, I don't see the point of that.

MR. RUDEBUSCH: I don't think it's at someone else's expense. I mean, they have their own contracts for long-term energy and capacity sources. It's not like they're buying on the spot market or should be subject to the congestion prices others pay for.

I can assure you that if there's too many costs loaded on, no one's going to buy it. And there's only one solution, long term, and that's to get off the system, because it's not working.

MR. FARRAH: Well, unless you have a hedge, then you're paying the cost of congestion as part of the transmission. And if the congestion wasn't there, nobody would be buying these things, anyway, so you're assuming there is congestion there, and you're assuming that one

party has a hedge and the other one doesn't, and --

MR. RUDEBUSCH: You're talking about Long Island, but most of the munies upstate, where there is no congestion, or very little.

MR. FARRAH: Then why would you be buying a long-term hedge against congestion that doesn't exist?

MR. RUDEBUSCH: For the certainty, so that you know that if you have a new resource, you'll know what the price is. It's not supposed to be a volatile price. That's what Congress wanted.

MR. FARRAH: Well, if there's no congestion, you're going to get a great price.

MR. RUDEBUSCH: I think you're going to pay the same TSC you would pay otherwise.

MR. MARGOLIS: Okay, I realize we've thrown these couple ideas out there, and we'd just like to hear in everybody's comments, what -- you know, take this on and think about it a little, you know, and we'd like to hear what -- once you've thought about them for a little bit, what ideas and what thoughts you have.

Does anybody on Staff have any more comments or questions?

(No response.)

MR. MARGOLIS: Okay, one thing I think we want to bring up, is the implementation or effective date that NYISO

has talked about. I know that in your original filing, you requested Commission action by December 1st, in order to implement this for the Spring of 2008 TCC auction.

In the August 24th filing, you would -- it's implied that you would need a number of more months to implement any new procedures. I just wanted to get a feel here for what timeline you're on in terms of at least having this in place for next year.

MR. MURPHY: You know, we're talking about a lot of different elements of the proposal, some potential changes and improvements to the proposal, reacting to the suggestions from the Staff. That makes it hard for us to say here -- I mean, certainly what we said, is that we're getting very tight on Spring.

I don't think we're in a position where we can say the Fall is impossible, certainly. It's something we could address again in the comments, particularly, if that would be helpful.

MR. MARGOLIS: Yes, I think it would. So, with no modifications, are you still on an Order by December 1st, as you originally requested? That would still be implementable in the Spring?

MS. LAMPI: Can we answer that in writing?

MR. MARGOLIS: Sure.

MR. BUTTERKLEE: Excuse me. I'm Neil Butterklee

from Con Edison. When are you looking for comments by?

MR. MARGOLIS: We'll get to that next.

MR. BUTTERKLEE: Okay, thanks.

MR. MARGOLIS: Yes, Staff is proposing that the parties will have the opportunity to file comments on this conference, and we're proposing dates for initial comments to be September 25th, to be filed no later than September 25th, and reply comments to be filed no later than October 5th.

MR. MURPHY: Well, you know, the original technical conference Order had suggested ten days, and I was going to ask if it would be possible for us to have 30 days to file comments, given the need to consider carefully, some of the suggestions you've made.

MS. WERNTZ: If you don't want a December Order.

MR. MURPHY: Right.

MS. WERNTZ: If you don't want a December Order, 30 days is fine, but we need to know that. You don't need to have an Order in time, you know, to get your Spring market run. If you want to take, like, five minutes to talk about it?

MR. MURPHY: Yes, that would be fine, to take a short break.

(Recess.)

MR. MURPHY: Having conferred with my client and

with some of the technical people that are here from the NYISO, I think that because we had planned to be doing some implementation work in support of a Spring auction, last month, and time is already -- steps that were planned for September, are already not getting started -- that we think that it's much more likely than not, that we wouldn't be able to make a Spring 2008 implementation date, and, therefore, given the opportunity to think about some of these things we've heard about today, again -- and we want to make sure we have enough time to talk to people about them and that we have enough time to think through them carefully ourselves, we think that the better course would be to request 30 days to file these comments.

MR. MARGOLIS: Okay.

MS. WERNTZ: Okay, then how do long folks feel they would need for reply comments? Fifteen?

MR. GASTEIGER: So, just to be perfectly clear, you are not expecting an Order from the Commission or requesting an Order from the Commission on December 1st?

MR. MURPHY: That's correct. We could clarify that in our request for an extension.

MR. GASTEIGER: Could you do that?

MR. MURPHY: Certainly.

MR. GASTEIGER: Okay.

MR. BUTTERKLEE: So we're looking now at

comments due on October 10th, I guess?

MS. WERNTZ: Yes.

MR. BUTTERKLEE: I guess 15 days?

MS. WERNTZ: Is 15 days long enough to reply? That would be the 35th. How does that work?

(Discussion off the record.)

MR. MARGOLIS: Okay, so comments are due no later than October 10th, and reply on the 25th of October.

MR. PICARDI: This is Matt Picardi again, with Coral. Can you just make -- if people do initial comments -- and I don't know how the next 30 days is going to evolve, but if you have a different pricing mechanism or proposal you're putting in, make sure they're in your initial comments. I would assume that everybody would be proceeding on that basis, so that people can react to that in the replies.

MR. MURPHY: Yes, that's a fair proposal. That's a good idea.

MR. MARGOLIS: Okay, if anybody has any other -- if nobody has any other comments or questions, then --

MR. GASTEIGER: One second.

(Pause.)

I just have a few closing remarks. I want to thank everyone for their participation. I think it's been very helpful for the Staff in terms of supplementing the

record for the Commission to consider while it's rendering a decision on this.

At the risk of having someone contradict me, I think we've made pretty good progress on the concerns the Commission identified regarding Guideline 5.

It would be helpful, as I indicated earlier, if the ISO could either clarify that, its points, in its comments, or, even better yet, given the added amount of time we have, if you could get together with Mr. Rudebusch and the other parties, and if you can clear that all up in advance, and indicate that in your comments, that would be even more helpful.

The other request I would make with respect to the December 1st request date that you have indicated that you're not going to -- you're no longer seeking Commission action by that time, if you could indicate what date you are looking for Commission action by, that would be helpful to us, as well.

Obviously, the real issue, I think, left for us, is surrounding Guideline 7. I commend the ISO and all of the participants for their efforts that have gotten us to this point. We've probed some of the different options here, and I thank everyone for not rolling their eyes, if we, FERC Staff, re-plowed ground that you'd already gone over many times before in the stakeholder process, but it

has been very helpful for us to get some education and enlightenment on some of the issues.

If I could suggest anything for all of the parties, if they could focus their comments, either their initial comments or reply comments, on the questions that Staff raised here at the meeting -- and, hopefully, people were taking good notes -- I think it would be most helpful in assisting the Commission at rendering a decision on this.

I think, finally, given the positions of everyone here, on the issues surrounding Guideline 7, just to be perfectly frank, I think it's going to be very difficult for the Commission to resolve this issue in a way that's going to make everyone happy.

I'd suggest another thing you might consider is using the extended time we gave you for submitting comments, is to see if there isn't any way you could possibly work this out before you dump it on the lap of the Commission, because the Commission is prepared to resolve this issue, and, again, I don't see how it's going to be possible, given the positions that were outlined here today, to make everyone happy.

So I think -- I commend everyone for the compromises that have been made to this point, and we are, I think, fairly close. It's a difficult issue, I recognize

that, but the Commission is going to have to decide this, one way or the other, so use your time wisely.

I don't know if any of the other Staff members have any additional comments.

MR. LANG: This is Kevin Lang from Greenberg & Traurig. Could I ask a question about what you just said?

If the parties are able to resolve something, that isn't perhaps exactly in accord with what's going on in other regions, is that acceptable, or would you be looking for a resolution that is comparable to what's happening in other regions?

MR. GASTEIGER: I think the Commission was pretty clear that we recognize regional differences on this. I think we do need to have an explanation of how the parties think it's consistent with the guidelines, but I think it would be helpful to the Commission, knowing that everyone, all the stakeholders, came up with a solution that there is broad agreement on, in fact, unanimous agreement on, would help a lot. Heidi, did you have anything to add?

MS. WERNTZ: I was going to say the same thing. Regional variation is permissible, provided the Guidelines are satisfied.

MR. LANG: Thank you.

MS. WERNTZ: Do you have any questions for us?

(No response.)

MR. MARGOLIS: Okay, thank you very much.

(Whereupon, at 3:11 p.m., the technical conference was concluded.)