

1 2-15-2024 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5
6 Thursday, February 15, 2024

7 10:31 a.m. until 12:26 p.m.

8 ESP, Building 3, 19th Floor Boardroom

9 Albany, New York

10

11 COMMISSIONERS:

12 RORY M. CHRISTIAN, Chair

13 COMMISSIONER DIANE X. BURMAN

14 COMMISSIONER JAMES S. ALESI

15 COMMISSIONER JOHN B. HOWARD

16 COMMISSIONER DAVID J. VALESKY

17 COMMISSIONER JOHN B. MAGGIORE

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2 (The meeting commenced at 10:31 a.m.)

3 CHAIR CHRISTIAN: Good morning. I
4 call the session of the Public Service Commission to
5 order. Madam Secretary, are there any changes to the
6 final agenda?

7 SECRETARY PHILLIPS: There are no
8 changes to the final agenda.

9 CHAIR CHRISTIAN: Thank you. Before
10 moving to the agenda, I'd like to conduct a roll call
11 of Commissioners. When I call your name, please
12 confirm that you are present. Commissioner Diane
13 Burman?

14 COMMISSIONER BURMAN: Here.

15 CHAIR CHRISTIAN: Commissioner James
16 Alesi?

17 COMMISSIONER ALESI: Here.

18 CHAIR CHRISTIAN: Commissioner John
19 Howard?

20 COMMISSIONER HOWARD: Here.

21 CHAIR CHRISTIAN: Commissioner Dave
22 Valesky?

23 COMMISSIONER VALESKY: Here.

24 CHAIR CHRISTIAN: Commissioner John
25 Maggiore?

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2 COMMISSIONER MAGGIORE: Here.

3 CHAIR CHRISTIAN: Thank you. Now,

4 before we go to the regular agenda, do any

5 Commissioners wish to recuse from voting on either

6 item 201 or 401? Commissioner Burman?

7 COMMISSIONER BURMAN: I'll be voting

8 on both.

9 CHAIR CHRISTIAN: Thank you.

10 Commissioner Alesi?

11 COMMISSIONER ALESI: No, I'll

12 participate fully.

13 CHAIR CHRISTIAN: Would you be so kind

14 as to say that again closer to the mic?

15 COMMISSIONER ALESI: No.

16 CHAIR CHRISTIAN: Thank you.

17 Commissioner Howard?

18 COMMISSIONER HOWARD: No.

19 CHAIR CHRISTIAN: Commissioner

20 Valesky?

21 COMMISSIONER VALESKY: No recusals.

22 CHAIR CHRISTIAN: Commissioner

23 Maggiore?

24 COMMISSIONER MAGGIORE: No.

25 CHAIR CHRISTIAN: Thank you. We'll

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2 now move to the regular agenda. Our first item for
3 discussion item 201 case 23-M-0298 and case 14-M-0565
4 as it relates to appropriations to enhance energy
5 affordability programs. It'll be presented today by
6 Aric Rider.

7 We'll also have Richard Berkley,
8 Alicia Sullivan, Tom Dwyer, Mike Summa for questions.
9 Aric, please begin.

10 MR. RIDER: Can you hear me? Good?

11 CHAIR CHRISTIAN: Okay.

12 MR. RIDER: Yes. Good morning, Chair
13 and Commissioners. Item 201 is a draft order
14 recommending the Commission adopt a utility specific
15 onetime energy bill credit using \$200 million in
16 funds appropriated in the 2023-2024 New York State
17 budget.

18 The onetime energy bill credit is
19 simple to administer, will be applied to customer
20 accounts automatically, and requires no action by
21 customers. The purpose of the relief to electric and
22 gas utility customers is to partially offset the
23 costs of the utility affordability programs in
24 recognition of recent upward pressure on utility
25 bills.

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2 The draft order estimates that the
3 relief will accrue to the benefit of more than 8
4 million customers Statewide. The draft order also
5 recommends the Commission direct Central Hudson Gas &
6 Electric Corporation or Central Hudson, the Brooklyn
7 Union Gas Company, D.B.A. National Grid New York or
8 KEDNY, New York State Electric and Gas Corporation or
9 NYSEG, and Rochester Gas and Electric Corporation or
10 RG&E, to each file a report with the secretary to the
11 Commission within 90 days of the effective date of
12 the order.

13 The purpose of directing these
14 utilities to each file a report is to address updates
15 made to their utility specific energy affordability
16 program or E.A.P. expenditure amounts. The reports
17 are necessary to fully identify the impact of errors
18 discovered with their reported E.A.P. expenditures.

19 I will next explain the 2023-2024
20 State budget appropriation, a staff proposal, a
21 proposal made by the Public Utility Law Project of
22 New York or PULP, and then a report filed by the
23 E.A.P. working group. The 2023-2024 State budget
24 included directives regarding three separate
25 programs.

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2 First, it required the Department of
3 Public Service or Department to utilize a \$200
4 million appropriation for the purpose of providing
5 assistance to utility customers related to the cost
6 of utility affordability programs authorized by the
7 Public Service Commission and administered by the
8 Department in -- in consultation with the Energy
9 Affordability Policy Working Group.

10 The amounts appropriated by the State
11 budget may be dispersed to the utilities, including
12 the Long Island Power Authority, or LIPA, on behalf
13 of utility customers as determined by the Department
14 based on their share of Energy Affordability Policy
15 program expenditures during calendar year 2022.

16 Second, it directed the Department to
17 establish a new expanded discount program to provide
18 utility bill relief to utility customers in
19 consultation with the Energy Affordability Policy
20 Working Group for residential customers that do not
21 currently qualify for the Energy Affordability Policy
22 Program, but whose income is below the State median
23 income.

24 Third, it directed the Department to
25 establish a program to provide an energy

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2 affordability guarantee to participating residential
3 customers in the EmPower+ program administered by the
4 New York State Energy Research and Development
5 Authority who electrify their homes in accordance
6 with the program standards required by the authority.

7 This draft order before you today
8 addresses the first program, providing relief to
9 customers. Recommendations to establish the
10 additional two programs required in the State budget
11 are being developed and recommendations will be
12 brought to the Commission at a future session.

13 On June 5th, 2023, the secretary to
14 the Commission issued a notice scheduling E.A.P.
15 Working Group meetings, stating that the Working
16 Group would be turning its focus to addressing the
17 fiscal year '23-'24 State budget funds.

18 The notice encouraged all interested
19 entities to attend and actively participate in the
20 Working Group's upcoming meetings. On August 21st,
21 2023, Department staff filed a proposal that I will
22 refer to as the staff proposal.

23 In these cases, to establish how
24 utilities and LIPA, who are utilities responsible for
25 administering the State's energy affordability

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2 program would use the budget funds to meet the
3 purpose of the appropriation.

4 The staff proposal recommended that
5 each of the utilities;

6 1) Receive an allocation of the
7 budget funds based on its share of Statewide calendar
8 year 2022 E.A.P. expenditures.

9 2) Allocated share of the budget
10 funds to each of the utility service classes similar
11 to how E.A.P. expenses are recovered from customers
12 and;

13 3) Distribute the bill credits
14 volumetrically to customers over a term of six
15 months.

16 Additionally, the staff proposal
17 recommended a final report on the status of execution
18 of the bill relief to customers to ensure the
19 implementation of the surcredits is both transparent
20 and adequately documented.

21 After staff issued its proposal on
22 September 11th, 2023, PULP submitted a responsive
23 proposal recommended the budget funds be dispersed to
24 residential utility customers only, via a non-
25 volumetric based equal surcredits to all residential

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2 eligible customers.

3 The staff proposal, the PULP proposal,
4 and a few other proposals were considered over the
5 course of several working group meetings, which
6 resulted in the Working Group developing an energy
7 bill credit report.

8 The bill credit report was filed on
9 November 21st, 2023. The bill credit report states
10 that the working group generally agrees with staff's
11 approach to allocate the \$200 million to the
12 utilities and LIPA and also reflects pertinent parts
13 of the PULP proposal.

14 However, the consensus of the Working
15 Group recommends different timing for application of
16 the credit to be placed on customer's accounts than
17 what staff proposed. The bill credit report
18 recommends the Commission implement a New York State
19 energy bill credit that includes the following.

20 1) The utilities including LIPA
21 would receive an allocation of the \$200 million
22 budget funds based on their share of Statewide
23 calendar year 2022 E.A.P. expenditures for electric
24 and/or gas service. I'll note here that staff
25 verified the calendar year 2022 ex -- E.A.P.

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2 expenditures to the utility's general ledgers.

3 2) Each of the utilities would
4 divide the budget funds allocated by the total number
5 of customers in each service, electric or gas, that
6 pay into E.A.P. to develop a onetime credit that
7 would be applied to customers' accounts within 45
8 days of receiving the budget funds. I'll note here
9 that the impact of this recommendation is that more
10 relief is targeted to residential customers and;

11 3) Utilities would each file
12 reports in case 23-M-0298 within 60 days of applying
13 the final credit to customer accounts.

14 The consensus of the Working Group was
15 that a onetime bill credit is simple to message and
16 provides meaningful relief to customers at a time
17 when winter bills are coming due. The bill credit
18 report also included an alternative proposal from
19 LIPA for customers in its service territory only
20 under which LIPA would use its existing revenue
21 decoupling mechanism to credit customers over the
22 course of calendar year 2024. LIPA states that its
23 proposal would eliminate its need to incur
24 incremental costs on billing system changes which is
25 different than the other utilities.

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2 Public Service Electric & Gas, Long
3 Island or PSEG Long Island would incur incremental
4 administrative cost to implement the onetime bill
5 credit proposed by the Working Group and LIPA is
6 contractually obligated to pay PSEG Long Island for
7 those incremental costs.

8 LIPA states its proposal would enable
9 it to directly assist customers at zero
10 administrative cost for implementation. The
11 utilities reported that any potential cost to
12 implement the onetime credits would be addressed
13 within their existing operating budgets and existing
14 personnel, and the structured relief should not
15 result in any incremental administrative expenses to
16 be borne by customers.

17 The Working Group evaluated whether
18 providing customers with bill credits would have any
19 impact on the utility's uncollectible expenses.

20 The utilities indicated that the bill
21 credits should have a small impact on arrears for
22 certain customers as the credit would be applied to
23 prior balances first. But overall, any impact on
24 utilities' uncollectible expenses is expected to be
25 de-minimis.

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2 The Working Group recommends that the
3 utilities apply the credits on customers' accounts no
4 later than 45 days after receiving the budget funds.
5 After application of all credits, the utilities would
6 file reports with the Secretary to the Commission
7 within 60 days of applying the last credit to
8 customer accounts.

9 The bill credit reports state that
10 LIPA's reporting process would be different from the
11 utilities to match its alternative approach. Staff,
12 the Joint Utilities, PULP, the New York State
13 Department of State Utility Intervention Unit and
14 specific to LIPA's proposal, the Long Island
15 Progressive Coalition support the recommendations in
16 the bill credit report.

17 The City of New York stated that it is
18 supportive of the Working Group recommendations
19 included in the bill credit report, except with
20 respect to two issues. First, the City of New York
21 proposes that the relief be provided to residential
22 customers only, as PULP initially proposed.

23 Second, the City of New York
24 recommends differentiating natural gas heating
25 customers from natural gas cooking only customers for

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2 the purpose of allocating the budget funding.

3 A.A.R.P. continues to believe a better use of the
4 money is to target moderate income utility customers.

5 Turning now to outreach and education,
6 the bill credit report states that the Joint
7 Utilities, the Department, and stakeholders have a
8 plan to execute an outreach plan for the energy bill
9 credit as soon as the Commission issues an order.

10 Next, I'll discuss the supplemental
11 filings made by NYSEG, RG&E, Central Hudson, and
12 KEDNY. After the bill credit report was filed, NYSEG
13 and RG&E, Central Hudson, and KEDNY contacted staff
14 and explained that their calendar year 2022 E.A.P.
15 expenditures, as reported on their general ledgers
16 and contained in the energy bill credit report, were
17 incorrect.

18 And if the expenditure amounts were
19 applied on the err -- the errors could have a
20 material impact on the allocation of the \$200 million
21 appropriation. Each utility filed a supplement in
22 the case and provided estimates of the corrected
23 calendar year '22 -- 2022 E.A.P. expenditures.

24 These utilities recommended the
25 Commission use the estimates in place of the 2022

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2 E.A.P. expenditures included in the energy bill
3 credit report for purposes of allocating the \$200
4 million budget appropriation.

5 The draft order considers the staff
6 proposal, the Working Group's bill credit report, and
7 stakeholder comments, and recommends the Commission
8 adopt the recommendations in the staff proposal with
9 modifications as presented in the energy bill credit
10 report to provide a onetime credit to customers.

11 The -- the relief will be immediate
12 and automatic for all utility customers that pay into
13 utilities and LIPA's energy affordability programs.

14 Now, we'll turn to some of the
15 specific recommendations in the draft order such as
16 allocation of the budget funds and addressing the
17 supplemental filings.

18 The draft order recommends the
19 Commission allocate the \$200 million budget funds to
20 each of the utilities and LIPA based on their share
21 of Statewide calendar year 2022 E.A.P. expenditures
22 because the method is consistent with the language
23 accompanying the \$200 million appropriation included
24 in the State budget.

25 However, as noted, four utilities

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2 discovered errors with their reported calendar year
3 2022 E.A.P. expenditures that caused staff to take
4 additional steps beyond verifying the expenditures of
5 the utilities general ledgers to determine if the
6 data provided was reasonable for the purpose of
7 making the required utility allocations.

8 Staff examined each entity billed --
9 sorry, staff examined whether each entity billed
10 correct E.A.P. discount rates and coded E.A.P.
11 customers in the correct E.A.P. tier. Staff also
12 obtained officer certifications attesting to the
13 accuracy of the data provided.

14 Staff deemed these certifications
15 necessary to ensure a high-level review at each of
16 the companies. The draft order recommends the
17 estimates provided by NYSEG, RG&E, Central Hudson,
18 and KEDNY are reasonable for the purpose of making
19 the required allocations to each utility and LIPA
20 associated with the \$200 million appropriation.

21 However, based on the errors made and
22 the technical nature of the recalculating of the 2022
23 E.A.P. expenditures, a subsequent process is
24 necessary to undertake an additional review to
25 further assess the information provided by the

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2 utilities.

3 Any discrepancies found in the context
4 of this additional review may result in a
5 reconciliation of the allocations across the
6 utilities and LIPA. To that end, the draft order
7 recommends NYSEG, RG&E, Central Hudson, and KEDNY
8 each be required to, within 90 days of the effective
9 date of this order.

10 To make a filing with the Secretary to
11 the Commission that explains the actual impact of the
12 identified errors and provides an accurate E.A.P.
13 expenditure amount for calendar year 2022 and to
14 investigate if customers were financially impacted.

15 The draft order recommends the
16 Commission leaves open the possibility of another
17 order and/or further process to address any
18 discrepancies resulting from the review required
19 here. The draft order also acknowledges the contract
20 agreements paid -- made by NYSEG, RG&E, Central
21 Hudson, and KEDNY for the disbursement of the budget
22 funds contain a specific provision to remedy errors
23 with their reported calendar year 2022 E.A.P.
24 expenditures for the purposes of allocating the \$200
25 million budget funds using shareholder funds only.

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2 The draft order also considers --
3 considered the bill credit report's analysis of
4 current and past customers arrears as an important
5 factor to consider in providing bill relief as
6 arrears data is one measure of energy affordability.

7 The arrears data generally indicates
8 that both residential and non-residential customers
9 need assistance. The draft order acknowledges that
10 targeting more of the onetime bill credit to low
11 income customers isn't supported by the arrears data
12 and minimizes the relief to non-low-income
13 residential customers or moderate-income residential
14 customers not eligible for bill assistance.

15 The arrears data also demonstrates
16 that non-residential customers, most of which the
17 bill credit report indicates are small commercial
18 customers, are in -- also in need of relief.

19 The draft order states that providing
20 an equal credit to all customers in a utility service
21 territory specific to electric and gas service
22 strikes the right balance between providing more
23 relief to residential customers and providing some
24 relief to small commercial customers.

25 The draft order addresses the -- the

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2 City of New York's recommendation to design a
3 residential bill credit that produces the same
4 percentage benefit to residential gas cooking only
5 and residential gas heating customers by explaining
6 it is not a Statewide issue.

7 The modification would require
8 programming changes and complicate the messaging to
9 customers for little benefit beyond Con Edison and
10 KEDNY's customers. New York City residential cooking
11 only customers likely have heating costs included in
12 rent.

13 And therefore, a fixed benefit to all
14 customers will assist all customers and their energy
15 costs. The draft order therefore recommends the same
16 onetime credit be applied to all customers in a
17 service territory specific to electric and gas
18 service to offset a portion of the energy
19 affordability program costs.

20 To that point, as shown in the -- in
21 the appendix of the draft order, the calendar year
22 2022 E.A.P. expenditures were \$345 million. And the
23 \$200 million budget funds offset approximately 58
24 percent of the E.A.P. program costs in this period.

25 Moreover, the automatic onetime bill

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2 credit is efficient and least administratively
3 burdensome, is simple to message, and allows relief
4 to reach customers as quickly and cost effectively as
5 possible, and it comes when -- at a time when winter
6 bills are coming due.

7 The draft order recognizes that a
8 small reconciliation is expected and recommends using
9 the existing E.A.P. reconciliation mechanism to
10 minimize administrative costs. Regarding LIPA's
11 proposal to pass back its share of the \$200 million
12 budget funds through its low-income discount and
13 existing revenue recoupling mechanism, the draft
14 order recommends the Department's Long Island staff
15 thoroughly review the monthly tracking and finance --
16 financial reports to ensure that LIPA's share of the
17 budget appropriation has been entirely provided to
18 customers.

19 And that the energy bill credit did
20 not have an impact on LIPA's revenue decoupling
21 mechanism. The draft order recommends the Commission
22 direct each of the utilities to file a report within
23 60 days of applying the last credit to customers'
24 accounts.

25 The report shall contain the amount of

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2 the budget funds allocated to the utility, the number
3 of customers receiving the energy bill credits and
4 the total amount of credits applied to -- to accounts
5 and identify any residual amounts that have been
6 deferred to an E.A.P. deferral account.

7 In addition, the report also include
8 the actual accounting entries recorded by the
9 utilities to account for the energy bill credit.
10 Staff has informed the Commission that the E.A.P.
11 Working Group has had multiple coordination meetings
12 to create common, plain language messaging and use
13 multiple outreach and education channels including,
14 but not limited to, bill messages, social media, and
15 posting on individual websites.

16 The plans are ready to be implemented
17 by the utilities and stakeholders. The draft order
18 recommends the Commission approve the outreach and
19 education plan.

20 In conclusion, the draft order
21 recommends the Commission adopt the recommendations
22 in the staff proposal with modifications as
23 recommended in the Working Group's bill credit report
24 to distribute the \$200 million budget funds based on
25 the utilities' and LIPA's share of Statewide calendar

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2 year 2022 E.A.P. expenditures.

3 The purpose of the relief is to -- to
4 electric and gas utility customers is to partially
5 offset the costs of the utility affordability
6 programs in recognition of recent upward pressure on
7 utility bills. The credit will be applied to
8 customers' accounts within 45 days of receiving the
9 budget funds, with the program structured for more
10 relief to residential customers and providing some
11 relief to small commercial customers. That concludes
12 my presentation and staff is available for questions.

13 CHAIR CHRISTIAN: Thank you, Aric. I
14 have to say I -- I appreciate the level of detail you
15 provided today in highlighting how we got from there
16 to here. And I -- I think that's sometimes lost in
17 some of the actions we take and I -- I really want to
18 thank you for highlighting all the various steps in
19 the process from start to finish.

20 You know, I think many people think of
21 our actions just as what happens here on session day.
22 But I think in articulating the various steps, you've
23 shown the level of engagement we've had both with
24 utilities, various stakeholders, and through the
25 E.A.P. Working Group.

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2 And the importance of that engagement
3 in identifying the right outcome that can be timely
4 and meaningful for the individuals involved. So I
5 really want to commend you. I want to commend the
6 staff involved, everybody here today.

7 The E.A.P. Working Group, utilities,
8 thank you for working so diligently to bring this
9 before us today. You know, and I think in -- in
10 looking at this order and looking at the Commission's
11 mandate that we provide affordable, safe, secure, and
12 reliable service.

13 I see this as a prime example of us
14 working towards that initial mandate, that
15 affordability, ensuring that we can provide the means
16 through which to deliver support and relief to our
17 customers. And I -- and I see that in this order as
18 one of its prime goals and of significant importance.

19 You know, every year, we have a
20 hundred -- hundreds of cases coming before us. Each
21 of them unique in their own way. Each of them
22 impacting either an individual utility, collection of
23 utilities, municipalities, or customers directly.

24 And again, all of these actions are
25 with the goal of maintaining our mandate. And each

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2 of them are of fundamental importance to maintaining
3 the well-being of New Yorkers. And I -- I think this
4 particular order is among them in its priority and
5 significance.

6 We're dispersing \$200 million today.
7 That's probably what's going to be highlighted in the
8 press. But we're also setting up processes and
9 actions to bring us further along our path of
10 achieving affordability for many New Yorkers, both
11 those in need and those to come who are not yet in
12 need.

13 And I think it's important because
14 this highlights the thoughtfulness of the steps taken
15 in the stewardship of our duties to New Yorkers. The
16 powers before the Commission that are granted to us,
17 that we are allowed to move forward with, they are
18 important.

19 And they affect everyone in many, many
20 ways. They affect livelihoods, they affect
21 businesses. And again, this order, it does an
22 amazing job articulating how detailed we are in
23 finding the right way forward.

24 So I appreciate your efforts. I think
25 this is in the public interest, and I thank you for

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2 your hard work in getting us here. Commissioner
3 Burman?

4 COMMISSIONER BURMAN: Thank you very
5 much, Chair. I want to take a moment to sort of
6 recognize that energy affordability is a critical
7 issue that we all grapple with and continue to
8 grapple with. It's not lost on me that many folks
9 have been a part of this process in trying to get it
10 right, in looking at how to address the issues.

11 Historically, we have really gotten
12 under the hood numerous times on energy
13 affordability, the programs that the utilities were
14 doing, and trying to constantly and consistently
15 evolve in a way that is helpful.

16 The legislature has in its intent to
17 help, has given us this opportunity to work with the
18 various stakeholders to try to come up with something
19 that we hopefully can get right and look at how we
20 can address one small aspect of the energy
21 affordability issue.

22 It is not lost on me though that the
23 issues around energy affordability are much deeper
24 than a pot of money. And in this case, while, you
25 know, significant, it's also a drop in the bucket for

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2 the larger energy affordability issues that are
3 there.

4 Energy affordability is in the eye of
5 the beholder too. Really is about, you know, how do
6 we define energy affordability for households, within
7 the households? You know, the -- the income levels
8 or the different pressures outside of just paying the
9 -- the utility bill.

10 There are other significant pressures.
11 And it's really about what are the hardships. What
12 are the hardships to the others who wind up having to
13 be a part of the costs that come from the energy
14 affordability bills that are -- are there that they
15 themselves can't take advantage of.

16 To the extent that, as we move
17 forward, it's not just about energy affordability
18 today, but it's about energy affordability tomorrow.
19 It's about looking and forecasting what that will
20 look like. You know, COVID showed us situations can
21 happen that put an incredible pressure that, you
22 know, are unforeseen.

23 But to the extent that there are some
24 foreseen pressures that will come, the more utility
25 investment that needs to be done, the more costly it

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2 will be, and the more we have to look at the backlash
3 from that in terms of the cost to the ratepayers.

4 And then we also have to look at to
5 the extent that it comes the -- the pot of money
6 comes from the legislature outside of the rate paying
7 perspective, what does that do to fully make sure
8 that we're aligned, but also not just moving it from
9 ratepayers to taxpayers.

10 And then also making sure that what
11 the legislation that may come is actually helping us
12 move forward even if it's well-intended. In my mind,
13 as I see it, it's a no brainer that we are moving
14 forward on the pot of money that we have now and
15 figuring it out.

16 But it does mean that we have to look
17 at what have we learned from this process. What's
18 the value that we've learned from this process?
19 Because I am sure that is there are lessons to be
20 learned, positive and negative, within that process.

21 I think it requires us to really be
22 transparent about engaging from those who are on the
23 outside, who might see some, you know, possibility of
24 what it looks like to them. But then for those who
25 are really on the ground level and especially the

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2 Working Group members who not only did they and work
3 with staff in truly trying to do the right thing.

4 But then they also still had their own
5 challenges or own perspective of where it may have
6 gotten, it may not be just quite good enough. And I
7 think that's something that we can learn from, but we
8 have to do it in a much -- in -- in a significant
9 transparent way.

10 So that we, as the Commission as a
11 whole, who will be addressing energy affordability on
12 many different fronts can really learn from. Keeping
13 in mind also that there is this division that needs
14 to happen or a division that needs to be talked about
15 between residential households and businesses.

16 And the impact on businesses cannot be
17 lost on us because it is really an economic engine
18 that we need to be addressing. And to the extent
19 that energy affordability and those issues look
20 different, just like for residences and the makeup of
21 each residence in the area and all different things.

22 It looks different for different
23 businesses as well, and we need to recognize that and
24 have some, I think, fruitful conversation on
25 addressing energy affordability and the continuing

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2 evolution of what that looks like.

3 For me, I -- I have some concerns
4 about the order itself. It is not that it is a
5 problematic order, it -- it's not. I think it's
6 really trying to hit upon a lot of the different
7 issues. The concern I have relates to the fact that
8 we are not -- we are not having closure on many of
9 these issues.

10 In fact, the order itself addresses
11 the fact that we're addressing the first part of the
12 program, providing relief to customers. But then
13 there are two other aspects of the program that were
14 within the budget that needs to get looked at.

15 And we will in -- in the order, we are
16 acknowledging in the body of the order that these two
17 programs required in the State budget are being
18 developed, and recommendations will be brought to the
19 Commission at a future session.

20 I think we really need to have more --
21 a light on what exactly we are going to be developing
22 in a way, and the timetable for when it may come back
23 to the Commission as a whole. There's no ordering
24 clause that actually defines sort of that -- those
25 next steps.

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2 And I think that's something that is
3 really important that it doesn't just get lost in,
4 you know, in the ethers after this session today.
5 Really making sure that it is laser focused on the
6 two other programs that need to get developed, how
7 we're doing it and then when it may come back to the
8 Commission and what the process is for those who may
9 want to get involved, but also the process as it
10 relates to other energy affordability issues. Does
11 that make sense?

12 MR. RIDER: Yes. It makes sense to
13 me.

14 COMMISSIONER BURMAN: Okay. The other
15 aspect of the order that -- that leaves me just
16 feeling a need to at least address openly is that we
17 have in here what -- what I call sort of -- and it's
18 appropriate, but we have in here a recognition that
19 additional staff analysis to address the accuracy of
20 the E.A.P. expenditures is necessary.

21 And in fact, we leave open the
22 possibility that we may need to come back with
23 further processes or further orders to address the
24 discrepancies resulting from the review and this
25 analysis. I can't imagine that this is the only

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2 thing where we have programmatic errors, right?

3 Just the nature of when you're working
4 with a large volume of different pots of money and
5 figuring out how to move forward and how it's getting
6 calculated. And there are many different, sort of,
7 eyes on things.

8 But sometimes we lose sight of the
9 fact that we need to take, sort of, a deep breath in
10 looking at, okay, we are seeing in real time an issue
11 in terms of how these program errors are coming into
12 fruition and what perhaps needs to be done to take a
13 look at the way we can in our proper oversight role.

14 But also, where else do we see that?
15 You know, what else can we learn from that? The
16 utilities aren't the only ones that have pots of
17 money that deal with, you know, energy affordability
18 and other things. And to the extent that we are
19 drawing upon this knowledge.

20 And saying, okay, what is it that we
21 need to do so that it doesn't come really to the
22 session with an order that is still having
23 possibility of needing to make course corrections in
24 the review process of the accounting? Does that make
25 sense?

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2 MR. RIDER: It -- it does. You know,
3 in this order, we're trying to strike the right
4 balance between providing relief to customers at a
5 time when bills are likely to be higher. And setting
6 out a process to, you know, work through the problems
7 the utilities had and come up with the correct
8 answer.

9 And you know, come up with the next
10 steps to address any issues that -- that -- that the
11 utilities uncover. Staff has to then verify them.
12 And you know, we'll have to -- hopefully, there's --
13 there's -- the utilities got it right in this
14 exercise, but staff just needs time to verify.

15 COMMISSIONER BURMAN: Okay. Thank
16 you. One of the issues I -- I think that is also
17 sort of lingering for me is the connection to our
18 evaluation of what LIPA may or may not be doing and
19 how that relates to the other utilities.

20 And there's sort of an apples to
21 orange comparison. You know, there's a variety of
22 reasons why LIPA may need to do it a little
23 differently. But one of the challenges that I have
24 from my role as an oversight of all of these is that
25 needing to make sure that we are fully evaluating and

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2 fully engaged in what everyone is doing even if we
3 don't have direct oversight over an entity.

4 And to the extent that this is
5 important for us not to just sort of leave to others
6 to deal with as it relates to LIPA, but to really
7 make sure that it is, you know, a part of, and
8 collaborative with, not just the Long Island staff,
9 but with the staff here.

10 And so while I recognize there is some
11 division of work there, I do want to make sure that
12 we are not siloed in our processes or leaving to
13 others to fix what might actually be helpful to us to
14 have more of hands-on approach with. Does that make
15 sense?

16 MR. RIDER: Yeah. And -- and -- and I
17 would say LIPA was, and PSEG Long Island were -- were
18 fully engaged in the E.A.P. Working Group process
19 along with our Long Island D.P.S. staff. So I -- I
20 think the -- the work in the Working Group was -- was
21 collaborative.

22 And on the staff side, you know, I
23 think we also are coordinated among the offices.

24 COMMISSIONER BURMAN: Okay. Great.
25 I'm happy to hear that. And then just really, I just

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2 think that, you know, as we look at this, the intent
3 of the program was really to help sort of offset the
4 costs that are there.

5 Can -- Can you explain a little bit
6 about what you see in terms of that intent and how it
7 may be helpful or not?

8 MR. RIDER: Sure. If you look at the
9 -- the -- the appropriation language, you know, the
10 purpose and intent of the language is to offset the
11 E.A.P. expenditures. And that's really the question
12 that the E.A.P. Working Group had to grapple with is
13 how to do that.

14 And the Working Group felt that it was
15 best to allocate the -- the cost a little bit more to
16 residential customers and came up with a method to
17 take the total allocated amount and divide it by the
18 number of customers.

19 And essentially, that's what -- what -
20 - what the recommendation does is provide a little
21 bit more to residential customers with some benefit
22 to small commercial customers.

23 COMMISSIONER BURMAN: Okay. Thanks.
24 I guess, I -- I also look at it, it's not for me to
25 sort of step into the shoes of, playing Monday night

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2 quarterback in terms of whether or not we should give
3 a little bit more over here or a little bit less
4 there. I recognize sort of the work through that.

5 But as we move forward, I think
6 there's -- at least for me, a recognition that the
7 program costs are only going to increase and that we
8 are not going to have sort of a -- we're not going to
9 be able to have a full match where the dollars that
10 come fully address the challenges that are there.

11 And that's looking at the cost issue.
12 Here, I think there was a recognition that it -- it
13 was to get the dollars out. The onetime credit was
14 important. But as we go forward, I also think one of
15 the lessons to be drawn is that it took a long time
16 from the legislation to get the dollars -- to get
17 this order to get the dollars out, right?

18 And so -- and we're talking really
19 about an average of \$15 bill credit. And so I just
20 worry that there needs to be a further look at if
21 this is now something that is going to be done and
22 more sort of focus on energy affordability from the
23 legislature.

24 I want to make sure that it is not
25 done in a way that we just become the ministerial,

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2 check the box and moving the dollars, but that we
3 actually are given the tools. We, as the Commission,
4 are given the tools to really fully evaluate the
5 whole and also what that may look like.

6 It may not be that a onetime bill
7 credit is appropriate as we go forward. It may not
8 be that we, you know, that we should have it take
9 this long to do or do this way. We may need to have
10 some more of an evolution of other ways that we can
11 substantively address the issues that are more
12 appropriate.

13 And really also being more accountable
14 in terms of the dollars and how they are actually
15 being utilized to help. Does that make sense?

16 MR. RIDER: Yes. I -- I just wanted
17 to kind of frame the -- the -- the timetable though.
18 I mean, staff did work in the E.A.P. Working Group as
19 soon as the appropriation was approved. We did have
20 to SAPA the -- a proposal.

21 So staff worked really quickly to get
22 a proposal out. And there were -- was a little bit
23 of a delay on the back end because we discovered
24 errors. But I do think the whole team, including the
25 E.A.P. Working Group really worked diligently to --

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2 to get a recommendation to the Commission as quickly
3 as possible.

4 COMMISSIONER BURMAN: Yeah. And I --
5 just to clarify, I was not suggesting that --

6 MR. RIDER: Okay.

7 COMMISSIONER BURMAN: -- there was a
8 delay on staff's part at all. It's really more of a,
9 what do we look like so that as we go forward, is it
10 more appropriate to look at some other way of doing
11 this in a way that is helpful? Is there tariff
12 review?

13 Is there something that we can do so
14 that what -- how we are handling it is really owned
15 by us in our substantive roles versus just waiting
16 for the budget to give us the dollars and being much
17 more fine-tuned with the substantive expertise that
18 is here versus being dictated merely by the dollars
19 that might be allocated?

20 And I -- and I -- again, I appreciate
21 really the forward thinking, but we also do need to
22 look at the bigger whole of energy affordability
23 because I think that that's the real big elephant in
24 the room. So thank you.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Alesi?

3 COMMISSIONER ALESI: Thank you, Mr.
4 Chairman. I'll be supporting the staff's
5 recommendation. The Department's re -- report is
6 thorough and extensive, and it reflects a significant
7 amount of effort yielding fair and professional
8 results --.

9 CHAIR CHRISTIAN: I'm sorry,
10 Commissioner Alesi. Would you -- would you mind
11 moving a little closer to the mic? We're having a
12 bit of a hard time hearing you.

13 COMMISSIONER ALESI: I'll be
14 supporting the effort. Thank the staff for their
15 professional job as usual, thorough and extensive
16 report yielding a fair and professional result. I'll
17 be voting yes.

18 CHAIR CHRISTIAN: Thank you.
19 Commissioner Howard?

20 COMMISSIONER HOWARD: Thank you, Mr.
21 Chair. I have a couple of questions. First of all,
22 can you explain the source of the \$340 million of the
23 existing E.A.P. program?

24 MR. RIDER: If you look at the
25 appendix to the order in calendar year 2022, in total

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2 Statewide, the E.A.P. expenditures were \$345 million.

3 COMMISSIONER HOWARD: Right. I got
4 how much it was. I want to know from whence it came.
5 Is it all -- was it all ratepayer funding?

6 MR. RIDER: Correct.

7 COMMISSIONER HOWARD: Okay. So this
8 we are now offsetting \$200 million worth of ratepayer
9 incurred expenses?

10 MR. RIDER: That's correct.

11 COMMISSIONER HOWARD: Great. Thank
12 you. You know, I want to share Commissioner Burman's
13 concern about the issue of the accountancy that we --
14 or the poor accountancy that we've uncovered. The
15 question is, if not for this program implementation,
16 when would we have found out that their -- their
17 accountants -- accountancy was incorrect?

18 MR. RIDER: I -- I don't know. I mean
19 one of the outcomes of this process is -- is we did
20 find errors. And we'll -- we'll go through the
21 process to determine if their -- if customers were
22 harmed and make corrections as necessary.

23 COMMISSIONER HOWARD: I -- I guess the
24 question becomes how much of this comes up. This is
25 a rate case issue. How much, you know, would we find

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2 it in their next rate filing --

3 MR. RIDER: Well --.

4 COMMISSIONER HOWARD: -- did we miss
5 it in their last rate filing?

6 MR. HOGAN: Commissioner, if I -- if I
7 could perhaps --.

8 COMMISSIONER HOWARD: Sure.

9 MR. HOGAN: Yeah. For the reporter,
10 Jeff Hogan. There's a -- there's a real possibility
11 that we would not have been aware of this if not for
12 this issue. So the -- the -- what the companies were
13 doing is they were calculating the amount of discount
14 for customers.

15 They were doing it incorrectly. And
16 the amounts that they were booking into their
17 accounts, under what we call the general ledger were
18 based on that incorrect accounting. So in a rate
19 case, when we go and look at the expenses and how
20 much you're spending on E.A.P. program.

21 And that's something you might see in
22 that appendix that you were just referred to, it's
23 based on the general ledger output. And that is not
24 something we go further to look at in general from a
25 resource issue, basically, to be able to dive into

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2 those numbers past the general ledger.

3 So it's -- it's possible that if a
4 mistake occurs and it's being reported in their
5 financials, like, reported to Wall Street, et cetera.
6 Those numbers can be -- can be incorrect and
7 sometimes you might not -- you might not find it
8 absent something like this occurring.

9 COMMISSIONER HOWARD: It gives me some
10 pause. As -- as Commissioner Burman noted, this is
11 just one of literally dozens of different programs
12 and embedded cost to ratepayers. So --.

13 MR. HOGAN: So staff -- staff shares
14 that pause and frustration at kind of the shifting
15 sand of the numbers. Something again, a preliminary
16 review was done to determine what the problems were.
17 We've identified the issues that these four companies
18 had.

19 There have been some preliminary talks
20 about, you know, possible ways as -- as it was
21 mentioned, is there other way, other things the
22 Commission could do? And we've had preliminary
23 discussions about, you know, my office of Accounting,
24 Audits, And Finance as a management audit group. And
25 we -- we could do operational audits on things.

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2 Sometimes we've done multi-utility
3 operational audits to investigate specific issues.
4 In this case, it's not really an accounting issue as
5 much as an internal controls computer programming
6 issue. Those aren't types of things that we could
7 investigate.

8 COMMISSIONER HOWARD: Great. Thank
9 you. How is this going to appear on customer's
10 bills? Will there be a line on everybody's bill that
11 says -- and an explanation of what it is.

12 MR. RIDER: Yes. There will be a
13 specific line item on a customer bill with bill
14 messaging explaining what the credit is. And the
15 E.A.P. Working Group has worked together to come up
16 with common messaging Statewide for -- for everyone's
17 use.

18 COMMISSIONER HOWARD: Great. And we
19 will make it clear, this is -- don't expect us every
20 month.

21 MR. RIDER: Correct. It's a one-time
22 bill credit.

23 COMMISSIONER HOWARD: Okay. Thank
24 you. You know, this really came in our 2022s, you
25 know, jump in -- in -- in energy prices is, you know,

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2 is largely attributable to the spike in natural gas
3 prices worldwide that had a cascading effect to -- in
4 New York and everywhere else.

5 But as we go forward, the issue of
6 energy affordability will be, still be subject to
7 these worldwide blips in commodity pricing and the
8 like, supply chain issues, a variety. But also, this
9 will have to be done in conjunction with how
10 decarbonization is paid for and how we recapitalize
11 huge amounts of utility infrastructure both owned by
12 utilities and by -- by suppliers.

13 So the upward pressure on cost is not
14 going away. It's already built into what we're
15 planning, vis-à-vis our decarbonization efforts. So
16 I think that -- that -- that the issue of energy
17 affordability just needs to be, it will be part of
18 our ongoing things, whether we pay attention to it or
19 not, customers are going to feel the increase.

20 And while the -- we are providing
21 relief to all customers, many -- many may seem that
22 this actual amount to customers get is somewhat
23 anemic. I guess, the message back to the legislature
24 will be that \$200 million doesn't go as far as it
25 used to. But thank you for your hard work and I will

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2 be supporting it.

3 CHAIR CHRISTIAN: Thank you.

4 Commissioner Valesky.

5 COMMISSIONER VALESKY: Thank you, Mr.
6 Chairman. Aric, thank you. Just a few -- few
7 questions for you, but first, I -- I do want to just
8 follow up to Jeff Hogan and what you had said. I --
9 I would certainly hope that as you consider a series
10 of errors that may have been found as a result of
11 this program that -- that you do bring forward to us,
12 whether it be of -- of an -- of an audit nature or --
13 or anything else.

14 Any potential resolutions that -- that
15 -- that you, you think we ought to be considering
16 because that is -- that is somewhat troublesome. But
17 for this program we -- we -- we -- certainly in all
18 likelihood, would still not know of -- of those
19 errors.

20 So if we could -- if we could have
21 that -- that follow up at some point in the future
22 that would be -- that would be very helpful and I
23 think really important.

24 Aric, thank you and your team for --
25 for the work that you have done here. I did -- I was

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2 going to ask you about one of the issues that
3 Commissioner Burman raised.

4 And if you're not prepared to -- to
5 speak to it here at session, that's fine, but if we
6 could, going forward, so -- so as you indicated early
7 in your presentation, the budget language actually
8 spoke to three separate programs, and this is
9 obviously just -- just one of those three.

10 So if we could at -- at some point get
11 a report or an update as to where we are in terms of
12 -- of following through with the second and third
13 recommendations that were made by the legislature and
14 Governor in last year's budget, particularly since
15 we're almost a year -- a year ahead of -- of -- of
16 that point in time.

17 I think that would really be
18 important. We all know that the issue of
19 affordability is not going to be lessening anytime
20 soon. So I'd be very anxious to -- to -- to hear
21 where we are with those two additional programs. The
22 other two specific questions I have are actually just
23 in terms of -- of ratepayers.

24 So I -- I know that assuming the order
25 is approved today, that ratepayers can see -- can

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2 expect to see their one-time bill credit within 45
3 days of the utilities receiving the budget
4 appropriation. And I understand we're not the
5 division of the budget.

6 However, do you have any sense, and
7 I'm just trying to get again, from the perspective of
8 a ratepayer, whether they can expect to see a bill
9 credit in May, in July, in October. Do we have any
10 sense at all as to when the budget appropriations
11 will actually be made and therefore triggering the
12 45-day clock?

13 MR. ROSENTHAL: So -- it's Bob
14 Rosenthal. So let me just be clear. So the budget
15 appropriation is to the Department of Public Service
16 that's been made already. The way the money is going
17 to be transferred to the utility customers is through
18 a contract with utilities, with -- between the
19 utilities and D.P.S.

20 That's how prior appropriation money
21 was distributed to the utilities.

22 COMMISSIONER VALESKY: And that could
23 be ballpark timeframe?

24 MR. ROSENTHAL: It's -- it would be
25 very soon after issuance --.

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2 COMMISSIONER VALESKY: Okay. Okay.

3 And then the -- so if I am a ratepayer in Long
4 Island, just correct me if I'm wrong in -- in any of
5 this.

6 MR. ROSENTHAL: Okay.

7 COMMISSIONER VALESKY: If I'm a
8 ratepayer, as a resident of Long Island, if I receive
9 gas through KEDLI, I would receive a one-time -- one-
10 time bill credit for my gas service at some point in
11 the relatively near future. On the electric side, I
12 would receive my credit over the remaining months of
13 calendar year 2024. Is that correct?

14 MR. RIDER: That's correct.

15 COMMISSIONER VALESKY: Okay. And in
16 part of your educational process, you'll make that
17 very clear to -- to ratepayers, not only across the
18 State, but because it's -- it's a bit of a different
19 situation on Long Island that'll be made clear to
20 them, I assume, right?

21 MR. RIDER: They have specific
22 messaging --

23 COMMISSIONER VALESKY: Okay.

24 MR. RIDER: -- for their -- for their
25 program, yes.

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2 COMMISSIONER VALESKY: Okay.

3 Terrific. Okay. Thank you very much. I don't have
4 any further questions and certainly plan on
5 supporting the order. Thank you.

6 CHAIR CHRISTIAN: Thank you.

7 Commissioner Maggiore.

8 COMMISSIONER MAGGIORE: Thank you. So
9 Aric, I just have one question, which you actually
10 already answered both in the body of your remarks and
11 also in response to one of Commissioner Howard's
12 questions. But I -- I'm going to ask it again
13 anyway, just to underscore a point that I'm going to
14 refer to in my -- in my comments, which is, can you
15 repeat again the -- the -- the amount of the cost
16 that this \$200 million program is supposed to offset.

17 In other words, the amount of the cost
18 of the E.A.P. program that this program is designed
19 to partially offset.

20 MR. RIDER: Of course. I think the
21 easiest reference is in the appendix to the order
22 where the 2022 calendar year E.A.P. expenditures were
23 \$345 million that -- that of course, has increased
24 since that time. But that's a -- that's a good point
25 of reference.

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2 COMMISSIONER MAGGIORE: Okay. Thank
3 you. And thank you for the overall presentation and
4 all the detail that you put into it. The reason I
5 think that's significant is that --

6 CHAIR CHRISTIAN: Sorry, Commissioner
7 Maggiore --

8 COMMISSIONER MAGGIORE: Yes.

9 CHAIR CHRISTIAN: -- I'm so sorry to
10 interrupt. We're having -- we're not hearing you all
11 that clearly. You're coming in rather faint. Can
12 you move the mic a little bit closer?

13 COMMISSIONER MAGGIORE: Okay. Can you
14 hear me better? Is this any better?

15 CHAIR CHRISTIAN: No, unfortunately
16 no.

17 COMMISSIONER MAGGIORE: Okay. I'm
18 literally touching the mic. Any better?

19 CHAIR CHRISTIAN: Yeah. Well, why
20 don't you continue.

21 COMMISSIONER MAGGIORE: Okay.

22 CHAIR CHRISTIAN: We'll -- we'll see
23 what we can do with the technical challenge we're
24 having.

25 COMMISSIONER MAGGIORE: All right.

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2 Okay. I -- I'll abbreviate my remarks. I -- I just
3 -- I do see a logic between the amount. There's a
4 logic to the amount. It is more than 50 percent, it
5 -- it -- it goes more than 50 percent towards
6 offsetting a particular cost. And I -- I -- I'll
7 just say that I am -- I'd like to applaud the
8 legislature for passing the -- passing this amount.
9 Hopefully we'll get more.

10 But I think I would like to
11 acknowledge that -- that this is a -- an action that
12 was designed to provide rate payer relief, and that's
13 a good thing. And I think we can applaud that. So
14 as Commissioner Burman indicated, it's not really our
15 role to pick between different options exactly how to
16 slice up this \$200 million to design the program
17 ourselves.

18 It has gone through many hands before
19 reaching us here today, but I'm satisfied that the
20 proposal before us is consistent with the intent of
21 the legislation and I'm planning to support it.
22 Thank you very much.

23 CHAIR CHRISTIAN: Thank you,
24 Commissioner. I'll now do a call for a vote. My
25 vote is in favor of the recommendation to approve the

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2 proposed implementation plan for financial assistance
3 to utility customers with modifications as discussed.
4 Commissioner Burman, how do you vote?

5 COMMISSIONER BURMAN: Yes.

6 CHAIR CHRISTIAN: Thank you.

7 Commissioner Alesi?

8 COMMISSIONER ALESI: Yes.

9 CHAIR CHRISTIAN: Thank you.

10 Commissioner Howard?

11 COMMISSIONER HOWARD: Yes.

12 CHAIR CHRISTIAN: Thank you.

13 Commissioner Valesky?

14 COMMISSIONER VALESKY: Yes.

15 CHAIR CHRISTIAN: Thank you.

16 Commissioner Maggiore?

17 COMMISSIONER MAGGIORE: Yes.

18 CHAIR CHRISTIAN: Thank you. The item
19 is approved and the recommendations are adopted.
20 Thank you, staff.

21 We'll now move to the second item for
22 discussion today. Item 401, Case 20-W-0477, Case 22-
23 W-0357 and Case 24-W-0105 as it relates to the
24 investigation into Hudson Valley Water Company's
25 capability to provide safe and adequate service.

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2 It'll be presented today by Charles
3 Coryer, Josh -- Joshua Gonyea, Timothy Marsh, Mike
4 Rieder and Richard Berkley are available for
5 questions. And Charles, welcome. This is your first
6 time?

7 MR. CORYER: Yes.

8 CHAIR CHRISTIAN: All right. Why
9 don't you get started? Please begin.

10 MR. CORYER: Thank you. Good morning,
11 Chair and Commissioners. My name is Charles Coryer
12 and I'm an Assistant Counsel in the Office of General
13 Counsel and lead attorney assigned to Item 401. Item
14 401 is a proposed order for your consideration
15 directing Hudson Valley Water Companies,
16 Incorporated, which we will refer to as Hudson
17 Valley, to show cause why the Commission should not
18 appoint a temporary operator for Hudson Valley.

19 The proposed order to show cause
20 references and is based on a report prepared by
21 Department staff that we have provided to you, but
22 have not yet publicly released. We refer to this
23 report as the 2024 staff report.

24 And it details the initial phase of
25 staff's ongoing investigation into Hudson Valley that

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2 commenced in December of 2023 after the Department
3 was notified of an arsenic filter system failure at
4 Hudson Valley. The draft order before you would
5 initiate a formal administrative process.

6 The draft order would not be the final
7 conclusion or verdict of the Commission. Similarly,
8 the 2024 staff report represents staff's initial
9 findings in an ongoing investigation. There has not
10 yet been a hearing and Hudson Valley has not yet been
11 provided with an opportunity to respond to this.

12 As such, staff reserves the ability to
13 augment the 2024 staff report's findings pending the
14 receipt of additional information. Our next speaker,
15 Tim Marsh, will provide an overview of Hudson Valley
16 and the initial notice and information we received
17 related to the arsenic filter system failure.

18 CHAIR CHRISTIAN: Tim, before you
19 begin, you might want to change your name tag.

20 MR. MARSH: Thank you.

21 CHAIR CHRISTIAN: There you go.

22 MR. MARSH: Thank you, Chair. Good
23 morning, Chair and Commissioners. My name is Timothy
24 Marsh. I'm a Utility Analyst Trainee II in the
25 Office of Consumer Services, and I am one of the lead

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2 staff assigned to Item 401. Little closer. Thank
3 you.

4 Hudson Valley is a Waterworks
5 Corporation that provides service to 434 customers
6 through five non-contiguous systems in the Ulster
7 County towns of Hurley, Saugerties, Rosendale, and
8 Olive.

9 On December 16th, 2023, the arsenic
10 filtration system at Hudson Valley System number 5
11 located in the town of Olive failed. This resulted
12 in 29 homes being without safe drinking water. It
13 was not until December 19th, 2023 when an employee of
14 the Public Utility Law Project contacted staff were
15 we aware of the incident.

16 Upon hearing of the interruption in
17 pot -- potable water service, staff reached out to
18 the Ulster County Department of Health, which
19 confirmed that Hudson Valley experienced a failure of
20 its arsenic filtration system, and that 29 homes were
21 without potable water.

22 The New York State Department of
23 Health approved the issuance of a do not drink order
24 on December 16th, 2023, which Hudson Valley was
25 required to share with impacted customers. It should

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2 be noted that the Department was not notified by the
3 company of this service interruption violating 16
4 NYCRR Section 503.3.

5 Upon confirmation of the issuance of
6 the do not drink order, which I'll note is much more
7 serious than a boil water notice. Staff began its
8 investigation into the arsenic filtration system
9 failure, and stayed in regular contact with our
10 partners at the Department of Health.

11 On December 28, 2023 approximately 12
12 days after the do not drink order was issued, the
13 Department began to receive customer comments and
14 complaints. Four customers contacted the Office of
15 Consumer Services and seven comments were filed
16 online regarding this incident. This includes a
17 letter signed by several local elected officials.

18 And notably the Ulster County
19 Commissioner of Health dated January 9th, 2024 that
20 expressed significant concerns about this system and
21 more broadly Hudson Valley's operations of the
22 system. Overall, commenters expressed frustration
23 regarding the quality of service and lack of
24 communication from Hudson Valley.

25 Alleged that Hudson Valley was not

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2 adhering to its own operational procedure and
3 emergency plan and claimed that the incident could
4 have been avoided if Hudson Valley replaced an
5 arsenic filter media weeks prior to the failure of
6 the filtration system when the Department of Health
7 made a rec -- recommendation to Hudson Valley that
8 such action be taken.

9 Some of the comments expressed
10 concerns that staff had previously identified in a
11 2020 staff report issued in case 20-W-0477 on October
12 2nd, 2020. The 2020 staff report made 49
13 recommendations on how Hudson Valley can improve the
14 quality of service it provides its customers.

15 Therefore, staff augmented its
16 investigation into the arsenic fil -- filter failure
17 to include its ongoing evaluation of Hudson Valley's
18 efforts to implement staff's 49 recommendations and
19 whether Hudson Valley adhered to Commission
20 directives since 2020. The outcome of the initial
21 phase of staff's investigation is the 2024 staff
22 report, which our next speaker, Josh, will elaborate
23 upon.

24 MS. GONYEA: Good morning, Chair and
25 Commissioners. My name is Joshua Gonyea. I'm a

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2 Utility Engineering Specialist II in the Office of
3 Rates and Tariffs, and one of the staff assigned as
4 lead to Item 401. The 2024 staff report touches upon
5 how well Hudson Valley has addressed the 49
6 recommendations made in the 2020 staff report.

7 Issues that were discussed in the
8 Commission's last rate order for Hudson Valley, which
9 was issued in May 19th, 2023, in case 22-W-0357, as
10 well as customer comments and complaints that have
11 been filed since 2019. In addition to these historic
12 and ongoing issues, the 2022 -- the 2024 staff report
13 explores the events surrounding and the ramifications
14 of the arsenic filtration system failure, which
15 represented a threat to public health and a higher
16 level of concern for the operational and managerial
17 capacities than historic administrative and
18 operational issues raised.

19 The 2024 staff report indicates that
20 Hudson Valley and its owners, managers, and operators
21 appear to have failed to make appreciable and
22 consistent improvements to the billing, metering,
23 management of Waterworks and customer service in
24 accordance with recommendations made in the 2020
25 staff report and have failed to abide by Commission

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2 directives in Hudson Valley's most recent rate order.

3 This 2024 staff report is based on
4 information previously filed with the Secretary to
5 the Commission and the Department. As staff
6 continues its investigation, staff plans to determine
7 if there is any evidence to support certain
8 allegations that have been made against the owner,
9 managers, and operators of Hudson Valley related to
10 the arsenic filter failure and its actions since the
11 issuance of the 2020 staff report.

12 However, based on staff's current
13 findings, it appears that the owner, and certain
14 managers, and operators of Hudson Valley lack the
15 managerial capability to properly operate the
16 utility, ensure provision of safe and adequate
17 service to Hudson Valley's customers. This concludes
18 my overview of the 2024 staff report.

19 At this time, Charles will provide
20 further details of the proposed order.

21 MR. CORYER: Thank you, Josh. In
22 order to ensure that Hudson Valley can provide safe
23 and adequate service to its customers, the owner,
24 manager, and/or operator of Hudson Valley must
25 demonstrate technical, managerial, and financial

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2 capacities to operate a water utility.

3 Based on the currently available facts
4 that Tim and Josh have outlined, staff is concerned
5 that Hudson Valley has failed to exercise due care
6 and diligence in the maintenance, supervision, and
7 operations of its water system.

8 Public Service Law Section 112-A
9 authorizes the Commission to appoint a temporary
10 operator for a Waterworks Corporation with less than
11 1000 customers, such as Hudson Valley.

12 If the Commission determines that the
13 Waterworks Corporation exhibits a failure to provide
14 safe, adequate, or reliable service, a lack of
15 technical, financial, or managerial capacity or
16 ability to provide the service or actual or effective
17 abandonment of any service or per -- portion thereof,
18 the proposed order before you would commence a
19 proceeding to consider appointing a temporary
20 operator for Hudson Valley.

21 Further, it would require Hudson
22 Valley to answer to the allegations contained within
23 the 2024 staff report and to show cause by March 1st,
24 2024 why the Commission should not find that the
25 operation and management of the company does not

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2 exhibit one or more of the criteria established in
3 Public Service Law Section 112-A and why the
4 Commission should not appoint a temporary operator
5 for Hudson Valley.

6 This concludes our overview of both
7 the draft order and staff report. I would like to
8 thank the Department staff team members that are
9 undertaking this investigation into Hudson Valley
10 service, operations, and practices, and who have
11 prepared this staff report and draft order.

12 We are now available to answer any
13 questions the Commission may have.

14 CHAIR CHRISTIAN: Thank you, Charles,
15 Tim, Josh. I -- I want to start with one question.
16 Please confirm that the situation is currently safe
17 for the families affected by this problem.

18 MS. GONYEA: Potable water service has
19 been restored to these customers.

20 CHAIR CHRISTIAN: Thank you. I -- I
21 think that's the most important part, to just get
22 that out of the way and make sure that's understood.
23 This is an interesting one and for your first, this
24 is an interest -- very interesting one, Charles. And
25 I want to -- want to start with just going through

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2 some of the facts of this case, you know, this
3 particular matter involves a small water utility.

4 They only serve a few hundred
5 customers. I think you said 434 customers to be
6 exact?

7 MR. CORYER: Yes, approximately 434.

8 CHAIR CHRISTIAN: So that's not 434
9 people, that's 434 customers. Could be very well,
10 thousands if not more affected by this. And there
11 are many of these tiny water companies throughout the
12 State. And you know, periodically, we at the
13 Commission have discussed the various challenges
14 these small water companies face.

15 And when you're a customer of one of
16 these, you're grateful that there are government
17 entities providing oversight and ensuring that the
18 utility is complying with all the applicable laws and
19 regulations. Especially when that utility is
20 providing the water that you and your family drink,
21 bathe in, cook, and clean with.

22 So I think this is a very significant
23 matter to ensure that that can continue. So I want
24 to commend you for working on this and for bringing
25 us to this point in the investigation and starting

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2 this process. Second, I want to highlight that we do
3 not take lightly what it means through the initiation
4 of this proceeding, the proceeding to temporarily
5 assign a temporary operator of a utility.

6 But the alleged allegations, the
7 alleged failures of the arsenic filter that occurred
8 in December, coupled with the long history you've
9 described of the company's history of poor service
10 and managerial missteps. This is a serious matter
11 and it dictates serious action. Today's action is
12 not the result of a single incident, but a
13 culmination of issues.

14 And upon learning of the problem in
15 mid-December, Staff immediately began this
16 investigation, and I think that's an important thing
17 to highlight. We didn't learn of this through the
18 operator as we should and, and can you clarify for me
19 when should the operator have informed us of this
20 failure?

21 MS. GONYEA: The operator or owner of
22 the system is intended to notify the Department
23 whenever an interruption of service would have a
24 duration of four hours or greater.

25 CHAIR CHRISTIAN: Right. So four

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2 hours plus another 72 we were then notified by a
3 third party, I think you said the Public Utility Law
4 Project.

5 MR. CORYER: Correct.

6 CHAIR CHRISTIAN: And that was our
7 first notification of this?

8 MR. CORYER: Yes, that was staff's
9 first notification.

10 CHAIR CHRISTIAN: Okay. So -- but
11 that wasn't the only notification. We also got
12 letters. I think we received a number of letters
13 around January 9th. We also received feedback from
14 the Department of Health, a number of elected
15 officials, and notably, it's the Department of Health
16 with jurisdiction of water quality in that area. Is
17 that correct?

18 MR. CORYER: It's the county, but yes,
19 that is correct.

20 CHAIR CHRISTIAN: Thank you. And so,
21 you know, one, I want to thank them for their
22 cooperation in this investigation. But it's
23 important to point out how this came to us. And I'd
24 also like to highlight a third thing. We learned
25 about the problems through PULP on behalf of the

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2 customers, and again, not through the company.

3 And in learning through this, we then
4 determined the severity of it through the number of
5 customers affected. The fact that this was not a
6 boil water notice, but a do not drink water notice.
7 Something I think you pointed out was far more
8 severe. Okay. So the severity of this was pretty
9 significant. This is a fairly big issue, overall.

10 And then the fourth point again, not
11 an isolated issue. In the 2020 report, I think you
12 identified 49 recommendations that -- resulting from
13 that investigation, from customer complaints for all
14 aspects of the customer's operations, everything from
15 billing, communication, operations.

16 These are things that we've already
17 informed the -- the utility that they needed to take
18 action on.

19 MS. GONYEA: That is correct.

20 CHAIR CHRISTIAN: Okay. And then in
21 our 2024 report that's included with this filing. We
22 alleged that the company did not move forward with
23 many of these recommendations. That's -- that's the
24 case, yes? Okay.

25 So given all the various issues here I

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2 think it's important that we highlight, you know,
3 again, the significance of the actions that brought
4 us to this point and our role in ensuring the safety
5 and reliability of the system.

6 It may be a small number of customers,
7 but those customers rely on us to take these actions
8 to ensure they get the water service they deserve.
9 So as we work to do that, it's important to note that
10 the company has rights as well.

11 So this process for which we're
12 engaging the company gives them an opportunity to
13 respond to our queries and to test all of our
14 allegations and to determine if additional actions
15 are required.

16 And so with that, I -- I want to thank
17 you for putting this together and bringing this
18 before us, and I look forward to the various next
19 steps needed before we make a final determination.
20 Thank you. Commissioner Burman.

21 COMMISSIONER BURMAN: Thank you. And
22 I do appreciate that the first issue raised was
23 making sure that the water was -- it is currently
24 safe. And I -- and I think that's really important.
25 So I appreciate that --

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2 CHAIR CHRISTIAN: Uh-huh.

3 COMMISSIONER BURMAN: -- because that
4 really underscores, you know, the situation and our
5 reality and what's most important. I -- I was -- and
6 I will be voting for this item. I do recognize that
7 it is the start of opening, bringing an order to show
8 cause, and then having the company an opportunity to
9 have the right due process and look at what we need
10 to do.

11 And it's focused on a temporary
12 operator perhaps being assigned in this situation. I
13 was struck that the -- that PULP was -- and first
14 kudos to the PULP staffer who raised it and -- and
15 highlighted it. I think it shows the continuing,
16 ongoing work and diligence of the PULP employees who
17 are really trying to make sure that they are
18 responsive to the many things that come to them.

19 The thing that I think I -- I, and I
20 had really two, sort of, focuses. The first is, is
21 that we do need to take a look at how is it that it
22 was only because of PULP sort of helping us know that
23 this was an issue. You know, we had the 2020 staff
24 report that highlighted some issues.

25 We had the 2023 rate case that also

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2 highlighted this. So it's -- it's not that we didn't
3 know that the company was a -- perhaps distressed
4 small water company and had challenges. So how --
5 how is it and what can we do as we move forward in
6 looking at this issue so that we have really more
7 eyes on the ground that is helpful to making sure
8 that, you know, these things don't get overlooked
9 because frankly, it was a troubled company.

10 So the fact that we were hoping that
11 they would notify us, it just -- it's unlikely that
12 would happen, so I'm just curious if you have any
13 thoughts on that.

14 MR. RIEDER: So if I may? My name is
15 Mike Rieder. I'm the Director of Office Rates and
16 Tariffs. During the last rate case, we did an
17 evaluation of the company's tariff and in that tariff
18 -- and -- and they're actually the customer outreach
19 and notifications also with their billing systems.

20 So we made adjustments to the billing
21 of the utility to ensure that the customers have the
22 opportunity and clearly see where they can issue
23 complaints, and that would be to the P.S.C.

24 COMMISSIONER BURMAN: Okay. It
25 doesn't really fully address though, sort of, what I

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2 am sort of looking at, which is the bigger whole,
3 right? Is that how -- is it that -- and really,
4 maybe this isn't necessarily needing to be drilled
5 down here, but it is something to say, what was it
6 that made someone reach out to PULP rather than --
7 rather than and/or us, right?

8 We -- we relied on our good
9 partnership with PULP to know that they're calling us
10 and flagging this issue was helpful. But what if
11 they didn't realize that PULP was the -- maybe, you
12 know, we don't -- they don't necessarily -- someone
13 might not necessarily know to call PULP, and then for
14 whatever reason, PULP may not have thought to call.

15 Like there's so many different layers
16 here. And so I am just trying to address what I see
17 as when we know we have distressed companies with
18 challenges, how are we more holistically looking?
19 And I know we do do a whole host of things, but
20 making sure that this is just one -- this is a one-
21 off, that's not going to happen again, right?

22 Because we know that the company being
23 required to call us when they are distressed and when
24 they're not following other areas, it's not
25 necessarily -- we can't count on them to, to know --

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2 to know to do the right thing or to do the right
3 thing. And I'm just -- I see this as a sort of a
4 flagging so that we're really focused on the safety
5 of the water customers.

6 MR. ROSENTHAL: I -- I can sort of
7 slightly answer this. So when it comes to electric
8 and gas, the Commission is directly tied into the,
9 you know, safety and welfare of the customers through
10 a regulatory authority. That's not the case with
11 water customers. The direct regulator really is the
12 Department of -- of -- the State Department of
13 Health, or the local Department of Health.

14 So they were notified, you know,
15 immediately and they participated in the -- you know,
16 the no drink and boil. I -- and I'm really
17 speculating, but PULP obviously would know that we
18 also regulate the entity and then therefore, you
19 know, contacted us, probably likely because of our
20 role in regulating water utilities.

21 COMMISSIONER BURMAN: I'm going to
22 push back a little bit because I do think that that
23 is framing it perhaps not as -- we may be speaking
24 the same language, but I think that you're framing it
25 as if we don't have a regulatory oversight over the

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2 safety of water and we do. And so I want to be very
3 clear that that is for us important.

4 And it is not just that we only have
5 the safety aspects as it relates to electric and gas.
6 We do have an obligation and our mission is safety
7 over all of them, including the water system. And
8 yes, we have partnerships with D.O.H. and they have
9 their own specific, you know, chall -- they have
10 their own specific regulations as it relates to the
11 health of folks as related to water.

12 But we are regulating this company,
13 and that is very clear, especially as when we look to
14 the rates, but for me, the bigger issue, and this
15 gets to really what I see as a path forward. And I
16 think we're all on the same page, that the path
17 forward is one that is really important.

18 So the letter that we got from the
19 executive, which is highlighted in the order,
20 references the -- that -- a request that the
21 Commission utilize our authority under Public Service
22 Law 89-H, as well as our Commission acquisition
23 incentive mechanism policy, the AIM policy to
24 transfer ownership of Hudson Valley to another entity
25 that can provide reliable service to customers.

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2 That's a bread and butter that we have
3 done over the years. I've been on the Commission now
4 in my 11th year, and we have had a whole host of
5 transfers of small water companies to being acquired,
6 whether it's to a -- another larger private water
7 company or to public company, you know, a
8 municipality.

9 And we have actually had a number of
10 different I -- I think very successful transfers in,
11 in looking at that. And we recognize, and -- and the
12 reason I -- first of all, I was very glad to see that
13 someone other than me remembers that we have the AIM
14 policy. It actually references the '93 -- actually
15 it's the '94 policy -- it was opened in -- in '94,
16 the '94 policy on Acquisition Incentive Mechanisms
17 for small water companies.

18 What -- it is important for me at
19 least to flag it from a historical perspective, but
20 also the importance of it for a moving forward
21 perspective is in 2015 I was one of the Commissioners
22 who -- who -- who voted to commence a generic
23 proceeding that was looking at really, frankly
24 changes that may or may not need to be made to the
25 1994 policy.

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2 And the -- the order -- and I think
3 it's really important just to flag it, the order
4 looked at that the 1994 AIM policy was established
5 with the stated goals of improving the ability of
6 small water companies to provide quality water
7 service, customer service, and system management
8 operation, making compliance with current and future
9 regulations easier, avoiding drastic rate increases,
10 and bringing rates of merged companies into parity
11 and promoting conservation. We, in 2015, opened this
12 generic proceeding because we were looking at how to
13 focus on promoting as appropriate the consolidation
14 of smaller water utilities, both through traditional
15 private acquisition and by facilitating transfers to
16 public systems.

17 One of the reasons we did that is that
18 we recognized that it's reasonable to conclude that
19 as smaller systems are acquired and removed from
20 Commission jurisdiction, those that remain -- those
21 small water companies that remain, are more likely to
22 require, you know, looking at perhaps incentives to
23 help them in terms of merging and that the smaller
24 systems are often unable to raise sufficient capital
25 to safely and properly operate the system in

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2 compliance with the Federal Safe Drinking Water Act.

3 And therefore, it was really important
4 for us in 2015 as we were realizing that there were
5 still a large number of small water companies that
6 were seeming to be distressed and seeming to have
7 challenges that the path forward needed for us to get
8 really much more under the hood on what we were doing
9 so that we did not continue to have small water
10 companies that are safely operating and be able to do
11 it from managerial perspective, should have the right
12 to do that.

13 But for those that we identify as
14 having challenges, we need to be able to move swiftly
15 before the issues arise. And in fact, at that time,
16 we had seen from the 1994 policy at that -- when we
17 had the 1994 policy, we had 450 water companies. Of
18 that number from 1994 to 2015, it went down to 254
19 water companies.

20 So my first question is, how many
21 water companies do we currently have?

22 MS. GONYEA: There are approximately
23 226 water companies.

24 COMMISSIONER BURMAN: Okay. So we
25 went from 254 to 226, not a large dip. At the time

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2 when we instituted this generic proceeding in 2015,
3 out of the 254 water companies, 130 of them, so more
4 than half of -- but just about more than half if my
5 math is right, which I -- I don't want Jeff to tell
6 me I'm wrong, but around that, let's just say about
7 half, were less than 50 customers.

8 How many of the 226 are about less
9 than half -- less than 50 customers. And you may not
10 know that right now, but.

11 MS. GONYEA: I believe that figure is
12 close to a 100 water companies.

13 COMMISSIONER BURMAN: Okay. So -- so
14 it's interesting. We went from 254 to 226 and it --
15 and then we went from 130 to -- what'd you say?

16 MR. RIEDER: So just to clarify. So
17 it's -- it's for number of customers under 100 --
18 it's 170 water companies that have less than 100.

19 COMMISSIONER BURMAN: Okay. And at --
20 all right. So we'll use that.

21 MR. RIEDER: About 50 -- 50 between
22 100 and 500 and -- just a handful over 500.

23 COMMISSIONER BURMAN: Okay. So it
24 seems to me that the number that went down were
25 pretty much then going from the smaller water

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2 companies were -- were going away. That's what it
3 looks like, right? So -- but it's not a lot that
4 went away.

5 And so -- and it's also not a lot when
6 you look at the total number, it's not a lot, you
7 know, for us to say, wow, there's too many for us to
8 be able to make sure that everyone's operating
9 safely, and obviously if that's the issue, we should
10 be operating as -- we should be making sure we have
11 the resources to do that.

12 One of the things that is challenging
13 and troubling to me is that I am always concerned
14 when we open generic proceedings that we do not then
15 -- with good intentions, that we do not then do the
16 follow-through in either making sure that we are
17 meeting our -- our intent and our mission in why we
18 opened the generic proceeding.

19 And -- and -- and then it gets lost,
20 right? And then the generic proceeding either just -
21 - it seems they go dormant and we have no idea. In
22 2015 when we opened it the last engagement on that
23 proceeding itself was in 2016, and then it seemed to
24 have fallen away in terms of people looking at it.

25 For a variety of reasons why, but it

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2 seems to me that we need to take a look at, is it
3 something that the generic proceeding which we
4 currently have is actually not necessarily addressing
5 the very core issues that we need because it was
6 focused on whether we need to revise our incentive
7 mechanisms.

8 Right now, it's really much more of
9 what the Chair said, which is we need to make sure
10 that the water companies that are operating,
11 especially the small water guys that we are seeing
12 that there are challenges and they will continue to
13 have challenges as they age that we need to actually
14 look at.

15 What are we doing to make sure that we
16 are helping them to manage their systems or to be
17 properly acquired and what does that look like?
18 Whether it's a big water company, a private water
19 company, or whether it's a public municipality.

20 And we should actually be engaging
21 with the larger water companies and the
22 municipalities on identifying those water companies,
23 those small water companies that may need some help
24 and some engagement in. Is there anything here in
25 terms of being able to be acquired before we wind up

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2 having the situation that we have now?

3 Does any of that make sense? All
4 right. So I'm just flagging 2015 order, which was
5 trying to address reducing the number of water --
6 small water companies to make sure we were addressing
7 safety, to make sure that we were not having these
8 situations. And that, just loving that it was
9 brought back, the 1994 policy that sort of triggered
10 the 2015 maybe we need to do something different.

11 And just reminding folks we never
12 actually addressed that generic proceeding. So thank
13 you.

14 CHAIR CHRISTIAN: Thank you.
15 Commissioner Alesi?

16 COMMISSIONER ALESI: Thank you, Mr.
17 Chairman. I have no further comments, but I will be
18 supporting this.

19 CHAIR CHRISTIAN: Thank you.
20 Commissioner Howard.

21 COMMISSIONER HOWARD: Thank you. I --
22 Mr. Chairman, I too really am concerned about the
23 volume of these small companies and -- and how they --
24 -- we deal with them going forward. I suggest -- this
25 actually is an issue that could also move beyond this

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2 Commission to legislature and how we deal with these
3 things, because it's very clear that probably these
4 small companies, many of them will never be able to
5 be completely viable at reasonable cost.

6 I guess I'm jumping ahead a little
7 about should we -- this order to show cause go
8 forward and it is determined we how -- needing a new
9 operator, how -- can somebody explain to me the
10 criteria by which we go through the selection process
11 for a new operator?

12 MR. RIEDER: So I could take this one.
13 Again, this is Mike Rieder. So we look for a company
14 that has a history of providing water service, make
15 sure they have the managerial, financial, and
16 technical capabilities in order to provide service.

17 We usually look towards our partners
18 at municipalities that have current water districts,
19 or we look to our partners at -- at larger -- larger
20 privately owned systems like New York -- well, not
21 New York American Water, Liberty Water Services or
22 Veolia Water.

23 COMMISSIONER HOWARD: Got you. So we
24 are not -- any way we don't have our thumb on the
25 scale one way or another where we go with a private

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2 operator or a municipal operator, right? It's -- and
3 whenever -- do we also look for, like, volunteers
4 say, who wants to do this?

5 MR. RIEDER: So yes -- yeah,
6 unfortunately, yes, that's usually -- our first --
7 our first reach out is to municipalities, that would
8 be our first reach out. And -- and then we -- then
9 we look for utilities that are willing to step up.
10 And to -- to -- to their credit both Liberty and
11 Veolia have -- have, have responded to -- to my
12 inquiries.

13 And they have said because it is a
14 health and safety issue that they would strongly
15 consider stepping in and becoming a temporary
16 operator.

17 COMMISSIONER HOWARD: Now, should the
18 temporary operator be put in place and they identify
19 capital costs that need to be done in order to
20 provide adequate and safe service, are they sort of
21 prejudged as to be prudent expenses already, or how -
22 - how do those get paid for? Or would -- or would we
23 need another petition to increase a tariff or -- or -
24 - or general rates to pay for these new capital
25 costs?

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2 MR. RIEDER: We would need a -- a new
3 tariff or par -- or petition under the system that is
4 being operated to recover those costs.

5 COMMISSIONER HOWARD: And would that
6 be brought by the operator or the temporary op -- the
7 owner or the temporary operator?

8 MR. RIEDER: The temporary operator
9 would have all the -- access to all the books and
10 records and have the jurisdiction over that company
11 if we appoint one as a temporary operator.

12 COMMISSIONER HOWARD: And when we say
13 temporary, how long is temporary?

14 MR. RIEDER: That's a good question.
15 So sometimes it's -- it's -- it's truly temporary
16 where it could -- it could last a year or so before
17 they become acquired, or it could be an
18 unfortunately, in some cases, a little bit longer
19 than that.

20 COMMISSIONER HOWARD: Well, I would
21 suggest in this particular case, there are many, very
22 viable and successful municipal water systems in
23 Ulster County. Some are big, some are small. But
24 the issue of ultimately fixing these problems, we've
25 seen it.

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2 It probably will require some degree
3 of municipal takeover, not over -- and I don't want
4 to prejudge this particular case, but for these small
5 companies writ large and creating a new water
6 district and a new finance is, is not an easy thing.
7 And there is also the opportunity.

8 It needs to be the transparency is
9 that just because this new water district or -- now a
10 water district is created that -- that customer's
11 costs will go down, that there is no direct
12 relationship. But in a case like this, we --
13 customers should potentially prepare for higher costs
14 to fix any ongoing problems.

15 Also, we have seen while there have
16 been some municipalities and areas where embracing
17 public ownership has gone forward, we've also seen
18 the -- the opposite. They look down the barrel at
19 purchasing or -- or moving ahead with
20 municipalization, and it just doesn't occur. We went
21 through this about 18 months ago, right in this room.

22 So how we -- going forward with this,
23 and I know that the issue of water infrastructure
24 funding is currently under great debate in the
25 legislature. I -- I would just ask those in -- in

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2 power that add this to your plate because we can
3 solve a singular issue. And I do believe that we've
4 been extraordinarily rapid in our response here.

5 But again, this -- we should
6 anticipate these before they happen. And how -- and
7 also to develop, I think to go to Commissioner
8 Burman's point, a mechanism by which customers know
9 if something bad happens, call us up. You know, and
10 -- and that also is true for, you know, elected
11 officials.

12 But again, in this case, I think, I
13 would hope that we would come away with municipal
14 operators for these one or more of these parts of
15 this system. And -- and again, maybe it's time to
16 revisit the entire small water system universe with
17 an eye toward what it would take to eliminate these
18 problems.

19 Just we need to remember how most of
20 them were done. They came up, developer came, wanted
21 to build a subdivision or something, and then the --
22 the way to get the water to everybody is that that
23 developer takes on the role of a utility. In many
24 cases that goes on many, many decades ago.

25 And you know, that -- that developer

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2 really never wanted to be in the water business to
3 begin with. So again, on a going-forward basis I'm a
4 strong believer in municipal water systems and -- and
5 quite honestly, in New York we are hugely blessed by
6 having the vast, vast majority of water customers in
7 this State, in -- on municipal systems.

8 That is not true across the map of the
9 United States. And again, I think there is room for
10 short-term improvement, but again, we need a long-
11 term strategy on how to deal with this, but thank
12 you.

13 CHAIR CHRISTIAN: Thank you.
14 Commissioner Valesky.

15 COMMISSIONER VALESKY: Thank you, Mr.
16 Chair. First I want to just complete Commissioner
17 Howard's loop of questioning Mike, if you could. In
18 terms of a potential selection of a temporary
19 operator. The ultimate decision would be the result
20 of a recommendation from staff that would come back
21 to the Commission at some point in the future for a
22 subsequent vote. Is that correct, by the Commission
23 itself?

24 MR. RIEDER: Yes, that is correct.

25 COMMISSIONER VALESKY: Okay. So it --

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2 it -- it seems to me in -- in -- in this case that
3 the failure of the arsenic filter system almost
4 served as a last straw, if you will, in terms of your
5 recommendation to -- to seek a -- an order to show
6 cause from -- from the Commission.

7 My -- my question is, and -- and --
8 and -- and doing some research on -- on -- on this
9 issue and going back to the 2020 order, obviously as
10 other Commissioners have indicated, this is not the
11 first time that -- that there have been problems.

12 There have been recommendations made.
13 Some, my understanding, followed, some not. So the -
14 - the question that I have, and perhaps it's more for
15 counsel, Mike than you, but the decision to seek a --
16 an order to show cause in a matter like this is. Is
17 -- is it a statutory trigger or is it a subjective
18 decision on the part of staff to ask for an order to
19 show cause?

20 The reason why I'm asking the
21 question, could an argument be made that something
22 between 2020 and the arsenic filter system failure
23 could or should have triggered an order to show cause
24 before -- before this point? So again, the question
25 is, is there something in statute that leads you to -

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2 - to take this recommendation or is -- is it a
3 subjective decision?

4 MR. ROSENTHAL: I wouldn't frame it as
5 a subjective decision. I would instead frame it as a
6 discretionary decision on behalf of the Commission.
7 We have obviously very strong statutory authority.
8 And pursuant to regulations and Commission process,
9 the order to -- to show cause is the proper mechanism
10 in which to review.

11 It's more -- it -- it -- it's -- it's
12 similar to -- like a civil court complaint and a
13 motion for a preliminary injunction. It's a sort of
14 a combination of the two. And here the motion is
15 that we're -- we're -- we're -- we're asking the
16 operator of this facility, based on your history and
17 based on this most recent pretty catastrophic
18 failure.

19 At you know, part of the system,
20 should you -- you -- you know, do you have the
21 wherewithal to continue operating the system or
22 should we provide a temporary operator?

23 CHAIR CHRISTIAN: Okay, sorry to
24 interrupt. I just want to make sure. You said you
25 would not frame it as a subjective decision? I

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2 didn't hear that part. I just wanted to make sure
3 that's what you said.

4 MR. ROSENTHAL: Ultimately, it's --
5 it's the Commission's discretionary decision. And
6 that's -- that's -- that's what it is. It's in front
7 of you. We've provided the basis to issue the order,
8 but it ultimately is your discretionary decision.

9 COMMISSIONER VALESKY: Okay. I think,
10 again, with -- with a -- with a situation like this
11 going forward, should a similar situation occur,
12 where is the trigger, I guess is what I'm -- I'm
13 really -- really getting at.

14 At what point is management
15 potentially so serious on behalf of its -- of its
16 customers that we're at a point that -- that we ought
17 to seek an order to show cause. Just -- just some
18 thought put to that going forward so that there's --
19 there's a -- a roadmap to follow, I guess, is what
20 I'm getting at.

21 MR. ROSENTHAL: Let me just say that
22 it -- it -- I think it's always going to be a very
23 fact-specific determination there. What the record
24 shows here is there -- there are definitely issues,
25 you know, historical issues regarding financial

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2 capability of the company, with respect to the
3 operational, and definitely customer complaint
4 process, certainly has been problematic over the
5 years. Those are different in kind than the failure
6 of a arsenic filtration system.

7 COMMISSIONER VALESKY: Sure. Okay.
8 Thank you. I appreciate that. My -- my only final
9 comment really, again, following up on -- on
10 Commissioner Burman initially laid out and
11 Commissioner Howard followed up as well. I just
12 think and I -- I guess, I'll address my -- my thought
13 to you directly, Chair, and -- and -- and your
14 leadership. I -- I -- I think this is certainly an
15 example of something that -- that I would be -- be
16 very supportive of revisiting that generic proceeding
17 and looking further at this -- at this entire issue.

18 And as Ms. Burman -- Commissioner
19 Burman indicated, it's very -- it's entirely possible
20 that other branches of government may want to look at
21 this as well in terms of -- of -- of legislative
22 issues. So I offer that as a suggestion. Thank you.

23 CHAIR CHRISTIAN: Thank you.
24 Commissioner Maggiore.

25 COMMISSIONER MAGGIORE: Thank you. I

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2 -- I don't actually have any additional questions. I

3 -- I will like to acknowledge that this is a very
4 concerning matter and I will be supporting this
5 order. Thank you.

6 CHAIR CHRISTIAN: Thank you. I'll do
7 a call for a vote. My vote is in favor of the
8 recommendation to institute a proceeding and direct
9 Hudson Valley Water Companies to show cause as
10 discussed. Commissioner Burman, how do you vote?

11 COMMISSIONER BURMAN: Yes.

12 CHAIR CHRISTIAN: Thank you.
13 Commissioner Alesi?

14 COMMISSIONER ALESI: Yes.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Howard?

17 COMMISSIONER HOWARD: Yes.

18 CHAIR CHRISTIAN: Thank you.
19 Commissioner Valesky?

20 COMMISSIONER VALESKY: Yes.

21 CHAIR CHRISTIAN: Thank you.
22 Commissioner Maggiore?

23 COMMISSIONER MAGGIORE: Yes.

24 CHAIR CHRISTIAN: Thank you. The item
25 is approved and the recommendations are adopted.

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2 Thank you, staff.

3 And with that, we'll now move to the
4 consent agenda. Do any Commissioners wish to comment
5 on or recuse from voting on any items on today's
6 consent agenda? I'll begin with Commissioner Burman.

7 COMMISSIONER BURMAN: Yes. I just
8 want to make some brief comments on item 562. It's
9 the petition of Empire City Subway Company for an
10 order requiring -- requiring optical communication
11 groups to notify its customers of a potential loss of
12 service.

13 This is really an item that's been
14 related to and is really about significant contract
15 money disputes among Empire City Subway, Verizon and
16 O.C.G. My concern here is that -- and -- and I
17 really first of all, want to sort of say kudos to
18 staff who I know, this isn't the first time this item
19 has -- item like this has come before us.

20 And I think the staff has been working
21 really hard at trying not to get involved in the
22 contract dispute, but resolving the jurisdictional
23 issues that are appropriate for us to resolve.

24 However, it's been rather difficult and I think it's
25 -- it continues to be a challenge in terms of

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2 addressing that.

3 We recently had a similar order in
4 April of 2023, a different case number, but same
5 parties related to this. And it gets again to, you
6 know, what are we doing and what -- what -- how do we
7 send the message about following the proper
8 notification.

9 But also having -- knowing that the
10 resolution of the contract and money dispute
11 continues to be a challenge, and it's a little bit
12 outside of our jurisdictional issue. I'm voting no
13 for a very specific reason, which is that, we got --
14 a preliminary agenda went out on Friday.

15 And that's really the first
16 opportunity for parties to see, you know, what may or
17 may not be on the agenda. Now, it shouldn't be a --
18 an opportunity for parties to say oh, wait, that's on
19 the agenda, we don't want that and to -- to say, pull
20 it or not pull it, right.

21 But if there are legitimate reasons,
22 and I think that when we see when the counsel to a
23 party who, you know, appears before us routinely and
24 says, you know, we'd -- we'd like you to not have
25 this on. And formally -- formally, because a lot of

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2 times I think these conversations may happen not
3 formally.

4 Formally puts in the file a request to
5 move it because they are working with their -- with
6 their client trying to resolve the money issue. And
7 the very issues that, you know, are -- are just back-
8 and-forth disputed it is -- is important to that
9 contract dispute, negotiations, and the money.

10 And so moving it from one session to
11 the next session and offering to have, you know,
12 formal notification of exactly what they did before
13 the March session. I think it requires us to take a
14 look and say, here we have -- and it's new counsel,
15 here we have new counsel who is trying to be openly
16 suggesting what may be helpful to resolve some of the
17 money issues.

18 I'm sure there's still going to be
19 some money issues that are outside our jurisdiction,
20 but we really would like the opportunity to not have
21 this on the session because it may not be helpful to
22 the ultimate resolution. And we are trying to
23 resolve it in time for the March session or at least
24 resolve aspects of it. For us to just say, sorry, no
25 good, no, we're going to keep it on February, when

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2 the movement from February to March does not show
3 that they would have significant harm. Yes,
4 customers would not be notified in a timely fashion,
5 but they haven't been notified in a timely fashion on
6 other things. And the February to March movement, I
7 don't think is a problem.

8 And therefore, I also think it's an
9 internal process that we need to have a better handle
10 on -- on us as Commissioners being able to kind of
11 weigh in on what, you know, how our comfort level is
12 on that rather than being told at the 11th hour, no,
13 we're -- we're denying this request. And so for
14 that, I am a no on this.

15 But I also want to be clear that it is
16 not now to invite more letters like this or more
17 opportunities for folks to say they want to switch
18 and move things, you know, from the February session
19 or the March session to, you know, March 2025. And I
20 don't think that's what this is, and I have faith
21 that this really is trying to address the underlying
22 issues. So I'm a no. Thank you.

23 CHAIR CHRISTIAN: Thank you. Excuse
24 me. Thank you. Commissioner Alesi.

25 COMMISSIONER ALESI: I'll have no

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2 comments or observations. I'll be supporting the
3 entire consent agenda.

4 CHAIR CHRISTIAN: Thank you.
5 Commissioner Howard?

6 COMMISSIONER HOWARD: I'll be
7 supporting the agenda.

8 CHAIR CHRISTIAN: Thank you.
9 Commissioner Valesky?

10 COMMISSIONER VALESKY: No comments on
11 any items.

12 CHAIR CHRISTIAN: Thank you. And
13 Commissioner Maggiore?

14 COMMISSIONER MAGGIORE: Thank you.
15 I'll be supporting the agenda. I do want to make a
16 quick comment on one item, which is item 375, 23-E-
17 0159, which is a minor rate filing pertaining to the
18 Village of Churchville.

19 And I just, you know, when I see these
20 minor filings, I look to see if there's any public
21 comments and there weren't here as is often the case.
22 This is actually not -- it's -- it's not a rate case
23 per se. It is a -- a petition for re-hearing to
24 correct some errors in the rate case from September.

25 And the result of this will be a base

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2 rate increase. And it just strikes me that there
3 weren't any public comments as -- as is often the
4 case with these small rate cases. I -- I look at
5 these to see if the -- the company, in this case, the
6 village informed the ratepayers before this reached
7 us.

8 And there was the opportunity for
9 public comment and I'm satisfied that there was. But
10 I just, you know, it strikes me that the first two
11 items on the regular agenda reflected a -- a -- a lot
12 of public input in different ways.

13 And there is the opportunity to
14 provide feedback and to shape the outcome before it
15 reaches us. In the absence of any -- anything in the
16 record to suggest that we should vote no on this, I'm
17 going to vote yes.

18 But again, the reason I'm highlighting
19 it is even in the small rate cases, there is the
20 opportunity for public input. That's my only
21 comment. Thank you very much. I'll be voting yes on
22 the entire agenda.

23 CHAIR CHRISTIAN: Thank you. I'll now
24 do a call for a vote. My vote is in favor of the
25 recommendations on the consent agenda. Commissioner

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2 Burman, how do you vote?

3 COMMISSIONER BURMAN: I vote yes,
4 except for 562. I'm a no.

5 CHAIR CHRISTIAN: Thank you.
6 Commissioner Alesi?

7 COMMISSIONER ALESI: I vote yes on all
8 items.

9 CHAIR CHRISTIAN: Commissioner Howard?

10 COMMISSIONER HOWARD: Yes on all
11 items.

12 CHAIR CHRISTIAN: Commissioner
13 Valesky?

14 COMMISSIONER VALESKY: Yes on all
15 items.

16 CHAIR CHRISTIAN: Commissioner
17 Maggiore?

18 COMMISSIONER MAGGIORE: Yes on all
19 items.

20 CHAIR CHRISTIAN: Thank you. The
21 items are approved and the recommendations are
22 adopted. Madam Secretary, is there anything further
23 to come before us today?

24 SECRETARY PHILLIPS: No, there is not.

25 CHAIR CHRISTIAN: Thank you. And with

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2 that, I adjourn. Thank you, everyone.

3 (Off the record.)

4 (The meeting concluded at 12:26 p.m.)

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2 STATE OF NEW YORK

3 I, MONIQUE HINES, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 95, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 19th day of February, 2024.

11

12

13 MONIQUE HINES, Reporter

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