

1 8/15/2024 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5
6 Thursday, August 15, 2024

7 10:35 a.m. until 2:07 p.m.

8 ESP, Building 3, 19th Floor Boardroom

9 Albany, New York

10

11 COMMISSIONERS:

12 RORY M. CHRISTIAN, CHAIR

13 COMMISSIONER DAVID J. VALESKY

14 COMMISSIONER JOHN B. MAGGIORE

15 COMMISSIONER UCHENNA S. BRIGHT

16 COMMISSIONER DENISE M. SHEEHAN

17 COMMISSIONER RADINA R. VALOVA

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2 (The meeting commenced at 10:35 a.m.)

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

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

9 CHAIR CHRISTIAN: Thank you. Before
10 we begin, I'd like to note that Commissioner Alesi
11 will not be joining us today due to an excused
12 absence. Before moving to the agenda, I need to
13 conduct a roll call of Commissioners. Commissioners,
14 when I call your name, please confirm that you are
15 present. Commissioner Valesky?

16 COMMISSIONER VALESKY: Present.

17 CHAIR CHRISTIAN: Commissioner
18 Maggiore?

19 COMMISSIONER MAGGIORE: Present.

20 CHAIR CHRISTIAN: Commissioner Bright?

21 COMMISSIONER BRIGHT: Here.

22 CHAIR CHRISTIAN: Commissioner
23 Sheehan?

24 COMMISSIONER SHEEHAN: I'm here.

25 CHAIR CHRISTIAN: I can confirm that

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2 Commissioner Sheehan is here. We'll work on her
3 microphone. Commissioner Valova?

4 COMMISSIONER VALOVA: Present.

5 CHAIR CHRISTIAN: Thank you. Before
6 we begin with the regular agenda, do any
7 Commissioners wish to recuse from voting on item 101,
8 401, 301, 302 or 501? Commissioner Valesky?

9 COMMISSIONER VALESKY: No recusals.

10 CHAIR CHRISTIAN: Thank you.

11 Commissioner Maggiore?

12 COMMISSIONER MAGGIORE: No recusals.

13 CHAIR CHRISTIAN: Thank you.

14 Commissioner Bright?

15 COMMISSIONER BRIGHT: No re --
16 recusals.

17 CHAIR CHRISTIAN: Thank you.

18 Commissioner Sheehan?

19 COMMISSIONER SHEEHAN: No recusals on
20 the regular agenda.

21 CHAIR CHRISTIAN: Thank you. And

22 Commissioner Valova?

23 COMMISSIONER VALOVA: No recusals.

24 CHAIR CHRISTIAN: So noted. Thank
25 you. We'll now move to the regular agenda. Our

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2 first item for discussion case 23-G-0225, case 23-G-
3 0226 and case 23-G-0220 as it relates to the Brooklyn
4 Union Gas Company and KeySpan Gas Energy Corporation
5 gas rates.

6 This will be presented today by Judge
7 Maureen Leary, Judge James Costello, Mary Ann
8 Sorrentino, Allison Manz and Jeff Hogan are available
9 for questions. Judge Leary, please begin.

10 A.L.J. LEARY: Thank you,
11 Commissioner. Good morning, Commissioners and Chair.
12 My name is Maureen Leary, and as the Chair noted, I
13 am accompanied today by an amazing group of people
14 without whom I probably would not be here today
15 because of, you know, so much that has been going on
16 in the case, which has been really an amazing
17 experience.

18 But I particularly want to thank at
19 the outset our project sponsors Allison Manz and Mary
20 Ann Sorrentino, as well as Chief Judge Dakin Lecakes,
21 and my colleague Jim Costello. I don't want to miss
22 thanking them as well as all of you for your input.

23 I was assigned to preside over these
24 rate proceedings with Judge Costello, and before you
25 today is a draft order establishing gas delivery rate

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2 plans covering a three-year period, beginning on
3 September 1st, 2024, and continuing until March 31st,
4 2027.

5 These rate plans are for the Brooklyn
6 Union Gas Company, which I will refer to as KEDNY
7 when necessary. And the KeySpan East Corporation,
8 which I will refer to as KEDLI. Collectively,
9 they'll be referred to as the companies.

10 The draft order with certain minor
11 corrections and one minor modification adopts an
12 April 2024 joint proposal representing a negotiated
13 resolution to these proceedings by the companies,
14 D.P.S. staff, the City of New York, the Environmental
15 Defense Fund, and N.R.G. Energy.

16 The Department of State Utility
17 Intervention Unit participated in these proceedings
18 and indicated that although not a signatory to the
19 joint proposal, it would not oppose it. The parties
20 opposing the J.P. include the Public Utilities Law
21 Project, WE ACT for Environmental Justice, the
22 Alliance for a Green Economy, All Our Energy, the
23 Natural Resources Defense Council, the Sane Energy
24 Project and individuals Margot Spindelman and Mary T.
25 Finneran.

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2 All of the foregoing opposed the joint
3 proposal and filed Statements in opposition. I will
4 very briefly review some of the background
5 information, detail the companies' revenue
6 requirements and capital expenditures, and highlight
7 certain noteworthy provisions of the draft order
8 adopting the joint proposal.

9 As you know, these cases were filed in
10 April of 2023. They sought gas rates for one year.
11 Although the information filed covered the three-year
12 period for staff's consideration. After the parties
13 filed testimony, the companies filed a notice of
14 impending settlement in September of 2023. Those
15 negotiations extended over -- extended over
16 approximately a seven-month period until the joint
17 proposal's filing in April of this year.

18 The administrative record of these
19 cases is substantial, as are the public comments,
20 which number nearly 1100. Of note is that public
21 notice and comment was extensive. Judge Costello,
22 Judge Lecakes, and I oversaw five in-person public
23 Statement hearings at various locations in the
24 companies' respective service territories.

25 We were often accompanied by members

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2 of the Commission. We thank you for that
3 participation. There was a high level of interest in
4 these -- in those hearings with many members of the
5 public attending and providing vigorous comments.

6 The comments were largely in
7 opposition to the proposed rate increases with
8 commenters asserting among other things that proposed
9 rates would be unaffordable and that the rate plans
10 contained too much funding for the continued use of
11 the companies' gas infrastructure with commenters
12 claiming that this rate -- these rate plans would be
13 inconsistent with New York's Climate Leadership and
14 Community Protection Act, which I will refer to
15 hereinafter, often as the C.L.C.P.A.

16 I'd like to take a moment to discuss
17 the statutory framework and the standard of review
18 governing this -- these proceedings and the
19 Commission's consideration of the joint proposal and
20 this draft order. The -- the Commission's first
21 statutory obligation arises under Public Service Law
22 Section 66, that requires the companies to provide
23 safe and reliable service and just -- at just and
24 reasonable rates and further requires that the comp -
25 - that the Commission oversee that obligation.

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2 The Commission's second ob --
3 statutory obligation is under C.L.C.P.A. Section 7
4 and is in two parts. The Commission must find that
5 adoption of the joint proposal is consistent with and
6 will not interfere with achieving the C.L.C.P.A.'s
7 goals.

8 The Commission also must find that the
9 joint proposal's terms will not result in
10 disproportionate impacts to disadvantaged communities
11 in the companies' service territories.

12 These statutory parameters are
13 complemented by the Commission's 1992 settlement
14 guidelines, which established a public interest
15 standard for considering a joint proposal that has
16 been reached after arms-length negotiations among
17 parties such as the joint proposal before you today.

18 For more than three decades, the
19 Commission has consistently applied this standard,
20 that is the public interest standard, that is
21 established in the guidelines. A negotiated joint
22 proposal must be consistent with the environmental,
23 social, and economic policies of the Commission and
24 the State, and it must produce reasonable results
25 that are within the range of those that would likely

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2 have arisen if the matter had been litigated.

3 The Commission also considers the
4 completeness of the record and whether the joint
5 proposal is contested. The draft order before you
6 concludes, that the joint proposal when viewed as a
7 whole, produces a result that is in the public
8 interest, and is consistent with the applicable
9 statutory framework, as well as the Commission's
10 settlement guidelines.

11 I'm going to turn now, if I can ask
12 for the PowerPoint to come up. The first page will
13 give the Commission the relevant term and effective
14 date of the joint proposal, which I've already
15 mentioned. So I guess that's not going to happen.

16 So the term of the rate plans run from
17 September 1st, 2024 through March 31st, 2027. But
18 because rates should have been effective on April
19 1st, there is a make-whole provision that is
20 retroactive from September 1st to April 1st, 2024.
21 Those make-whole costs are recovered primarily in the
22 first year of the rate plan.

23 Next slide. The -- this slide shows
24 you the progression of the companies' filing in the
25 matter. I will not read all the numbers other than

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2 the last that was filed in rebuttal testimony on
3 September 22nd, 2022, which proposed an increase to
4 the revenue requirement for KEDNY of \$504.3 million,
5 and an increase for KEDLI of \$314.3 million. The
6 proposed R.O.E. at the time was 10.3 percent,
7 assuming a multi-year rate plan.

8 Next slide. Staff's adjustments and
9 recommendations in their testimony indicated that
10 they believe KEDNY was entitled to a \$390 million
11 revenue requirement, KEDLI entitled to a \$220 million
12 revenue requirement. Staff proposed an R.O.E. of 9.1
13 percent for a one-year rate plan.

14 Next slide. I'm going to turn to the
15 joint proposal's revenue requirement. I'm only
16 showing the levelized, of course, we have available
17 in the -- in the draft order, the un-levelized. But
18 this is actually what the rate design will include
19 for rate years one through three for KEDNY, the
20 R.O.E. will be 9.35 percent. Next slide. And
21 KEDNY's levelized is shown also a 9.35 R.O.E.

22 Next slide. I'd like to talk about
23 the major rate drivers or the why behind the revenue
24 requirement, and in no particular order, because some
25 of these are applicable to the first year, some are

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2 applicable only to the last year.

3 So they include net plant and
4 depreciation expense, operations and maintenance
5 expense, the overall rate of return, property taxes,
6 amortization of regulatory deferrals, and long-term
7 debt, which is assigned really only to KEDLI. Please
8 note that there are partial offsets to these rate
9 drivers and the revenue requirement as a result of
10 higher gas sales forecast among other matters.

11 Next slide, please. Here are the bill
12 impacts associated with the revenue requirements.
13 And note that in rate year one, that increase of
14 19.36 percent includes the make-whole provisions that
15 were for the September 1st back to April 1st
16 retroactive make-whole provision.

17 So essentially, this first-rate year
18 monthly bill increases for a typical residential
19 customer using 83 dekatherms of gas will be \$30.18
20 for KEDNY, \$33.35 for KEDLI.

21 Next slide. Here, the capital budget
22 expenditures, and I want to note and clarify that the
23 fiscal year 2024 line item is not a part of the rate
24 plan. It's included for illustrative purposes only.
25 These capital budgets include funding for customer

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2 initiatives, information technology advancement, gas
3 safety programs, C.L.C.P.A. related investments
4 including leak and methane detection, aggressive
5 targets to address leak-prone pipe repair backlogs,
6 and funding for other programs and projects.

7 The draft order finds that these
8 capital budgets are reasonable -- reasonable, and
9 appropriately include funding for critical programs
10 as well as projects mandated by federal and State law
11 and regulations. The draft order also indicates that
12 these capital budgets include funding to maintain
13 facilities to ensure system reliability, improve gas
14 safety, and otherwise advance the C.L.C.P.A.'s goals.

15 Notably, the joint proposal excludes
16 funding for some capital projects as a result of the
17 negotiations. Staff determined those projects to be
18 unnecessary to address immediate operational needs,
19 service reliability and/or public safety.

20 I want to make a note about new
21 customer connections. The draft order approves the
22 reduction of the companies' proposed customer
23 connection budget as compared to the companies'
24 historical spend. The numbers in this rate -- in
25 these rate plans are lower.

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2 This imposes a meaningful incentive
3 for the companies to avoid spending growth in this
4 area because it also caps deferrals. This provision
5 is designed to an -- incentivize the companies'
6 pursuit of alternatives to gas service and otherwise
7 reduce greenhouse gas emissions in its service
8 territories.

9 Next slide. The -- the draft order
10 adopts the joint proposals continuation of gas safety
11 performance metrics. These are particularly
12 important as a result of their really two-pronged
13 purpose, one of which is actually to reduce
14 emissions, and the second of which is to promote
15 safety in their system.

16 These are simply the continuation of
17 safety performance mechanisms adopted in the last
18 rate order. There are negative revenue adjustments
19 associated with the companies not meeting the targets
20 that are identified and positive revenue adjustments
21 associated with the companies' exceedances of those
22 regulatory targets.

23 Next slide. I want to turn to the
24 estimated emission reductions and some C.L.C.P.A.
25 related provisions in the draft order and joint

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2 proposal. This slide reflects the companies'
3 estimates of greenhouse gas emissions -- emission
4 reductions over the three-year term of the rate
5 plans.

6 So as you can see, KEDNY is estimating
7 880,341 metric tons of CO2 equivalent over the three-
8 year plan, KEDNY's number 787,838 metric tons of CO2
9 equivalent.

10 This slide includes -- the next slide,
11 please. This slide includes some of the C.L.C.P.A.
12 related provisions and the Commission's findings
13 associated with the companies' implementation of
14 these provisions. I want to first look at non-pipe
15 alternatives and expand a little bit about -- on this
16 first bullet point.

17 The draft order approves the joint
18 proposal's non-pipe alternative or N.P.A. provisions
19 that include expanded criteria and framework for the
20 companies to evaluate possible N.P.A.s in connection
21 with L.P.P. replacements, system reinforcements, main
22 extensions, and new gas service lines.

23 This evaluation is formalized. It
24 must occur before the companies proceed with the
25 construction of traditional gas infrastructure. The

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2 draft order approves the requirement for the
3 companies to identify at least five segments of
4 L.P.P. in their service territories that could be
5 abandoned in favor of an N.P.A. and to prioritize to
6 the greatest extent those areas of concentrated
7 L.P.P. miles that can be addressed through an N.P.A.

8 Notably, the J.P. also contains
9 provisions designed to replicate successful N.P.A.
10 methodologies in targeting customers who may be
11 willing to participate in moving from gas service to
12 electrification or geothermal systems.

13 It requires the companies to work with
14 the New York City Housing Authority to develop a
15 large scale N.P.A. in a disadvantaged community. The
16 companies have agreed to enhance promotion of N.P.A.s
17 to their customers through the use of their own
18 internal resources and implementation contractors.

19 Finally, the N.P. -- the provision
20 requires the companies to file annual -- annual
21 reports to the Commission on their efforts and
22 successes in pursuing N.P.A.s in connection with
23 their gas system. The draft order specifically notes
24 the requirement that the companies file an N.P.A.
25 implementation plan, which will be subject to

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2 stakeholder input and public comment.

3 The companies are also required to
4 hire an N.P. -- N.P.A. implementation contractor to
5 oversee the entire N.P.A. process. Notably, the
6 implementation plan will contain some of the details
7 I just discussed and we'll flesh out in further
8 detail how this-criteria to consider N.P.A.s are
9 implemented.

10 In rate year two, the companies will
11 convene a stakeholder engagement meeting to discuss
12 their progress on N.P.A. implementation. They'll
13 talk about successful and unsuccessful strategies,
14 further modifications to their efforts, and the use
15 of compensation and incentive mechanism -- mechanisms
16 for customers in order to foster N.P.A.
17 implementation.

18 And finally, the companies will report
19 annually to the Commission on their efforts in an
20 N.P.A. opportunities and programmatic success report.
21 The draft order recites and recognizes the challenges
22 associated with N.P.A. implementation because the
23 success of those measure -- those measures most often
24 relies on customers deciding to move to an
25 alternative form of energy such as geothermal heat

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2 pumps or electrification.

3 This was detailed by D.P.S. staff and
4 the companies at the evidentiary hearing on the joint
5 proposal. Thus, the draft order adopts the joint
6 proposal's emission --these joint -- these additional
7 emission reduction efforts, including new demand
8 response earnings adjustment mechanism to encourage
9 that program participation. The draft order also
10 approves an increase to the incentive discount
11 offered to demand response customers.

12 Next slide. I want to talk a minute
13 more about not this slide, but another provision I
14 think is quite important on -- in the draft order,
15 and it's the adoption of the C.L.C.P.A. and
16 Disadvantaged Communities report and a subsequent
17 disadvantaged communities analysis that the companies
18 will be required to file in their next rate plan.

19 In their testimony, the companies'
20 identified infrastructure projects and programs in
21 their capital budgets that are located in
22 disadvantaged communities and had potential to impact
23 those communities.

24 The draft order approves the joint
25 proposals requirement that the company submit a

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2 C.L.C.P.A. D.A.C., disadvantaged communities report
3 annually, which will detail their activities
4 including energy efficiency programs, demand
5 response, main replacements, leak repairs,
6 operational data, clean energy jobs, capital
7 investments, efforts to reach low-income customers
8 within a D.A.C., program implementation and outreach
9 strategies, performance data, and other relevant
10 information.

11 The joint proposal itself provides
12 extensive additional details of the data and
13 information that is required to be included in this
14 report.

15 The joint proposal provides that to
16 the extent the C.L.C.P.A. D.A.C. report identifies
17 instances of the companies' performance, failing to
18 meet targets or goals regarding the level of benefits
19 targeted for the communities. They're -- the
20 companies are required to submit an action plan to
21 improve performance.

22 The draft order also approves the
23 process for the companies to engage stakeholders by
24 requiring a meeting to be convened within 60 days of
25 the filing of this report. The companies will submit

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2 a D.A.C. analysis in their next rate case. This must
3 include greenhouse gas emissions as well as other
4 pollutant emissions found in the disadvantaged
5 community.

6 It also must detail the contribution
7 of capital assets to the existing pollution and the
8 potential burdens on those communities. In addition,
9 proposed project designs and a description of actions
10 necessary to eliminate impacts on the community that
11 may be associated with the project.

12 The D.A.C. analysis is intended to
13 identify the companies' infrastructure plans and
14 projects that could pose a disproportionate burden on
15 disadvantaged communities.

16 There are details associated with the
17 level of investment on those capital projects that
18 are also detailed in the joint proposal, and I will
19 not detail here. The draft order before you finds
20 that the C.L.C.P.A. and D.A.C. report and the D.A.C.
21 analysis required in the next rate cases will provide
22 valuable information to the Commission and to
23 interested stakeholders and will provide a foundation
24 for the companies to take further actions.

25 I next turn to the renewable natural

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2 gas interconnections, which are also considered a
3 part of the C.L.C.P.A. related provisions of the
4 joint proposal. The draft order approves the
5 authorization and deferral for future rate recovery
6 of interconnection costs for four renewable natural
7 gas projects.

8 Two are in KEDNY's, New York City
9 service territory, and two are in KEDLI's Long Island
10 service territory. The joint proposal caps the
11 deferral amount for these projects at \$13.19 million
12 for KEDNY and \$9.86 million for KEDLI.

13 The joint proposal imposes reporting
14 requirements acknowledged in the draft order. These
15 are required prior to construction of any of the
16 R.N.G. interconnection projects. That report must
17 include an assessment of benefits and costs, the
18 materials to be used, a quantitative -- and a
19 quantitative accounting of any upstream emissions
20 avoided by the interconnection.

21 Significantly, the draft order
22 contains this minor addition to the scope of this
23 reporting requirement. The companies must analyze
24 whether there are disproportionate impacts associated
25 with any of the R.N.G. projects located in a

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2 disadvantaged community.

3 The joint proposal also provides that
4 to the extent the companies purchase renewable
5 natural gas from the interconnected facilities, they
6 must not pay a premium for it. They must purchase
7 the renewable natural gas at a price that is no
8 greater than what is paid for traditional natural gas
9 supplies purchased at the companies' city gates.

10 The joint proposal requires the
11 companies to engage with prospective biomethane
12 project developers for the four projects to ensure
13 that the sale of the environmental attributes
14 associated with the facility are voluntary and are
15 made only to an entity located in New York.

16 The draft order before you finds that
17 the joint proposal's approach to potential R.N.G.
18 interconnection projects will provide opportunities
19 from which both customers and the State will benefit
20 because of the avoided upstream emissions that are
21 otherwise associated with natural gas production and
22 transportation.

23 The draft order also finds that
24 customers are adequately protected from the
25 uncertainties associated with the four R.N.G.

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2 interconnection projects proposed through the use of
3 the deferral mechanism, the cost cap, and the
4 reporting requirements about project costs and other
5 details. That report, notably, is required to be
6 filed within 90 days before commencement of
7 construction of an R.N.G. facility.

8 The draft order finds that the terms
9 of the three-year rate plans outlined in the joint
10 proposal are consistent with the C.L.P. --
11 C.L.C.P.A.'s objectives and will not
12 disproportionately burden disadvantaged communities.

13 In support of this finding, the draft
14 order notes, the numerous actions the company will
15 take under the joint proposal during the three-year
16 rate term.

17 These include non-pipe alternatives,
18 analyzing capital invest -- investment impacts to
19 disadvantaged communities, funding economic
20 development and clean energy job training in
21 disadvantaged communities, investing in energy
22 efficiency, prioritizing the repair of leak-prone
23 pipe segments according to the risk of leakage or
24 failure.

25 Developing renewable gas resources,

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2 continuing the targets in the capacity demand metrics
3 for energy efficiency, demand response,
4 electrification, et cetera, submitting annual
5 C.L.C.P.A. and disadvantaged community reports that
6 detail investments and efforts and the companies'
7 continued participation in the Utility Thermal Energy
8 Network and implementation of geothermal systems,
9 which is the subject of a separate proceeding on a
10 Statewide level.

11 The companies' cessation of gas
12 marketing to new or potential customers will -- will
13 continue. They agreed to that in the last rate case
14 and the Commission also cites the continuing
15 interconnection with the Newtown Creek renewable gas
16 facilities with new reporting requirements to
17 identify the revenues realized from R.N.G. sales and
18 associated environmental attributes as well as other
19 provisions.

20 The draft order concludes that the
21 adoption of the joint proposal and approval of the
22 companies' rate plans will continue to provide safe
23 and adequate service, are consistent with the
24 C.L.C.P.A., and do not result in a disproportionate
25 impact on disadvantaged communities.

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2 I will not go into detail the other
3 programs, but just to highlight these are very strong
4 programs that will continue. One is energy
5 affordability. There are additional dollars being
6 spent for customer initiatives that are weather-
7 related storm hardening, weatherization outreach and
8 education, et cetera, and then the customer service
9 performance indicators are also continued.

10 I want to just make a quick note of a
11 provision at -- in the draft order that deals with
12 the companies' payment of organizational dues and its
13 policy activities.

14 With respect to membership dues paid
15 by the companies and any regulated entity, Public
16 Service Law Section 114(a) prohibits the Commission's
17 approval of a rate plan that includes as operational
18 costs that are payable by ratepayers, any membership
19 dues for an organization that engages in lobbying.

20 The draft order provides that the
21 Commission's approval of the joint proposal is
22 premised on the assumption that no organizational
23 membership dues are included in the revenue
24 requirements for any organization that engages in
25 lobbying.

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2 The record indicates that potential
3 inclusion of such dues and the draft order therefore
4 directs the companies within 60 days of the order's
5 issuance to confirm in writing that they have again
6 reviewed the organizations in which they are members
7 and can confirm the exclusion of all dues from the
8 revenue requirement during the three-year rate terms
9 for any organizations engaged or otherwise -- engaged
10 in or otherwise funding lobbying activities.

11 If such dues were incorrectly
12 included, the draft order provides that the -- the
13 company shall defer those amounts for future refund
14 to customers.

15 Now, with respect to the companies'
16 other activities that some parties claimed were
17 improper policy activities before governmental
18 agencies, and improper postings to the companies'
19 website of its clean energy vision as well as bill
20 inserts communicating similar messages, the draft
21 order finds that these are properly character --
22 characterized as operational costs for which
23 ratepayers are responsible.

24 In conclusion, the draft order finds
25 that the provisions of the joint proposal meet the

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2 statutory requirements applicable to rate plans, as
3 well as, complying with the Commission's settlement
4 guidelines and the C.L.C.P.A.

5 This concludes my presentation. We
6 are available for questions.

7 CHAIR CHRISTIAN: Thank you for the
8 presentation, Judge Leary. I'm thinking back to our
9 time together in Nassau County and the feedback we
10 received at that time, and I know this has been a
11 long road to get to this point and appreciate you
12 recognizing the travels and multiple public statement
13 hearings.

14 One thing I'd like to do is want to --
15 want to thank staff for the work in getting this to
16 where it is, but I also want to take a moment to
17 thank our Commissioners, particularly our newer
18 Commissioners, for the level of engagement and
19 attention to detail in looking through this order and
20 helping it make it what it is before us today.

21 Now, when I think about our charge as
22 a Commission, we're here to ensure the safe and
23 continuous operation of the utilities under which our
24 society relies. And to accomplish this mission,
25 continued investments -- investments in maintaining

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2 the ongoing operation and integrity of the system in
3 accordance with State laws and other regulations,
4 those are essential.

5 And it's the oversight of these
6 investments that is the central task to which this
7 Commission is charged. Now, we identify and
8 prioritize these investments through rate cases like
9 this one. And rate cases are a very unique
10 obligation to the Commission.

11 And over the 11 plus months or so
12 staff, stakeholders, and others reviewed thousands
13 upon thousands of pages of documents negotiating
14 terms, conditions, and outcomes that we have before
15 us today. And the resulting order and its thousands
16 of appendices, though substantial, they conceal what
17 I would describe as a herculean effort towards its
18 overall development.

19 Now, no negotiated settlement is easy,
20 and this particular case is no different. And with
21 negotiated settlements like this, it's often the case
22 that individual provisions, investments, or actions
23 may not align neatly with the views and positions of
24 everyone involved.

25 One project you -- you mentioned

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2 earlier, you didn't mention it specifically, but I'll
3 point it out. A hydrogen project was proposed as
4 part of the initial filing by the utility. And this
5 is something that was actually supported by, I
6 believe, the City of New York, but ultimately opposed
7 by several other parties. This was ultimately
8 rejected, one of many examples, but many other
9 proposals were accepted.

10 Now, we as a Commission must ask
11 ourselves if this negotiated settlement before us
12 today is a better outcome than the alternative. And
13 for that, I think the answer is a resounding yes, we
14 are better off.

15 We have to balance interests, those of
16 stakeholders, utilities, and ratepayers. And in
17 achieving that balance, we ensure that the decades of
18 investments that preceded us needed to develop a
19 reliable distribution system can continue to deliver
20 on the results for which the system was designed.

21 And failure in this regard would be a
22 threat to both lives and livelihood. So given our
23 actions are to balance these interests and assure
24 reliability, I see this order as in the public
25 interest, and I see this as also further aligning

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2 with our overall goals in support of the C.L.C.P.A.

3 So Judges, thank you for your time
4 today, and I appreciate your work and the effort of
5 staff in bringing us to this point. I'll now move to
6 Commissioner Valesky.

7 COMMISSIONER VALESKY: Thank you, Mr.
8 Chair. First let me start also to you Judge Leary,
9 Judge Costello, Judge Lecakes and the entire staff
10 you know, the -- these types of orders, cases to --
11 to consider are not easy. But you continue to show -
12 - and the level of professionalism and due diligence
13 in following the statute and following guidelines to
14 bring an order to us for consideration, and -- and
15 certainly this is -- this example is no different.

16 So I -- I thank you really for the --
17 the tremendous work that you have done to this point.
18 I just want to sort of echo what -- what the Chair
19 has said. I don't have any questions, but I do want
20 to echo what the Chair has said in -- in a slightly
21 different way and in terms of what our basic, and by
22 us, I mean the Commission, what our basic charge
23 today is, and why we are here, and what we are asked
24 to do.

25 And to do that I'll return, Judge

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2 Leary to some of your opening comments. And I'll do
3 it in a little bit of a different way. I'll actually
4 take it from the discussion section of the order
5 itself, because I think this is really the -- the --
6 the place from which we begin and from which we all --
7 -- each of us come to a conclusion.

8 So I'll just share for the record
9 again, this is item number four, discussion in the
10 draft order. It says as follows; in establishing
11 utility rates, the Commission may consider any factor
12 and assign whatever weight it deems appropriate.

13 How do we do that? Why do we do that?
14 In 1986, the result of -- of a -- a court case in the
15 matter of Abrams versus the Public Service
16 Commission. 1986, that's a long time ago.

17 The order goes on to say, we are
18 specifically called upon to regulate electric and gas
19 rates to ensure that all charges are just and
20 reasonable and that they produce sufficient revenue
21 for the utility to provide safe and adequate service.

22 Where does that come from? Also,
23 quite a while ago, and Judge Lecakes you referred to
24 this, I believe in our session last month, in 1992,
25 the settlement guidelines that were adopted by the

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2 Commission at that time and have been in effect ever
3 since.

4 The order goes on to say we are also
5 required to make specific findings under the Climate
6 Leadership and Community Protection Act, that our
7 determination here is consistent with the State's
8 emission reduction objectives and will not
9 disproportionately burden disadvantaged communities.

10 I think if my memory is correct, and
11 Judge -- Mr. Rosenthal -- Judge Rosenthal -- Mr.
12 Rosenthal will correct me if I'm not, three years
13 ago, almost to the day when then Commissioner
14 Christian, Commissioner Maggiore and I were still
15 relatively new Commissioners at the time.

16 It was the previous version of this
17 case, the KEDNY, KEDLI order, where for the very
18 first time we adopted the C.L.C.P.A. review as part
19 of that rate case, and every rate case that has --
20 that has come since. And we continue to do that here
21 on this -- on this anniversary of -- of -- of that
22 inclusion.

23 So in cases such as these where the
24 terms of a joint proposal have been submitted for
25 Commission consideration, we must determine if such

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2 terms, viewed as a whole, produce a result that is in
3 the public interest.

4 In doing so, we follow our settlement
5 guidelines, which are referred to earlier from --
6 from 1992 and consider whether the terms of the -- of
7 the J.P. appropriately balance protection of
8 consumers, fairness to investors, and the long-term
9 viability of the utility.

10 So the -- the -- the previous point,
11 we must determine if such terms when viewed as a
12 whole, produce a result that is in the public
13 interest. There's an awful lot in here. And Judge
14 Leary, I -- I give you great credit for summarizing
15 an awful lot of material into -- into a relatively
16 short period of time because we could certainly spend
17 all day talking about various provisions here.

18 But we as Commissioners, whether we
19 like a provision, dislike a provision, support a
20 provision, oppose a provision, we are charged to look
21 at the order on the whole, and when -- and -- and
22 determine as we look at it on its whole as to whether
23 we find it in the public interest.

24 Upon going through that exercise
25 myself, I concur and agree with Chair Christian, and

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2 I also find the order in the public interest and will
3 be supporting it. Thank you very much.

4 CHAIR CHRISTIAN: Thank you,
5 Commissioner. Commissioner Maggiore?

6 COMMISSIONER MAGGIORE: Thank you.
7 Thank you, Judge Leary, and everybody that worked on
8 this. Thank you for the presentation and the
9 important work that you did in -- in bringing --
10 bringing this case to us today.

11 I have a few questions and then I'm
12 going to explain my vote if -- if the answers or the
13 questions are as I anticipate. You had a slide that
14 showed some of the rate drivers of this case. Can
15 you characterize what are -- what you would say are
16 the major rate drivers of this -- of this case?

17 A.L.J. LEARY: So there's so much
18 information associated with the -- the separate
19 things that are listed on that slide.

20 COMMISSIONER MAGGIORE: Yeah.

21 A.L.J. LEARY: Let me just give you an
22 example. Energy efficiency is in the O. and M.
23 budget. It's a very large portion -- portion of the
24 O. and M. budget. So when I -- when you see O. and
25 M., you think, oh, that includes energy efficiency

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2 and it also includes many other kinds of things.

3 So for KEDNY income taxes -- oh, I'm
4 sorry. What? Why don't you do this? Judge Costello
5 gave me something to read. He's going to take it
6 over.

7 A.L.J. COSTELLO: Yeah, I'll go
8 through basically --

9 COMMISSIONER MAGGIORE: Thank you.
10 Thank you.

11 A.L.J. COSTELLO: -- the different
12 things. So net plant investments it was \$120 million
13 for KEDNY, as part of the \$440 million increase in
14 rate year one. Total operations and maintenance
15 costs \$90 million. The increase in the rate of
16 return is \$68 million. Property taxes is a \$57
17 million increase, and depreciation expense is \$54
18 million.

19 For KEDLI, with respect to rate year
20 one, property taxes account for \$75 million of the
21 increase plant investments, \$72 million, total
22 operations, and maintenance costs \$60 million. The
23 increase in the rate of return is \$40 million, and
24 \$20 million for a depreciation expense.

25 COMMISSIONER MAGGIORE: Okay, thank

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2 you. Let me say -- tell you why I'm -- I'm asking
3 that. If you look at the major drivers of the case
4 that you just went over, I -- I think it would be
5 disingenuous to claim that C.L.C.P.A. compliance is
6 the reason or perhaps even the major reason for rates
7 going up in this particular case.

8 And further, I understand that it's
9 difficult to disentangle the costs of initiatives
10 that promote energy efficiency or otherwise, would
11 help the State meet its climate goals that are part
12 of this case, specifically because of the C.L.C.P.A.
13 or because of reasons that exist outside the
14 C.L.C.P.A. itself.

15 Most of the major drivers that you
16 just went over are more prosaic than that. That's
17 not a question, it's just, you know, explaining why
18 I'm asking the question. The -- the other issue
19 related to this tangentially that I wanted to ask,
20 you had a slide that acknowledged the companies'
21 assertions of a three-year emission reduction
22 estimate for both of them.

23 And in mentioning this, and in
24 acknowledging this in the order, are we endorsing
25 those estimates or are we acknowledging that that's

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2 what the companies' putting forth?

3 A.L.J. LEARY: I think we are only
4 acknowledging. I've read this over again in light of
5 a couple of comments we received before today, and I
6 think we are acknowledging. I want to just make
7 sure, let's go to 30,000 feet.

8 When you're talking about measuring
9 emissions, it is extremely difficult and we are very
10 early in the process of attempting to do that. As --
11 as a State, it's not just the utilities --

12 COMMISSIONER MAGGIORE: Yeah.

13 A.L.J. LEARY: -- it's people who are
14 emitting pollutants have to do this now under the
15 C.L.C.P.A. And the agencies that approve, they're
16 doing that, like the Department of Environmental
17 Conservation, for example, they have to make this
18 same finding. So the measurement I think is going to
19 continue to evolve.

20 This morning I looked at the
21 C.L.C.P.A. panel that the company presented, and it
22 identified in really summary terms what it had used
23 to estimate those emissions. And it had used
24 something that D.E.C. has advanced as a -- a factor,
25 so to speak, where it was not necessarily applicable.

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2 They turned to a -- an E.P.A. document.

3 So the record here indicates that the
4 companies undertook in good faith an effort to
5 measure in accordance with what the ongoing State and
6 federal regulatory agencies are promoting as -- and I
7 think that could evolve, but that's not something
8 that is in -- in play right now, that we are where we
9 are in terms of measuring.

10 So I don't think we're endorsing those
11 numbers. I think that they're important numbers for
12 us to consider and look closely --

13 COMMISSIONER MAGGIORE: Yeah.

14 A.L.J. LEARY: -- in this case as we
15 did -- the staff did in this case and in the next
16 rate cases, what's behind those numbers?

17 COMMISSIONER MAGGIORE: Yeah.

18 A.L.J. LEARY: And are they you know,
19 sound in terms of the methodology used to estimate
20 them? Do they include everything that should be
21 included? So just by way of example, the company in
22 rebuttal had to come back and talk more about, okay,
23 you told us what the reductions are, now tell us
24 where -- what projects you have that are going to
25 increase emission.

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2 So we need to sort of look at a net
3 number here. And that resulted in the -- in the
4 companies' downward estimation of their emission
5 reductions because they had then included additional.

6 So I -- there is a generic proceeding
7 in the State regarding the C.L.C.P.A. I have faith
8 that that proceeding will advance an evolution of
9 these issues on how to measure emissions. So that
10 when we look at those numbers that I had to put on
11 the slide, because I wanted them to really be sort of
12 front and center, not that we endorse them, but this
13 is what the companies think, that they followed a
14 methodology that is sound, it appears.

15 So I think the C.L.C.P.A. proceeding,
16 Commissioner Maggiore will further develop how this
17 works, how you measure, and when you measure, what
18 you measure and all of those kinds of things. I hope
19 that answers your question. Anybody else please step
20 in.

21 A.L.J. COSTELLO: I just want to
22 provide some clarification with respect to those
23 numbers. Those numbers were provided by the company
24 in rebuttal, the numbers on the slide, in rebuttal
25 testimony.

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2 COMMISSIONER MAGGIORE: Yeah.

3 A.L.J. COSTELLO: They're not with
4 respect to what is provided in the joint proposal.
5 We would anticipate that they would be similar, but
6 we don't have the information on G.H.G. emissions
7 specifically as under the joint proposal. So I just
8 wanted to clarify that.

9 A.L.J. LEARY: And I --

10 COMMISSIONER MAGGIORE: Okay, I --
11 yeah, I'm sorry.

12 A.L.J. LEARY: -- parenthetically,
13 Commissioner, I just want to add that if the
14 companies say this, this rate plan this time around,
15 this is information that is of value in the next rate
16 plans, what did you really do?

17 That's the question that I think is an
18 important one to keep in the back of our minds when
19 the companies come in. And that may -- it may be
20 much more than that number, it may be much less, but
21 it's certainly important information to be considered
22 in the next rate plans, and I think that's going to
23 be true for all the utilities in New York.

24 COMMISSIONER MAGGIORE: Yeah, I -- I
25 very much appreciate that explanation and the context

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2 and also that -- that we do make note of those
3 numbers in the order and in your presentation. So
4 thank you for that. I'm going to ask an unrelated
5 question and then I'm going to explain my vote.

6 The unrelated question is this. So
7 annual economic development funding will be set at
8 about 1.4 million for KEDNY and about 1.2 million for
9 KEDLI, which will be funded through the amortization
10 of prior economic development deferral credits,
11 resulting in a zero-dollar net revenue requirement
12 for each company.

13 Does the zero-dollar net revenue
14 requirement mean that this approximately \$2.5 million
15 worth of programs have no impact on a rate payer's
16 bill for the pendency of this rate case?

17 A.L.J. LEARY: That is correct.

18 COMMISSIONER MAGGIORE: Okay, thank
19 you. So I'm going to explain my vote because I'm not
20 asking a question here. I apologize if I'm going to
21 be somewhat lengthy here. I am going to vote yes on
22 this order. As you may have heard before, in other
23 rate cases, I don't want to vote yes. I don't want
24 to raise anyone's rates.

25 However, as I search the record, I

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2 don't see anything to justify a no vote. I'm in
3 agreement with the Chair, that if we voted this order
4 down, the likely consequences, the alternative would
5 be worse for rate payers. And I -- I often feel that
6 the Commission is faced often with the choice between
7 unpalatable options, and this is the case here.

8 I would've liked to have uncovered
9 some dramatic accounting error or some large
10 discretionary cost driver that could be zeroed out,
11 or a violation of law buried deep within the J.P.
12 giving me an excuse to vote no and a path to make it
13 better, but I can't find any of those things.

14 I asked the question about economic
15 development programs, and I want to be clear that I
16 am skeptical of a foundation based in the Public
17 Service Law justifying our approval of cost recovery
18 for economic development programs in general.

19 I would like to take a closer look at
20 how we evaluate such programs in the future.
21 However, as we discussed, and the question or the
22 answer that you just gave, this is not an issue in
23 this rate case.

24 On the C.L.C.P.A., first, I think we
25 have established that the C.L.C.P.A. is not the major

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2 reason for the rate increase. Further, there's a
3 distinction, you know, as I -- as I mentioned,
4 between cost recovery for programs that are
5 consistent with the C.L.C.P.A. versus initiatives
6 that would not exist but for the C.L.C.P.A., and I
7 understand that this is difficult to disentangle. In
8 any event, these costs are significantly smaller than
9 the largest rate drivers in this particular case.

10 The C.L.C.P.A. has many parts, and
11 compliance with one part does not necessarily equate
12 with compliance with all parts. To that end, I'd
13 like to specifically address Section 7(2). I read
14 Section 7(2) as applying to all State entities,
15 including the P.S.C., that make any decision or take
16 any action that interferes with the State's
17 attainment of greenhouse gas emission limits.

18 In such cases, the State entity in
19 question must justify the action and then identify
20 either an alternative or mitigation efforts. I
21 believe that this order satisfies that requirement,
22 but I'd like to take a little closer look as to how.

23 Unlike the electric sector for which
24 the C.L.C.P.A. has established very prescriptive
25 emissions and renewable energy targets. The

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2 C.L.C.P.A. law is silent on gas utilities. The
3 Commission continues to be in a transitional period
4 while the economy-wide emissions regulations are
5 developed by the D.E.C., and while efforts to
6 harmonize the Public Service Law and the C.L.C.P.A.,
7 which our attention and points continue to be
8 discussed in the legislature.

9 Many questions about the future of gas
10 utilities remain. And in the meantime, we have, as
11 has been mentioned, Public Service Law obligations to
12 ensure safe and reliable service at just and
13 reasonable rates, gas utilities continue to have a
14 legal obligation to serve customers.

15 And we have an obligation to review
16 gas rate cases to determine if they are consistent
17 with the C.L.C.P.A. We cannot change the law that is
18 power reserved for the legislature. There are a
19 number of provisions in the J.P. approved and
20 strengthened in the draft order that advance the
21 C.L.C.P.A., and that mitigate the greenhouse gas
22 emission impacts associated with the companies'
23 operations.

24 You -- you reviewed those provisions
25 at length. I had a very slightly different list, but

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2 since you spent quite a bit of time in your
3 presentation going over many of those provisions, I'm
4 -- I'm not going to repeat what you said.

5 But I do believe that these provisions
6 constitute compliance with both the Public Service
7 Law and the C.L.C.P.A. So we have a just -- I'm
8 sorry, I'm skipping over what you already said, so
9 I'm not going to say that.

10 So I -- I would like to point out that
11 many of the provisions that you highlighted are among
12 the most innovative gas utility initiatives in the
13 entire country and meaningfully advance the State
14 forward in achieving its C.L.C.P.A. targets.

15 So we have a justification for this
16 order based in the P.S.L., which is the law that
17 creates this Commission. And we've identified
18 mitigation to the greenhouse gas impact of the
19 operations of the two utilities, which satisfies
20 Section 7(2) of the C.L.C.P.A.

21 So I think we're in compliance with
22 the law. I can't find justification for a no vote,
23 so I'm going to cast a yes vote. Thank you very
24 much.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. Commissioner Bright?

3 COMMISSIONER BRIGHT: Thank you,
4 Chair. I have some similar -- I will be sort of
5 echoing some of the similar maybe questions and
6 getting some additional information, but similar
7 questions of Commissioner Valesky and Commiss --
8 Commissioner Maggiore.

9 So first I sort of wanted to talk
10 about -- and first thank you for all of your hard
11 work. I mean, I should start there. I mean there --
12 this was a huge record and pulling all of this
13 together is -- is -- is -- is quite a task. but I
14 wanted to start with just talking about some of the
15 parameters around settlements.

16 So just for some clarity, we sort of
17 deem a settlement is in the public interest as we
18 sort of went over because it is continuing to provide
19 safe, reliable service at just and reasonable rates
20 while preserving operational financial stability of
21 the utility and the systems that we are actually
22 relying upon.

23 That it -- that -- that the settlement
24 falls within the range of potentially litigated
25 outcomes or otherwise provides benefits ratepayers

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2 would not have received through litigation and is
3 consistent with environmental, social, and economic
4 policies of the Commission and the State.

5 But there's also the settlement
6 framework, which we touched on, but I just wanted to
7 see if you could give that a little more overarching
8 background. And just in the order, it's very
9 specific. It says that we do not disturb the
10 interrelated compromises negotiated by the parties in
11 the absence of a demonstration that a provision of
12 the agreement is inconsistent with sound policy.

13 So I just wanted to -- to just get a -
14 - a sort of plain-speaking definition on sort of what
15 that settlement framework is that we're working
16 within from you.

17 A.L.J. LEARY: I want to ask Judge
18 Lecakes to talk about the Consolidated Edison case in
19 the discussion there about the framework. But I will
20 say having negotiated a lot during my life, in all
21 realms not just legal, negotiations which we have no
22 idea about, it is confidential. It's a process that
23 we cannot have any knowledge of.

24 But behind the curtain of negotiations
25 is the horse trading. And I think that's something

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2 that it is very hard to understand without knowing
3 the facts of what did you get for giving up that, and
4 that's what happens in negotiations, in every joint
5 proposal, I suspect.

6 So it's hard to decide for, you know,
7 sort of post-game, what -- why did this happen? It's
8 not something we have enough information about. But
9 I think Commission -- the Chair and Commissioner
10 Valesky were really succinct in saying, this is
11 viewed as a whole.

12 This is viewed as -- yeah, we -- we
13 cannot exactly know what happened behind the curtain,
14 but as a whole, without picking out each individual
15 term that we may not love, there's not much more to
16 be done except view it as a whole, as a resolution.

17 And one thing I didn't mention, which
18 is -- goes well beyond or well before the settlement
19 guidelines from 1992, was the Commission's policy to
20 encourage settlement, to have people meet face-to-
21 face, arms-length, and neither of them will be
22 entirely happy and neither of them will be entirely
23 unhappy.

24 So that promotion of settlement is
25 really important to the Commission's work

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2 historically and even today. So do you mind talking
3 about Con Ed?

4 A.L.J. LECAKES: Hi, good morning,
5 Commissioners. I -- I think what Judge Leary said is
6 really important. Basically, when parties affix
7 their signatures to the joint proposal, they're doing
8 that in reliance of the negotiation process that took
9 place.

10 And while we may look at it from the
11 outside and think, hey, we might have done something
12 different in this term or that term, these parties
13 are signing the -- the agreement having given up
14 certain things. And you know, because of that, the
15 Commission has a long history of respecting the joint
16 proposals that are submitted.

17 And again, looking at it as the entire
18 document, not on an individual element basis. The
19 point that Judge Leary was making about the 2019 Con
20 Edison rate case, which resulted in a 2020 -- January
21 2020 order, the Commission spoke there to parties
22 that were attacking the joint proposal on an
23 individual term basis.

24 And saying that -- the order basically
25 says that to the extent that parties want to

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2 challenge the joint proposal because of a single term
3 in that joint proposal. They need to point out that
4 that joint proposal is so outside the realm of what's
5 allowed either by policy or by law as to affect the
6 entire joint proposal.

7 To the extent that it's something less
8 than that, if there's a reasonable minor modification
9 that can be made, the Commission will consider it,
10 but it does so knowing that it is invading the
11 territory of the negotiations. And so it's very
12 careful when it does that.

13 COMMISSIONER BRIGHT: Thank you. So -
14 - and the settlement process, you know, it -- it
15 seems like it could be sort of undermined if we
16 regularly modified J.P.s, without getting the parties
17 to agree to that.

18 A.L.J. LECAKES: Right. The way we
19 look at it from the Office of Hearings is to the
20 extent that we start second guessing the terms and --
21 and making modifications like that, it gives less
22 certainty to the parties when they affix their
23 signatures.

24 And to the extent that parties don't
25 have any faith that what they're agreeing to is going

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2 to survive Commission review, they'll be less likely
3 to engage in settlement discussions and -- and to
4 settle on terms because they don't know ultimately if
5 that's what -- if the J.P. that they submit is
6 ultimately what they'll be faced with.

7 COMMISSIONER BRIGHT: Yeah. All
8 right, thank you so much. So my next question is
9 sort of on those big bucket categories that
10 Commissioner Maggiore sort of mentioned -- sort of
11 just wanting to look at rate year one you did define,
12 I feel like already those big buckets, so thank you
13 for that, Judge Costello.

14 The property and income taxes are
15 quite sizable here, and I'm just wondering, like, is
16 there a percentage that we have for the unlevelized,
17 like of what is the property taxes?

18 A.L.J. COSTELLO: Yeah, it's -- it --
19 the income taxes are actually not a -- a major
20 factor. It's the property taxes.

21 COMMISSIONER BRIGHT: Property taxes.

22 A.L.J. COSTELLO: So the property
23 taxes in rate year one for KEDNY, it's a 13 percent
24 of the revenue requirement increase. And for KEDLI
25 it's 30 percent of the increase.

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2 COMMISSIONER BRIGHT: Okay. Okay,
3 thank you. So I just want to switch topics a little
4 bit after that, just to the R.N.G. piece in this. So
5 both staff and the company pointed to the Climate
6 Action Council scoping plan looking at R.N.G.'s role
7 in the clean energy transition, which the scoping
8 plan does mention that. I wanted to pull some of the
9 specific language out of the scoping plan.

10 So I'm just going to read that here on
11 page 350 of the scoping plan in the gas transition
12 chapter, I'm -- I'm going to paraphrase though. So
13 while there may be, it says, a strategic role for the
14 system to transport R.N.G., the potential in-State
15 availability and resource size of R.N.G. is currently
16 small as compared with current levels of fossil gas
17 use.

18 It goes on to say the council, which
19 is the Climate Action Council, notes, that additional
20 analysis, and this is the part I really want to get
21 into, that additional analysis is needed to determine
22 the feasibility and the climate impact. And it's
23 talking about both R.N.G. and green hydrogen
24 production in this instance.

25 The analysis, it says, should include

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2 an evaluation of the full life cycle, greenhouse gas
3 and co-pollutant emission impacts, health impacts,
4 impacts on energy affordability, and safety and
5 reliability considerations for the use of R.N.G. and
6 green hydrogen prior to investments in alternative
7 fuels for use in the gas system planning as described
8 in the gas system transition plan framework, which is
9 the chapter that it's -- that this -- that this
10 information is in.

11 So I'm sort of -- my question is
12 really about this evaluation of greenhouse gas
13 emissions and emissions reductions and how we look at
14 the true costs of emissions and the true benefits of
15 those reductions. We sort of talked -- Commissioner
16 Maggiore brought this up on the estimates that --
17 that the company provided.

18 I'm just trying to get a sense of
19 like, where we're going -- are -- having a standard
20 way of looking at measuring emission reductions,
21 emissions, and then also the benefits. I'm just
22 trying to get a sense of where we're at with that.

23 A.L.J. LEARY: So I mentioned before
24 the evolving nature of the emissions measurement
25 science, and I think it will get there. I really do.

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2 But a couple things in the record struck me. The
3 company included an E.P.A. document that thoroughly
4 reviews the potential behind renewable natural gas,
5 and frankly was very high on developing that source.

6 It will depend on a lot of factors
7 however, you know, including the feedstock, what are
8 you making your renewable gas from? It will depend
9 in part on are you going to ship it to another state
10 or are you going to use it in the community in which
11 it's being generated?

12 And I -- I agree, and I think the no
13 one here or on the company side would disagree that
14 you need to really look at what are the emissions
15 potentials of that option? What do you -- what are
16 you saving upstream? So the companies here have --
17 have evaluated that and have estimated what those
18 emission -- upstream emissions reductions will be.

19 And they are upstream, which under the
20 C.L.C.P.A. we are required to analyze. So when I --
21 when I think we saw that E.P.A. document and we
22 looked at the Climate Action Council scoping plan,
23 which leaves the door very much open about renewable
24 natural gas.

25 There's no -- there's no second

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2 guessing those -- those factors in the record. And
3 I'm the queen of second guessing. But in essence, I
4 think that this is a transition period in which we
5 continue to explore. And that's why the reporting
6 requirements on the R.N.G. interconnection facilities
7 are so important.

8 Okay, what are you going to do?
9 What's it going to cost? What are the benefits? And
10 -- and as the draft order notes, the customers, the
11 ratepayers are protected by that reporting, by the
12 cap, the deferral cap.

13 Remember, these dollars are not in
14 this rate plan. They are approved to be deferred so
15 that the companies can explore those
16 interconnections. And as we sit here, we don't know
17 whether those ever -- those four facilities will ever
18 become real. Maybe they will not be feasible.
19 That's to be seen.

20 But in a transition period, as we are
21 under the C.L.C.P.A., it's -- it's incumbent upon us
22 to leave every door open that we possibly can to
23 reduce emissions.

24 COMMISSIONER BRIGHT: Thanks so much,
25 Judge Leary. And just on those reporting

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2 requirements, I, I think it is worth just going over
3 them one more time. I mean there's -- staff
4 recommended strict reporting requirements on the
5 R.N.G. projects and the J.P. imposes some reporting
6 requirements on the proposed biomethane
7 interconnections and then also on the Newtown Creek
8 R.N.G. project if I'm not mistaken. So I just wanted
9 to go over those if possible.

10 A.L.J. LEARY: Yeah, let me go to
11 Newtown Creek first because I didn't cover this.
12 This was a facility that was approved under the last
13 rate plan. There are dollars in this rate plan for
14 that facility, but the testimony at our day-long
15 evidentiary hearing was very positive in favor of
16 this facility.

17 And I was impressed with their expert,
18 as I think was Judge Costello in responding to very
19 pointed questions about, okay, what's the 30,000
20 foot? Is it better now than it used to be for the
21 neighborhood? And he said quote, there's no
22 comparison, it's -- it's better.

23 So it convinced us, and of course, he
24 was under oath, but here are the reporting
25 requirements. So the -- the draft order -- these are

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2 the dollars approved \$15.7 million in capital
3 expenditures. The deferrals are capped at \$2.16
4 million, rate years two and three.

5 In the reporting, KEDNY must identify
6 the total revenues realized from the sale of R.N.G.
7 and the associated environmental attributes. It must
8 also identify the quantity of biomethane produced,
9 the number of days and hours the project is online
10 and offline.

11 The number and value of environmental
12 attributes sold each month, the estimated emission
13 reductions to KEDNY's system, and the nature of
14 complaints received in the community regarding the
15 project.

16 There is a reconciliation mechanism
17 that I also want to mention because there are revenue
18 forecasts associated with Newtown Creek, and there is
19 a formula in place that calls for -- it's frankly a -
20 - a bit complicated. It calls for actual revenues to
21 be reconciled with the -- those that are forecasted.

22 And if revenues exceed the expected
23 forecast over the three-year rate term, any excess
24 amounts are refunded to customers through a delivery
25 rate adjustment mechanism. After year -- rate year

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2 three, annual revenues in excess of \$5.93 million
3 will be refunded to customers.

4 But if actual revenues do not exceed
5 the forecast, KEDNY can defer for future recovery 50
6 percent of the difference between the forecasted
7 amounts and \$1.6 million. So you can see how
8 complicated this is, but it's all designed to protect
9 the ratepayers from, you know, having to spend, you
10 know, their dollars on this facility.

11 This requires a demonstration of -- of
12 real benefit dollar wise as well as emission wise.
13 Turning to the four R.N.G. facilities, I might have
14 to look at the -- do you have that?

15 Okay, for the biomethane
16 interconnection projects, the reporting required
17 that's to be done 90 days before commencement of
18 construction has to contain a cost estimate for the
19 con -- interconnection project, which I assume will
20 be updated because there are cost estimates in the
21 record now.

22 So you -- you get an idea of what the
23 projects right now are anticipated to cost. The
24 report also must include a summary of the benefits to
25 the reliability of the gas system in the vicinity of

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2 the interconnection project and in the companies'
3 service territory in general.

4 A detailed description will also be
5 included of the source materials that will be used at
6 the interconnection facility to produce biomethane,
7 that is the feedstock, whether it's from a wastewater
8 treatment plant or food waste, or I think there are
9 farms that can produce R.N.G. and so forth,
10 landfills.

11 A detailed accounting will also be
12 included of the upstream greenhouse gas emissions
13 avoided by the R.N.G. interconnection that the
14 companies will realize as a result of the
15 interconnections. There is additional, as I think I
16 mentioned in my presentation dis -- disadvantaged
17 communities reporting.

18 So there's an additional modification
19 that was made to the joint proposal to protect those
20 communities. My understanding is there's at least
21 one of the proposed -- of the four proposed R.N.G.
22 interconnections that is actually located, the
23 company knows all about it in a disadvantaged
24 community, there'll be additional reporting
25 associated with emissions and so forth and impacts on

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2 that community. I hope that answers your question.

3 COMMISSIONER BRIGHT: Very much, very
4 much. Thank you. So last -- lastly, I just want to
5 move over to the non-pipeline alternatives. So you
6 did give a very good summary of -- of sort of some of
7 the steps that are going to be taken.

8 And the N.P.A.s are not funded by this
9 rate plan, but sort of the expanded process, right?
10 Is sort of funded by this rate plan. So I just
11 wanted to sort of -- there were -- when we sort of
12 talked earlier, there's eight distinct improvements
13 that you guys sort of noted. So I'd like to just --
14 just -- if you could go over those -- those
15 improvements that would be great, maybe more.

16 A.L.J. LEARY: I might need some help
17 here, but --.

18 COMMISSIONER BRIGHT: Or a few
19 improvements.

20 A.L.J. LEARY: You know the -- the
21 thing that impressed me the most, this is just me
22 talking, is that there's an implementation plan that
23 really will capture some of the intent behind the
24 joint proposal's provisions. And that will drive
25 going forward what -- how this program advances.

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2 I also want to refer you to some
3 testimony during the evidentiary hearing in which I,
4 personally explored, you know, what's with N.P.A.s
5 and, you know, tell me about this. And the testimony
6 by both the companies and staff was very compelling
7 about the challenges associated with this,
8 particularly for a gas only company and what the
9 options are and so forth.

10 So that coupled with the improvements
11 to their process and the intention that the companies
12 express to really make this work is -- is -- is
13 pretty important to the draft order. It -- this is
14 my view and I think it's reflected in the draft
15 order.

16 Pairing the N.P.A.s with very specific
17 infrastructure projects is also important. So
18 service line replacements, L.P.P., main work, all of
19 those things are N.P.A.s are going to be considered
20 first before you invest in the infrastructure. What
21 am I missing?

22 A.L.J. COSTELLO: Well, I believe you
23 said most of them, but it's, you know, I'll just list
24 it out because I have some -- something written down
25 about, you know, it's prioritized leak prone pipe --

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2 non-pipe alternative projects that are located within
3 disadvantaged communities.

4 They're going to work with the New
5 York City Housing Authority to do -- to develop a
6 large-scale program. They will, and that's implement
7 an updated and improved process for the companies to
8 follow to ensure that they're trying to develop leak
9 prone pipe N.P.A. projects with the greatest chance
10 of success.

11 There's a listing in the joint
12 proposal of what that entails. I can read it to you
13 if you -- if you want. They also have to perform an
14 analysis of any main extension request that's greater
15 than 100 feet as opposed to its current requirement,
16 which applies to new mains greater than 500 feet.

17 And then they also have to seek
18 opportunities to provide incentives to have customers
19 switch away from gas equipment instead of installing
20 new service lines. And they have to provide
21 information about otherwise replacing or relocating
22 existing service lines.

23 A.L.J. LEARY: So -- so also the check
24 on this is that there are annual reports to the
25 Commission. You know, what have you done? What are

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2 your efforts? Have you had successes? Have you had
3 failures? Another notable point is that there's
4 going to be stakeholder engagement in this process on
5 the implementation plan.

6 There are five segments of L.P.P. that
7 have to be identified in their service territories
8 that could be abandoned in favor of an N.P.A. This
9 is going to take a lot of work. They're required to
10 hire an -- a contractor that's just going to oversee
11 the non-pipe alternative process.

12 So these are some of the things that
13 make this a lot different than what they did in their
14 last rate plan and really foster potential success
15 for these efforts.

16 COMMISSIONER BRIGHT: Yeah, thank you.
17 So those are my questions. I mean, I -- the gas
18 utilities by law, you know, still have an obligation
19 to serve their customers. And you know, by approving
20 this joint proposal, we ensure that Brooklyn Union
21 Gas customers and KeySpan Gas customers will have
22 certainty over the next three years on the prices
23 they will be paying. So I will be voting in favor of
24 this item. Thanks.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. Commissioner Sheehan.

3 COMMISSIONER SHEEHAN: Thank you.

4 Thank you, Chair. My mic is working. Thank you. So
5 you know, being later on the dais just means that a
6 lot of people say a lot of things before you. So I'm
7 going to try to winnow in on things that necessarily
8 haven't been said while also conveying my position.

9 So first, I just want to thank Judge
10 Leary, Judge Costello, Judge Lecakes, Allison Manz,
11 and Mary Ann Sorrentino for all of your hard work as
12 well as all of the staff that worked on this. I know
13 it's been a grind. So I also want to thank the
14 parties those who signed on to the joint proposal and
15 those who didn't.

16 I want to make sure that even the ones
17 who didn't sign on, I want you to know that we -- I
18 personally read the -- the evidence you submitted,
19 your statements. You know, as you've heard from my
20 colleagues, we do have to make our decisions based on
21 the law and based on the evidence in front of us, so.

22 But just to be -- just be aware that
23 we -- those things are things we all -- we consider
24 and we do review. In general, I agree that the joint
25 proposal on the whole ensures continued safe and

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2 reliable service as required by the Public Service
3 Law and complies with the C.L.C.P.A.

4 I'm impressed that it includes the
5 non-pipe alternative improvements, energy efficiency,
6 demand response, the Utility Thermal Energy Network
7 investments, investments in economic development and
8 workforce development in disadvantaged communities,
9 as well as robust reporting requirements and the DAC
10 analysis.

11 These are, I think, really important
12 components of this J.P. for me, personally. I did --
13 I know, Judge -- Commissioner Maggiore and
14 Commissioner Bright both asked questions about
15 certain things that I cared about as far as the
16 drivers. You know, as you -- as Commissioners, we
17 receive this case and you see the numbers and the
18 numbers are big, right?

19 So my first reaction was to dig into
20 the numbers and I wasn't there, I would -- I had to
21 review the evidence, so. But I'm looking at the
22 comments from folks who are saying, oh, this is too
23 much, you know, we need to be going the other
24 direction, but I -- on the whole, I think that the
25 investments from my judgment and from what was

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2 presented in evidence are necessary to provide that
3 safe reliable service and to comply with the
4 C.L.C.P.A.

5 But I -- one thing I wanted to kind of
6 zero in on a little bit because of the increases on
7 their face appear large. You talked a little bit
8 about property taxes, but I also wanted to get at the
9 specifics of maintaining a safe system and what we
10 determined as far as, you know, of the percentage
11 increases, what portion of that is really directly
12 related to mandated costs for safe service.

13 A.L.J. COSTELLO: Well, we -- we
14 actually, our view is that everything that's been
15 approved is really necessary for either business
16 costs, necessary business costs or to provide safe
17 and reliable service. So that's including the
18 capital projects as well as the O. and M. costs
19 involved.

20 COMMISSIONER SHEEHAN: Right.

21 A.L.J. COSTELLO: With respect to
22 discretionary, so-called discretionary, spending, the
23 company stripped away through the process of
24 negotiation a number of things which it determined
25 did not need to happen during this period of time.

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2 So our view is that basically all of
3 the costs are either required by law or necessary to
4 provide safe and reliable service.

5 COMMISSIONER SHEEHAN: Thank you.
6 Okay. So then, my other question as my colleagues,
7 we -- we -- I took a lot of interest as well in the
8 R.N.G. projects and the -- the biomethane projects.
9 So Judge Lecakes, you described the -- the joint
10 proposal context.

11 One thing that's important, I think,
12 for me is just understanding that while this is --
13 this J.P. may include provisions that we're not 100
14 percent embracing or loving, that it doesn't set a
15 precedent for us.

16 That it's -- it recognizes that
17 there's a balancing act that happens in the -- in the
18 settlement negotiations, but that by approving it in
19 the order we aren't -- by -- by that action,
20 establishing a precedent for future rate cases.

21 A.L.J. LECAKES: Right. So the
22 precedent that's set when the Commission adopts a
23 joint proposal is that it adheres to the Commission
24 settlement guidelines of 1992 and it continues to
25 affirm the way it reviews the joint proposal.

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2 As for the terms themselves, because
3 they are negotiated among the parties who are
4 involved and based on the testimony that's been
5 supplied previously in -- in the process. Those
6 terms, the terms of the joint proposal are not
7 precedential themselves.

8 They can be used by other parties as
9 reference when they negotiate things in future cases
10 but they don't carry as much weight, if any weight
11 into each Commission successive review of a joint
12 proposal.

13 COMMISSIONER SHEEHAN: Okay. Thank
14 you for that. One thing that I did want to just
15 reference is that I am supportive of the biomethane
16 projects that are included in the J.P. in the context
17 of the J.P. and recognizing that they are pilots.
18 This is a new arena for the Commission, for the
19 companies.

20 And I do think that we're going to
21 learn from these projects. The reporting is going to
22 be really essential. You know, we expect to realize
23 greenhouse gas emissions benefits. Something that
24 was important for me was the environmental attributes
25 remaining in New York.

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2 I just -- what I want to be clear
3 about is going forward, I just want us to be looking
4 at this in a holistic way. And as a -- as a
5 department, as a Commission and recognizing that
6 there are different approaches happening across the
7 State when we're looking at R.N.G. and biomethane
8 projects and how those are -- are being incorporated
9 by different utilities.

10 So my recommendation just going
11 forward on that topic is that we look at creating a
12 more comprehensive, holistic approach, learning from
13 these projects. And you know, looking at things like
14 cost, causation, taking a page from what we're doing
15 on the electric grid side and ensuring that the
16 environment -- environmental attributes remain in the
17 State. So that was just something that I wanted to -
18 - to get on the table for the future.

19 A.L.J. LECAKES: And I think that's an
20 excellent observation you made, so.

21 COMMISSIONER SHEEHAN: Okay. Thank
22 you. Okay.

23 A.L.J. LEARY: Commissioner Sheehan,
24 can I just add --

25 COMMISSIONER SHEEHAN: Of course.

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2 A.L.J. LEARY: That there -- there are
3 two perfect forums to implement your suggestion that
4 come to mind. And the parties in these cases
5 recognize them and repeatedly refer to them, which
6 are the gas planning proceeding, the Statewide gas
7 planning proceeding and the Statewide C.L.C.P.A.
8 proceeding.

9 So it's -- I think this is definitely
10 on the radar screen for -- for us as an agency, as
11 well as all the parties here that were involved in
12 the -- these proceedings.

13 COMMISSIONER SHEEHAN: Thanks for that
14 follow-up, Judge. I actually, that was in my notes,
15 but I didn't say them. So that's great. You just
16 took my -- that -- that was exactly what I was going
17 to say about the other proceeding, so terrific.

18 So that's really all I really wanted
19 to cover, but I -- so as my colleagues have
20 articulated, it's my sense that this -- this joint
21 proposal and the order, I will be supporting on the
22 basis that it is in the public interest and that it
23 complies with the Public Service Law and the
24 C.L.C.P.A. Thank you.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. Commissioner Valova.

3 COMMISSIONER VALOVA: All right.

4 Thank you. First, I want to echo my fellow
5 Commissioners in thanking staff and the A.L.J.s for
6 their hard work on this case as well as all the
7 intervenors who participated in the docket. I have
8 some questions. Sticking with the theme of the
9 biomethane interconnections.

10 Having reviewed the record, I noted
11 that some parties raised concerns that these projects
12 which the draft order notes are being done to reduce
13 greenhouse gas emissions could cause disproportionate
14 impacts in disadvantaged communities.

15 Judge Leary, as you noted one of the
16 projects would be located in -- in a disadvantaged
17 community. I am pleased that the draft order makes a
18 minor modification to the joint proposals biomethane
19 reporting requirements to have the companies also
20 conduct an analysis of potential disproportionate
21 impacts to disadvantaged communities.

22 The order then goes on to explain that
23 the Commission will assess the information provided
24 in these reports. My question is, what is the
25 purpose of the Commission's review of the reports?

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2 A.L.J. LECAKES: I'll take that.

3 First, I want to just make a comment about the
4 observation that it was a minor modification because
5 I mentioned with Commissioner Bright that we tend not
6 to make modifications to joint proposals.

7 In this case, we departed from that
8 because there was already a unique process that was
9 involved in -- in the review of these biomethane
10 interconnection projects by requiring the company to
11 supply additional information.

12 And so we felt that just augmenting,
13 supplementing that reporting requirement that the
14 company already agreed to do with a disadvantaged
15 community analysis was appropriate in this instant.
16 As to your question about the purpose of the
17 reporting, the companies claim that the projects will
18 displace gas supply from the interstate pipeline
19 system and have a resulting decrease in greenhouse
20 gas emissions.

21 So the primary purpose for the
22 reporting from our perspective is to evaluate the
23 emissions analysis conducted by the company, evaluate
24 the methodology that they use and generally better
25 understand the final projects before they actually

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2 commence construction of the interconnection.

3 COMMISSIONER VALOVA: Okay, thank you.

4 The order doesn't say what happens after Commission
5 review. If we review and conclude that the projects
6 don't reduce emissions as intended or have some other
7 concern or impact, what is our recourse?

8 A.L.J. LECAKES: So even though the
9 Commission makes a finding of adopting a joint
10 proposal that doesn't end its oversight authority.
11 So the Commission retains its oversight authority to
12 review the reasonableness of the projects and it can
13 ultimately decide whether cost recovery should be
14 disallowed, whether, you know, during the term of the
15 rate plan or in the next rate case.

16 COMMISSIONER VALOVA: Okay. So to
17 understand or to -- to confirm my understanding, if
18 in this review, the Commission sees a problem with
19 the analysis or the data provided, we could disallow
20 cost recovery for those four interconnections?

21 A.L.J. LECAKES: That is correct.

22 COMMISSIONER VALOVA: Okay. And in
23 conducting that review, do we have the ability, would
24 -- would we be -- would we be able to get insights
25 from other parties and stakeholders in conducting

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2 that review, right?

3 A.L.J. LECAKES: Right. So if it was
4 deemed necessary through senior staff and
5 consultation with the Chair and the Commissioners
6 that it was desirable to have additional comment from
7 outside parties, yes, we can absolutely request that.

8 COMMISSIONER VALOVA: Okay. So again,
9 to confirm my understanding, we could solicit
10 stakeholder feedback, a notice and comment period on
11 -- on the data provided?

12 A.L.J. LECAKES: We could do that.

13 COMMISSIONER VALOVA: Thank you.

14 Okay. Those -- those were my questions. I -- I'd
15 like to begin by saying I -- I appreciate that the
16 order explicitly recognizes in the introduction that
17 the Commission is required to make specific findings
18 under the C.L.C.P.A. and that our determination of
19 this case must be consistent with the State's
20 emissions reduction objectives and that it will not
21 disproportionately burden disadvantaged communities.

22 It's really helpful for me to get this
23 clarification in the Commission's role in reviewing
24 the biomethane interconnection projects that if the
25 data shows any potential concerns, the Commission can

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2 disallow cost recovery for these projects.

3 I think it's important as Commissioner
4 Sheehan has noted that as we assess new technologies,
5 we do so with the information and data necessary to
6 evaluate them. And I look forward to reviewing those
7 reports when they are submitted.

8 To be honest, without this
9 clarification, I would have found it difficult to
10 vote to approve the joint proposal, given the
11 potential costs of the interconnections and the fact
12 that one of them is known to potentially be located
13 in a disadvantaged community. With this
14 clarification, I concur. Thank you.

15 CHAIR CHRISTIAN: And my mic is not
16 on, sorry. So thank you everyone. Excuse me, Ms.
17 Fraczek, I believe this is inappropriate.

18 SECRETARY PHILLIPS: Can we please
19 pause the record?

20 (Off the record; 12:05 p.m. to 12:09
21 p.m.)

22 SECRETARY PHILLIPS: Chair, I just
23 want to confirm for the record it's my understanding
24 that we are recording and we should resume with the
25 vote, please.

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2 CHAIR CHRISTIAN: All right. Thank
3 you. We're resuming. Where we left off, we were
4 doing a call for the vote for item 101. My vote is
5 in favor of the recommendations to adopt the terms of
6 the joint proposal as discussed. Commissioner
7 Valesky --

8 COMMISSIONER VALESKY: Yes.

9 CHAIR CHRISTIAN: -- how do you vote?

10 COMMISSIONER VALESKY: Yes.

11 CHAIR CHRISTIAN: Commissioner

12 Maggiore?

13 COMMISSIONER MAGGIORE: Yes.

14 CHAIR CHRISTIAN: Commissioner Bright?

15 COMMISSIONER BRIGHT: Yes.

16 CHAIR CHRISTIAN: Commissioner

17 Sheehan?

18 COMMISSIONER SHEEHAN: Yes.

19 CHAIR CHRISTIAN: Commissioner Valova?

20 COMMISSIONER VALOVA: Concur.

21 CHAIR CHRISTIAN: The item has been
22 approved and the recommendations are adopted. Thank
23 you, everyone.

24 We'll now move to our second item for
25 discussion after which just for everyone's

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2 information, we'll be taking a brief 10-minute break.
3 The second item for discussion today is item 401,
4 case 23-W-0235. This case relates to Liberty
5 Utilities New York Water and their rates.

6 It will be presented today by Tara
7 Kersey, Dakin Lecakes, Jeff Hogan, and Mike Rieder
8 are all available for questions should any arise.
9 Judge Kersey, please begin. And I believe this is
10 your first time before the Commission.

11 A.L.J. KERSEY: It is.

12 CHAIR CHRISTIAN: All right. Welcome.
13 Thank you.

14 A.L.J. KERSEY: Good afternoon, Chair
15 Christian, and Commissioners. My name is Tara
16 Kersey. I was assigned to preside over this
17 proceeding with Chief Administrative Law Judge
18 Lecakes. Before you is a draft order that would
19 establish a three-year rate plan for Liberty
20 Utilities New York Water Corp for April 1st, 2024 to
21 March 31st, 2027.

22 The rate plan is consistent with a
23 joint proposal executed by Liberty and D.P.S. staff.
24 Two other parties participated in this proceeding,
25 the Public Utility Law Project of New York, Inc.,

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2 PULP, and L.I. Clean Air Water and Soil Limited,
3 CAWS.

4 Although, PULP did not sign the J.P.,
5 it submitted a statement in neutrality, noting its
6 support for low-income customer assistance programs,
7 but expressing concerns regarding bill impacts.

8 CAWS opposes the J.P., citing
9 affordability concerns and the rate plan's potential
10 impact on municipalization efforts. Having reviewed
11 the evidence in this case, we conclude that the J.P.
12 is in the public interest and recommend adoption of
13 it.

14 This proceeding is most clearly viewed
15 within the context of two previous Commission orders.
16 The first approving a rate plan for New York American
17 Water Company, Inc., Liberty's predecessor. And the
18 second that allowed Liberty's acquisition of New York
19 American Water.

20 The New York American Water rate plan
21 was adopted in a May 2017 order and the rate plan
22 ended on March 31st, 2021. In December 2021, the
23 Commission approved Liberty's acquisition of New York
24 American Water.

25 Liberty operates 21 separate water

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2 systems and one wastewater system spread over eight
3 counties. Liberty acts only as operator for four of
4 those systems, both owning and operating the other 17
5 systems.

6 Liberty's systems are divided into two
7 separately billed service areas, referred to as
8 Service Area 1, S.A. 1, and Service Area 2, S.A. 2.
9 S.A. 2 consists of Merrick and Sea Cliff on Long
10 Island. The rest of the water systems make up S.A.
11 1.

12 Notably, during the merger
13 proceedings, staff conducted a study regarding the
14 feasibility of municipalizing the company's systems.
15 Staff's report found that municipalization was
16 feasible and could produce customer benefits.

17 After the study was released,
18 legislation was passed that created two water
19 authorities in Nassau County to pursue
20 municipalization. While negotiations have been
21 underway between the authorities and the company,
22 municipalization is not a part of this rate case.

23 Criticism of the joint proposal
24 relevant to municipalization has been that a rate
25 increase is likely to frustrate the municipalization

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2 negotiations by increasing the value of utility
3 assets. However, no actual evidence was presented
4 showing that a rate increase will impact
5 municipalization negotiations.

6 Moreover, the Commission is obligated
7 under the Public Service Law to hold a hearing on any
8 utility request for a major rate increase. Because
9 of a Commission stay-out requirement in the 2021
10 acquisition order, when Liberty filed this increase,
11 this -- I'm sorry, when it filed this case in May
12 2023, it had not requested a rate increase in seven
13 years.

14 Liberty requested a one-year increase
15 of approximately \$39.745 million on a consolidated
16 basis across S.A. 1 and S.A. 2. Based on a 10
17 percent return on equity and a common equity ratio of
18 50 percent. D.P.S. staff testimony indicated that it
19 did not support consolidating the two service areas
20 and recommended a \$14.1 million revenue increase in
21 S.A. 1 and a \$1.7 million decrease in S.A. 2 for a
22 one-year rate plan.

23 Staff proposed an 8.9 percent return
24 on equity and a common equity ratio -- ratio of 44
25 percent. Rate case settlement negotiations began in

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2 October of 2023 and ended with the joint proposal's
3 filing on May 31st, 2024.

4 As noted during Judge Leary's
5 presentation when reviewing a settlement in a rate
6 case, the Commission must ensure that its terms
7 enable the utility to provide safe, adequate, and
8 reliable service at just and reasonable rates.

9 Judge Lecakes and I have concluded
10 that the joint proposal satisfies the Commission's
11 settlement criteria and recommend its adoption. The
12 J.P. proposes a three-year rate plan that covers
13 April 1st, 2024 through March 31st, 2027.

14 It reduces Liberty's initial \$39.745
15 million request to a combined S.A. 1 and S.A. 2 rate
16 year one increase of \$17.24 million.

17 The J.P.'s S.A. 1 levelized revenue
18 increases are \$13,704,197 in each of the rate years.
19 The S.A. 2 increases including an incremental
20 property's tax surcharge applicable only in Sea Cliff
21 are \$3.5 million in rate year one and \$1.8 million in
22 rate years two and three.

23 The incremental property tax surcharge
24 charges Sea Cliff customers for the incremental per
25 customer property tax burden in excess of the per

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2 customer property tax responsibility of Merrick.

3 The recommended rate plan is based on
4 a 9.1 return on equity and a 48 percent common equity
5 ratio. It includes an earning sharings mechanism
6 that is triggered if the company's actual return
7 exceeds 9.75 in any rate year.

8 The major drivers of rate increases
9 are net plant, O. and M. expenses and property taxes.
10 The J.P.'s long term capital provisions ensure that
11 the company can continue providing safe and adequate
12 water service, thus serving the public interest.

13 The J.P.'s construction projects are
14 intended to continue the replacement of Liberty's
15 distribution mains annually, address contamination of
16 fresh drinking water supplies including from 1,4-
17 Dioxane at the Siemens Neck Water Treatment Plant.

18 Continue water treatment upgrades,
19 complete the installation of the advanced metering
20 infrastructure or A.M.I., respond as necessary to
21 water main breaks with repair and replacement
22 actions, and fund a number of upgrades to Liberty's
23 water distribution systems.

24 For public health, the J.P. provides
25 to ad -- funding to address the New York State

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2 Department of Health's August 2020 new maximum
3 contaminant level for 1,4-Dioxane of one part per
4 billion.

5 The J.P. also provides funding to
6 address lead contamination, particularly on customer
7 owned service lines that connect residences to the
8 company owned distribution mains.

9 The J.P. requires Liberty to explore
10 integrating electric vehicles and renewable power for
11 company operations, promote water conservation
12 efforts by its customers, improve pump efficiency in
13 its infrastructure, by installing pumps that use less
14 electricity and track its progress for such projects.

15 Relatively, the J.P.'s provisions
16 require Liberty to include a plan in its next rate
17 case to mitigate water supply, water quality, and
18 infrastructure issues attributed to climate change
19 impacts. The J.P. also includes an overall \$13.3
20 million capped budget to address cybersecurity
21 upgrades and provides \$48.7 million for Liberty's
22 Customer First program which consists of improvements
23 to certain business processes and computer systems.

24 The J.P. provides for the continuation
25 and enhancement of its customer service performance

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2 incentive mechanisms which consists of a customer
3 satisfaction survey metric and a complaint rate
4 mechanism which are applicable to the company's
5 entire combined service territory with accompanying
6 negative revenue adjustments.

7 Importantly, the J.P. establishes a
8 low-income customer assistance program following in
9 the Commission's adoption of Veolia's joint proposal
10 in June, this J.P. allows for low-income assistance
11 being available to all of the customers of New York's
12 two largest private water service companies.

13 Under the CAP, eligible customers will
14 receive a monthly discount equivalent to the monthly
15 meter charge. Qualifying customers can also receive
16 a \$100 monthly arrearage forgiveness of up to \$1,200
17 a year for each timely budget payment made. If they
18 have a minimum of \$300 in arrears of at least 45
19 days, they participate in the company's budget
20 billing plan and they pay their agreed monthly
21 budgeted amount.

22 The company will also grant CAP
23 participants who services shut off due to non-
24 payment, a once per year reconnection fee waiver.

25 The J.P. further provides for the implementation of

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2 an enhanced water conservation program including
3 public outreach to increase knowledge and awareness
4 of accessible conservation measures and programs.

5 An EyeOnWater app, that provides
6 customers with A.M.I. meters, access to real time
7 data concerning their water usage and suspected
8 leaks, the provision of water conservation kits to
9 customers, high use customer water audits to -- to
10 provide ratepayers information concerning their water
11 usage and water use recommendations, reduction
12 recommendations, and savings.

13 Irrigation system incentives to
14 encourage customers to purchase search -- certain
15 irrigation equipment upgrades and lead audits for
16 low-income customers. With water supply conservation
17 in mind, the J.P. provides for an inclining rate
18 structure where it has not yet been implemented.

19 This rate structure is designed to
20 discourage discretionary usage, particularly lawn
21 watering or other outdoor use. However, the J.P.
22 also requires the company to study whether its
23 conservation rates inadvertently impact households
24 with indoor only water usage and to address any
25 unintended impacts to those customers.

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2 In conclusion, the joint proposal is
3 supported by the record and in the public interest.
4 It offers multi-year rate certainty to the company
5 and its customers. It includes customer service
6 performance incentives and an earning sharings
7 mechanism as well as several health and safety
8 related provisions.

9 It advances important policy goals
10 balanced against the impact of the recommended rate
11 increases on ratepayers and ensures the company's
12 continued ability to provide safe and reliable water
13 service at just and reasonable rates. Thank you.

14 We are available for any questions you
15 may have.

16 CHAIR CHRISTIAN: Thank you, Judge
17 Kersey. I -- I don't have any questions and I think
18 for the most part, my comments from earlier would be
19 echoed again. So I'll save the transcriptions, the
20 effort of retyping what I said earlier.

21 But ultimately, I find this to be a
22 good compromise in terms of advancing the State's
23 policies, public health and safety and ensuring that
24 we can continue providing the service needed.

25 So thank you for your work and putting

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2 this together and bringing it before us today.
3 Commissioner Valesky.

4 COMMISSIONER VALESKY: Thank you, Mr.
5 Chair. Thank you, Judge Kersey. Excellent job with
6 your first presentation. I have a feeling you'll be
7 back before us again in the future with other rate
8 cases. I also find this joint proposal to be in the
9 public interest. I would just make one very, very
10 quick point. No question.

11 But the issue of municipalization
12 which I know has been of interest to Nassau County,
13 many Nassau County residents for a very, very long
14 time. I want to thank the staff for the -- the
15 report that staff did a while ago that found those
16 efforts to be both feasible and desirable from a
17 customer perspective.

18 Certainly, reiterate what -- what you
19 had said in regard to the legislature's interest in
20 the creation of two -- of two water authorities in
21 Nassau County. And I certainly agree with your
22 statement. And I also found no evidence in this
23 record that would show that the potential rate
24 increase that we will consider momentarily would
25 impact any municipalization negotiations any -- in

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2 anyway.

3 So to those who continue to be
4 interested in municipalization in Nassau County, I
5 see nothing in this -- in this order that would
6 impede those efforts. Thank you.

7 CHAIR CHRISTIAN: Thank you,
8 Commissioner. Commissioner Maggiore.

9 COMMISSIONER MAGGIORE: Thank you.
10 Thank you, Judge Kersey. And congratulations on your
11 first presentation and thank you for your
12 thoroughness.

13 I do have a few questions. The first
14 set, I'm going to ask in a cluster of three which you
15 -- you might want to answer as a single question.

16 What percentage of the average
17 customer's Liberty utility bill goes towards paying
18 property tax or other local taxes on the company?
19 And then, how does that level of taxation compare to
20 other major investor-owned utilities in New York, and
21 what drives the difference?

22 A.L.J. KERSEY: I'm going to refer
23 that question to Jeff Hogan.

24 COMMISSIONER MAGGIORE: Okay.

25 MR. HOGAN: Good afternoon,

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2 Commissioner. So what I heard was in your three-part
3 question was what percentage of customers' bills is
4 made up of property taxes.

5 COMMISSIONER MAGGIORE: Right.

6 MR. HOGAN: And so for part one for,
7 so there's two different service areas, Service Area
8 1, and Service Area 2. For Service Area 1 by the end
9 of this rate plan, approximately 31 percent of all
10 money paid by customers will be going towards
11 property taxes. For service area --.

12 COMMISSIONER MAGGIORE: 31 percent?

13 MR. HOGAN: 31 percent, yes.

14 COMMISSIONER MAGGIORE: Yeah. Okay.

15 MR. HOGAN: For Service Area 2, it's
16 28 percent for all customers on average.

17 COMMISSIONER MAGGIORE: Okay.

18 MR. HOGAN: Those are both average
19 numbers. For Service Area 2, Judge Kersey's point
20 out that Sea Cliff has even higher property taxes
21 than average. And there's actually a surcharge that
22 was mentioned. And so you know, the Sea Cliff area
23 customers experience even higher than that average.
24 Of course, that would mean that some customers
25 experience a little bit lower.

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2 And for Service Area 1, the property
3 taxes were a major driver in what's leading to the
4 rate increase. So that covers --

5 COMMISSIONER MAGGIORE: Okay.

6 MR. HOGAN: -- I think, part one of
7 your question. You -- you asked what other New York
8 utilities experience in terms of percentage of bills
9 that are property taxes.

10 COMMISSIONER MAGGIORE: Yeah.

11 MR. HOGAN: For the major electric and
12 gas utilities in New York, there's a -- there's a
13 range. It's a little bit lower Upstate than it is
14 Downstate. It's generally four or five percent at
15 the lowest, up to about 18 percent for Con Edison.
16 So we have here a situation where we're talking about
17 double the Statewide average for what -- for property
18 taxes.

19 And you also asked what could be done
20 about this situation? What I believe maybe causes
21 this situation? What causes --.

22 COMMISSIONER MAGGIORE: Well, what
23 drives the differences? Yeah.

24 MR. HOGAN: What drives the
25 difference? I'd say the primary driver of the

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2 difference is the different taxation that occurs in
3 Nassau County and New York City in terms of having a
4 special class of taxable entities. They -- they --
5 they have a class that's only utilities and they're
6 able to essentially target utilities with higher
7 rates of taxation than other commercial enterprises
8 or residential assets.

9 So you have a situation where the
10 utilities can be burdened with more tax than they
11 would be outside of New York City or Nassau County.
12 So that's why you see the Con Ed numbers being high
13 and here you have the Liberty Water numbers being
14 higher.

15 COMMISSIONER MAGGIORE: Okay, thank --
16 thank you very much. Now, let me ask this.

17 MR. HOGAN: Okay.

18 COMMISSIONER MAGGIORE: Are we legally
19 obliged to approve cost recovery for payment of
20 property taxes?

21 A.L.J. KERSEY: Yes.

22 COMMISSIONER MAGGIORE: Yeah.

23 A.L.J. KERSEY: Yes, these taxes are -

24 -

25 COMMISSIONER MAGGIORE: Okay.

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2 A.L.J. KERSEY: -- a necessary cost of
3 doing business. And we are required to allow the
4 utilities to recover those from their customers.

5 COMMISSIONER MAGGIORE: Yeah. Okay.
6 So Commissioner Valesky mentioned the
7 municipalization study and he characterized it. Do
8 you agree with his characterization or would you add
9 anything?

10 A.L.J. LECAKES: I -- I --.

11 COMMISSIONER MAGGIORE: How would you
12 characterize it?

13 A.L.J. LECAKES: I think Commissioner
14 Valesky's summary and -- and -- was -- was spot on
15 with what the study found.

16 COMMISSIONER MAGGIORE: Yeah.

17 MR. HOGAN: If I could --

18 COMMISSIONER MAGGIORE: Great.

19 MR. HOGAN: -- just add one additional
20 piece of information there. The staff study did
21 indeed find that there are a variety of scene --
22 scenarios where it's a -- feasible for this for a
23 municipalization to make sense. At the time the
24 study was released, interest rates were a lot lower
25 than they are now.

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2 And -- and a matter of fact, in the
3 numbers that staff used to come up with the dollar
4 impacts of how much, you know, more reason -- how
5 much lower customers' bills could be? The interest
6 rate assumed was 2.3 percent and we're in a situation
7 now where we're at five percent, probably plus for
8 similar debt.

9 So that would -- but there's other
10 factors that would be moving as well including what
11 the purchase price of the utility would be or the --
12 of the -- or the assets.

13 COMMISSIONER MAGGIORE: Okay. Are --
14 are municipal water companies subject to property
15 tax?

16 MR. HOGAN: They are not.

17 A.L.J. KERSEY: They are not.

18 MR. HOGAN: Nor are they subject --

19 COMMISSIONER MAGGIORE: They are not.

20 MR. HOGAN: -- to State or federal
21 income tax.

22 COMMISSIONER MAGGIORE: Okay. So a
23 difference between the rate of a private company as
24 we're discussing today, versus how much somebody who
25 gets water from a municipal company is in part

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2 different because a private company is subject to
3 local taxation, is that correct?

4 A.L.J. KERSEY: Yes. And unlike an
5 investor-owned utility whose source of income is
6 ratepayers, municipal utility providers have access
7 to funding such as local taxes.

8 COMMISSIONER MAGGIORE: So let me make
9 sure I have this right. So in this case, if you're
10 paying your utility bill and you're a Liberty
11 customer, you're paying -- you're basically revenue
12 to the local government whereas, if you were a
13 customer of a municipal water company, the local
14 government is helping to pay for that local company
15 through taxation, is that correct?

16 A.L.J. KERSEY: That is correct.

17 COMMISSIONER MAGGIORE: Okay. Do you
18 know if any local taxes collected from Liberty
19 customers go to support any other municipal water
20 company?

21 A.L.J. KERSEY: I'm going to defer to
22 Jeff Hogan on that.

23 MR. HOGAN: Commissioner, it's -- it
24 would be difficult for us to know that we can't know
25 for certainty if that's the situation, we would have

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2 to do an audit of the municipal utilities to check --

3 COMMISSIONER MAGGIORE: Yeah.

4 MR. HOGAN: -- to see whether or not
5 the costs of the municipal utility are being entirely
6 borne by its customers or is there some sort of
7 subsidization going on. For instance, is all of the
8 human resources activity being done at a town or
9 village or county level?

10 And -- and those costs may not be
11 shared to the -- at the utility level that might be
12 being raised at the utility level. So we can only
13 state that we don't know but it is theoretically
14 possible.

15 COMMISSIONER MAGGIORE: Okay. Just
16 one last question, a little different. Does this
17 order, did I read it correctly that it rejects the
18 company's plan for management which is to say non-
19 union incentive compensation?

20 A.L.J. KERSEY: The company didn't
21 seek recovery of executive incentive compensation, so
22 those costs aren't included. They did seek -- they
23 did seek recovery of management non-union comp,
24 incentive compensation. Staff objected to that
25 request, given the lack of a study supporting the

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2 compensation.

3 The J.P. provides for the company to
4 conduct a study during the first year of the rate
5 plan at show -- at shareholders expense. And then,
6 the company can then petition the Commission during
7 the first year of the rate plan to recover the
8 management incentive compensation if the Commission
9 approves.

10 And if the Commission approves the
11 amounts that would be recovered from ratepayers, I
12 believe there's slightly less than \$2 million in each
13 of rate year two and three.

14 A.L.J. LECAKES: And -- and just to
15 clarify, so that means that there will be no
16 management compensation available to the company in
17 rate year one, that -- that study that they would
18 perform would only be prospective in nature for rate
19 years two and three.

20 COMMISSIONER MAGGIORE: Okay. No, no
21 management and incentive compensation at no
22 management compensation at all. Right?

23 A.L.J. LECAKES: Right.

24 COMMISSIONER MAGGIORE: Okay.

25 A.L.J. LECAKES: Management incentive

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2 compensation.

3 COMMISSIONER MAGGIORE: All right.

4 Okay. The reason I asked about that is I think that
5 the answer illustrates how --

6 SECRETARY PHILLIPS: Commissioner --

7 COMMISSIONER MAGGIORE: We were able
8 to --

9 SECRETARY PHILLIPS: -- Maggiore?

10 COMMISSIONER MAGGIORE: Yes.

11 SECRETARY PHILLIPS: I'm sorry.

12 COMMISSIONER MAGGIORE: Yes.

13 SECRETARY PHILLIPS: Something
14 happened with your mic.

15 COMMISSIONER MAGGIORE: Okay. Can you
16 hear me, okay?

17 SECRETARY PHILLIPS: Now we can.

18 COMMISSIONER MAGGIORE: All right.

19 Maybe I -- I moved away from it. And I -- I
20 apologize. Well, let me just say this. I -- I think
21 it's very obvious that the big culprit of this rate
22 driver here has to do with local taxation and there's
23 a nexus between the reason that this rate increase is
24 large.

25 And the reason that the issue of

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2 municipalization has not been resolved. Obviously, I
3 think the local governments that are receiving
4 revenue through taxation of the utility at a greater
5 rate as Jeff mentioned that, than they are taxing
6 other entities that they're applying taxes to, needs
7 to be resolved before municipalization will come to
8 pass and property tax won't be a factor.

9 I'm not -- I don't see that as
10 happening on the horizon. So I'm going to vote in
11 favor of this item. Thank you.

12 CHAIR CHRISTIAN: Thank you,
13 Commissioner. Commissioner Bright.

14 COMMISSIONER BRIGHT: Thank you,
15 Chair. I -- I'm staying on the municipalization
16 track here, so. A number of the comments on the
17 record, people were saying that their neighbors were
18 paying less. And can you just -- can you just talk
19 about, I mean, cause -- I mean, I think Commissioner
20 Maggiore just alluded to those reasons but just want
21 to get your take on that as well.

22 A.L.J. KERSEY: I think part of that
23 is that Liberty's Service Territory is, it -- it
24 doesn't -- it doesn't align well with the different
25 taxing jurisdictions boundaries. And so it is

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2 possible for neighbors or folks you would consider
3 neighbors, people in not-too-distant proximity from
4 one another to, one to be on a municipally owned
5 water system whereas the other is on Liberty's water
6 system.

7 COMMISSIONER BRIGHT: And the
8 municipalization report was done some time ago but
9 there are -- maybe not but --.

10 A.L.J. KERSEY: 2021, I believe.

11 COMMISSIONER BRIGHT: There hasn't
12 been -- okay. So it's not too long. But there
13 hasn't been any takers yet, is that true?

14 A.L.J. LECAKES: So again, it wasn't -
15 - municipalization wasn't an issue in the rate case.
16 But from what we gathered during the evidentiary
17 phase of the proceedings is that the authorities have
18 been pursuing settlement negotiations.

19 They've been ongoing with respect to
20 one of the authorities, it seemed that they had
21 advanced further in negotiations than the other, but
22 neither of the two have reached any sort of agreement
23 with regard to taking over the Liberty systems.

24 COMMISSIONER BRIGHT: Got it. Okay.
25 So I -- I -- those were really my main questions. It

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2 seems like, you know, Liberty was in front of the
3 Commission seven years ago, some -- some time ago and
4 the major rate drivers other than taxes are sort of
5 the advanced metering infrastructure, lead service
6 line replacement, a newly regulated toxin, it sounds
7 like and then also water conservation measures.

8 And it's great, I just want to make
9 one more comment that it's really just great that
10 we're seeing our actions that we took with Veolia are
11 showing up again here for Liberty in -- in them
12 instituting a low-income program.

13 So thank you so much for all your hard
14 work and for your presentation, Judge Leary.

15 A.L.J. KERSEY: Thank you.

16 COMMISSIONER BRIGHT: Kersey.

17 CHAIR CHRISTIAN: Thank you,
18 Commissioner. Commissioner Sheehan.

19 COMMISSIONER SHEEHAN: Thank you,
20 Chair. Thank you, Judge Kersey, Judge Lecakes. I
21 also want to thank the parties. I know there are
22 company representatives here as well on -- on what I
23 believe is a -- a settlement that is in the public
24 interest. I, since my colleagues have covered
25 municipalization, I won't have to go there.

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2 I did want to cover a couple of
3 things, echoing Commissioner Bright, I'm very happy
4 to see the inclusion of the low-income customer
5 assistance program. As similar and taking the page
6 from the Veolia case from June, I, you know, I -- I
7 just really want to support that continuing effort in
8 future water cases.

9 The other thing that I think is
10 notable too, is the customer service performance
11 incentives being included here and the, you know,
12 potential for negative revenue adjustments in the
13 case of customer service performance dropping below
14 agreed to metrics.

15 So I really wanted to highlight those
16 as well as the enhanced water conservation programs.
17 Obviously, these are going to be important for, you
18 know, adapting to climate change that the water
19 conservation program and I want to acknowledge that
20 as an important element of this also.

21 So I think that's all I had to say. I
22 -- I will be supporting the order. Thanks again.

23 CHAIR CHRISTIAN: Thank you,
24 Commissioner. Commissioner Valova.

25 COMMISSIONER VALOVA: Thank you. I

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2 have no questions. Thank you to the A.L.J.s and the
3 staff and stakeholders who participated in this
4 proceeding. My colleagues have asked all of the
5 questions that I -- I would have wanted to ask today.

6 So I'll say generally that I think the
7 joint proposal represents a reasonable compromise
8 between the parties. And that the expenditures are
9 necessary for the company to continue providing, safe
10 and adequate and reliable service at just and
11 reasonable rates.

12 And also includes beneficial programs,
13 like the customer service performance incentives,
14 energy -- excuse me, water efficiency and the
15 customer assistance program. So I will be voting,
16 yes. Thank you.

17 CHAIR CHRISTIAN: Thank you. We'll
18 now do a call for vote. My vote is in favor of the
19 recommendation to adopt the terms of the joint
20 proposal as discussed. Commissioner Valesky, how do
21 you vote?

22 COMMISSIONER VALESKY: Yes.

23 CHAIR CHRISTIAN: Commissioner
24 Maggiore, how do you vote?

25 COMMISSIONER MAGGIORE: Yes.

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2 CHAIR CHRISTIAN: Commissioner Bright?

3 COMMISSIONER BRIGHT: Yes.

4 CHAIR CHRISTIAN: Commissioner

5 Sheehan?

6 COMMISSIONER SHEEHAN: Yes.

7 CHAIR CHRISTIAN: Commissioner Valova?

8 COMMISSIONER VALOVA: Yes.

9 CHAIR CHRISTIAN: The item is approved
10 and the recommendations are adopted. Thank you all.

11 And with that, we will now take a 10-minute break.

12 My watch says 12:40 p.m. We'll return at 12:50.

13 Thank you.

14 (Off the record; 12:41 p.m.)

15 (On the record; 12:56 p.m.)

16 CHAIR CHRISTIAN: All right. Good
17 afternoon, everyone. Welcome back. We are
18 continuing our session for today with our third item
19 for discussion, item 301, case 24-E-0364, which
20 establishes a proceeding for proactive
21 electrification planning.

22 It will be presented by Schuyler
23 Matteson with Zeryai Hagos and Stephanie McDermott
24 available for questions. Schuyler, please begin.

25 MR. MATTESON: Good afternoon and

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2 thank you, Chair Christian, and Commissioners. My
3 name is Schuyler Matteson. I serve as the Clean
4 Energy Planning Lead here at D.P.S., and I'm here
5 today to present item 301.

6 The draft order before you, if
7 adopted, would initiate a new proceeding regarding
8 proactive planning for upgraded electric grid
9 infrastructure. The need for this new proceeding was
10 identified through the research, development, and
11 stakeholder engagement that occurred within the
12 medium and heavy-duty vehicle electrification
13 proceeding.

14 And initially contemplated the elect -
15 - in the electric vehicle supply equipment and
16 infrastructure proceeding. In those proceedings,
17 staff and stakeholders identified a disconnect
18 between how new loads related to electric vehicle
19 charging arrive on the grid.

20 And how the associated expansion or
21 upgrade of the grid are planned and implemented. The
22 disconnect was as follows. Turns out that it is very
23 easy to add electric load to the system, but far more
24 difficult and time-consuming to add the grid -- grid
25 capacity.

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2 For example, a fleet owner could go
3 buy electric vehicles to replace their internal
4 combustion vehicles with little to no advanced
5 planning. This process could take days to months,
6 depending on the fleet size and vehicle class, adding
7 new load to the system very quickly.

8 In some instances, the new load at the
9 charging site for those vehicles may exceed current
10 infrastructure capabilities. And a load letter or a
11 request for new or increased electrical service at a
12 given location must be submitted to the local
13 utility.

14 Triggering -- triggering a process
15 where utilities study -- the utilities study the
16 local electric system to determine if any new grid
17 upgrades are necessary to enable the charging of the
18 new vehicles.

19 The study process and the process of
20 upgrading the grid infrastructure, such as bringing
21 in a new feeder or upgrading a transformer could take
22 multiple years. This timeframe is far longer than
23 the time required to actually make the switch to an
24 electric vehicle and adds uncertainty to the vehicle
25 transition process.

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2 For fleet owners, planning the
3 decarbonization of their vehicles, driven by State
4 policy, this additional time could increase costs and
5 delay vehicle electrification, slowing our timelines
6 for decarbonization.

7 With numerous State policies regarding
8 vehicle electrification, this will not be an isolated
9 issue and will require advanced planning for new
10 loads to avoid delays for fleet owners. This is not
11 the full scope of the issue, however.

12 After further stakeholder engagement
13 and outreach to utilities, staff identified that
14 these same issues arise for building owners seeking
15 to decarbonize their facilities through
16 electrification as well.

17 The process for a building owner
18 responding to a State policy or a corporate mandate
19 to purchase or install new electric heating, cooling,
20 cooking or other equipment at their facility is also
21 fairly straightforward and can occur on a timeline of
22 weeks to months.

23 But from our current grid planning
24 perspective, those loads are essentially the same as
25 the electrical vehicle loads. If the facility is

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2 likely to require an increase to their electrical
3 service, they must submit a load letter to the
4 utility, initiating that same study and upgrade
5 process we discussed earlier, which could take years.

6 Needless to say, the timeline delay
7 and cost uncertainty related to grid upgrades can
8 make business planning, investment decisions, and
9 retrofits difficult to complete. And from a utility
10 perspective, this popcorn process of new loads
11 popping up across their service territory, initiating
12 study after study.

13 And sometimes overlapping with areas
14 that only received upgrades quite recently can be
15 very difficult, and very inefficient, and very
16 expensive. Given the State's policy targets and
17 advancements in clean energy technologies, this
18 difficulty will only increase through time without a
19 change.

20 The draft order before you would
21 launch a new proceeding that would take these
22 problems head on, creating a proactive planning
23 process for upgrading electric grid infrastructure.

24 With this action, New York utilities
25 will get ahead of the issue, identifying areas where

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2 new loads will arise and proactively deploying grid
3 upgrades to accelerate the deployment of clean energy
4 across the State.

5 As part of the medium and heavy duty
6 proceeding, numerous stakeholders commented on the
7 need to get ahead of electrification for fleets,
8 electric vehicles in general, and building electric -
9 - electrification.

10 36 initial and 11 written reply
11 comments were filed in response to the initiate --
12 initiating order in the medium and heavy-duty
13 electric vehicle proceeding. Environmental Defense
14 Fund and CALSTART presented proactive planning
15 approaches along with Con Edison and National Grid
16 during technical conferences in November of 2023.

17 Stakeholders identified the issues we
18 discussed earlier where investments in
19 decarbonization may be jeopardized or delayed by the
20 extended grid study and upgrade timelines associated
21 with existing processes.

22 Furthermore, E.V. and building
23 electrification impact each other, and there is
24 synergy to be found by combining forecasts and
25 planning processes for both sectors. For example, if

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2 a utility plans an upgrade to enable more electric
3 vehicle charging in an area, that upgrade plan will
4 likely be insufficient if they do not include the
5 background load growth from building and other
6 transportation electrification in that same area.

7 Given the dynamics of ordering new
8 transformers, planning electrical upgrades, and
9 completing system plans. Upgrading that same piece
10 of equipment multiple times over just a few years is
11 a very expensive and inefficient process.

12 We do not want the utilities to have
13 to buy two transformers for every one transformer
14 that must be upgraded or worse, a new piece of
15 equipment for every study and every new load that
16 comes online.

17 Initial studies presented by the
18 utilities, the expected long-term load growth driven
19 by electrification in certain locations throughout
20 the State, could be the equivalent to the demand of a
21 small city, particularly in areas where fleets are
22 clustered or locations where future charging load is
23 anticipated to grow significantly, such as at highway
24 rest stops, as was highlighted in National Grid's
25 electric highway study.

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2 The new loads we're discussing are
3 fairly predictable, but very local, requiring new
4 forecasting methods and data analysis in order to
5 plan for and build the most efficient and timely
6 utility infrastructure.

7 Fortunately -- fortunately, there are
8 many new data sources that have been or are being
9 developed that can support this proceeding. To be a
10 little bit more specific, this draft order initiates
11 a new proceeding to develop and implement proactive
12 utility planning processes for both vehicle and
13 building electrification across all of New York
14 State.

15 The first step of the process is to
16 create the planning framework that utilities will use
17 to identify the needed infrastructure investments.
18 The draft order directs the utilities to develop and
19 file within 120 days, a study framework, including a
20 detailed timeline, data needs and analysis
21 methodology that would account for the growth of new
22 electric loads in their territory and identify grid
23 infrastructure needs that would be required to serve
24 that load.

25 The first filing will also include

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2 proposals for how costs should be allocated. How the
3 risks of over or under building are accounted for and
4 the metrics and characteristics by which the projects
5 should be evaluated.

6 Second, the draft order directs the
7 utilities to evaluate and file a proposal for how the
8 granular bottoms-up analysis can be integrated with a
9 broader top-down analysis that is occurring within
10 the coordinated grid planning process, which is
11 particularly relevant within the nodal system
12 modeling occurring in stage two of the C.G.P.P.

13 Third, the draft order acknowledges
14 that load growth driven by electrification is
15 happening now. New loads have come onto the system
16 and continue to come onto the system all the time.
17 Stakeholders and the utilities discussed this fact
18 during our technical conferences, in which Con Edison
19 and National Grid presented draft proactive planning
20 analyses, which examined parts of their service
21 territory where clusters of fleets and electric
22 vehicle charging demand are expected to drive load
23 growth in advance of the development of the planning
24 framework within this proceeding.

25 This fact necessitates a separate

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2 approach for these current, urgent electrification
3 needs and the draft order directs the utilities to
4 file within 90 days, proposals for urgently needed
5 grid infrastructure that must enter construction
6 before the expected conclusion of this new
7 proceedings first study cycle, which is based on this
8 -- the timelines outlined in the draft order is
9 expected to be around early 2026.

10 Importantly, these urgent projects
11 require their own evaluation process, which must use
12 more -- more stringent criteria for approval to
13 ensure that ratepayers are protected and only the
14 most needed projects proceed outside the unified
15 planning process that will be developed in parallel.

16 While the urgent upgrade projects will
17 be developed by the individual utilities, the
18 proactive planning framework developed in the first
19 filing will bring all the utilities together,
20 aligning their methods, data, and study timelines
21 into one coordinated State process.

22 This will allow all the utilities and
23 the electrification process -- projects within their
24 territories to proceed on one shared timeline and
25 will provide the Commission with a uniform set of

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2 proposals and results that will be on a level playing
3 field, allowing for the consideration of all grid
4 upgrade needs simultaneously.

5 With the unification of this planning
6 process and the coordination -- Coordinated Grid
7 Planning Process or C.G.P.P., we will create one
8 overarching planning process starting with cycle two
9 of the C.G.P.P. in 2026, where all of the Statewide
10 electrification, transmission, distribution,
11 renewable and clean energy needs are considered in
12 one single integrated resource planning process.

13 Initiating this proactive planning
14 process as described in the draft order before you,
15 positions New York at the forefront of the industry
16 through the development of an innovative approach to
17 utility planning that we expect will be used as a
18 model for other states across the country. Thank you
19 for your time this morning and Zeryai Hagos,
20 Stephanie McDermott, and I are now available for
21 questions.

22 CHAIR CHRISTIAN: Thank you, Schuyler.
23 I appreciate the presentation and the work that's
24 gone into this. You know, I -- in -- in hearing you
25 talk, I -- I -- I want to clarify something in case

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2 some are left with the impression, we just figured
3 this out.

4 We did not. In fact, this particular
5 proceeding has been quite some time in development
6 and the cases you referenced earlier, I think they
7 began 2016 or '18, somewhere all -- almost a decade
8 ago in some ways.

9 So, this has been, we've known this
10 problem was coming. And I think the challenge with
11 building assets in the right way to adapt to an
12 evolving landscape that we cannot predict is
13 understanding when something can be used and useful.

14 Because at the end of the day, that's
15 what the Commission ensures our investments are, used
16 and useful. We can't proactively build out the
17 largest, the biggest, the best and gold plate the
18 system in advance of some potential future that we
19 don't know when will arrive.

20 We have to build it as it's needed.
21 And that not just helps ensure the reliability of the
22 system, but the affordability of the system as it's
23 being built out. So, I look at this as very timely,
24 you know, for many of the reasons you mentioned.

25 You -- there's a significant increase

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2 in a need for number of, and size and scope of,
3 investments needed for both electrifying
4 transportation and building sector. And as you
5 pointed out, the timeline for doing so can be very
6 long.

7 However, I could go out and buy an
8 E.V. today. In fact, all of us could and may consider
9 that. So, we need to be in a position where we can
10 accurately predict and plan. And I think this
11 proceeding puts us in a position to do that, not just
12 for an individual utility, but for all utilities in
13 the State.

14 And that gives us consistency,
15 something someone in Long Island, Upstate New York,
16 New York City can expect and predict the same kind of
17 outcomes, not just for that individual level, but for
18 building owners, developers, fleet owners, everyone
19 looking to electrify.

20 This puts us in a position to better
21 prepare all our assets to meet the growing needs and
22 demands of ratepayers and consumers. So, thank you
23 for putting this before us. I think this is very,
24 very timely and much needed. Commissioner Valesky.

25 COMMISSIONER VALESKY: Well, I

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2 certainly agree with you, Mr. Chair. It's certainly
3 timely. It's well needed and also, it seems to be
4 one of those examples that sometimes this Commission
5 takes up some of the most important work after the
6 room half empties out. Interesting how that happens,
7 isn't it?

8 Just one question I have. There's a
9 lot here, obviously and you've done a great job
10 explaining it and reviewing it with us. And -- and
11 certainly, the ultimate goal of unifying the planning
12 process with the Coordinated Grid Planning Process.

13 But the reports that -- that we'll be
14 asking the utilities for 120 days, the 90-day
15 emergency report. Can you just explain, so when and
16 how -- when and how do we reengage as a Commission?
17 What comes back before us? When does it come back
18 before us? How -- how would that -- how do you --
19 how do you envision that looking?

20 MR. MATTESON: So, we expect the
21 Commission to be involved in multiple ways as we move
22 through the -- the next year or so. So, the most
23 urgent filing is expected to come within 90 days of,
24 if the order is approved, where the utility will be
25 filing these very urgent projects.

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2 We heard about a couple of them
3 through our stakeholder process and through the
4 technical conferences where National Grid and Con
5 Edison have already identified projects that may need
6 to enter construction with the next year or so.

7 So those urgently needed projects
8 would come within about 90 days, and then we'd be
9 able to evaluate the -- the need to fund those
10 projects at that time. The Commission would also be
11 engaged once the utilities file their planning
12 framework and their suggestions for how to integrate
13 it with the C.G.P.P.

14 That's something where the Commission
15 would evaluate the plan, the appropriateness of that
16 plan and the appropriateness of the -- the schedule
17 and timing and methods of integrating that with the
18 C.G.P.P. Commission will be further engaged later on
19 as well.

20 Once the plan has been proposed and
21 approved and we've actually been able to move through
22 an entire planning process, that planning process is
23 expected to result in greater than zero projects,
24 most likely.

25 And so, if there are projects arising

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2 out of that planning process that are identified
3 where investments are needed to enable this type of
4 electrification. Those projects would be presented
5 to the Commission and either through rate cases or
6 through this -- this proceeding itself as projects
7 for funding at -- and at that time, the Commission
8 would evaluate those for funding.

9 COMMISSIONER VALESKY: Suffice to say,
10 much more to come soon.

11 MR. MATTESON: Much more.

12 COMMISSIONER VALESKY: Okay. Great.
13 Thank you very much.

14 MR. MATTESON: Thank you.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Maggiore.

17 COMMISSIONER MAGGIORE: Thank you.
18 Just one question, sort of, building on the comments
19 of Commissioner Valesky --.

20 SECRETARY PHILLIPS: Commissioner
21 Maggiore, can --.

22 COMMISSIONER MAGGIORE: Yes.

23 SECRETARY PHILLIPS: We're having
24 trouble hearing you. Can you check your mic?

25 COMMISSIONER MAGGIORE: Okay. Okay.

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2 Can you hear me better now?

3 SECRETARY PHILLIPS: Yes.

4 COMMISSIONER MAGGIORE: Okay. I just
5 want to ask one question building on the point of
6 timeliness that were -- was raised both by the Chair
7 and Commissioner Valesky. And I think I know the
8 answer, but I -- I want to give you the opportunity
9 to expand on this. Why haven't we done this already?

10 MR. MATTESON: No, that's -- that's a
11 valid -- valid question. The proceeding arose from a
12 lot of the previous work we had been doing.

13 COMMISSIONER MAGGIORE: Yeah.

14 MR. MATTESON: Going all the way back
15 to the late 2010s, where we were developing the
16 electric vehicle proceedings. But really starting
17 with the July 2020 make-ready order where we had
18 identified some significant differences between
19 planning for transportation loads versus traditional
20 electric system planning, and how there was, kind of
21 a, some conflicts there in the ways the -- the loads
22 show up and how to plan for those loads.

23 So, at that time, which is more than
24 four years ago now, we asked for a technical
25 conference, which was then held in 2021. To really

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2 get into more detail about what are those conflicts,
3 how are the utilities currently planning to remedy
4 those conflicts.

5 And we learned a lot from -- from
6 those technical conferences. And we built that
7 learning and that engagement into the 2023
8 proceedings that were launched through the medium
9 heavy-duty order.

10 And in that order, we actually carved
11 out a -- a special section explicitly dedicated to
12 getting stakeholder feedback on proactive planning on
13 the needs and -- and the methods to go forward. And
14 we got, as - as I mentioned before, about 47 separate
15 sets of comments on that proceeding in the reply
16 comments.

17 That really informed us as to the --
18 the very specific needs and the -- the granular
19 frameworks that are actually required to do this.
20 That gave us enough certainty and confidence to
21 really initiate the order that you see before you
22 today.

23 COMMISSIONER MAGGIORE: Thank you very
24 much.

25 MR. HAGOS: If I could just add?

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2 COMMISSIONER MAGGIORE: Yup. Sure.

3 MR. HAGOS: Some national context,
4 Commissioner Maggiore. The U.S. Department of Energy
5 and Department of Transportation's joint office on
6 energy and transportation in March of this year
7 released a national zero emissions freight corridor
8 strategy.

9 And in that strategy, it laid out a
10 sequence of phases in terms of development that needs
11 to occur for hubs, corridors connecting hubs, and
12 then the expansion of the corridors across the
13 nation. And part of that strategy includes
14 cooperating -- cooperating with the utility planning
15 processes and regulators in the states.

16 And in just in July, the Department of
17 Energy hosted a workshop focused on proactive
18 planning specifically where it gathered regulators
19 and practitioners from across the country who are
20 really actively looking at this problem right now.

21 And to just echo something Schuyler
22 said earlier, looking at the state of play, this is
23 really the perfect moment for this type of -- of --
24 of initiation of this type of planning process. And
25 it really, you know, this order would put New York

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2 right at the forefront, right at the cutting edge of
3 the work that is now starting to build momentum
4 nationally.

5 COMMISSIONER MAGGIORE: Beautiful.
6 Thank -- thank you very much for that answer. That's
7 -- that's my only question. Thank you.

8 CHAIR CHRISTIAN: Thank you,
9 Commissioner Bright.

10 COMMISSIONER BRIGHT: Thank you,
11 Schuyler, for this great presentation, to Stephanie
12 and Zeryai, of course, as well. So, I don't think I
13 have any questions. I mean, I especially appreciate
14 that we're seeing a need here.

15 And in this case, you know,
16 infrastructure development, especially around large
17 fleets being a bottleneck and responding to this in a
18 systemwide and a statewide way, rather than an
19 incremental way. So, while we're seeing
20 infrastructure of large fleets may have -- or
21 infrastructure of large fleets may have initiated
22 this, you know, us digging a little bit deeper.

23 We are seeing buildings and
24 transportation electric - electrification happening
25 at an accelerated rate. Maybe I should ask that as a

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2 question. You know, are we seeing electrification of
3 buildings and transportation happening at an
4 accelerated rate.

5 And so, we're really trying to be more
6 strategic about our investments in areas where we're
7 seeing some large load growth showing up. That's
8 kind of what we're doing.

9 MR. MATTESON: Yup. I -- I think
10 that's exactly right. You know, we had fairly stable
11 both peak and average load growth over the last 5 or
12 10 years, but as we see fleets responding to both our
13 -- our policies and national policies, we see large,
14 very, you know, chunky popcorn type loads popping up
15 around the State that might be 5, 10, 20 megawatts at
16 a time, which is a very significantly sized load.

17 And then just all this background load
18 from our accelerated growth of our electric vehicles,
19 just personal electric vehicles, as well as the sales
20 of heat pumps are taking off in -- in the State as
21 well, adding a lot of this background load that we
22 need to start planning for.

23 COMMISSIONER BRIGHT: Which is like
24 good news, bad news. So, we're ramping up our
25 utility infrastructure upgrades for newly increasing

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2 and accelerated -- accelerated electric load based on
3 a layered planning process, which is what we're doing
4 now.

5 And so, I really appreciate all the
6 hard work and thank you so much.

7 CHAIR CHRISTIAN: Thank you.
8 Commissioner Sheehan.

9 COMMISSIONER SHEEHAN: Thank you,
10 Chair. Thank you, Schuyler, Zeryai, Stephanie, for
11 your work on this. It's -- as everyone has said,
12 it's exciting. I'm excited to get this off the
13 ground. I just have a couple of questions that I
14 think would be helpful just for the record.

15 Schuyler, can you talk a little bit
16 about how we're going to define urgent projects and
17 what we can expect to see when urgent -- when we get
18 the urgent filing?

19 MR. MATTESON: Absolutely. That is
20 kind of just a generic term. We -- we've try to
21 define that, so that it's clear to both the utilities
22 and those that are going to be evaluating it, why we
23 need a special designation for urgent.

24 This really arose from our technical
25 conference learnings where we learned of multiple

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2 projects throughout National Grid and Con Edison
3 territory, at least where even though they're very
4 supportive of this type of planning proceeding taking
5 off.

6 They know these types of projects, for
7 example Zerega Avenue in Downstate New York and a
8 couple of areas around Syracuse. These are areas
9 that might need investment in the next year. We
10 might need to be -- begin construction before we
11 could even really get their full planning process all
12 the way through for the first time, much less
13 approved.

14 And so, these are kind of urgent needs
15 that we've tried to define as water projects that
16 cannot wait to enter construction until the end of
17 this planning process. In an ideal world, you know,
18 we could start this planning process and we don't
19 have to look at anything until we have all the
20 projects batched together.

21 But as -- as we mentioned, you know,
22 this load growth has been happening, even in the
23 background, as we've been trying to get this -- this
24 order together, try to get the full planning
25 framework together. And we just saw the need for

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2 maybe a handful of projects across the State that
3 we're aware of that may need action ahead of that.

4 COMMISSIONER SHEEHAN: Uh-huh. And --
5 and then just, we talked about buildings and, you
6 know, electric vehicles. Can you just speak to the
7 economic development potential here too and whether
8 it's data centers or, you know, superconductors, for
9 example.

10 MR. MATTESON: Well, that -- that's a
11 great point. There's a lot -- a lot going on in that
12 background electrification that's happening. A lot
13 of new loads coming in. I would say there's a couple
14 of ways this is implicated.

15 So, a lot of the largest types of
16 loads, the 50-100 megawatt plus loads that might be
17 coming into the system. They're likely to be
18 captured under the Coordinated Grid Planning Process
19 because they often have transmission level
20 interconnections.

21 But to the extent that we do see
22 significant adoption of, you know, new electricity
23 loads, new loads coming on the system on the
24 distribution network. Those will have to be
25 incorporated into the distribution scale load

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2 forecast that the utilities will use to identify
3 these infrastructure planning upgrades.

4 Because as we mentioned, if we're --
5 if we're trying to electrify one fleet that needs
6 five megawatts, but a two-megawatt new load is being
7 built next door. You can't just build a five-
8 megawatt substation. You need to meet that entire
9 load for your system.

10 COMMISSIONER SHEEHAN: Great. That's
11 it. I -- the only other thing I wanted to say is
12 that I do think that coordination with the
13 Coordinated Grid Planning Process is going to be
14 essential. I loved hearing you talk about integrated
15 energy planning, which I think, is really where --
16 where we need.

17 So, I'm excited about what's to come.
18 Thank you for -- again, for your work on this.

19 CHAIR CHRISTIAN: Thank you.
20 Commissioner Valova.

21 COMMISSIONER VALOVA: Thank you.
22 Yeah. Thank you all for your great work in this
23 order. I think it's well-structured and offers a lot
24 for us to think about as we've already discussed
25 today. I have a few follow-up questions.

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2 One is related to Commissioner
3 Sheehan's question on how we define the urgent
4 projects. Just to clarify my own understanding.
5 These are projects that are closed or already have
6 received permitting. They've already requested
7 energization or interconnection.

8 They're going to happen. They're not
9 in the queue waiting review. Is -- is that right or
10 is it not clear yet?

11 MR. MATTESON: I would say we don't
12 have all the answers on that right now. Part of the
13 characterization of urgent projects will be what the
14 utilities are actually proposing to the Commission as
15 part of those projects.

16 We would like them to identify what is
17 most urgent, why do you think this is most urgent and
18 give us all the proof that this is an urgent project.
19 So, we have all of that in front of us rather than us
20 saying, you know, any -- any projects that need to
21 start construction in the next two years.

22 That's actually more open than having
23 them come back to us and prove that this is something
24 that's very urgent. I would say that the ones that
25 we know about, the ones that were presented at

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2 technical conferences are things where the entity
3 involved is already in contact with the utility.

4 So, we already have a very -- a very
5 good sense of those loads. So at least for the ones
6 we're aware of, I would say, you know, we -- we are
7 pretty -- pretty confident in those showing up, but
8 there may be others, and we're going to have the
9 utilities kind of justify that in -- in the filing.

10 MR. HAGOS: I'd just like to also call
11 out some, perhaps subtle, but very important language
12 in the order to, I think, in response to this
13 question. For the urgent projects, the draft order
14 directs the utilities to be specific in highlighting
15 how specific risks are addressed.

16 Not -- and it allows the utilities to
17 expand upon the list of risks that are in the -- the
18 draft order, but certainly, the risk of certainty,
19 timing, both over or under shooting, you know, in
20 terms of what you're building up to right now.

21 And that will give the Commission,
22 when those proposals come back, hopefully a really
23 well thought through record and -- and rationale for
24 making decisions. But doesn't say that you have to
25 accept the rationale.

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2 But it is specific in requesting that
3 type of analysis and defense of the projects and it
4 was done really for that specific reason.

5 COMMISSIONER VALOVA: Thank you.
6 That's great. That -- that fully addresses my
7 concern, which was exactly that, you know, how do we
8 know that these projects will, in fact, materialize.
9 Will the Commission have the opportunity to review
10 the utility's proposed forecasting methodologies,
11 including their underlying inputs and assumptions.
12 The -- the -- the methodologies that they'll -- they
13 will use specific to the proactive planning process?

14 MR. MATTESON: Yes, and then that's
15 actually one of the most important aspects of this
16 whole thing, is really trying to -- to fill that gap
17 that -- that we think exists right now in terms of
18 like, really granular longer-term forecasting for
19 E.V.s and building electrification.

20 So, this can be a critical -- critical
21 piece of this whole thing. And as part of the filing
22 that's requested 120 days from now, the utilities
23 will be proposing those different load forecasts,
24 those planning methodologies.

25 So, we'll have at least, you know, a

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2 few times we can look at this where we're evaluating
3 proposals from the utilities, but also in the actual
4 development process of the planning framework. We
5 expect to have some more back and forth with
6 utilities on specifically what data sets are -- are
7 most relevant here.

8 COMMISSIONER VALOVA: Great. Thank
9 you. And my last question is, a point of
10 clarification on the urgent project category. Will
11 the proposals for the grid upgrades for the urgent
12 projects include a cost allocation framework for
13 those projects separate from the cost allocation
14 framework that will be developed for the long-term
15 planning?

16 MR. MATTESON: Yes. So, the -- the
17 order requests that the utilities provide for the
18 urgent projects, a separate cost allocation,
19 methodology, separate evaluation framework. Because
20 these are kind of a unique category of projects that
21 we don't -- we don't expect to see this really much
22 again.

23 But we have since we're kicking this
24 project off for the first time, there may be projects
25 that are kind of, in the works already. So yes,

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2 there's going to be a separate framework proposed for
3 these projects.

4 COMMISSIONER VALOVA: Thank you.

5 Well, overall, I think that, as I said, the order
6 does a great job spelling out what all of the major
7 issues are that we need to consider in order to, as
8 Chair Christian was saying earlier, make sure that
9 we're right sizing the proactive investments with the
10 load that we anticipate coming online.

11 So, I really appreciate it and I will
12 be voting in favor.

13 CHAIR CHRISTIAN: Thank you. And with
14 that, we'll do a call for a vote. My vote is in
15 favor of the recommendation to commence a proactive
16 planning proceeding as discussed. Commissioner
17 Valesky, how do you vote?

18 COMMISSIONER VALESKY: Yes.

19 CHAIR CHRISTIAN: Thank you.
20 Commissioner Maggiore?

21 COMMISSIONER MAGGIORE: Yes.

22 CHAIR CHRISTIAN: Thank you.
23 Commissioner Bright?

24 COMMISSIONER BRIGHT: Yes.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Sheehan?

3 COMMISSIONER SHEEHAN: Yes.

4 CHAIR CHRISTIAN: Thank you.

5 Commissioner Valova?

6 COMMISSIONER VALOVA: Yes.

7 CHAIR CHRISTIAN: Thank you. The item
8 is approved and the recommendations are adopted.
9 Thank you everyone for your work in bringing this to
10 the Commission. We now move to our fourth item for
11 discussion.

12 Item 302, case 14-M-0565, as it
13 relates to implementation of the Energy Affordability
14 Guarantee Pilot. This will be presented by Chris
15 Coll, Jordan Lesser, Kyle Labelle and Richard Berkley
16 are all available for questions. Chris, please
17 begin.

18 MR. COLL: Good afternoon. Good
19 afternoon.

20 CHAIR CHRISTIAN: And before, we
21 should make sure everyone's name plate is accurate.
22 All right. Thank you.

23 MR. COLL: Okay. Sorry for that
24 technical difficulty. Good afternoon, Chair, and the
25 Commissioners. Are we good? Thank you.

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2 So, this afternoon I'll be presenting
3 on item number 302 in the case 14-M-0565 on the
4 Energy Affordability Guarantee Pilot. Before I
5 begin, I want to borrow on a theme from our last
6 item. And that is electrification.

7 In this -- in this case, home
8 electrification, as it relates to low-income
9 households. So, and when we think about home
10 electrification, we're -- we're really talking about
11 the conversion of space and water heating from
12 combustion appliances to heat pump technologies.

13 And this is really important in the
14 low-income space because we -- we currently lack a
15 lot of detail on, you know, what -- what heat pump
16 conversion might mean in terms of operating costs,
17 energy burden, what typical heat pump configurations
18 might look like, the installation costs.

19 And importantly, the motivations of
20 and experiences of low-income households when they do
21 electrify. Right. So, as we look to develop
22 policies and programs to simultaneously advance the
23 Commission's energy affordability policy as you know,
24 you know, ensuring that low-income customers pay no
25 more than six percent of their annual household

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2 income towards their utility bills.

3 As well as address the -- the State's
4 important energy and environmental goals outlined in
5 the -- the C.L.C.P.A. It's going to be important
6 that we find solutions to, you know, answer these
7 kind of important questions we have on how do low --
8 electrifying the low-income space.

9 One important opportunity for us to do
10 that right now is, the Energy Affordability Guarantee
11 Pilot. So, by way of background, the fiscal year
12 2024 State budget included a provision directing the
13 department to establish a guarantee for low-income
14 customers that fully electrify their space and water
15 heating through the EmPower+ program, which is
16 administered by the New York State Energy Research
17 and Development Authority to ensure that those
18 households pay no more than six percent of their
19 annual income towards their electricity bills.

20 The -- the 2024 State budget also
21 outlined several additional parameters for this
22 guarantee. So first, the department should establish
23 a cap on the amount of electricity that would be
24 subject to the guarantee, that the guarantee shall
25 last for the life of the installed heat pump

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2 technology.

3 In this case, we're estimating 15
4 years as that's established in the New York State
5 Technical Resources Manual, which establishes energy
6 savings methodologies and calculations for energy
7 efficiency measures, as well as the effective useful
8 life of those measures.

9 And lastly, that the guarantee can
10 transfer to new households in the -- in the event
11 that current recipient moves from the -- from the --
12 from the -- the home which was electrified. The
13 guarantee was subsequently funded through a budget
14 appropriation in the fiscal year 2025 State budget in
15 the amount of 50 million dollars.

16 So, this includes funding for the
17 guarantee, for the provision of the guarantee, as
18 well as funding for the department to implement the
19 guarantee. So up to 3 percent of those dollars
20 appropriated can be used by the department for such
21 purposes.

22 So, in response to the -- the
23 directive in the State budget, staff developed and
24 filed a staff report on April 29th of this year that
25 outlines recommendations for the development of an

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2 initiative to effectuate the guarantee.

3 So, including that the guarantee be
4 delivered as part of a pilot initiative with two
5 distinct phases, right. So, the first phase, over
6 the first two years of the pilot, we would really
7 look at data collection.

8 So enrolling households into the
9 pilot, collecting data on their, you know, operating
10 costs, energy burden, experiences with -- with heat
11 pumps. And then over the balance of the 15 years,
12 this would be, you know, kind of just the provision
13 of the guarantee, right.

14 So, we're really kind of looking to
15 establish a baseline for, you know, customer
16 experiences when -- when they do electrify. Further,
17 the -- the staff report identifies three key
18 objectives for -- for this pilot initiative.

19 So, the first is to mitigate the
20 potential for an increase in household energy cost
21 burdens because of the electrification. Secondly, to
22 provide insights to drive a broader strategy for
23 creating affordable access to heat pump solutions for
24 low-income households, including understanding
25 operating cost considerations for customers when they

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2 choose to electrify.

3 Third, we're looking to understand the
4 options for determining customer specific, energy
5 cost burdens and providing tailored bill assistance
6 to customers to achieve energy cost burden reductions
7 and the ultimate goal of, you know, six percent
8 energy burden.

9 Specific pilot design and
10 implementation considerations include a target to
11 enroll a thousand participants. And this is based on
12 NYSERDA EmPower+ production estimates over the next
13 year-and-a-half. And staff would work with NYSERDA
14 to ensure that there's an equitable distribution of
15 pilot participants across utility territories and in
16 disadvantaged communities.

17 Eligibility would be set on the
18 EmPower+ eligibility for low-income households, which
19 includes a household's income eligibility threshold
20 of six per -- 60 percent of the State median income,
21 which for reference, for a family of four, that
22 equates to around \$76,000 per year. And that's
23 according to the Federal Administration for Children
24 and Families.

25 And the -- the household must or the -

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2 - the participant must reside in a one to four family
3 home. So, after homes are identified and electrified
4 through EmPower+ and -- and enrolled in the pilot.
5 Electricity consumption will be monitored for each
6 participating customer on a monthly basis, and the
7 guarantee will be calculated and applied on a monthly
8 basis if needed.

9 In this respect, the guarantee serves
10 as a backstop against the potential for an increase
11 in electric consumption as a result of heat pump use
12 to also increase household energy burden beyond six
13 percent. If a participant experiences an electricity
14 bill greater than six percent, they will receive the
15 guarantee in that month.

16 If their bill in that month does not
17 exceed six percent, then they would not receive the
18 guarantee. The amount of electricity consumption
19 that would be covered by the guarantee will be capped
20 at a 150 percent of the average consumption for low-
21 income customers that heat with electricity in each
22 utility territory.

23 This is referred to as the guarantee
24 limit in the staff report. Staff would monitor
25 electric -- electricity consumption and energy cost

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2 burden and adjust methodology over time. This
3 flexibility is particularly important because the --
4 the track record on incremental elect -- electric
5 costs consumption and associated, you know, energy
6 burden just doesn't exist, right, for low-income
7 households at this point.

8 The staff report also recommends that
9 participants should undergo annual recertification to
10 ensure income eligibility and to provide household
11 income data for the purposes of calculating the
12 energy burden for each household and to calculate the
13 -- the guarantee that each pers -- participant might
14 need.

15 In the event of a change in occupancy
16 in the dwelling, electrified by EmPower+, the
17 guarantee would be able to be transferred to new
18 residents, provided that their income eligible at the
19 time of enrollment.

20 Lastly, staff would procure an
21 implementation contractor to manage the pilot,
22 including enrollment of participants, managing
23 communications with participants, utilities and
24 NYSERDA, collecting and analyzing billing data for --
25 for participants, calculation of the guarantee and

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2 reporting out on pilot outcomes.

3 So, with respect to the draft order
4 before you, the draft order approves the
5 implementation of the Energy Affordability Guarantee
6 Pilot as outlined in the staff report with
7 modifications based on stakeholder input.

8 Seven parties filed comments on the
9 staff report, including the Alliance for a Green
10 Energy Economy, Blueprint Geneva, the City of New
11 York, the Joint Utilities, the Long Island
12 Progressive -- Progressive Coalition, National Fuel
13 Gas, and the Public Utility Law Project.

14 Notably, the draft order modifies the
15 proposal contained in the staff report in the
16 following ways. The draft order removes the
17 requirement for participants to demonstrate income
18 eligibility on an annual basis once they're enrolled
19 in the pilot.

20 So, in this respect, once a household
21 is enrolled, they cannot be disqualified from
22 participation if they experience an increase in
23 income at any point during the pilot. So, once
24 they're in, they're -- they're -- they're in the
25 pilot.

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2 However, participants would still need
3 to provide income documentation on an annual basis
4 for the purpose of calculating the energy burden for
5 each household and the guarantee that that household
6 may need.

7 The draft order also sets a goal for a
8 minimum of 100 pilot participants in each major
9 electric utility territory and sets an expectation
10 for at least 40 percent of participants to be located
11 within disadvantaged communities.

12 The draft order also allows for
13 retroactive enrollment of low-income households that
14 had previously been fully electrified through
15 EmPower+, dating back to the enactment of the fiscal
16 year 2024 State budget. So that's approximately May
17 3rd, 2023.

18 And it sets an enrollment deadline of
19 January 1st, 2026, with the ability for staff to seek
20 an extension on this deadline if enrollment does not
21 reach the 1,000-household mark by -- by the deadline.

22 In acknowledgement that bill payment
23 assistance is only one strategy for advancing
24 electrification while mitigating energy burden
25 increases. The draft order also directs staff to

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2 explore additional opportunities for advancing our
3 co-equal objectives of, you know, developing
4 solutions for decarbonizing homes, as well as
5 advancing energy affordability for -- for low-income
6 households.

7 However, this work should take place
8 in the Energy Efficiency and Building Electrification
9 portfolio under case 18-M-0084. The draft order also
10 requires staff to consult with the Energy
11 Affordability Policy Working Group on any
12 modifications to the pilot or the implementation plan
13 over the course of the pilot.

14 Also of note, parties commented on the
15 income eligibility thresholds for EmPower+,
16 particularly the fact that income eligibility is
17 currently set at 60 percent of the State median
18 income. And that may limit access to program support
19 for residents in parts of the State with higher costs
20 of living.

21 As an alternative, parties recommended
22 that the minimum eligibility for EmPower+ be set at
23 60 percent of the area median income or State median
24 income, whichever is higher, depending on the -- what
25 part of the State you're in.

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2 Staff notes that the design of
3 EmPower+ cannot be addressed through this pilot or
4 this order. However, parties have provided comments
5 on this issue through the Energy Efficiency and
6 Building Electrification proceeding, which will come
7 before the Commission in the -- in the near future.

8 The draft order also requires staff to
9 file an implementation plan for the pilot within 60
10 days of this order. For staff to provide updates on
11 the pilot to the Energy Affordability Policy Working
12 Group on a quarterly basis.

13 For staff to file quarterly pilot
14 status reports for the first two years of the pilot,
15 as well as to develop and file an annual report with
16 key insights, analysis, and pilot progress. And
17 lastly, directs the major electric utilities to file
18 temporary tariffs no later than November 1st to
19 effectuate the guarantee, and to file a proposal and
20 plan for the -- for cost recovery within 30 days
21 after the filing of the staff implementation plan.

22 The plan for cost recovery would come
23 back to the Commission for action at that time. So,
24 in closing, this pilot provides an opportunity for
25 the department to support electrification for low-

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2 income households, while collecting important data
3 and insights on the impact that heat pump solutions
4 can have on energy bills, as well as how households
5 can benefit from electrification.

6 All while preserving energy
7 affordability by capping participants and -- energy
8 burden at six percent of household income. Staff
9 expects that the experience and insights gained from
10 this pilot will inform longer term policy, programs,
11 and strategies for advancing -- advancing
12 electrification in the low-income market segment.

13 This concludes my presentation.
14 Richard Berkley, Kyle LaBelle, Jordan Lesser and I
15 are available for any questions you might have.
16 Thank you.

17 CHAIR CHRISTIAN: Thank you.
18 Appreciate the presentation and good work in getting
19 this to us today. I -- I -- I look at this as a
20 continuation of one of many efforts that the
21 Commission has taken on to advance affordability, and
22 I think this is an excellent example of not just
23 taking an action that can have a direct impact on
24 individuals within the State and how they live, where
25 they live, their finances.

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2 But also helping us determine what
3 actions we can take in the future, regarding how to
4 better develop policy and initiatives to support
5 those favorable outcomes in the future.

6 You know, I -- I -- in hearing your
7 presentation, this sounds to be a very well thought
8 out pilot, the protections for consumers, the -- the
9 -- the length, 15 years, that's significant in and of
10 itself. And I think this proves over time we will
11 find ways to ensure affordability for a wider swath
12 of New Yorkers through this opportunity before us.
13 So, thank you for putting this together. And
14 Commissioner Valesky.

15 COMMISSIONER VALESKY: Thank you,
16 Chris. Thank you to your team. It's certainly a
17 thorough project and I know you've put a lot of time
18 and attention into it. I don't have anything further
19 to add beyond what the Chair has already indicated.
20 I look forward to supporting the order. Thank you.

21 CHAIR CHRISTIAN: Thank you,
22 Commissioner Maggiore.

23 COMMISSIONER MAGGIORE: I have no
24 questions. I'd echo the sentiments of Commissioner
25 Valesky and the Chair and thank you for your

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2 presentation and your good work on this item, and I
3 also plan to support it.

4 CHAIR CHRISTIAN: Thank you.
5 Commissioner Bright.

6 COMMISSIONER BRIGHT: Thanks, Chris.
7 I also have no questions. This looks like a well-
8 designed pilot program. It's responsive to the 2024
9 budget and it fulfills some core Commission
10 priorities of addressing energy cost burdens, as well
11 as, ensuring access and a wider adoption of clean
12 energy. So, this is great work and thank you so
13 much.

14 CHAIR CHRISTIAN: Thank you.
15 Commissioner Sheehan.

16 COMMISSIONER SHEEHAN: Sorry, Chris, I
17 have a question.

18 MR. COLL: Go for it.

19 COMMISSIONER SHEEHAN: You -- you
20 prepared, so.

21 MR. COLL: Yeah.

22 COMMISSIONER SHEEHAN: First, thank
23 you very much to all of you who've been working on
24 this. I -- I -- this is a really well thought out
25 pilot design. And I think I -- I love that it's been

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2 responsive to stakeholder comments.

3 The -- the question I have, you know,
4 I used to work at the budget division. So, my
5 question is, do you think 50 million is enough?

6 MR. COLL: So. it's a good question,
7 and the honest answer is, we don't know until we
8 start to see, you know, what the actual, you know,
9 energy burdens and electric, you know, consumption
10 profiles look like.

11 COMMISSIONER SHEEHAN: Uh-huh.

12 MR. COLL: We did do some modeling and
13 some planning and it -- it appeared that \$50 million
14 would be sufficient. But, you know, once we start to
15 collect data on, you know, how much, you know, energy
16 bills, you know, might go up.

17 Then you know, we'll -- we'll
18 obviously be able to answer that question better.

19 COMMISSIONER SHEEHAN: And then the
20 other part of that is whether the three percent for
21 administration. Because it is complex. There's a
22 lot -- there's a lot of steps in this and there's a -
23 - and so I'm -- that -- that sort of baked in there
24 too, is that the right number, is that going to be
25 enough for the administration of the program.

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2 I -- I think the answer is we don't
3 know yet, but I -- I want to just put that out there
4 as something that I encourage us to track and because
5 this program is so important and the -- the
6 legislature agrees, it's important.

7 This is critical for us to meet the
8 policy goal of, you know, six percent annual income,
9 you know, for towards energy expenses. So, I -- I
10 think it's really important that we monitor this
11 closely and communicate the needs as we go.

12 MR. COLL: Point taken. In the -- the
13 reporting that, you know, is outlined in the staff
14 report and order will -- will also help us shed light
15 on ongoing operating --

16 COMMISSIONER SHEEHAN: Yeah.

17 MR. COLL: -- costs of this project.

18 COMMISSIONER SHEEHAN: Great.

19 MR. COLL: Okay.

20 COMMISSIONER SHEEHAN: Again, thank
21 you.

22 MR. COLL: Thank you.

23 CHAIR CHRISTIAN: Thank you.

24 Commissioner Valova.

25 COMMISSIONER VALOVA: Thank you.

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2 Yeah. Thank you all for a great job on the pilot
3 proposal. I have just one clarifying question. What
4 percentage of the EmPower+ program participants would
5 be able to participate in the pilot? Is it everyone
6 basically?

7 MR. COLL: So, any low-income
8 household that -- that fully electrifies would be
9 enrolled in the pilot, okay. So, the -- the
10 Empower+, you know, production expects to hit around,
11 you know, a thousand low-income households would --
12 with fully electrified work scope. So that would be
13 our universe. Yup.

14 COMMISSIONER VALOVA: That's -- that's
15 great to hear. I think that's a really important
16 aspect of this program that I wanted to highlight. I
17 agree with my colleagues. I think the pilot achieves
18 the intent of the legislature and is a really
19 important effort to make sure that we do everything
20 we can to make electrification affordable for
21 everyone.

22 So, I will be supporting. Thank you.

23 CHAIR CHRISTIAN: Thank you. And with
24 that, I'll call for a vote. My vote is in favor of
25 adopting the recommendations in the staff report with

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2 the modifications as discussed. Commissioner
3 Valesky, how do you vote?

4 COMMISSIONER VALESKY: Yes.

5 CHAIR CHRISTIAN: Thank you.

6 Commissioner Maggiore?

7 COMMISSIONER MAGGIORE: Yes.

8 CHAIR CHRISTIAN: Thank you.

9 Commissioner Bright?

10 COMMISSIONER BRIGHT: Yes.

11 CHAIR CHRISTIAN: Thank you.

12 Commissioner Sheehan?

13 COMMISSIONER SHEEHAN: Yes.

14 CHAIR CHRISTIAN: Thank you.

15 Commissioner Valova?

16 COMMISSIONER VALOVA: Yes.

17 CHAIR CHRISTIAN: Thank you. The item
18 is approved and the recommendations are adopted.

19 Thank you, everyone. And with that, we move to our
20 fifth and final discussion item for today. Aptly
21 numbered item 501, case 15-M-0388.

22 As it relates to a proposed settlement
23 agreement with Charter Communications. This will be
24 presented by John Sipos, Debbie Labelle, Brian Ossias
25 and Vincent Stark are all available for questions and

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2 their name tags are correct.

3 Not -- wait, not -- not quite. There
4 we go. Thank you. All right. John, please begin.

5 MR. SIPOS: Good afternoon,
6 Commissioners. Currently before the Commission in
7 item 501 is a proposed order concerning an
8 investigation and potential enforcement matter. By
9 way of background, in January 2016, the Commission
10 approved the merger of Charter Communications,
11 Incorporated and Time Warner Cable, Incorporated,
12 subject to various conditions.

13 One such condition in that merger
14 order required Charter to offer a low-income
15 broadband program with the following components.
16 First, as to cost, the cost was to be \$14.99 per
17 month. Second, the download speed was to be at least
18 30 megabits per second.

19 And third, as to eligibility, it was
20 to include customers receiving benefits from the
21 National Free School Lunch Program or those reserving
22 -- receiving supplemental social security income.

23 Following a recent compliance review,
24 D.P.S. staff contend that Charter had violated the
25 low-income broadband condition. Charter disputes

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2 staff's position, to be sure. In lieu of expending
3 time and resources litigating this issue, Charter and
4 D.P.S. staff have negotiated a resolution of this
5 issue and have prepared a settlement agreement.

6 Accordingly, today, D.P.S. staff
7 recommends that the Commission improve and just to be
8 clear -- accordingly, today, D.P.S. staff recommends
9 that the Commission approve an enforcement settlement
10 between staff and Charter that resolves a notice of
11 apparent violation issued on April 5, 2024.

12 And as described, the 2016 merger
13 order included a number of enforce -- enforceable
14 public interest conditions, including the low-income
15 broadband program just discussed.

16 The N.O.A.V., Notice of Apparent
17 Violation alleges that Charter increased the price of
18 its low-income broadband program to \$24.99 a month
19 without Commission approval in violation of the 2016
20 merger order.

21 And as noted, Charter disagreed with
22 that Notice of Apparent Violation. The proposed
23 settlement agreement before the Commission today will
24 require Charter to re-establish the program at \$15
25 per month with speeds of 50 megabits for four years

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2 with annual price adjustments for inflation in years
3 two, three and four.

4 For additional context, staff notes
5 that on June 1, 2024, the Federal Affordable
6 Connectivity Program or A.C.P., which had provided
7 eligible households with up to \$30 per month discount
8 for broadband expired; that program expired earlier
9 this summer.

10 Also, the State's Affordable Broadband
11 Act, which requires among other things, that internet
12 service providers offer 25 megabits speed service for
13 \$15 per month is currently suspended within ongoing
14 litigation.

15 And moreover, uncertainty surrounds
16 federal broadband policy given litigation and
17 administrative review. Thus, the takeaway is that,
18 at present, the only low-income broadband
19 requirements that currently exist in New York are the
20 low-income program conditions contained in the
21 Commission's previous orders approving certain
22 mergers.

23 Staff submits that the approval of the
24 settlement agreement will promote the public
25 interest, will assist New Yorkers, and will provide

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2 accessibility. And by approving the proposed
3 settlement, the Commission will make affordable
4 broadband available to eligible New Yorkers while the
5 litigation is resolved and/or the federal government
6 considers potentially reinstating the affordable
7 connectivity program.

8 Review and approval of the settlement
9 agreement at the August session today will assist
10 eligible New York families with school students who
11 will start classes shortly or who had participated in
12 the recently terminated Federal Affordable
13 Connectivity Program.

14 Before I conclude, there's just one
15 household item I want to wish to flag for the
16 Commission in reviewing the draft order just now, we
17 noticed a typographical correction on page 13, on the
18 second full paragraph, the sixth line, the first word
19 should read "agreement" instead of "transfer."

20 And with that correction, we recommend
21 that the Commission approve the draft order. Staff
22 is available for questions. Thank you.

23 CHAIR CHRISTIAN: Thank you. Could
24 you one more time reference the correction?

25 MR. SIPOS: Yes. So, on page 13 of

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2 the draft order, the second full paragraph, the sixth
3 line down, the first word in that line currently
4 reads in the draft "transfer," and staff is proposing
5 that that word be replaced with the word "agreement."

6 CHAIR CHRISTIAN: Understood. Thank
7 you for the clarification.

8 MR. SIPOS: Thank you.

9 CHAIR CHRISTIAN: Okay. Okay. Thank
10 you. So, in looking at this order before us today,
11 what I see is an opportunity to align Charter's
12 posture today with the needs we expressed long ago.
13 And given that outcome, that is the outcome. I am
14 supportive of this item and I think this is a good
15 outcome.

16 And as you point out, kids will be
17 going back to school and ensuring affordable internet
18 in a timely manner, I think, is a win, no matter how
19 you look at it. So, thank you for working to get
20 this item resolved. Commissioner Valesky.

21 COMMISSIONER VALESKY: Thank you very
22 much, Mr. Chair. Darn, I can't believe I missed that
23 clarification, John. Better next time, I'll keep a
24 closer eye on things. Thank you again to you and
25 your enforcement team for keeping your eye on the

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2 ball and obviously to your program team.

3 The only thing I would like to -- to
4 add and want to single out Tom Congdon, our
5 executive, Deputy Executive here at the department,
6 and I think Bob Rosenthal, I think you were here at
7 the time. The -- the merger in 2016, I think the
8 only Commissioner, none of us were here then.

9 I think Commissioner Alesi may have
10 been on the Commission at the time, I'm not sure, but
11 it was just really a landmark case that -- that was -
12 - that was taken and -- and I just reflect on it.
13 Here we are eight years later. And from an
14 enforcement perspective, finding things that -- that
15 had gone awry from that -- from that landmark
16 decision.

17 So really great work back then and
18 fast forward to today. Great work making sure that
19 the -- that the terms continue to be met by the
20 company. Thank you.

21 CHAIR CHRISTIAN: Thank you.
22 Commissioner Maggiore.

23 COMMISSIONER MAGGIORE: Thank you.
24 John, I'd like to join Commissioner Valesky in
25 apologizing for not catching the typo which I'm sure

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2 expresses the sentiment of my colleagues. Other than
3 that, I, you know, I think this is a terrific
4 settlement.

5 I think it is going to provide a great
6 service to folks who might not otherwise be able to
7 afford broadband but need to -- broadband in order to
8 just function in society. So, I think this is
9 terrific work and I would also say that I feel much
10 better about voting yes, on the items after we took
11 our break than before.

12 So good work and thank you very much.

13 CHAIR CHRISTIAN: Thank you.

14 Commissioner Bright.

15 COMMISSIONER BRIGHT: Thank you, Mr.
16 Sipos, and the enforcement team and of course, Debbie
17 and -- and the Office of Telecommunications. I have
18 no questions. I first want to thank you for
19 proactively and quickly doing the compliance review.

20 After the federal program ended, I
21 think that that, you know, really was essential in --
22 in making sure that we recognized what -- what was
23 going on here. And because of your team's hard work,
24 some households who are struggling the most will not
25 see their bills jump.

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2 And as -- as Mr. Sipos mentioned,
3 school is starting soon. So, this is in the nick of
4 time. And in the absence of the State program which
5 is being -- which is currently held up in litigation
6 and the federal program, which is expiring, as we
7 mentioned, this is -- this is the only game in town.

8 So, thank you so much for all your
9 hard work and I'll be supporting.

10 MR. SIPOS: Thank you.

11 CHAIR CHRISTIAN: Thank you.

12 Commissioner Sheehan.

13 COMMISSIONER SHEEHAN: Thank you,
14 John. I echo my fellow Commissioner comments that I
15 think this is a great settlement and to everybody who
16 worked on it, congratulations. I think it's really
17 well done.

18 I do have a question and maybe for
19 clarification that I just wanted to cover. So when
20 will Charter be required to est -- re-establish the
21 program effective when?

22 MR. SIPOS: Our -- our understanding
23 is that it will -- it will start to occur at, by the
24 end of this month, beginning of September.

25 COMMISSIONER SHEEHAN: Great. And

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2 then the relationship between this settlement, the
3 State legislation on the Affordable Broadband Act and
4 if there is a federal program again or that the
5 federal program is reinstated. Can you just walk us
6 through that?

7 MR. SIPOS: Yes. And I want to be
8 careful because there is ongoing litigation, and
9 which the Public Service Commission is not the -- the
10 lead litigator on that. That is -- that -- that law
11 is being defended ably by the New York State Attorney
12 General's office and they are in the midst of
13 litigation on that right now.

14 But before the federal program and
15 before the Affordable Broadband Act. So, both of
16 those occurred in -- in the -- if I could call it
17 during the COVID era, 2020, 2021. But before that,
18 as -- as Commissioner Valesky, I think help -- is
19 helping me out on this question here in his
20 observation.

21 So, there were a number of mergers in
22 the 2016, 2017 timeframe. And the Commission, at
23 that time, exercising its authority did place
24 conditions on -- on those merger orders.

25 And so, what we are bringing to the

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2 Commission today, what O.I.E., and Office of
3 Telecommunications was -- was looking at and doing
4 its compliance review on really goes back to the 2016
5 orders. That -- that is the, in this case, the 20 --
6 the January 2016 merger or that is in the root of
7 what brings us here today.

8 So, there are -- there are -- there
9 have been State efforts in -- in -- in the
10 legislation, which is -- which is continuing, which
11 is continuing and is continuing in litigation. And
12 the -- there is the termination of the federal
13 program as I -- as I noted earlier this year.

14 And there is also uncertainty about
15 some aspects of -- of federal -- of the federal
16 broadband policy that is, that the Federal
17 Communications Commission is -- is working through
18 also in litigation out in Cincinnati in the Sixth
19 Circuit.

20 So, this is apart from those issues
21 that have caused, perhaps some uncertainty, this is
22 the -- this is the current game in town, I guess, if
23 -- if -- if you will call it that and it goes back to
24 this 2016 order. And it is the Commission using its
25 authority to advance the public interest today for --

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2 for eligible New Yorkers.

3 It's in -- in some ways it is a -- I -
4 - I, you know, my personal view, it's a very good
5 solution, given the uncertainty that is going on in
6 this area.

7 COMMISSIONER SHEEHAN: I totally
8 agree. I was just trying to establish recognizing
9 uncertainty at the federal level and with the
10 litigation on the State legislation. Is -- is this
11 settlement going to be the controlling document for
12 the next three years, regardless of those?

13 MR. SIPOS: We believe --.

14 COMMISSIONER SHEEHAN: There's nothing
15 in this settlement that says, this is -- well, this
16 is what we're going to do unless State law's, you
17 know -- you know, reinstated or --?

18 MR. SIPOS: Right. We --

19 COMMISSIONER SHEEHAN: Okay.

20 MR. SIPOS: -- we believe that this
21 does set the standard for the next four years.

22 COMMISSIONER SHEEHAN: Okay.

23 MR. SIPOS: And there is an
24 opportunity in this -- in this agreement that, should
25 Charter comply with the Affordable Broadband Act

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2 requirements that that would also suffice. And those
3 requirements, again, not getting into the litigation,
4 but those requirements also speak to public interest
5 concerns as well.

6 So, from -- from our perspective, it's
7 a win win for -- for New Yorkers.

8 COMMISSIONER SHEEHAN: Yeah, I totally
9 agree. So, thank you for taking the time to walk me
10 through that. And I -- I -- I will be supporting.
11 Thanks, John.

12 MR. SIPOS: Thank you.

13 CHAIR CHRISTIAN: Thank you.
14 Commissioner Valova.

15 COMMISSIONER VALOVA: Thank you.
16 Yeah. Thank you, everyone for the enforcement action
17 and keeping an eye on things and making sure that New
18 Yorkers who, otherwise, might not be able to access
19 broadband will have access under this program.

20 I don't have anything to add or ask
21 apart from my colleagues. I -- I second, what has
22 already been said. Thank you and I will vote in
23 favor.

24 MR. SIPOS: Thank you.

25 CHAIR CHRISTIAN: Thank you. I'll now

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2 do a call for a vote. My vote is in favor of the
3 recommendation to adopt the terms of the 2024
4 agreement as discussed with the additional correction
5 as noted by John Sipos. Commissioner Valesky, how do
6 you vote?

7 COMMISSIONER VALESKY: Yes.

8 CHAIR CHRISTIAN: Commissioner
9 Maggiore?

10 COMMISSIONER MAGGIORE: Yes.

11 CHAIR CHRISTIAN: Commissioner Bright?

12 COMMISSIONER BRIGHT: Yes.

13 CHAIR CHRISTIAN: Commissioner

14 Sheehan?

15 COMMISSIONER SHEEHAN: Yes.

16 CHAIR CHRISTIAN: Commissioner Valova?

17 COMMISSIONER VALOVA: Yes.

18 CHAIR CHRISTIAN: The item is approved
19 and the recommendations are adopted. Thank you. We
20 will now move to the consent agenda.

21 SECRETARY PHILLIPS: Chair, I'm sorry,
22 could I have one or two minutes before you move to
23 the consent?

24 CHAIR CHRISTIAN: Of course.

25 SECRETARY PHILLIPS: Thank you.

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2 CHAIR CHRISTIAN: We will take a
3 three-minute break.

4 SECRETARY PHILLIPS: Sorry.

5 CHAIR CHRISTIAN: And, will return
6 shortly.

7 (Off the record; 02:00 p.m.)

8 (On the record; 02:04 p.m.)

9 CHAIR CHRISTIAN: Okay. We are now on
10 the consent agenda. Madam Secretary, do we need to
11 make any adjustments to the consent agenda?

12 SECRETARY PHILLIPS: Yes, I'd like to
13 note that we're pulling item 374, it's case 23-E-0680
14 from the consent agenda. So, it will not be part of
15 your vote.

16 CHAIR CHRISTIAN: So noted. Thank
17 you. With that, do any Commissioners wish to comment
18 on or recuse from voting on any items on the consent
19 agenda? Beginning with Commissioner Valesky?

20 COMMISSIONER VALESKY: I have no
21 comments or recusals on any item.

22 CHAIR CHRISTIAN: Thank you.
23 Commissioner Maggiore?

24 COMMISSIONER MAGGIORE: I have no
25 comments or questions on the consent agenda. I

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2 wouldn't have questions anyway. I have no comments
3 on the consent agenda. I'll vote for the entire
4 consent agenda.

5 CHAIR CHRISTIAN: Thank you.

6 Commissioner Bright?

7 COMMISSIONER BRIGHT: Thank you. I
8 have no comments on the consent agenda. I will be
9 voting for the full consent agenda. Thank you.

10 CHAIR CHRISTIAN: Thank you.

11 Commissioner Sheehan?

12 COMMISSIONER SHEEHAN: Yes, I will be
13 recused from items 375 and 376 on the con -- consent
14 agenda, and I have no questions on the remaining
15 items.

16 CHAIR CHRISTIAN: Noted. Thank you.

17 And Commissioner Valova?

18 COMMISSIONER VALOVA: No questions or
19 recusals.

20 CHAIR CHRISTIAN: Thank you. We'll do
21 a call for a vote. My vote is in -- my vote is in
22 favor of the recommendations on the consent agenda.
23 Commissioner Valesky, how do you vote?

24 COMMISSIONER VALESKY: I vote yes on
25 all items.

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2 CHAIR CHRISTIAN: Commissioner

3 Maggiore?

4 COMMISSIONER MAGGIORE: I also vote
5 yes on all items.

6 CHAIR CHRISTIAN: Commissioner Bright?

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

9 CHAIR CHRISTIAN: Commissioner
10 Sheehan?

11 COMMISSIONER SHEEHAN: Yes, on all
12 items with the exception of items 375 and 376 from
13 which I am recused.

14 CHAIR CHRISTIAN: Thank you. And
15 Commissioner Valova?

16 COMMISSIONER VALOVA: Yes, on all
17 items.

18 CHAIR CHRISTIAN: Thank you. The
19 items are approved and the recommendations are
20 adopted. Madam Secretary, is there anything else to
21 come before the Commission today?

22 SECRETARY PHILLIPS: There is nothing
23 more.

24 CHAIR CHRISTIAN: Thank you very much.
25 And with that, I adjourn. Thank you, everyone.

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(Off the record.)

(The meeting concluded at 02:07 p.m.)

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2 STATE OF NEW YORK

3 I, Danielle Christian, do hereby certify that the
4 foregoing was reported by me, in the cause, at the time
5 and place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 167, is a true record of all
8 proceedings had at the hearing.

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

11

12

13 Danielle Christian, Reporter

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