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12/19/2024 - Monthly Meeting

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

MONTHLY MEETING

Thursday, December 19, 2024

10:33 a.m. until 12:30 p.m.

ESP, Building 3, 19th Floor Boardroom

Albany, New York

COMMISSIONERS:

RORY M. CHRISTIAN, Chair

COMMISSIONER JAMES S. ALESI

COMMISSIONER JOHN B. MAGGIORE

COMMISSIONER UCHENNA S. BRIGHT

COMMISSIONER DENISE M. SHEEHAN

COMMISSIONER RADINA R. VALOVA

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2 (The meeting commenced at 10:33 a.m.)

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

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

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

15 COMMISSIONER ALESI: Present.

16 CHAIR CHRISTIAN: Commissioner John
17 Maggiore?

18 COMMISSIONER MAGGIORE: Present.

19 CHAIR CHRISTIAN: Commissioner Uchenna
20 Bright?

21 COMMISSIONER BRIGHT: Present.

22 CHAIR CHRISTIAN: Commissioner Denise
23 Sheehan?

24 COMMISSIONER SHEEHAN: Present.

25 CHAIR CHRISTIAN: Commissioner Radina

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2 Valova?

3 COMMISSIONER VALOVA: Present.

4 CHAIR CHRISTIAN: Thank you. Before
5 we turn to the regular agenda, do any commissioners
6 wish to recuse from voting on item 101, 201 or 301?
7 Commissioner Alesi?

8 COMMISSIONER ALESI: No.

9 CHAIR CHRISTIAN: Thank you.
10 Commissioner Maggiore?

11 COMMISSIONER MAGGIORE: No.

12 CHAIR CHRISTIAN: Thank you.
13 Commissioner Bright?

14 COMMISSIONER BRIGHT: No.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Sheehan?

17 COMMISSIONER SHEEHAN: No.

18 CHAIR CHRISTIAN: Thank you.
19 Commissioner Valova?

20 COMMISSIONER VALOVA: No.

21 CHAIR CHRISTIAN: Thank you. We now
22 move to the regular agenda. Our first item for
23 discussion item 101, case 23-G-0627, which addresses
24 the National Fuel Gas rates. It'll be presented
25 today by Judge Michael Clarke and Judge Tara Kersey.

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2 Dakin Lecakes, Aric Rider, Brandon Goodrich and Jeff
3 Hogan are all available for questions.

4 A.L.J. CLARKE, please begin.

5 A.L.J. CLARKE: Good morning, Chair
6 Christian, Commissioners. My name is Michael Clarke.
7 I was assigned to preside over this proceeding with
8 Administrative Law Judge Tara Kersey.

9 Item 101 is a draft order that would
10 approve with minor modifications that I'll expand on
11 shortly. A joint proposal that establishes a three-
12 year rate plan for the National Fuel Gas Distribution
13 Corporation for the time period running from October
14 1st, 2024 through September 30th, 2027.

15 The J.P. is signed by N.F.G., D.P.S.
16 staff, Multiple Interveners, I.B.E.W. Local Union
17 2199, and I.B.E.W. Local Union 2154. The Department
18 of State's Utility Intervention Unit did not sign the
19 J.P., but does not oppose it.

20 The Public Utility Law Project or
21 PULP, the National Resources Defense Council and the
22 Alliance for a Green Economy, AGREE, raised various
23 arguments and opposition to the J.P., most of which
24 have already been rejected by the Commission in
25 recent utility rate proceedings.

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2 These arguments include that a fixed
3 R.O.E. during the term of the rate plan is against
4 the public interest, that the J.P. includes excessive
5 investments in traditional gas infrastructure, and
6 that the J.P. impermissibly allows the company to
7 charge ratepayers for political activity aimed at
8 undermining New York's climate goals.

9 As background, N.F.G. commenced this
10 proceeding in October, 2023, seeking an \$88.8 million
11 increase in base delivery revenues driven by higher
12 O. and M. expenses, inflation, and heightened
13 regulatory requirements among other things.

14 Testimony from D.P.S. staff and
15 interveners was submitted in March, 2024, with staff
16 recommending a \$34.5 million increase or
17 approximately \$54 million less than was requested by
18 the company. Shortly thereafter, N.F.G. filed a
19 notice of impending settlement discussions, which
20 continued through the spring and summer and
21 culminated with the filing of the J.P. on September
22 9th.

23 An evidentiary hearing was held on
24 October 29th at which almost 600 exhibits were
25 entered into the record and agreed conducted cross-

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2 examination of a witness panel comprised of
3 representatives from N.F.G. and staff.

4 As I indicated earlier, the J.P.
5 establishes a three-year rate plan running from
6 October 1st, 2024 through September 30th, 2027 with
7 new rates becoming effective on January 1st, 2025,
8 subject to a make-whole provision that allows N.F.G.
9 to recover rates for the three-month period from
10 October 1st until December 31st, 2024.

11 On an un-levelized basis, the J.P.
12 adopts increases of \$57.3 million in rate year one,
13 \$15.8 million in rate year two, and \$12.7 million in
14 rate year three. To minimize the impact of their
15 first-year rating increase on ratepayers, however,
16 the J.P. would levelize the increases to \$37.1
17 million in rate year one, 34.7 million in rate year
18 two and 35.6 million in rate year three.

19 On a total bill basis, this results in
20 4.42 percent increases in all three rate years. The
21 order rejects arguments from the opposing parties
22 that the rate increases are too high with one
23 significant reason being that this is N.F.G.'s first
24 rate increase since 2017 and only its second since
25 2007.

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2 Both of those proceedings resulted in
3 fully litigated rate orders with the Commission
4 approving a \$1.8 million increase in 2007 and a \$5.9
5 million increase in 2017. The Commission performed
6 one additional review of N.F.G.'s rates in 2014 when
7 it initiated its own proceeding due to concerns that
8 the company may have been over earning.

9 At the conclusion of that proceeding,
10 the Commission approved to J.P. that froze rates at
11 the 2007 levels and provided N.F.G. customers with a
12 \$7.5 million refund. The company's \$15.54 cents
13 minimum monthly charge has remained constant since
14 2007, as has largely the delivery portion of the
15 average residential customer's bill, which was \$38.81
16 cents in 2008 and \$38.86 cents in 2023.

17 In contrast, inflation has risen
18 approximately 24 percent since 2017 and the company's
19 cost to remove one mile of leak-prone pipe have grown
20 by 56 percent in the last 6 years. These costs are
21 likely to grow even higher as a result of the New
22 York State Roadway Excavation Quality Assurance Act,
23 which was enacted in September, 2023 and subject
24 certain contractors who perform work for N.F.G. to
25 prevailing wage requirements.

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2 It is nevertheless notable that even
3 with the increases proposed in the J.P., N.F.G.s
4 monthly delivery charges will be among the lowest in
5 the State. Excuse me. The J.P. allows a 9.7 percent
6 R.O.E. and a 48 percent common equity ratio for all
7 three rate years, which is the product of a
8 settlement compromise and falls within the range of
9 the 9.8 percent proposed by the company and the 9.25
10 percent recommended by staff.

11 Further, the proposed R.O.E. is
12 reasonable given the economic environment at the time
13 the J.P. was signed by the parties and filed, which
14 reflected higher return requirements than when staff
15 initially filed its testimony.

16 While PULP continues to advocate in
17 favor of an R.O.E. that is updated annually, the
18 Commission has recently observed that a settled fixed
19 R.O.E. permits rates to be set over multiple years
20 without the risk of year-to-year fluctuations and
21 thus protects ratepayers from being exposed to the
22 volatility of frequent rate changes.

23 A fixed R.O.E. also allows the company
24 to borrow money on favorable terms as it supports the
25 company's credit ratings, and it incentivizes the

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2 company to create cost efficiencies and productivity
3 gains that may lead to lower costs, which can then be
4 reflected in future rates.

5 The J.P. includes an earning sharing
6 mechanism that acts as a safeguarding against
7 potential excessive over earning, and ensures that
8 ratepayers share in any efficiency gains realized by
9 the company. It's triggered if the N.F.G.'s actual
10 return exceeds 10.20 percent.

11 The J.P. supports plan -- planned gas
12 capital budgets of \$120.9 million in rate year one,
13 120.0 million in rate year two, and 121.5 million in
14 rate year three. Figures that fall within the range
15 of possible outcomes in a litigated proceeding and
16 there are actually very near staff's initial
17 position.

18 The order accordingly agrees with the
19 signatory parties that these budgets are reasonable
20 and necessary to ensure the company's continued
21 provision of safe, reliable, and adequate gas
22 service.

23 Additionally, as part of its annual
24 review of proposed capital projects, the J.P.
25 requires the company to consider non-pipes

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2 alternatives or N.P.A.s., in accordance with its
3 N.P.A. suitability and criteria process and document
4 that consideration including reasons for pursuing or
5 not pursuing an N.P.A. for each -- for each
6 particular project.

7 Turning to leak-prone pipe, the
8 company began its systematic removal program in the
9 1990s, identifying and prioritizing the removal of
10 various types of pipe prone to leaking, some of which
11 was installed in the 1800s.

12 Since commencement of the program,
13 N.F.G. has eliminated about 3000 miles of leak-prone
14 bare steel, cast iron, and wrought iron mains leading
15 to a 69 percent reduction in annual greenhouse gas
16 emissions from its gas distribution system.

17 The company's remaining approximately
18 1200 miles of leak-prone pipe, about 90 percent of
19 which is more than 60 years old is nonetheless the
20 15th most of the more than 1,330 gas operators in the
21 nation. And the Commission has previously stated
22 that its continued removal is an ongoing priority
23 until the inventory no longer exists.

24 Benefits to leak-prone pipe removal
25 extend beyond public safety and include improved

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2 system reliability and fewer interruptions, lower
3 overall leakage rates, and reduced operating
4 maintenance and overtime costs associated with
5 surveying leaks and responding to emergency reports.

6 The J.P. includes four distinct
7 programs directly related to managing emissions and
8 supporting C.L.C.P.A. requirements, a demand response
9 pilot program, hydrogen-related demonstration
10 projects targeted for hard to electrify industrial
11 customers, a deep shell retrofit weatherization
12 program, and hybrid heating demonstration projects
13 for small commercial customers.

14 Several other provisions in the J.P.
15 advance New York's climate goals, such as funding for
16 the installation of a solar array at the N.F.G.
17 Tonawanda Service Center to offset the Center's
18 electricity usage, funding for electric vehicle
19 charging stations to help phase in electric vehicles
20 for the company's fleet and moving toward flat blocks
21 rates.

22 The J.P. also allows -- excuse me, the
23 J.P. also allows N.F.G. to solicit purchases of
24 renewable natural gas and to implement a pilot
25 program for the purchase of reliably sourced gas with

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2 both provisions being narrow in scope and tailored to
3 protect customers from excessive or wasteful costs.

4 These provisions also require
5 information gathering and reporting that will provide
6 all stakeholders with valuable information regarding
7 the potential benefits of alternative fuel sources.

8 The J.P. includes several noteworthy -
9 - noteworthy customer service provisions, including a
10 performance incentive mechanism that subjects the
11 company to negative revenue adjustments, funding for
12 a new call center phone system, enhance --
13 enhancements to the company's energy affordability
14 program for low-income customers or E.A.P., and the
15 expansion of cold weather protections for residential
16 customers.

17 More specifically, the J.P.
18 establishes targets for four customer service
19 performance metrics; the P.S.C. complaint rate, the
20 call answer rate, the residential customer
21 satisfaction survey, and estimated bills which will
22 incentivize the company to provide customers with
23 accurate bills in a timely manner.

24 If the company fails to meet
25 applicable targets in any of these metrics, it is

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2 subject to negative revenue adjustments, which will
3 be held in deferral for the benefit of ratepayers.

4 The J.P. establishes an E.A.P. budget of \$12.8
5 million in all 3 rate years and includes provisions
6 for improving the company's process for assigning
7 customers to E.A.P. participant tiers.

8 In particular, the J.P. requires that
9 the company use the annual, OTDA home energy
10 assistance test guide and/or the New York HEAP State
11 Plan, whichever is most current, to update its
12 tiering logic as necessary.

13 Additionally, the signatory parties
14 acknowledge that a dispute exists regarding whether
15 the company properly assigned some customers to the
16 correct E.A.P. tier. The company has recently
17 submitted reports to the Commission concerning this
18 issue and indicated that it's provided credits to
19 certain customer accounts for various periods between
20 October 1st, 2021 and September 30th, 2024.

21 These submissions are currently under
22 review by staff who can revert -- refer any relevant
23 matters for future commission corrective action as
24 necessary. The J.P. merges two separate heating
25 equipment repair and replacement programs. One for

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2 elderly, blind, and disabled customers, and one for
3 low-income homeowners receiving HEAP benefits into a
4 single program to restore heat to homeowners who are
5 unable to replace or repair their primary heat
6 source.

7 The J.P. requires the company to apply
8 energy efficiency standards to the program to
9 determine whether installation of energy efficient
10 equipment can occur. The J.P. recognizes N.F.G.'s
11 partnership with Neighborhood Legal Services or
12 N.L.S., which provides free legal services to low-
13 income individuals and persons with disabilities.

14 \$55,000 in funding for all 3 rate
15 years will enable N.L.S. paralegals to assist
16 customers in obtaining valuable emergency assistance
17 or HEAP benefits preventing gas shutoffs or restoring
18 service.

19 The J.P. also requires that the
20 company reopen three walk-in customer assistance
21 centers in Buffalo, Cheektowaga, and Jamestown, which
22 were closed in connection with the COVID-19 pandemic.
23 And it provides that the company will expand the
24 avail -- availability of translated customer outreach
25 materials, explaining customer rights and

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2 responsibilities, safety, and bill assistance into
3 the top five non-English spoken languages in the
4 company's service territory.

5 The J.P. provides formal protection to
6 customers during the cold weather period between
7 November 1st and April 15th, ensuring that the
8 company will not disconnect service to residential
9 gas heating accounts identified as elderly, blind, or
10 disabled.

11 And on days when the local weather
12 forecast predicts a high temperature below 32 degrees
13 Fahrenheit, the company will cease all residential
14 collection disconnections.

15 Finally, while AGREE argues that the
16 J.P. ostensibly permits the company to charge
17 ratepayers for political activity, AGREE itself
18 acknowledges that purported costs associated with the
19 company's advocacy are not apparent from the joint
20 proposal and appendices.

21 The draft order nevertheless makes 3
22 minor modifications to the J.P. arising out of
23 AGREE's assertions and the company's statements with
24 respect thereto during the evidentiary hearing.

25 First, through its cooperative

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2 advertising program, the company has historically
3 provided funds to other companies including appliance
4 -- appliance dealers, contractors, and builders to
5 promote their natural gas equipment and services.
6 The draft order directs that the company shall not
7 use ratepayer funds in connection with this program
8 during the term of the rate plan.

9 Next, given the company's concessions
10 at the evidentiary hearing, that it tracks one
11 particular employee's advocacy related work only on
12 an annual basis, and that is unaware if other
13 employees are posting content that this employee
14 creates to social media.

15 The company must confirm that it has
16 reviewed the work performed by all employees to
17 determine who performs advocacy related tasks and
18 whether they have appropriately allocated their time
19 to the parent company.

20 If the cost of advocacy related work
21 were incorrectly included in the revenue requirements
22 of this proceeding, the company is directed to defer
23 that amount for future refund to customers.

24 Relatedly, the company is also
25 directed to include information regarding employee

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2 work time spent on advocacy related tasks when it
3 completes the reporting required pursuant to Appendix
4 O of the J.P., which will enable staff to determine
5 whether the company is properly charging the cost of
6 that time to the parent company.

7 In concluding that these additional
8 reporting requirements were necessary, consideration
9 was given to a recent investigation into the
10 company's political expenditures conducted by the
11 Department's Office of Investigation Enforcement or
12 O.I.E., as well as the company's implementation of
13 certain recommendations arising out of management and
14 operations audits.

15 Notwithstanding the minor
16 modifications to the J.P., however, it should be
17 noted that O.I.E. did not find any violations of the
18 Public Service Law, regulations or Commission orders
19 that warrant an enforcement action, and the
20 Department's office of accounting audits and finance
21 indicates that the company's audit efforts have
22 demonstrated recent improvement.

23 When reviewing a joint proposal on a
24 rate case, the Commission must ensure that its terms
25 enable the utility to provide safe, adequate, and

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2 reliable service at just and reasonable rates. The
3 Commission must also ensure that the settlement's
4 terms as a whole produce a result that is in the
5 public interest.

6 Factors considered in this analysis
7 include whether the terms appropriately balance the
8 interests of the utility's ratepayers, its investors,
9 and the company's long-term viability, produce
10 outcomes that may have arisen had the case been fully
11 litigated, whether such terms are consistent with the
12 social, economic, and environmental policies of the
13 Commission and the State, and whether they're
14 supported in the record.

15 In light of all of the above, we
16 believe that the J.P. satisfies these criteria. That
17 concludes our presentation and we available for any
18 questions you may have.

19 CHAIR CHRISTIAN: Thank you, Judge.
20 And thank you to the entire team involved in this
21 rate case. Each rate case is unique and this
22 uniqueness creates challenges for staff and
23 Commissioners alike because we have to look at not
24 just past actions and their outcomes and impacts, but
25 we also need to look at the cost and benefits of

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2 what's to come, the future actions.

3 And in performing this review as
4 emphasized by A.L.J. CLARKE, we must stay true to our
5 mandate of ensuring that ratepayers have access to
6 safe, secure, and reliable services, and just and
7 reasonable rates.

8 Now, in any rate case parties seek out
9 opportunities to advance positions, policies, for
10 specific outcomes. And these -- in these instances,
11 staff and the Commission evaluates these proposals as
12 part of the whole. And again, as A.L.J. CLARKE
13 pointed out, we incorporate or not based on how they
14 affect the whole and overall benefits.

15 Now, again, unique to this rate case
16 is also the fact that it's the first time they've
17 come for a rate case, N.F.G., to this Commission
18 since 2016, right? Almost a decade. It's a long
19 time. And I don't think any of the Commissioners
20 today, looking at you, Jim, were here around that
21 time.

22 And since that rate case, the rates
23 for N.F.G. have remained unchanged which is also
24 unique among the major utilities in New York State.
25 Again, a unique situation to N.F.G. Now, with the

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2 passage of time needs grow more significant.

3 And when you look at the Commission's
4 analysis, the estimated cost of service is what, I
5 believe, it's referred to as. Is that the right
6 terminology? The ECOS?

7 MR. ROSENTHAL: Embedded.

8 CHAIR CHRISTIAN: Embedded. Right.
9 Thank you. Embedded cost of service, thank you.
10 That actually supports a read -- a rate increase of
11 more than double for the minimum charge that we see
12 today. Now, I don't think such an action would be a
13 good thing.

14 I think it would have a very negative
15 impact on consumers and I want to applaud staff and
16 the stakeholders for negotiating the outcome we see
17 before us. I think where we are with the change in
18 minimum charges takes into consideration a passage of
19 time, the need for needed investments, and also not
20 unduly burdening ratepayers with excessive increases.

21 And so that the parties were able to
22 come to an agreement I think is something worth
23 noting and commending because it doesn't always
24 happen that way. So again, I want to commend staff
25 for their efforts of shepherding us through this rate

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2 case process.

3 I want to thank you for your
4 engagement with the utility, N.F.G., the
5 stakeholders, and others, and for ensuring that this
6 process is completed in an efficient and a timely
7 manner.

8 When I look -- again, when I look at
9 the record, I too agree, A.L.J. CLARKE examining the
10 positions of various parties and the outcomes as a
11 whole, I find this to be in the public interest. So
12 again, thank you for your hard work. Commissioner
13 Alesi?

14 COMMISSIONER ALESI: Thank you,
15 Chairman. I will be supporting this. It is -- I
16 should note at the outset, it is less than what was
17 initially requested, and I think that's a significant
18 issue to stress. Nevertheless, it does provide
19 essential customer service improvements that are safe
20 and reliable.

21 The prices are just and reasonable and
22 that is accomplished without litigation. So it
23 strikes a fair balance for ratepayers as -- as well
24 as shareholders. And based on today's detailed
25 presentation and very thorough briefings earlier this

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2 month I'll be voting yes on it and I can very
3 comfortably support the proposal. Thank you for your
4 efforts.

5 CHAIR CHRISTIAN: Thank you.
6 Commissioner Maggiore?

7 COMMISSIONER MAGGIORE: Thank you.
8 Thank you, A.L.J. CLARKE, for your presentation.
9 When I review a major rate case, I'm looking to see
10 if the process leading up to the order coming before
11 us has been transparent, participatory, and thorough.

12 I don't want to raise rates for
13 anyone, I don't think any of us do. So I'm looking
14 to see if there are miscalculations or unnecessary
15 cost recoveries. I'm also looking to see if the
16 order is consistent with the climate law, the
17 C.L.C.P.A.

18 In many respects, major rate cases are
19 the bread and butter of the agency. And to date, I
20 have not found a J.P. that falls short in these
21 respects. The same holds true with this one, which
22 in one sense is a positive testament to the thorough
23 and professional work of staff and the various
24 parties involved and the comprehensive nature of the
25 process.

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2 But in another sense is unfortunate
3 because I sure would lead -- like to be the one to
4 discover something that everybody else missed that
5 saves ratepayers money or further reduces the climate
6 impact of a natural gas utility.

7 But I don't see much room to maneuver
8 here, and I would like to ask you a series of
9 questions to either confirm or refute these
10 observations. So let me start with this. In your
11 presentation, you explained what the company asked
12 for in its initial petition and then what the end
13 result was.

14 Can you explain in a little more
15 detail some of what they asked for but then did not
16 get?

17 A.L.J. KERSEY: Commissioner, the un-
18 levelized rate year one increase is \$57 million.
19 That's \$31 million less than what the company had
20 requested, the 88 million that they had initially
21 requested. The largest component of the decrease was
22 O. and M. expenses, which represents \$24 million out
23 of the \$31 million decrease.

24 Decreases in pension and OPEP costs
25 were 15 million. Labor costs decreases were 3

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2 million, and customer processing fees were \$2.5
3 million. They were the largest drivers of the
4 decrease in O and M. expenses.

5 There was also a decrease in the rate
6 of return and depreciation expenses. The -- the
7 decrease in the rate of return was about \$4.7
8 million, and the decrease in depreciation expenses
9 was approximately \$2.3 million.

10 COMMISSIONER MAGGIORE: Okay, thank
11 you. So -- so on the flip side, can you walk us
12 through what some of the major drivers of the
13 increase were?

14 A.L.J. KERSEY: The major drivers of
15 the increase were depreciation expenses and O. and M.
16 expenses and the collection of previously incurred
17 regulatory deferrals.

18 COMMISSIONER MAGGIORE: Okay. So it
19 strikes me that we have absolutely no discretion over
20 some of the rate drivers. And then in other cases we
21 might have discretion over timing, but at the end of
22 the day, the company needs to recover costs for
23 either directly legally required expenses or expenses
24 that are incurred in order for the company to do
25 something that it's obliged to do.

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2 Can you give any examples of anything
3 left? I mean, you just walked us through some of
4 what was taken out, but anything that's remaining in
5 this J.P. that could have been cut out or what, you
6 know, approximately what percentage of what's left is
7 discretionary?

8 MR. HOGAN: Thanks. Commissioner,
9 I'll try and address that question. It's -- it would
10 be very difficult to quantify exact amounts that
11 could possibly be cut. I'd say that there's a single
12 digit percentage of the company's costs that wouldn't
13 be considered mandatory, required, statutory,
14 absolutely necessary to conduct its business.

15 You could get into discussions about
16 whether you know, 10 accounts are needed or 9
17 accounts, whether or not 4 percent raises versus 3.5
18 percent raises would -- would be enough to retain
19 employees and -- and ensure continued reliable
20 service by the utility.

21 It's really around the edges though,
22 in terms of what would be, I would say discretionary.
23 Is there a legal perspective you're looking at?

24 A.L.J. LECAKES: Commissioner, I'd
25 like to add a little bit from our perspective in the

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2 Office of Hearings because I think your question gets
3 a little bit more into a fundamental point about the
4 rate case process. From our perspective, there are
5 no costs or no specific examples of costs that are
6 discretionary.

7 So the way the rate case process works
8 is the company files testimony and says that it needs
9 a certain amount to meet its obligations to provide
10 safe and adequate service under the Public Service
11 Law.

12 The other parties, including our
13 department staff who are experts in their field, take
14 a look at the company's filing and review it to find
15 exactly what you're talking about, any discretionary
16 costs or costs that they think they think that have
17 been overestimated, things like that.

18 And they provide their own testimony
19 as to that what they think the right outcome is for
20 the company to provide safe and adequate service.
21 The case then either goes in one of two directions.

22 It goes fully litigated like the
23 recent Central Hudson one earlier this summer, which
24 was a fully litigated case where the Judges came
25 before you and provided their own review of the

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2 litigated record and said, this is what we think are
3 the absolute necessary costs to meet safe and
4 adequate service.

5 Here we have a joint proposal, we have
6 many of those. That's where the parties get together
7 based on the testimony that was filed and come to a
8 negotiated agreement where they say, we all agree
9 that these are the costs that are necessary to
10 continue to provide safe and adequate service for the
11 next 3 years, in this case, of the rate plan.

12 Then our judges take a look at that
13 and determine whether they agree that the rate plan
14 provides just and reasonable rates to meet that safe
15 and adequate charge. And they also look to make sure
16 that the rate plan itself is in the public interest.

17 And by coming before you, as even
18 A.L.J. CLARKE said in his presentation, our
19 representation is that as far as we're concerned,
20 these are mandatory costs required to meet their safe
21 and adequate charge.

22 COMMISSIONER MAGGIORE: Thank you. So
23 when A.L.J. CLARKE was saying that one of the reasons
24 for the rate hike was that National Fuel hasn't had a
25 rate increase since 2017. On an even more

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2 fundamental level, the reason that we're approving a
3 rate increase is because they have upcoming expenses
4 that they have to incur. Is that correct?

5 A.L.J. LECAKES: That's correct. A
6 lot of things have changed since that rate order in
7 2017. And A.L.J. CLARKE mentioned a few of them,
8 including inflation and -- and other things. We've
9 also had the COVID pandemic, which affected costs on
10 the supply chain for all industries.

11 Basically, the company took a look at
12 where it was relative to the rate plan it received in
13 2017, and it determined that in order to get its
14 constitutionally required return on its investment,
15 it needed to increase its cost and they filed a rate
16 case.

17 Staff ultimately looked at what the
18 filing was and agreed that there was some amount that
19 was necessary to continue to provide safe and
20 adequate service, to provide the constitutionally
21 required return, and came back with a -- a number.

22 It was less than the company, so they
23 disagreed with the amount that the company had
24 requested. But all the parties in this case provided
25 testimony that -- that went to the programs proposed

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2 by the company that said there is some amount of rate
3 increase that is required here.

4 COMMISSIONER MAGGIORE: Okay. All
5 right. Thank you. So I'm going to turn to some of
6 the feedback we've received through comments by
7 parties and members of the public through the public
8 comment process. And I'm going to characterize it in
9 my -- this is my language because I'm trying to
10 characterize a thread of comment that National Fuel
11 should be spending less on infrastructure.

12 And the -- the argument goes along the
13 lines that the climate law, the C.L.C.P.A. requires
14 that the State get off natural gas by a point in time
15 and that National Fuel should essentially be planning
16 to shrink or even shut down. Can you explain the
17 obligation to serve? What -- what is that?

18 A.L.J. LECAKES: Absolutely. So in
19 New York, gas companies, electric companies, the
20 utilities are required to serve customers. And for
21 gas utilities, the statutory obligation comes from
22 transportation, corporate -- Corporation Law Section
23 12 for non-residential customers and from Public
24 Service Law, Section 31 subsection(4) for residential
25 customers.

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2 To enforce these requirements of the
3 Commission's gas regulations on a Part 230 and
4 specifically 16 N.Y.C.R.R. 230.2, obligate gas
5 companies to connect and provide service to any
6 customer who requests such service as long as the
7 requesting customer meets certain basic conditions.

8 The utility does not have the right to
9 turn down a request where it has been granted a
10 franchise by a local municipality under normal
11 circumstances. Where there is a lot of history
12 behind this there -- it can most succinct be --
13 succinctly be summarized by the recognition that a
14 franchise generally provides the utility with the
15 right to act as a legal monopoly provider in return
16 for accepting the legal obligation to provide service
17 to anyone who needs and wants essential utility
18 service.

19 And just in conclusion, I want to note
20 that the C.L.C.P.A. doesn't negate other statutory
21 requirements regarding the Commission's oversight of
22 utilities or their provision of service.

23 COMMISSIONER MAGGIORE: Okay, thank
24 you. So along those lines, there's a term that
25 you've used and A.L.J. CLARKE used and, you know,

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2 people that listen to these sessions here all the
3 time, safe, reliable, and adequate service. That
4 term comes out of the law, doesn't it?

5 A.L.J. LECAKES: Yes, it -- it comes
6 for gas utilities from Public Service Law, Section
7 65, which requires the utilities to provide safe and
8 adequate service. And there's a century and more of
9 legal precedent both by Utility Commissions across
10 the United States as well as federal courts and --
11 and Commissions that define adequate as reliable
12 service, service to meet the expectations of the end
13 users who use that service.

14 COMMISSIONER MAGGIORE: Okay. So my
15 next question is trying to get at whether or not
16 either that provision or law -- of law or the
17 obligation to serve contradicts the C.L.C.P.A. Does
18 the C.L.C.P.A. ban natural gas, or mandate that
19 utilities shut down the provision of natural gas, or
20 prohibit customers from using natural gas?

21 A.L.J. LECAKES: No, it doesn't.

22 COMMISSIONER MAGGIORE: Does
23 C.L.C.P.A. do any of it?

24 A.L.J. LECAKES: It -- it does not.

25 COMMISSIONER MAGGIORE: It doesn't,

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2 okay.

3 A.L.J. LECAKES: And the rate plan
4 itself that we've -- are proposing or -- or
5 supporting here today doesn't contradict the
6 C.L.C.P.A. And the Public Service Law also doesn't
7 contradict the C.L.C.P.A. So under the law, the
8 legislature is presumed by the courts to know all the
9 laws that exist that go to the same targeted subject
10 area.

11 The C.L.C.P.A. and the Public Service
12 Law arguably have some overlap. But that doesn't
13 mean that they're contradictory. It's just that the
14 Commission's obligation is to balance those laws and
15 figure out how they work together and what the
16 Commission ultimately decides on that is subject to
17 review by the courts. But there is no contradiction.

18 COMMISSIONER MAGGIORE: Okay. So just
19 staying with the C.L.C.P.A., we -- we've also
20 encountered a line of argument that, again, this is
21 my characterization, so I hope I'm not
22 mischaracterizing somebody's point.

23 That the C.L.C.P.A. is one of the
24 leading reasons why rates in this case, or other
25 utility cases are going up. Would you say that the

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2 C.L.C.P.A. is one of the major drivers of the rate
3 increases here?

4 A.L.J. LECAKES: So --.

5 COMMISSIONER MAGGIORE: The rate
6 increase here?

7 A.L.J. LECAKES: No, I -- I don't
8 think it is. And earlier A.L.J. KERSEY mentioned the
9 rate drivers in response to one of your questions,
10 she did not --

11 COMMISSIONER MAGGIORE: Yeah.

12 A.L.J. LECAKES: -- mention the
13 C.L.C.P.A. It's not a major driver of the cost
14 increases themselves as it doesn't require anything
15 different than what the Public Service Law requires,
16 as I just said, to -- to maintain safe and adequate
17 service.

18 What it does is it may influence the
19 way we interpret safe and adequate service, or the
20 way staff, when it does its review, looks at some of
21 the programs proposed by the company, or even the
22 company itself, when it comes in for its rate filing,
23 looks at the filing that it's going to make.

24 So there's some influence that it
25 exerts over the direction that the utilities are

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2 taking over the short and long term. But it itself
3 is not a major driver of the rate increases.

4 COMMISSIONER MAGGIORE: Okay, thank
5 you. Now in, in A.L.J. CLARKE's presentation, he
6 mentioned four programs related to managing emissions
7 that support the C.L.C.P.A. Are any of those
8 projects specifically required by the C.L.C.P.A.?
9 Would any not exist, but for the C.L.C.P.A.?

10 A.L.J. CLARKE: Commissioner, excuse
11 me. They're not required by the C.L. -- C.L.C.P.A.
12 But as you suggested, they support the goals of the
13 C.L.C.P.A.

14 COMMISSIONER MAGGIORE: Yeah.

15 A.L.J. CLARKE: It's difficult to
16 answer whether or not they would exist. They do have
17 benefits beyond the C.L.C.P.A.; weatherization is
18 good for efficiency. Hydrogen -- hydrogen or hybrid
19 heating programs perhaps would be investigated as
20 innovative measures to create a more efficient gas
21 system.

22 And just so you're aware, none of
23 those four actually have high dollar amounts
24 associated with them. The hydrogen --

25 COMMISSIONER MAGGIORE: Yeah.

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2 A.L.J. CLARKE: -- demonstration
3 project is \$185,000 in each of the three rate years.
4 Hybrid heating is 51,000, weatherization is 55,000.
5 And the Demand Response Program provides funding for
6 one full-time employee. So that's essentially 1
7 percent of the \$37 million levelized increase.

8 COMMISSIONER MAGGIORE: Okay. Thank
9 you. So just final question, you know, and staying
10 on this topic. As I read this order, I, you know, I
11 do think I agree with you. I agree with A.L.J.
12 LECAKES that this order is consistent with the
13 C.L.C.P.A.

14 And I do think that there are
15 provisions that are in response to the C.L.C.P.A. and
16 to, you know, and something that sticks out to me are
17 the -- that the J.P. brings a couple of economic
18 development programs, the A.D.P. and the Prime
19 Economic Development Program, more in line -- more in
20 alignment with the C.L.P.C.A.'s clean energy
21 objectives. Can you just explain how we do that with
22 those two programs?

23 A.L.J. CLARKE: Yes. So this was a --
24 a provision insisted upon by staff that the company
25 modified both of those programs. Any applicant

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2 seeking funding through one of those programs will
3 have to demonstrate that they have conducted an
4 N.P.A. analysis in order to be awarded any kind of
5 grant or -- or loan.

6 The company's review will con--
7 consider technical feasibility, cost effectiveness,
8 impact on the initial project scope, impact on safety
9 and reliability, and the impact on greenhouse gas
10 emissions.

11 COMMISSIONER MAGGIORE: Okay. Thank
12 you. So that's it for my questions. Thank you for
13 spending so much time with me on this. I, you know,
14 on -- on the C.L.C.P.A.s in -- in particular, I do
15 think that this order is consistent with the
16 C.L.C.P.A. for all the reasons that you explained.
17 And thank you for doing that.

18 I do think that the C.L.C.P.A.
19 affected the outcome but is not a major cost driver
20 in this case. And you know, I am -- you know, I'm
21 convinced the presentation has been persuasive that
22 what could be, you know, siphoned off the initial --
23 the company's initial request has been and what's
24 left is -- is -- is necessary and required by law.

25 So I'm going to vote yes because I

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2 don't see a responsible alternative for doing
3 otherwise. Thank you very much.

4 CHAIR CHRISTIAN: Thank you.
5 Commissioner Bright?

6 COMMISSIONER BRIGHT: Thank you,
7 Chair. Thank you so much for the presentation. It
8 is very difficult to vote yes on a rate increase, and
9 there are so many factors to consider. So I truly
10 appreciate all of your hard work and all the work
11 that's been done here.

12 As you mentioned, this is the
13 company's first increase in seven years, but also the
14 settlement includes a number of investments that are
15 not just about labor -- increased labor costs which
16 are, of course important, but that are -- that I felt
17 like were more directly tied to things that benefit
18 the individual customers that are paying the rates.

19 So I wanted to call out a couple and
20 then maybe have you talk about a few as well. So you
21 did mention that the J.P. supports the continuation
22 of the free legal -- legal assistance program, and
23 that these funds are going to be dedicated to
24 ensuring people receive direct legal representation
25 when facing shutoffs or when in need of other

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2 emergency services.

3 And I also wanted to note, and I think
4 you noted as well, that the legal firm that is going
5 to be doing this work is local and specializes in
6 giving legal aid to low-income New Yorkers within the
7 company service territory which I thought was really
8 important.

9 And I'm hoping you can talk about a
10 couple of the other programs in this J.P. The one I
11 just spoke about was a continuation of a program. So
12 I think it was just like maybe \$5,000 more for this
13 year than it was last -- for \$5,000 more than it was
14 in the last rate plan.

15 But the methane detector installation
16 program and then you mentioned a little bit about the
17 enhanced cold weather protection program. These --
18 these were expanded programs, they existed already
19 and then were expanding. Could you just talk a
20 little bit about the expansion of these programs?

21 A.L.J. CLARKE: Residential -- the
22 residential, excuse me, sorry. The residential
23 methane program, I think has distributed about 3,000
24 detectors so far. And it's going to expand to
25 102,000 by the end of the rate plan.

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2 It's targeted to vul -- vulnerable
3 constituencies, the elderly, disabled, blind, perhaps
4 people who may have difficulty recognizing that
5 there's a leak or knowing what to do about it. So
6 that's -- that's that program.

7 A.L.J. KERSEY: As far as the cold
8 weather protections, PULP in its initial testimony
9 had proposed expansion of the company's cold weather
10 protections. And the J.P. adopted many of those
11 proposals with certain modifications.

12 It basically formalizes what in many
13 instances the company was doing, but it provides
14 formalized protections that the company agrees to do,
15 which includes during the coldest months of the year,
16 November through mid-April.

17 The company would accept all HEAP
18 payments that for active customers and pledges, where
19 those HEAP pledges covered at least half the amount
20 due and would enter into deferred payment agreements
21 with residential customers who had received and
22 utilized all of their regular or emergency HEAP
23 pledges during the current plan year, even if there
24 had been a default previously on that which is a -- a
25 -- a real protection.

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2 It wouldn't schedule residential con -
3 - disconnections on days when the temperature was
4 predicted to fall below freezing temperature or
5 certain winter storm alerts were in effect. And
6 also, disconnections wouldn't occur for certain
7 vulnerable populations.

8 COMMISSIONER BRIGHT: Thank you for
9 just going over those a little bit more. And I think
10 that especially as we go into winter very, very
11 important programs to expand. So thanks for -- for
12 talking a little bit more about those.

13 A couple of the other things I wanted
14 to touch on. There were some operational
15 efficiencies and analysis that are wrapped into this
16 J.P. So you mentioned sort of the energy
17 affordability program and looking at the different
18 tiers and making sure that people are properly
19 classified, so they are getting their benefits.

20 I wanted to also mention the -- that
21 the company is reassessing the base cost of gas
22 charge that is embedded in the delivery rates. But
23 then you touched on a little bit, and just to touch
24 on a little bit more that there's money dedicated to
25 the way the company is interfacing with their

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2 customers, so the call center, the -- the customer
3 service portal, and the reopening of the customer
4 assistance centers.

5 So can you -- and just could you talk
6 a little bit more about how these components might
7 simplify the customer experience but also go a little
8 bit over the metrics, which you did touch on earlier
9 that are outlined in this order that help us keep
10 track of if we are actually simplifying the customer
11 experience and improving the company's customer
12 service system.

13 A.L.J. CLARKE: Well, certainly the --
14 the reopening of the customer assistance centers is
15 going to -- going to provide people with an in-person
16 dialogue. Some low-income customers might not have
17 access to -- to an internet communication.

18 So that will just enhance the customer
19 service provisions for the company and the customers
20 portal is actually a work in progress. But the goal
21 is to create efficiencies for the company so that the
22 actual customer service representatives can focus on
23 emergencies.

24 And it will also enhance customers'
25 abilities to take care of things by themselves. So

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2 it's an efficiency measure as much as a customer
3 service measure.

4 A.L.J. KERSEY: The -- the customer
5 service performance indicators, that -- that's a big
6 component. There are four -- four metrics that the
7 P.S.C. customer complaint rate or call answer rate,
8 residential customer satisfaction survey, and
9 estimated bills.

10 These are four different metrics that
11 will be -- be tracked. And along with those is the
12 imp -- re-implementation, I guess we would say, of
13 negative revenue adjustments which is a, a
14 substantial change in this J.P. with respect to those
15 components that will provide benefits to customers.

16 And also, the company is expanding its
17 outreach and education programs. And we touched on
18 that a bit with the language access, but in general,
19 they're working to expand their customer outreach.

20 COMMISSIONER BRIGHT: Thank you. And
21 I look forward to reading those performance reports.
22 I know that we will be getting those that we get
23 those regularly every year. So I wanted to call out
24 a couple of C.L.C.P.A. provisions that I appreciated
25 in this J.P.

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2 One was the adjusting the economic
3 development programs as Commissioner Maggiore also
4 mentioned to be aligned with the C.L.C.P.A. goals
5 ensuring that the economic development programs,
6 which were the area development program and the
7 partnership to revitalize the Industrial
8 Manufacturing Economy programs or the Prime program.

9 Ensuring that these programs are
10 considering the C.L.C.P.A. and our State's emission
11 reduction goals when propose -- when projects are
12 proposed, I -- I thought was great. And A.L.J.
13 KERSEY, you just to touched on the outreach, which in
14 this J.P. I sort of appreciated that -- well, that
15 there was a focus on disadvantaged communities.

16 So I -- I, you know, one of the things
17 about the -- that I remark often about how important
18 the C.L.C.P.A. is for a ton of different reasons, but
19 one of the reasons that always sort of rises to the
20 top is the emphasis the C.L.C.P.A. had on doing --
21 the C.L.C.P.A. had on doing a thorough assessment of
22 what a disadvantaged community is and where they are
23 located across the State.

24 And then built into the C.L.C.P.A. are
25 intentional ways of ensuring disadvantaged

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2 communities are not only not being disproportionately
3 impacted by our actions, but that they get at least
4 35 percent of the benefits of the State's climate
5 actions.

6 So I'd love to just hear a little bit
7 more, because I didn't see -- so like I saw in the
8 J.P. that they were talking about doing more outreach
9 that's specific for disadvantaged communities but was
10 a little unclear on what that outreach exactly might
11 be.

12 A.L.J. KERSEY: I think one of the
13 interesting things in this J.P. was that the
14 signatory parties acknowledged -- thank you, that the
15 company had demonstrated expansion of outreach to
16 disadvantaged communities, and so that they -- they
17 had been being successful in that area.

18 I think what's -- what's going on
19 right now, particularly they're continuing to review
20 their work, they're expanding their language access
21 to make sure that the most critical and not just --
22 not just examining it, but actually moving forward on
23 their language access to, I believe, the five most --
24 most utilized languages in the -- in the area and
25 providing all of their most critical materials in

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2 those languages.

3 And then I believe that there's
4 expansion work in their multimedia campaigns and just
5 making sure that they're getting all of their most
6 critical documents out to the most necessary
7 populations.

8 A.L.J. CLARKE: I -- I think many of
9 the things that we've described as customer service
10 provisions are also dedicated to the disadvantaged
11 communities, and the outreach is intended to make
12 these communities aware of the efforts that the
13 company is engaging to provide them with all kinds of
14 services. So it's -- it's educational as much as
15 customer service.

16 COMMISSIONER BRIGHT: So maybe even on
17 efficiency programs --

18 A.L.J. CLARKE: Yes.

19 A.L.J. KERSEY: Yes.

20 COMMISSIONER BRIGHT: -- or more
21 efficient things like that. Okay.

22 A.L.J. KERSEY: And also, just their
23 general outreach as to what's going on and where
24 they're -- one of the big things that they were
25 moving forward was their infrastructure and outreach

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2 programs to make sure that when projects are going on
3 that just might affect different communities, that
4 all of the people in those communities are made aware
5 of what's happening.

6 COMMISSIONER BRIGHT: Yeah.

7 A.L.J. KERSEY: Which just improves
8 daily life.

9 COMMISSIONER BRIGHT: Yeah. Yeah.

10 Well, thank you so much to the team for all your hard
11 work. And that was all of my questions. Thank you.
12 I'll be supporting this item.

13 CHAIR CHRISTIAN: Thank you. Thank
14 you. Commissioner Sheehan?

15 COMMISSIONER SHEEHAN: Thank you,
16 Chair. As usual, when you get to me, I've heard a
17 lot of really -- people have wonderful comments and
18 really great questions. So I -- I really support and
19 concur with many of the comments that my fellow
20 Commissioners have made.

21 I want to thank A.L.J. CLARKE and
22 Judge -- A.L.J. KERSEY, staff, and the parties for
23 their work on this case. I, like, my fellow
24 Commissioners, I do look at the comments from the
25 parties that sign on as well as the ones that don't,

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2 and just to see, you know, why somebody, why a party
3 didn't sign on.

4 So I did pay particular attention to
5 that. But on the whole, I do think that the J.P. and
6 the order are -- are put -- are -- I'm supportive of
7 on the whole. So there are five specific reasons why
8 I -- you know, five key elements to this order that I
9 think are worth noting and why, you know, for me, it
10 kind of rose to the top.

11 First is the increased emphasis on the
12 non-pipe alternatives, which is really pretty much a
13 new thing for this company to be really focusing on,
14 that this -- not -- that the N.P.A.s are something
15 that they will be needing to consider when they
16 evaluate capital projects, and that's also that it's
17 embedded in the economic development programs.

18 The second is the expanded leak-prone
19 pipe replacement program, which does also have an
20 impact on reducing emissions. So I think that's
21 really notable. And when you look at this in the
22 whole, especially in relation to the C.L.C.P.A.

23 The third is the C.L.C.P.A. programs
24 that are specifically included in the J.P. demand
25 response pilot program, the hydrogen demo project,

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2 the hybrid heating demo projects. Fourth is the
3 customer service enhancements, especially the energy
4 affordability program and the cold weather -- cold
5 weather protections program.

6 And then fifth is the -- and you know,
7 is the additional protection, ensuring that ratepayer
8 funds aren't going to be used for advocacy related
9 work, which frankly, I don't think we should ever
10 have to say; it should just be.

11 But you know, obviously it was raised
12 by -- an important point raised by a party, and I'm
13 happy to see that we're -- we're including that in
14 the order. The -- the one thing that I am just
15 curious about, because there are so many new things
16 in this and I think this might be a Jeff Hogan
17 question, is in relation to -- because a lot of this
18 is new and there's new criteria and or expanded
19 programs is -- for me, it's the implementation,
20 right?

21 So now the -- the part will be, these
22 programs being implemented, these key provisions and
23 how we monitor that they're actually complying with
24 these new provisions and you know, ensuring the
25 oversight that they're being implemented properly.

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2 MR. HOGAN: Sure. I think the -- the
3 primary way we do that is we have so many different
4 divisions here that have specialties. So our
5 customer service staff will be overseeing specific
6 areas that impact customers, right?

7 Obviously, if there's other changes
8 that are going on, we have other -- we have other --
9 if it's construction related our engineers will be
10 closely looking at it. But we also have our
11 management audit process.

12 And so when we have -- we've -- we've
13 now done -- we're completing our third cycle of our
14 major comprehensive management audits of companies.
15 And we've -- we've looked at sort of the basics a
16 couple times now.

17 But as we get into the next round of
18 management audits, we can look at -- we're looking at
19 things where things have changed, where -- where the
20 company's made an organizational change, there's new
21 programs and making sure that things are going well.

22 So our management audit process will
23 also be providing that oversight. It's not what I
24 would call timely because it's every few years, but
25 that's sort of a backup to our -- to our bread-and-

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2 butter daily oversight.

3 COMMISSIONER SHEEHAN: Uh-huh. Okay.

4 so just in general, to wrap up, I do think on the
5 whole, the J.P. ensures safe, adequate, reliable
6 service at just and reasonable rates, and I'll be
7 supporting it.

8 CHAIR CHRISTIAN: Thank you.

9 Commissioner Valova?

10 COMMISSIONER VALOVA: Yes. Thank you
11 so much. And I echo Commissioner Sheehan's
12 sentiments that at the end of the line, I have a lot
13 to agree with and concur and appreciate my
14 colleagues' questions and comments.

15 I too feel that under the governing
16 standard of review as a whole the J.P. produces a
17 result that is in the public interest and within the
18 likely outcomes of a litigated proceeding.

19 I do have one area that in the future,
20 I think, I -- I would like to see handled
21 differently. The joint proposal includes what I
22 think are good questions that would be provided in a
23 survey to contractors who supply responsibly sourced
24 gas.

25 And A.L.J. CLARKE, you had mentioned

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2 that these questions or the responses to these
3 questions will provide the Commission and other
4 stakeholders with helpful information to allow us to
5 evaluate whether procuring responsibly sourced gas is
6 aligned with the C.L.C.P.A.

7 To -- to my knowledge, as far as I'm
8 aware, the Commission hasn't gathered this kind of
9 data on responsibly sourced gas before. I -- I don't
10 know if -- if you know that answer.

11 A.L.J. LECAKES: That's correct. We
12 have some programs in place right now that are
13 starting to collect that information with other
14 utilities. KeySpan Energy, which was here earlier on
15 a joint proposal earlier this year.

16 But it's still kind of an evolving
17 area, so we are gathering that information now. But
18 the more information we can gather without
19 overburdening any one utility's customer base, while
20 we get that information, you know, is beneficial, so.

21 COMMISSIONER VALOVA: Yeah. Thank
22 you. That's -- that's helpful. I think in the
23 future it would be helpful to have this information
24 before we allow any cost recovery for responsibly
25 sourced gas.

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2 I think if we want to ensure that this
3 procurement is aligned with -- with the C.L.C.P.A.
4 especially if the information would be received in
5 the form of a survey, that information could be, for
6 example, required as part of an R.F.P. solicitation
7 response.

8 That would enable the company and you
9 know, the -- the Commission if our R.F.P. responses
10 are public, which I'm -- I'm not sure if they would
11 be, to make a determination of alignment with -- with
12 the C.L.C.P.A.

13 With -- with that relatively minor
14 wish for how we approach this issue going forward,
15 again, I feel that as a whole, the joint proposal is
16 in the public interest, and I appreciate staff --
17 staff's great work on this case and all of the effort
18 that all of the stakeholders and parties put forth.
19 Thank you. And I -- I will be concurring.

20 CHAIR CHRISTIAN: Thank you. I'll now
21 do a call for vote. My vote is in favor of the
22 recommendation to approve the joint proposal with
23 minor modifications as discussed. Commissioner
24 Alesi, how do you vote?

25 COMMISSIONER ALESI: I vote yes.

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2 CHAIR CHRISTIAN: Commissioner

3 Maggiore?

4 COMMISSIONER MAGGIORE: Yes.

5 CHAIR CHRISTIAN: Commissioner Bright?

6 COMMISSIONER BRIGHT: Yes.

7 CHAIR CHRISTIAN: Commissioner

8 Sheehan?

9 COMMISSIONER SHEEHAN: Yes.

10 CHAIR CHRISTIAN: Commissioner Valova?

11 COMMISSIONER VALOVA: Concur.

12 CHAIR CHRISTIAN: Thank you. The item
13 is approved and the recommendations are adopted.

14 Thank you, everyone.

15 We'll now move to our second item for
16 discussion. Item 201, case 21-M-0351, as it relates
17 to a settlement agreement with National Grid. It'll
18 be presented today by John Sipos and Nicholas Forst.

19 John Castano and Jeff Hogan are also
20 available for questions. John, please begin.

21 MR. SIPOS: Good morning, Chair
22 Christian. Good morning, Commissioners. I'd like to
23 provide some brief context before we turn to the
24 details of this matter.

25 We're pleased to report that D.P.S.

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2 staff and National Grid have reached an agreement
3 here, and the settlement agreement before the
4 Commission today has three main components.

5 First, a condition providing a credit
6 of \$20 million for ratepayers. Second, a separate
7 condition that the companies will not seek payment
8 from the ratepayers for over \$20 million in costs
9 associated with the company's internal investigation
10 here. And third, a condition that the companies will
11 publicly file a supplemental report in which they
12 describe what occurred and their response and remedy
13 efforts to prevent a repetition of the underlying
14 conduct.

15 Staff today respectfully submits that
16 the settlement agreement reflects an appropriate
17 resolution and advances the public interest. It
18 benefits the ratepayers in the National Grid service
19 territories.

20 It serves to deter individuals from
21 contemplating similar action, similar conduct at
22 other regulated entities, and it provides through the
23 supplemental report lessons learned that may be
24 useful elsewhere and it incents National Grid and
25 other utilities to keep a close watch on contracts

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2 for services, contracts for components, and to review
3 concerns or complaints that come through those
4 company's internal processes.

5 Ongoing criminal litigation and
6 sentencing processes and internal corporate
7 investigations and response activities can add
8 complexities to a situation such as this. Here,
9 D.P.S. staff pursued a deliberate, focused, step-by-
10 step approach.

11 And I'd like to acknowledge the hard
12 work of Allison Manz, John Castano, Tim Canty, Jeff
13 Hogan, Brandon Goodrich, Diana Hedayati, Dave Rossi,
14 and of course Nicholas Forst who kept this initiative
15 on course.

16 And with those preliminary comments,
17 I'd like to turn it over to Nick to walk through the
18 agreement. Thank you.

19 MR. FORST: Good morning, Chair
20 Christian. Good morning, Commissioners. Item 201,
21 the draft order before you adopts the terms of a
22 settlement agreement before the Department of Public
23 Service staff and National Grid, and as my esteemed
24 colleague John Sipos stated, consisting of a \$20
25 million credit to National Grid's customers,

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2 preclusion of recovery from customers of
3 approximately \$22 million in expenses incurred in
4 connection with the company's investigation
5 activities and enhancements to their internal
6 controls, and provides for the submission of a
7 supplemental report by the company's detailing
8 National Grid's investigation, and an acknowledgment
9 of the remedial efforts taken by National Grid to
10 resolve matters associated with the criminal conduct
11 of its former employees.

12 By way of background, on June 17th,
13 2021, the U.S. attorney filed a criminal complaint in
14 the U.S. District Court for the Eastern District of
15 New York against five former National Grid employees.

16 The complaint charged these former
17 National Grid employees with violating a federal
18 criminal statute called the Travel Act, which makes
19 it a crime to use any facility of interstate
20 commerce, such as a cell phone or email with the
21 intent to engage in certain unlawful activities
22 including commercial bribery.

23 The criminal complaint alleged a
24 procurement kickback scheme in which the defend --
25 the defendant employees received bribes including

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2 cash payments, travel expenses, vehicles, college
3 tuition, and home repairs from vendors in exchange
4 for providing those vendors with various benefits,
5 including contracts with the utility companies.

6 These criminal activities occurred
7 over a seven-year period between July, 2013 and July,
8 2020. Vendors paid kickbacks to the company
9 employees one, to secure work from National Grid.
10 Two, to receive non-public information about
11 competing vendors' bids for work that was
12 competitively sourced.

13 Three, to -- to structure the value of
14 contracts to avoid scrutiny. Four, to avoid
15 favorable performance reviews or to obtain favorable
16 per -- performance reviews -- excuse me.

17 And five, to prevent or avoid negative
18 performance reviews. The defendants exchanged
19 numerous text messages and kept electronic records of
20 payments made as part of the scheme. The defendants
21 also sent coded messages indicating payments were at
22 times insufficient and should be larger in the
23 future.

24 The five defendants subsequently pled
25 guilty to the charges pursuant to plea agreements and

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2 were sentenced by the Federal District Court to
3 criminal penalties ranging from two years of
4 probation to one year in prison. The defendants also
5 agreed collectively to forfeit nearly \$1 million
6 derived from their criminal conduct.

7 In response to the Fed -- Federal
8 criminal complaint on June 23rd, 2021, the Commission
9 initiated this proceeding and issued an order
10 commencing proceeding and requiring a report in this
11 case.

12 The June, 2021 order directed the
13 companies to file an investigation report detailing
14 various aspects of the company's operations,
15 including but not limited to the company's internal
16 controls, procurement, invoicing, ethics and
17 investigation practices.

18 Filed in August of 2021, National
19 Grid's initial report identified the status of the
20 company's internal controls processes, procurement
21 processes, and amounts related to contractor and
22 vendor costs, internal audits, and any remediation or
23 reimbursement plans.

24 Further, the initial report outlined
25 the work National Grid would undertake to improve its

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2 controls, procedures, personnel monitoring, in
3 addition to hiring outside legal counsel and
4 independent consultants.

5 Concurrently, in cases 19-G-0309, et.
6 al., the Commission issued its order approving joint
7 proposal as modified and imposing additional
8 requirements setting rates for KEDNY and KEDLI.

9 The 2021 rate order adopted a three-
10 year rate plan for KEDNY and KEDLI and made certain
11 modifications to KEDNY and KEDLI's rate plan to
12 address the then ongoing concerns regarding the
13 federal criminal complaint and the company's
14 investigation into the alleged criminal conduct.

15 The Commission required that a portion
16 of KEDNY and KEDLI's revenue requirement be collected
17 through an adjustment mechanism. The Commission
18 established that annually a total of 2.5 million of
19 revenues for each KEDNY and KEDLI would be collected
20 through a rate adjustment clause or RAC.

21 The RAC proactively set aside a
22 portion of KEDNY and KEDLI's revenues for disposition
23 in this proceeding. During KEDNY and KEDLI's rate
24 plan, the term spanning April 1st, 2020 to March
25 31st, 2023, a total of \$20 million was collected

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2 through the RAC for both KEDNY and KEDLI.

3 Using National Grid's initial report
4 in 2021 as a starting point, the Department pursued a
5 robust investigation, which included the proffering
6 and review of numerous interrogatories, reviewing
7 invoices and expenditures for facilities work such as
8 building maintenance, landscaping, paving, fencing,
9 and snow removal, and conducting numerous ex --
10 extensive interviews with the criminal defendants and
11 National Grid personnel.

12 During its investigation, staff found
13 two instances in 2015 and 2017 where National Grid
14 received reports specifically identifying allegations
15 of kickbacks, bribes and inappropriate selection of
16 vendors by National Grid's facilities management
17 team, i.e. the criminal defendants.

18 The conduct identified in -- in these
19 internal reports was consistent with the conduct
20 identified in the criminal complaint. While these
21 internal complaints were investigated by National
22 Grid's Ethics Office, the allegations were ultimately
23 categorized as unsubstantiated.

24 Simultaneous with the department's
25 investigation, National Grid pursued its own

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2 investigation. The focus of National Grid's parallel
3 investigation span four key areas, data analytics and
4 forensics, procurement process controls, ethics,
5 processes, and culture and personnel.

6 National Grid expended significant
7 resources throughout its investigation, spending
8 approximately \$22 million on outside counsel and
9 consultants. National Grid brought on additional
10 resources to support its investigation group -- to
11 support its investigation group convened to respond
12 to the situation.

13 National Grid hired
14 PricewaterhouseCoopers or PwC to conduct a data-
15 driven analytic forensic examination to investigate
16 how the fraud occurred and to as -- assist with the
17 calculation of any customer impact.

18 National Grid also retained outside
19 legal counsel to conduct an internal investigation
20 and to partner with the forensic accounting experts.
21 National Grid also engaged Korn Ferry to conduct a
22 12-week review of the company's ethics and compliance
23 culture.

24 Stemming from staff and National
25 Grid's investigations and as part of its remedial

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2 efforts, National Grid implemented new controls in
3 its procurement processes and developed an artificial
4 intelligence tool to detect patterns of behavior that
5 might indicate misuse, abuse, or avoidance of the
6 controls process.

7 National Grid also created a new
8 financial integrity team to help identify how
9 controls can be manipulated or circumvented. The
10 companies also examined their ethics department and
11 retained Jenner and Block and Ernst and Young to
12 assess the company's ethics program, including
13 whistleblowing and investigation processes.

14 Notably, the companies terminated all
15 of the employees' corporate ethics department during
16 the period the fraudulent activity occurred and
17 replaced them with new staff.

18 National Grid also improved the
19 reporting structure of it -- that of its ethics
20 department. National Grid and -- and its
21 consultants' efforts are further described in its
22 supplemental report filed with the Commission
23 pursuant to the settlement agreement.

24 Ultimately, under the terms of the
25 settlement agreement, National Grid will credit its

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2 customers KEDNY and KEDLI gas customers \$20 million
3 in a regulatory deferred liability account funded at
4 National Grid shareholder expense.

5 In addition, the companies agree not
6 to speak -- seek recovery from ratepayers of the
7 approximately \$22 million incurred in connection with
8 the company's investigation activities and
9 enhancement of internal controls.

10 Further, and as discussed before,
11 National Grid agreed to file with the Commission a
12 supplemental public report detailing the events that
13 transpired in connection with the federal criminal
14 investigation, the plea agreements, and convictions
15 of the five former employees, and the specific
16 remedial steps and efforts made thereafter by
17 National Grid regarding its procurement and ethics
18 investigation practices.

19 In conclusion, the department
20 acknowledges National Grid's cooperation through the
21 department's investigation and its commitment to a
22 series of remedial actions and efforts towards
23 prevention of similar criminal conduct in the future.

24 While National Grid exercised
25 meaningful corporate stewardship in response to the

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2 federal criminal complaint, mismanagement while these
3 acts occurred, necessitated investigative action by
4 staff, which culminates in the settlement agreement
5 and today's action by the Commission.

6 The agreement provides National cust -
7 - National Grid's customers a substantial financial
8 benefit and insulates customers from incurring the
9 costs associated with National Grid's investigation
10 and remedial actions. The agreement is in the public
11 interest and for the reasons discussed should be
12 adopted.

13 I also want to extend my appreciation
14 to all of the department staff who've expended a
15 considerable effort to investigate and resolve this
16 matter, including those in counsel's office, the
17 Office of Investigations and Enforcement, and the
18 Office of Accounting Audits and Finance.

19 I appreciate this opportunity to
20 present this item to the Commission along with John
21 Sipos. This concludes our presentation. John Sipos,
22 Jeff Hogan, and John Casano, and I are available to
23 answer any questions you may have. Thank you.

24 CHAIR CHRISTIAN: Thank you. It's
25 unfortunate that this situation happened and even

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2 more so that it wasn't caught earlier, but I'm
3 grateful that we were able to identify the issue and
4 address it and come to a remedy and a conclusion that
5 actually benefits ratepayers in the long run.

6 So thank you for your hard work in
7 bringing this about. I have no further questions.
8 Good work on addressing the issue. With that, I go
9 to Commissioner Alesi.

10 COMMISSIONER ALESI: Thank you,
11 Chairman. I believe that this does provide a
12 substantial financial benefit in a very positive way.
13 It addresses the criminal, the issue of criminal
14 activities of for -- former employees as well as the
15 acts or of -- or omissions of management.

16 And it also provides the
17 environmental, social, and economic policies of the
18 Public Service Commission. And it's most certainly
19 in the public interest. So I will be supporting it.

20 CHAIR CHRISTIAN: Thank you.
21 Commissioner Maggiore.

22 COMMISSIONER MAGGIORE: Thank you.
23 Thank you for the presentation and -- and the work
24 bringing this issue to resolution. I just have one
25 quick question, which I think is directed to John

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2 Sipos. Are -- are you satisfied that these corrupt
3 activities that are limited to the five employees in
4 question or even just to National Grid, or are you
5 concerned at all that there might be a more systemic
6 issue?

7 MR. SIPOS: Commissioner, I -- I think
8 we take each case as it comes. We look at the facts
9 as they're presented as -- as -- as the United States
10 Attorney's Office developed, as -- as we developed,
11 and as was developed by National Grid's internal
12 investigation, which had some substantial additional
13 support from outside resources, nationally known law
14 firms, and accounting companies.

15 So in connection with -- with -- with
16 Grid, in -- in -- in -- in this facility's and
17 services contract arena, I -- I am satisfied that the
18 -- that the problems were identified and that there
19 is an appropriate remedial plan in place to preclude
20 this in the future.

21 I believe that National Grid
22 understands the significance of this situation and is
23 approaching it in a -- a sober, deliberate, systemic
24 manner based on -- based on the record here.

25 You know, your larger question, I

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2 guess, goes to it's -- it's more of a question of
3 like human philosophy. You know, there are
4 upstanding people and there are folks who will look
5 to take advantage of situations. I think with the --
6 I think all the offices here in -- in -- in the
7 department and, you know, including the Office of
8 Investigations and Enforcement, you know, have the
9 capabilities to pursue allegations and concerns such
10 as this.

11 We have a whistleblower hotline that
12 we monitor and, you know, O.I.E. and I believe the
13 entire department stands ready to investigate or
14 pursue and hold folks accountable in situations like
15 this.

16 COMMISSIONER MAGGIORE: Thank you.
17 Thank you for the answer. And again, thank you for
18 your good work on this, and I, of course, will be
19 supporting this item.

20 CHAIR CHRISTIAN: Thank you.
21 Commissioner Bright?

22 COMMISSIONER BRIGHT: Thank you,
23 Chair. I appreciate all the work that has been done
24 on this like my colleagues have said to do a deep
25 dive into the root causes and the solutions that can

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2 avoid this type of thing in the future and deter bad
3 actors and bad behavior. So great work, everybody.

4 CHAIR CHRISTIAN: Thank you.

5 Commissioner Sheehan.

6 COMMISSIONER SHEEHAN: Just want to
7 thank you, John, Nick, John, Jeff, your respective
8 teams, everybody involved in this. It was really
9 shocking to read. I'm sure a lot of people had the
10 same reaction.

11 My question is sort of similar to
12 Commissioner Maggiore's, but maybe on a larger scale.
13 So do we think, is there an opportunity here for
14 lessons learned from this case to maybe be applied to
15 other utilities?

16 MR. SIPOS: So the short answer is
17 yes. Absolutely, there is an opportunity for lessons
18 learned here. And in addition to the financial
19 aspects of the settlement that, you know, Nick has
20 walked us through, another aspect of the settlement
21 was the publicly filed supplemental report.

22 The how, what, where, when, was dis --
23 you know, is discussed, and I believe the -- you
24 know, the Commission has -- has access to that.

25 But also, how is it addressed going

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2 forward. And it -- it -- it is important -- I think,
3 staff thought it was important for that report to
4 come in, not only for -- for Grid in this situation
5 to -- to put that in the record here, but for other
6 utilities to read this report.

7 It is a -- it is a lessons learned or
8 a, you know, a opportunity -- identification of
9 opportunity for -- for other utilities to see as
10 well. And it is -- I think, staff's hope that other
11 utilities will review that report. We'll see what
12 occurred. We'll see how these individuals were able
13 to exploit the prior contract control process, the co
14 -- the prior ethic -- internal ethics process within
15 the company.

16 And we'll take lessons from those, and
17 we will work hard to improve that because after all,
18 contracts for services, contracts for components,
19 contracts that utilities let to -- to facilitate
20 their provision of -- of -- of utility service to
21 ratepayers, those contracts are oftentimes paid for
22 by ratepayers.

23 So they have an obligation to ensure
24 that those contracts are -- are -- are fair and
25 appropriate, and there -- there is not extra money

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2 being added in, being, you know, there's extra
3 padding that is running to the benefit of individual
4 employees.

5 So I -- I -- I really, really
6 appreciate your question and it's something that
7 staff really believed was important here, was to get
8 this out in the open.

9 COMMISSIONER SHEEHAN: Yeah, agree.
10 Thank you all very much for your hard work on this.

11 CHAIR CHRISTIAN: Thank you. And
12 Commissioner Valova?

13 COMMISSIONER VALOVA: Thank you. I
14 echo my colleagues' sentiments and really appreciate
15 staff's work on this matter. I think this issue goes
16 to the heart of what it means to regulate in the
17 public service and ensuring that utilities are
18 operating in -- in the public service and public
19 interest.

20 And I look forward to seeing how the
21 continued efforts to identify ways to improve and the
22 lessons learned as -- as they come out. Thank you
23 and I -- I will be supporting this item.

24 CHAIR CHRISTIAN: Thank you. I'll now
25 do the call for vote. My vote is in favor of the

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2 recommendation to adopt the terms of the settlement
3 agreement as discussed. Commissioner Alesi, how do
4 you vote?

5 COMMISSIONER ALESI: I vote yes.

6 CHAIR CHRISTIAN: Thank you.

7 Commissioner Maggiore.

8 COMMISSIONER MAGGIORE: Yes.

9 CHAIR CHRISTIAN: Commissioner Bright?

10 COMMISSIONER BRIGHT: Yes.

11 CHAIR CHRISTIAN: Commissioner

12 Sheehan?

13 COMMISSIONER SHEEHAN: Yes.

14 CHAIR CHRISTIAN: Commissioner Valova?

15 COMMISSIONER VALOVA: Yes.

16 CHAIR CHRISTIAN: Thank you. The item
17 is approved and the recommendations are adopted. And
18 with that, going to recommend we take a five-minute
19 break. By my clock, it is now 11:54 p.m. Why don't
20 we return at noon? Thank you.

21 (Off the record; 11:54 a.m.)

22 (On the record; 12:01 p.m.)

23 CHAIR CHRISTIAN: Good afternoon,
24 everyone. I now reconvene the session. We are now
25 going to move to item 301, case 22-E-0222, as it

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2 relates to electric utilities' climate change
3 resilience plans.

4 It'll be presented by Emmanuel Alexis
5 and Richard Schuler. Aferdita Bardhi, Paul Darmetko,
6 Steve Kramer, and Makayla Loeb are available for
7 questions. Emmanuel, please.

8 MR. ALEXIS: A presentation.

9 CHAIR CHRISTIAN: We have lost the
10 presentation. One moment while we figure that out.
11 All right.

12 MR. ALEXIS: All right. Good morning,
13 Chair Christian and Commissioners. My name is
14 Emmanuel Alexis, and I'm a Utility Engineering
15 Specialist III in the Office of Resilience and
16 Emergency Preparedness.

17 The draft order before you today, if
18 adopted, will approve with modifications the Climate
19 Change Resilience Plans filed by Central Hudson, Con
20 Edison, National Grid, and Orange & Rockland and
21 direct NYSEG and RG&E to file revised plans.

22 Today, we will give you a high-level
23 summary of item 301 and the relevant details are in
24 the draft order. Next slide.

25 In recent years, severe storm events

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2 have adversely impacted New York State. To make the
3 electric system more resilient to such storm events,
4 Governor Hochul signed into law an act that added a
5 new subdivision 29 to Publics Serv -- Service Law 66
6 on February 24, 2022.

7 This new legislation requires New York
8 State electric utilities to file climate change
9 vulnerability studies and resilience plans with the
10 Public Service Commission.

11 On June 16th, 2022, the Commission
12 issued an order to initiate this proceeding. On
13 November 21, 2023, the utilities submitted climate
14 change resilience plans to address findings of
15 climate change studies filed on September 22 and 25,
16 2023.

17 Throughout the study and plan
18 development process, the utilities engaged with staff
19 and many stakeholders. Next slide.

20 Each utility study evaluated the
21 infrastructure, design specifications, and procedures
22 to better understand the electric systems
23 vulnerability to climate driven risks.

24 In these studies, the utilities assess
25 their transmission, substation, and distribution

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2 systems to determine the climate hazards that they
3 are most vulnerable to. For example, substation
4 assets are most vulnerable to flooding and high
5 temperature.

6 As a result of the studies, the
7 utilities updated some of the design standards or
8 guidelines. For example, Con Edison updated
9 substation design flood elevation from FEMA plus
10 three feet to FEMA plus five feet. National Grid
11 increased temperature design specifications from 32
12 to 35 degrees Celsius for substation transformers.
13 Next slide.

14 Each plan proposes storm hardening and
15 resilience measures based on strategies or
16 objectives. Con Edison and O&R's plans are based on
17 strategies that will prevent, mitigate, and respond
18 to future events, whereas Central Hudson, National
19 Grid, NYSEG and R.G. and E.'s plans are based on
20 objectives that will withstand, absorb, recover, and
21 adapt to future events.

22 These objectives and strategies
23 appropriately address the impacts of climate change
24 and consider infrastructure reliability. Next slide.
25 The utilities proposed several programs and projects

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2 to address the potential climate change
3 vulnerabilities -- vulnerabilities in the next 10 and
4 20-year periods. For example, to mitigate against
5 flooding, utilities plan to install flood walls and
6 raise equipment at substation that are in flood
7 zones.

8 To address wind impact, the utilities
9 are proposing selective or strategic undergrounded
10 program. While a few of the proposed projects are
11 new, the utilities have long considered the
12 resilience of their electric systems as part of the
13 rate case process.

14 In Con Edison's 2013 electric, gas,
15 and steam rate plan, the Commission established a
16 process to address the impact of Superstorm Sandy and
17 to ensure the appropriate climate science was used to
18 address current and future needs for resiliency
19 through a collaborative process with stakeholders.

20 As part of this process, the
21 Commission approved approximately \$1 billion in
22 capital spending to fund storm hardening projects.
23 Similarly, the Commission has authorized resiliency
24 related investments in recent rate plans for all the
25 utilities. Next slide.

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2 To comply with Public Service Law 66,
3 each utility established a climate resilience working
4 group to advise and make recommendations regarding
5 the development and implementation of the utility's
6 plan.

7 Additionally, stakeholder comments
8 were received in this proceeding via notice of
9 proposal making and at in-person public statement
10 hearings held between July and August, 2024.

11 The draft order consider comments
12 filed in response to the plans and identified
13 shortcomings that need to be addressed in the current
14 plans and the next iterations of the plans. Next
15 slide.

16 Overall, the utilities plans -- the
17 utilities plans propose storm hardening resilience --
18 resiliency measures that will generally improve the
19 resilience of their systems.

20 However, the plans submitted by NYSEG
21 and RG&E are not adequate because they omit certain
22 information required by Public Service Law 66 Section
23 29.

24 Specifically, NYSEG and R.G. and E.'s
25 plans, like forward looking projections and cost

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2 implementation timelines for resiliency measures that
3 could be implemented in the next 10 and 20-year
4 periods.

5 Additionally, NYSEG and R.G. and E.'s
6 plans do not provide the first five years of rate
7 impacts associated with the implementations of their
8 plans. Regarding Con Edison, O&R and National Grid,
9 these companies inappropriately classify some
10 projects as resiliency investment in their plans.

11 These projects do not address a
12 specific change to the company's design standards or
13 operating processes to mitigate, identify climate
14 hazards.

15 Regarding adaptations to climate
16 change into internal processes, the utilities and
17 resilience plans like define in explicit details with
18 respect to climate change projections. None of the
19 utility's plans address coordination opportunities
20 with telecommunication service providers. And these
21 service providers were not included in the climate
22 change resilience working groups.

23 Currently, there is no industry
24 standard to measure resiliency and the development of
25 resiliency metrics is an active area of research.

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2 The utilities propose to use varying methods to
3 assess and address each program's effectiveness.

4 Some of the methods track the
5 implementation of projects, but they are not capable
6 of gauging the effectiveness of storm hardening and
7 resiliency efforts. For example, tracking the number
8 of devices upgraded or re -- replaced on a circuit
9 will provide information on project completion, but
10 will not give any indication of circuit improvement.

11 Now, I will turn it over to Rick
12 Schuler who will address our assessment of the plan's
13 cost and benefit. Rick?

14 MR. SCHULER: Thank you, Emmanuel.

15 MR. ALEXIS: Next slide.

16 MR. SCHULER: So Section 66.29 of the
17 Public Service Law requires the utilities have an
18 estimate of the costs and the benefits associated
19 with their plans, especially regarding the
20 undergrounding of electric transmission and
21 distribution lines.

22 Although the utilities provided
23 detailed cost estimates for their plans, due to the
24 complexity and lack of information on benefits, none
25 of the utilities could provide a quantitative

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2 comparison of the net present value of the proposed
3 plan cost to the net present value of the associated
4 societal benefits.

5 The utilities instead provided a more
6 qualitative analysis of the benefits of their
7 proposed measures. These more qualitative methods
8 were used as a means to compare the potential
9 benefits between various resilience measures.

10 Utilities should monitor ongoing
11 research related to valuing the societal benefits
12 such as benefits related to avoiding service outages.
13 We expect that the utilities will address this issue
14 with more specificity in their next iterations of
15 their plans.

16 MR. ALEXIS: Thank you, Rick. Next
17 slide. The draft order determines that the plans of
18 Central Hudson, Con Edison, O&R and National Grid
19 satisfy the requirements of the legislation.

20 However, the order divides certain
21 modifications to the plans of Con Edison, O&R, and
22 National Grid and directs they file amended plans in
23 this proceeding within 60 days.

24 These modifications are related to the
25 inappropriate classification of some projects, as I

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2 previously discussed. The draft order also direct
3 NYSEG and RG&E to file revised plans within 90 days
4 to address the omission of information in NYSEG and
5 R.G. and E.'s plans required by Public Service Law
6 66, Section 29.

7 The cost and timing of the -- of some
8 of the utilities forecast climate resilience projects
9 are being assessed as part of ongoing rate case
10 proceedings. This should continue and future
11 resilience investment should be assessed in upcoming
12 rate case proceedings.

13 No specific resilience surcharge is
14 necessary at this time. Efforts to harden New York
15 State electric system will require many years to
16 accomplish because climate science is continually
17 evolving, and as such, the need to mitigate utility
18 vulnerabilities will change over time.

19 As this is a iterative process, the
20 utilities -- the utilities' action to improve their
21 plans adaptation to climate change projections,
22 performance benchmarks, and resilience metrics should
23 be discussed in ongoing engagement with stakeholders
24 and incorporated in future iteration of the plans.

25 Finally, after the second full year of

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2 plan implementation and every two years thereafter,
3 Public Service Law 66 Section 29 require each utility
4 to file a report with the Commission detailing its
5 activities to comply with its plan and to file an
6 updated plan for Commission consideration at least
7 every five years.

8 This concludes staff's presentation.
9 We are now available for questions. Thank you.

10 CHAIR CHRISTIAN: Thank you, Emmanuel.
11 Appreciate the work in putting this together. You
12 know, today's action is a result of a process as is
13 almost every Commission action, and this is a process
14 initiated with the intent of first understanding the
15 vulnerabilities of the electric system and how
16 they'll be experienced due to the evolving climate
17 change risks.

18 And today, this order directs the
19 utilities to take actions in support of addressing
20 the vulnerabilities identified earlier in this
21 effort. Now, resiliency is an essential part of
22 everything that we do. It's essential to ensuring
23 that ratepayers have access to safe, secure, and
24 reliable services at just and reasonable rates.

25 And the Commission, New York State

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2 Utilities, we all have a long history of considering
3 resilience in planning. And what makes this order
4 unique and separates it from the past is that we are
5 effectively blazing a new trail.

6 The industry does not have standards
7 and practices that have evolved to the point where
8 our utilities have a standard roadmap to follow. And
9 so we are effectively blazing a new trail in this
10 matter to help identify a path forward using lessons
11 learned from past experiences.

12 And we recognize that this will be an
13 iterative process, and that over time as our
14 understanding and -- and the understanding of best
15 practices evolve, so too will the process as well as
16 the resulting recommendations.

17 And I think about the guidance that
18 you've highlighted where we need to improve, and
19 that's things that we've directed utilities to do.
20 And I -- I think there -- I could best describe them
21 as the need for greater transparency and specificity
22 in both the data used, the methodology behind the
23 analysis, and how various considerations are weighed.

24 And I'm looking forward to seeing
25 those in subsequent plans and reviews as we go

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2 forward. So again, thank you for putting this
3 together. Thank you for the review and I support
4 this item. With that, Commissioner Alesi.

5 COMMISSIONER ALESI: Thank you, Chair.
6 And thank you to all of the people that worked hard
7 to put this together. It's important that we keep
8 abreast of not only what has happened, what is
9 happening, and where we're going down the road. So I
10 appreciate what you've done here and we'll stay alert
11 to the next issue.

12 CHAIR CHRISTIAN: Thank you.
13 Commissioner Maggiore?

14 COMMISSIONER MAGGIORE: Thank you. I
15 don't have any questions. I'll just comment that,
16 you know, 66.29 is a new law and a new law is passed
17 to modify behavior.

18 So the utilities are being asked to do
19 something that they wouldn't necessarily do on their
20 own anyway, but it's not like utilities didn't plan
21 to improve resilience as part of the normal, you
22 know, the rate case process as was mentioned in the
23 presentation.

24 So I appreciate the work that you guys
25 have done, and I also appreciate that we're just not

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2 rubber stamping the utilities' plans. As the Chair
3 said, we're, you know, blazing a new trail here and
4 it's -- we're at the very beginning stage of a
5 process to try to enhance our resilience in the face
6 of, you know, ever increasingly severe weather as a
7 result of climate change.

8 So I thank you for the presentation
9 and thank you for the work and look forward to what
10 comes next. So I'll be voting yes. Thank you.

11 CHAIR CHRISTIAN: Thank you.
12 Commissioner Bright?

13 COMMISSIONER BRIGHT: Thank you staff
14 for the presentations. I have no questions. I think
15 it's important that we're assessing and fortifying
16 our systems, and particularly in the face of climate
17 change and the ever-intensifying impacts it has on
18 our systems and our communities.

19 I appreciate that we are also
20 recognizing that we don't have all the answers yet
21 and are making sure that this is an iterative
22 process, so we can address the shortcomings and add
23 more detail in future plans as the utilities continue
24 to evaluate their vulnerabilities and their needs.

25 So great presentation and thank you.

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2 I'll be supporting this item. Thanks so much.

3 CHAIR CHRISTIAN: Thank you.

4 Commissioner Sheehan.

5 COMMISSIONER SHEEHAN: Thank you,
6 Chair. Thank you, Emmanuel. I appreciate your
7 presentation. And Richard, I really do appreciate
8 the work in this area by yourselves as well as the
9 utilities and the stakeholders given that this is,
10 you know, a new area and everyone is learning,
11 including us.

12 One thing that I -- that I don't think
13 we covered in the presentation, but I think's
14 important for an understanding of what's in the order
15 and what's not, is that the specific projects in the
16 plans are still subject to individual rate cases, I
17 just want to make sure that that's communicated.

18 MR. ALEXIS: Yes, that's correct.

19 COMMISSIONER SHEEHAN: So the plan
20 being approved even with modifications doesn't mean
21 that they're, you know, it's -- the project's going
22 to happen tomorrow. It's still going to be
23 considered in the context of individual rate cases.

24 MR. ALEXIS: Yes, Commissioner.

25 COMMISSIONER SHEEHAN: Okay. So now,

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2 how will your team intersect with rate cases then in,
3 you know, bringing forward these projects?

4 MS. BARDHI: So resilience staff is
5 assigned to every single electric rate case. And as
6 the order states that during rate cases, the staff
7 team will look at -- take a holistic approach to
8 utilities, electric capital programs and O. and M.
9 programs and evaluate shortcomings there and then
10 prioritize the funding within the rate proceedings.

11 COMMISSIONER SHEEHAN: Okay. Thank
12 you. I just -- I thought that was worth
13 highlighting. So thank you all for -- for your work
14 on this. I'll be supporting.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Valova.

17 COMMISSIONER VALOVA: Thank you.
18 Yeah, thank you for the presentation. I will also be
19 supporting this item and I found the list of major
20 storms at the beginning of the order, really sobering
21 just the reminder of the storms that New York has
22 been hit with.

23 And I think it's also a really
24 sobering reminder that there is a human cost to these
25 storms. You know, we're not just talking about the

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2 electric grid, we're talking about the impact that
3 people, businesses, and individuals and -- and
4 communities suffer as -- as a result of these storms.

5 So I view the Public Service Law that
6 enables us to do this work and the -- the process of
7 developing and implementing the plans as a no regrets
8 approach to safeguard New Yorkers from as -- as much
9 as possible, future harm.

10 And I also want to say I really
11 appreciate the data-driven approach in this -- in
12 this process. As -- as you've noted, we don't have
13 all the data yet on all the inputs that go into these
14 plans. Like we don't have, you know, nationally
15 recognized standardized resilience metrics.

16 There was interesting discussion about
17 what data to use to determine the accuracy of future
18 sea level rise. So it -- we don't necessarily have
19 to know everything, but the fact that we're coming
20 together to have these conversations and that we have
21 the benefit also of stakeholders with analytical
22 expertise from academic institutions and -- and --
23 and other sources to help buttress our own
24 understanding is -- is incredibly helpful.

25 So thank you again to -- to staff and

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2 to the utilities for developing their plans and for
3 all the stakeholders who provided data and input
4 here.

5 And thank you to staff for the very
6 careful review of the plans and identifying the areas
7 of improvement and those that are deficient so that
8 we can make sure that this work has its intended
9 impact. Thank you.

10 CHAIR CHRISTIAN: Thank you. I'll now
11 do a call for vote. My vote is in favor of the
12 recommendation to -- to direct revisions of the
13 climate change resiliency plans submitted by NYSEG
14 and RG&E and to approve the remaining plans with the
15 modifications as discussed.

16 Commissioner Alesi, how do you vote?

17 COMMISSIONER ALESI: Yes. Yes.

18 CHAIR CHRISTIAN: Thank you.

19 Commissioner Maggiore?

20 COMMISSIONER MAGGIORE: Yes.

21 CHAIR CHRISTIAN: Commissioner Bright?

22 COMMISSIONER BRIGHT: I vote yes.

23 CHAIR CHRISTIAN: Commissioner

24 Sheehan?

25 COMMISSIONER SHEEHAN: Yes.

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2 CHAIR CHRISTIAN: Commissioner Valova?

3 COMMISSIONER VALOVA: Yes.

4 CHAIR CHRISTIAN: The item is approved

5 and the recommendations are adopted. Thank you all.

6 Great work. And now, we will move to the consent

7 agenda.

8 Do any Commissioners wish to comment

9 on or recuse from voting on any items on the consent

10 agenda? I'll begin with Commissioner Alesi.

11 COMMISSIONER ALESI: No comments or

12 questions. Thank you.

13 CHAIR CHRISTIAN: Thank you.

14 Commissioner Maggiore?

15 COMMISSIONER MAGGIORE: Yes, I'm going

16 to comment on one item, which is 269 24-M-0327. I'm

17 going to concur on this item. This order would

18 authorize Iberdrola to reacquire the remaining

19 approximately 18.4 percent of the stock of Avangrid,

20 subject to conditions imposed by the order to

21 minimize risk to ratepayers.

22 According to staff analysis, the

23 stated benefits of the initiative lower financial

24 market compliant costs and improved access to capital

25 are immaterial. And contrary to Iberdrola's

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2 assertions, the transaction does have costs and could
3 pose certain risks, which is why we mitigate those
4 risks through the conditions of this order,
5 specifically requiring financial transparency and
6 assurance that NYSEG and RG&E will not recover the
7 transaction costs from ratepayers.

8 So I support all that. The reason I'm
9 concurring rather than simply voting yes, is that
10 given that Iberdrola will pay a total of 2.5 billion
11 to acquire the outstanding shares of Avangrid and
12 that the stated reasons for doing so are enhanced
13 access to credit markets and investment and operating
14 capital, which we dispute as well as quote,
15 intangible benefits.

16 And given that our conditions ensure
17 that the company will not benefit at the expense of
18 ratepayers, which I'm not saying was their
19 motivation, I just don't see why we're doing this.

20 That said, there's nothing in the
21 record giving me a reason to vote no. So simply by
22 virtue of that fact, I'm going to concur rather than
23 vote yes. And I'm going to vote yes on all other
24 items. Thank you very much.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Bright?

3 COMMISSIONER BRIGHT: Thank you,
4 Chair. I will be voting for all items. I did want
5 to comment on item 387, implementing large scale
6 renewable programs in the Clean Energy Standard, the
7 NYSERDA 2025 clean energy standard administrative
8 budget.

9 So my comment is really just that
10 NYSERDA's administration of these crucial programs --
11 crucial and important programs is being funded by
12 surplus funds and not ratepayer dollars.

13 So these programs instead are being
14 funded by revenues NYSERDA has received in previous
15 years from alternative and voluntary compliance
16 payments, bid fees, investment income, contract
17 security forfeitures. So when contracts cancel, they
18 pay a penalty.

19 So I notably found that the proposal
20 for using these funds was to be really smart and
21 taking some people who are currently contractors and
22 converting them to full-time employees, and in places
23 where we know we will need the people power. So tier
24 one and tier four work.

25 I appreciate the report and the plan

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2 and also want to acknowledge that some of the
3 commenters had other ideas for how to use the funds,
4 but respect staff's assertion that these funds should
5 be used to offset these specific costs.

6 But also, that we have additional
7 programs like the Statewide Solar for All and NYPA's
8 REACH program that the Commission recently approved
9 and will continue to have prob -- programs like this
10 that are aimed at getting bill credits to energy
11 affordability program customers, particularly in
12 areas that have been designated by the C.L.C.P.A. to
13 be disadvantaged communities. So I will be
14 supporting all items but wanted to comment there.
15 Thank you, Chair.

16 CHAIR CHRISTIAN: Thank you.
17 Commissioner Sheehan?

18 COMMISSIONER SHEEHAN: Thank you,
19 Chair. I will be recusing from items 373 and 375.
20 And I do just want to acknowledge the hard work by
21 all the staff on these consent items.

22 I know, you know, there's a lot here,
23 so I know this work doesn't happen without your hard
24 work. And as we come to the close of the calendar
25 year, I just want to acknowledge all of the hard work

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2 that -- that brought these orders before us today.

3 So thank you.

4 CHAIR CHRISTIAN: Thank you. And
5 Commissioner Valova?

6 COMMISSIONER VALOVA: I have no
7 recusals, no comments.

8 CHAIR CHRISTIAN: Thank you all. I'll
9 now do the call for a vote. My vote is in favor of
10 the recommendations on the consent agenda.
11 Commissioner Alesi, how do you vote?

12 COMMISSIONER ALESI: Yes on all items.

13 CHAIR CHRISTIAN: Thank you.
14 Commissioner Maggiore?

15 COMMISSIONER MAGGIORE: Yes on all
16 items except for 269, which I'm concurring on. Yes
17 on everything else.

18 CHAIR CHRISTIAN: Thank you.
19 Commissioner Bright?

20 COMMISSIONER BRIGHT: Yes on all
21 items. Thank you.

22 CHAIR CHRISTIAN: Thank you.
23 Commissioner Sheehan?

24 COMMISSIONER SHEEHAN: Yes on all
25 items, with the exception of 373 and 375 from which

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2 I'm recused. Thank you.

3 CHAIR CHRISTIAN: Thank you. And
4 Commissioner Valova?

5 COMMISSIONER VALOVA: Yes on all
6 items.

7 CHAIR CHRISTIAN: Thank you. The
8 items are approved and the recommendations are
9 adopted. Madam Secretary, is there anything further
10 to come before us today?

11 SECRETARY PHILLIPS: There is nothing
12 further for today.

13 CHAIR CHRISTIAN: Thank you. And with
14 that, I want to wish everyone a happy holidays, and a
15 happy New Year, and adjourn our final meeting of the
16 year. Thank you all.

17 (The meeting adjourned at 12:30 p.m.)

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2 STATE OF NEW YORK

3 I, MONIQUE HINES, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 94, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 23rd day of December, 2024.

11

12

13 MONIQUE HINES, Reporter

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