

1 12-16-2021 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5
6 Thursday, December 16, 2021

7 11:30 a.m. until 1:30 p.m.

8 ESP, Building 3, 19th Floor Boardroom

9 Albany, New York

10

11 COMMISSIONERS:

12 RORY M. CHRISTIAN, Chair

13 DIANE X. BURMAN

14 TRACEY A. EDWARDS

15 JAMES S. ALESİ

16 JOHN B. MAGGIORE

17 DAVID J. VALESKY

18 JOHN B. HOWARD

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2 (The meeting commenced at 11:30 a.m.)

3 CHAIR CHRISTIAN: Okay. Good morning.

4 I call the session of the Public Service Commission
5 to order. Secretary Phillips, are there any changes
6 to the final agenda?

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

9 CHAIR CHRISTIAN: Thank you. First,
10 I'd like to conduct a roll call of the Commissioners.
11 When I call your name, please confirm that you are
12 with us. Commissioner Burman.

13 COMMISSIONER BURMAN: Here.

14 CHAIR CHRISTIAN: Commissioner Alesi.

15 COMMISSIONER ALESI: Yes, I'm here.

16 CHAIR CHRISTIAN: Great. Thank you.

17 Commissioner Edwards.

18 COMMISSIONER EDWARDS: Here.

19 CHAIR CHRISTIAN: Commissioner Howard.

20 COMMISSIONER HOWARD: Here.

21 CHAIR CHRISTIAN: Commissioner

22 Valesky.

23 COMMISSIONER VALESKY: Here.

24 CHAIR CHRISTIAN: Commissioner

25 Maggiore.

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2 COMMISSIONER MAGGIORE: Here.

3 CHAIR CHRISTIAN: Excellent. We have
4 everybody here. Okay. Our first item for discussion
5 is Item 302, Case 21-E-0130 related to the Exelon
6 Corporation & Exelon Generation Company, LLC. Today
7 we will have a presentation by John Sipos our Deputy
8 General Counsel. Jeff Hogan, the Director of
9 Accounting Audits and Finance.

10 Bridgette Frymire, Utility Supervisor.
11 Ryan Coyne, Assistant Council are available for
12 questions. John, please begin.

13 MR. SIPOS: Good morning, Chair
14 Christian, Commissioner Burman, Commissioner Alesi,
15 Commissioner Edwards, Commissioner Howard,
16 Commissioner Valesky, and Commissioner Maggiore.
17 With me today, as noted are Bridget Frymire from the
18 Office of Resilience & Emergency Preparedness.

19 And Ryan Coyne and Jeff Hogan, I
20 believe this is Bridget and Ryan's first presentation
21 to the Commission. So I welcome them to -- to the
22 presentation. Turning to Item 302, this is a Public
23 Service Law, Section 70, proceeding concerning a
24 proposed transfer of upstream interests of four New
25 York nuclear powered electric generation facilities.

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2 In their joint petition to the
3 Commission, Exelon Corporation and Exelon Generation
4 Company, LLC ask the Commission to either abstain
5 from exercising any jurisdiction over the proposed
6 transaction or alternatively to approve the transfer.

7 The concept underlying the transaction
8 here involves the separation of Exelon's two business
9 lines. A traditional rate-regulated utility
10 business and a competitive merchant generation
11 business. The transaction and transfer would --
12 would separate -- would separate and spin off Exelon
13 Generation from within Exelon and create a new
14 publicly traded investment grade company.

15 The new company would focus on owning
16 and operating merchant generation and serving
17 customers in competitive energy markets. Following
18 the proposed transfer, Exelon Generation's primary
19 focus going forward in New York, will continue to be
20 providing safe, reliable, baseload carbon-free
21 electricity.

22 With respect to New York, the proposed
23 transaction implicates four units. Those units are
24 Ginna, FitzPatrick, Nine Mile Point One and Nine Mile
25 Point Two, which are located in Wayne and Oswego

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2 counties, with a collective rating of approximately
3 3300 megawatts electric.

4 And since two -- 2017, these
5 facilities have participated in the clean energy
6 standard, zero emission credit program. In addition
7 to generation, the New York facilities also have
8 associated decommissioning trusts, which were
9 initially capitalized by ratepayer funds authorized
10 by previous New York State Public Service Commission
11 orders.

12 And these sites also store spent
13 nuclear fuel that has not yet been collected by the
14 federal government. From an operations and
15 reliability and safety perspective, Exelon Generation
16 has confirmed that it will continue to employ the
17 same management and workforce team and follow the
18 same operational protocols.

19 This was important to the OREC team
20 and to D.P.S. staff and thus, from a baseline or
21 status quo perspective, those employees and
22 operational protocols will continue. The Commission
23 has before it today, both the joint petition and the
24 parties' joint proposal which augments the petition.

25 Staff submits that the joint petition

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2 and the joint proposal taken in concert with one
3 another advance the public interest. As an initial
4 matter, the new corporate entity will be a publicly
5 traded investment grade company. This was an
6 important aspect to the Office of Audits, Accounting,
7 and Finance, which evaluated the proposed transfer.

8 The draft order before you determines
9 that Exelon Generation and its subsidiaries, within
10 the context of the new corporate framework, have the
11 financial wherewithal and technical qualifications to
12 continue to operate the New York facilities in a
13 reliable and safe manner. The joint proposal is
14 consistent with New York State Public Policy and adds
15 several important protections to the public interest.

16 And as part of the joint proposal,
17 Exelon Generation agreed to the following. And I'll
18 just review the salient high points. First, Exelon
19 agree to the continued maintenance of emergency
20 operation facilities within New York State.

21 This resolves a concept recently
22 raised by Exelon to consolidate all Eastern State
23 Emergency Operation facilities at a site in
24 Pennsylvania. Second, Exelon Generation has agreed
25 to deposit an additional \$15 million into the Nine

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2 Mile Point Unit Two trust in early 2022 and before
3 the completion of the transaction.

4 This additional deposit will help
5 reduce and diminish the gap in that trust when
6 benchmarked against the federal formula. Third,
7 Exelon Generation has agreed that there will be a
8 maintenance of a minimum -- initial minimum trust
9 balance of \$144 million per unit or \$576 million
10 totaled across the four New York units.

11 The joint proposal includes financial
12 assurance provisions that protect the public's
13 interest in ensuring that Exelon Generation and its
14 affiliates do not exhaust the trust funds before they
15 complete the necessary decommissioning and site
16 restoration work at the New York sites.

17 The various minimum balance provisions
18 will ensure that the funds remain well capitalized
19 until certain significant project milestones are
20 achieved. And with respect to site restoration,
21 Exelon Generation has also agreed to establish a
22 parent guarantee to address site restoration costs
23 for each facility and to support that commitment with
24 a third party surety bond, if the company investment
25 grade falls below the investment grade rating.

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2 Taken collectively these financial
3 assurance conditions will help effectuate thorough
4 and prompt site restoration and decommissioning.
5 Fourth, Exelon Generation has agreed to a 20-year
6 projected backstop timeline for decommissioning
7 following the end of licensed terms.

8 This is a real and significant
9 improvement over the N.R.C. deferred 60-year
10 parameter known by the phrase "SAFSTOR, S-A-F-S-T-O-
11 R". And at the same time from staff's perspective,
12 the joint proposal leaves in place an earlier 2001
13 Commission order, which incents prompt commencement
14 and the continuation and the completion of
15 decommissioning at the Nine Mile site.

16 Fifth, Exelon Generation has
17 acknowledged the New York State Department of
18 Environmental Conservation 10 millirem cleanup
19 guidance standard for residual red -- radiation as
20 part of the New York State site restoration
21 obligation. And this 10 millirem standard is more
22 protective than the federal 25 millirem standard.

23 Six, there is an agreement to provide
24 annual and detailed decommissioning trust fund
25 reporting to D.P.S. And from a timing perspective

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2 and a substance perspective as well, this is an
3 improvement over the current 2-year summary level
4 reporting to the federal agency, a schedule that may
5 be extended further to 3 years going forward.

6 So both from a timing and substance
7 perspective, this is an improvement. And Exelon
8 Generation is also agreed to a twice a year report to
9 D.P.S. throughout the decommissioning process once
10 the decommissioning process starts.

11 Finally, the joint proposal provides
12 for an 18-month advance notice of shutdown. This is
13 an improvement over the 12 month NYISO provision and
14 lessens the need for a quick turnaround and should
15 assist state planners.

16 The joint proposal before you along
17 with the petition is the result of negotiations
18 amongst the parties, parties whose interests have
19 been adverse in other proceedings. At the end of the
20 process, the Alliance for a Green Economy, the
21 Attorney General's Office, the Long Island Power
22 Authority came to support and signed onto the joint
23 proposal, along with the Exelon petitioners and
24 D.P.S. staff.

25 And as we note or as the draft order

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2 notes initially, LIPA indicated that it did not
3 oppose the proposal, but on December 7th, it joined
4 the proposal and submitted its formal assent and
5 signature. Thus, all parties have joined and support
6 the joint proposal.

7 The petition also provides for new
8 financial support agreements for the New York State
9 and Maryland facilities. The support agreements will
10 provide support in the following amounts for the New
11 York sites. For Ginna 118 million, for FitzPatrick
12 85 million, and for the two unit Nine Mile Point
13 site, 128 million.

14 That's a total of approximately 331
15 million for the New York sites, as well as 126
16 million for the Calvert Cliffs site, which is in
17 Maryland. I'd like to just touch briefly on the
18 public comments that were received.

19 There were approximately 2800 or more
20 than 2800 form type of public comments that expressed
21 concern with Exelon and the proposed spinoff here.
22 Many of those commenters noted that Exelon held over
23 \$2 billion in decommissioning funds for the New York
24 reactors, which were, as we noted earlier, ratepayer
25 funded.

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2 Those comments suggested that those
3 funds be used, managed -- managed and used
4 responsibly. There were also comments in support,
5 local union I.B.E.W., Local 97. That's the union
6 with members supporting the operations at the
7 FitzPatrick and Nine Mile units.

8 The building trades council, the local
9 governmental entities, including counties, towns and
10 school districts, filed comments in support. And in
11 its statement in support, Exelon Generation noted
12 that on October 18th, 2021, Exelon Generation signed
13 an memorandum of understanding with I.B.E.W. Local 97
14 in furtherance of their ongoing relationships,
15 following the closing of the proposed transfer and
16 transaction.

17 That concludes staff's presentation.
18 Again, Bridget Frymire, Ryan Coyne, Jeff Hogan of
19 O.A.A.F. and I are available for questions. Thank
20 you very much.

21 CHAIR CHRISTIAN: Thank you very much.
22 I think it goes without saying that this is a very
23 significant accomplishment. One, getting all the
24 various parties as you mentioned, that are often on
25 disparate tables, different side of the tables

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2 together to agree on this, I think in and of itself
3 shows how significant your efforts have been in
4 achieving goals that are in support of New York's
5 interests and the interests of New Yorkers.

6 You know, I don't think I can thank
7 you enough and congratulate you enough for the job
8 well done. But I really want to make sure you
9 recognize that this is a significant milestone. The
10 simple fact that we're going to be able to
11 decommission these plants in 20 years, rather than
12 the recommended 60 that in and of itself is a huge
13 accomplishment.

14 But the financial protections you've
15 accomplished and achieved through these negotiations,
16 I think are just as significant. So I want to fully
17 support this. And I'll ask my fellow Commissioners
18 if they have any other comments. Start with
19 Commissioner Burman.

20 COMMISSIONER BURMAN: Thank you so
21 much. And Ryan and Bridget, congratulations on your
22 first time presenting. I'm going to make this short.
23 I'm going to be in support of this. I think this was
24 a really collaborative effort. I was really glad to
25 see that A Green New York signed on; it's the second

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2 time in separate matters recently that they have
3 signed onto the joint proposal.

4 So I'm glad that they felt it was
5 inclusive, kind of looking forward, obviously these -
6 - this issue, a lot of these issues were not as
7 contentious as others for them. So you know, just
8 note kind of working with that process seems to have
9 worked here.

10 I also want to say a special thank you
11 to Commissioner Howard, who I know has been very
12 active and engaged with staff on this issue that we
13 have now before us. So that's it. Thank you.

14 CHAIR CHRISTIAN: Thank you.
15 Commissioner Alesi. How do you vote?

16 COMMISSIONER ALESI: Thank you, Mr.
17 Chairman. I -- as it looks, all interested parties
18 seem to be fine with this and it serves the public
19 interest. The joint proposal addresses critical
20 issues relating to finances and reports,
21 decommissioning and related issues as well as
22 monitoring by the State and maintaining emergency ops
23 centers within New York State, so I'll be supporting
24 this.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Edwards.

3 COMMISSIONER EDWARDS: Yes, I will
4 also, thank you, Chair, you know, what was
5 accomplished here is just absolutely wonderful, the
6 collaboration on the seven points, the negotiations
7 to bring all the parties together, couldn't be more
8 pleased. And thank you very much for all that you
9 have achieved here.

10 We have a long way to go in order to
11 achieve our goals. But this is a really big step.
12 So thank you very much.

13 CHAIR CHRISTIAN: Thank you.
14 Commissioner Howard.

15 COMMISSIONER HOWARD: Thank you, Mr.
16 Chairman. First of all, to say this is merely a good
17 job would be an enormous understatement. It is
18 precedent setting, not only for New York, but I
19 believe for the United States as well. And you know,
20 my comments later on will elaborate on that.

21 First of all, I believe this company
22 has an extraordinary obligation to the State of New
23 York. First of all, I can give you seven plus
24 billion dollars of ratepayer money that support these
25 four units. And without that, by the company's own

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2 admission, that subsidy, these plants would have
3 ceased operation some time ago.

4 So again, that -- that is number one
5 in our obligation. Second of all, the parent of this
6 company, it should be pointed out has had serious
7 corruption allegations in the State of Illinois and
8 those are being pursued by various law enforcement
9 and prosecutorial entities in that state and with the
10 federal government.

11 So that was the background by which we
12 started this -- this case. But I do have a couple
13 questions, I'd like to elaborate on. First of all on
14 workforce. And I understand that the communication
15 between the bargaining unit and the company sort of
16 outlines a plan for remaining headcount at the status
17 quo going forward to the period of -- going forward
18 for the next few years anyway?

19 MR. SIPOS: Yes, Commissioner Howard,
20 it is our understanding that from both a management
21 strategy perspective and also a workforce perspective
22 that Exelon Generation plans to continue the current
23 approach that they have had at those four facilities.
24 They continue -- they are going to continue the --
25 the -- the operational protocols and the parameters

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2 that they have.

3 So it's -- it's our understanding that
4 they are, you know, going to continue with their
5 workforce and with their management team that they
6 have at the New York facilities.

7 COMMISSIONER HOWARD: Also in terms of
8 if and when the -- not a question of if, but when
9 these plants move to decommissioning and with our
10 shorter timeframe for that activity I'm making the
11 broad assumption it gives a greater opportunity for
12 the incumbent workforce to participate in those
13 decommissioning activities, much like we have seen at
14 Indian Point. Is that a safe assessment?

15 MR. SIPOS: That is a correct
16 observation. One of the advantages of prompt
17 decommissioning is that it provides the opportunity
18 for the workforce that has been recently at that
19 site, operating that site, knows that site, walks
20 that site, comes to that site on a daily basis, to
21 participate in decommissioning.

22 And that is an advantage for the
23 decommissioning undertaking because you have -- in
24 that situation, you have knowledgeable people --
25 people who -- who have been working at that site, who

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2 can, you know, contribute their -- their knowledge,
3 their institutional knowledge for the next phase
4 which is decommissioning.

5 So that is, in fact a recommendation
6 or it's a -- it's a synergy, if you will, it both
7 helps the decommissioning be effective, it helps the
8 decommissioning be prompt, and it provides the
9 opportunity for continued employment.

10 COMMISSIONER HOWARD: Great, thank
11 you. You know, as a former Oswego County resident, I
12 just want to go on record. This -- these three
13 units, particularly in Oswego County, are the
14 backbone of that county's economy and a huge chunk of
15 the overall Central New York Economy.

16 So in addition to the benefits they
17 provide statewide for 3000 megawatts of zero emission
18 electricity. It does provide an enormous financial
19 kick in the pants for the Central New York economy
20 writ large. I think it's safe to say that those
21 people who were fortunate enough to work at -- these
22 Exelon facilities are maybe the highest paid and best
23 benefited workers in the region.

24 Another couple comments I will make.
25 First of all, the fact that these plants now appear

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2 to be and have seem to be at all-time capacity
3 levels, they are running better than they ever have
4 in their lifetime. I guess a question to Bridget is
5 that, from your -- you've observed these for a long
6 time and including plants like FitzPatrick, who
7 didn't operate for a long time.

8 So would you say that the Exelon --
9 how would you characterize Exelon's management in
10 terms of the day to day operation of these
11 facilities?

12 MS. FRYMIRE: Just to start, you're
13 right. They have been performing at a very high
14 level. A few of the plants in recent years have had
15 breaker to breaker runs, which mean that they start
16 up after their refueling. And they run either the
17 two years or the 18 months up until their next
18 refueling.

19 And I have recognized and we've spent
20 a lot of time looking at Exelon's focus on
21 reliability of their equipment and keeping a very
22 active look at some of their aging equipment to make
23 sure that they replace that equipment before it fails
24 and can impact operations.

25 COMMISSIONER HOWARD: Great, thank

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2 you. Also, could you elaborate a little bit on what
3 the extra funding dollars will be used for at these
4 facilities? The -- the commitment by Exelon, are
5 they ongoing plant improvements, are they capital
6 expenses, how would you characterize the extra
7 spending?

8 MR. SIPOS: So they're -- Exelon has
9 agreed -- Exelon Generation has agreed to provide the
10 support payments or the support agreements for the
11 New York facilities. They are -- they perform a
12 backstop function, should there be an unexpected
13 outage and I believe there's also a provision for
14 operation and maintenance, operation, and maintenance
15 needs.

16 COMMISSIONER HOWARD: Okay. Thank
17 you. You know, we made history earlier this year
18 with our I.P. settlement and particularly with the
19 issue of putting a new decommissioning -- rapid
20 decommissioning standard in place in New York. And I
21 believe this order just fulfills that promise now to
22 communities in Oswego and Wayne counties.

23 And I believe that our new protocols
24 should be the gold standard for not only New York,
25 because we've taken care of ourselves, but it's a

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2 model that I believe should be replicated or could be
3 replicated across the country.

4 I believe, also believe that the
5 N.R.C. and the Department of Energy needs to scrap
6 the current policy of a 60-year decommissioning
7 schedule. That is outdated and unfriendly to host
8 communities. And I think I would call on both of
9 those agencies and then possibly even the Congress to
10 modify the law that would require a more accelerated
11 timeframe.

12 Again, I just want to thank everybody
13 -- everybody because just remind everybody, New York
14 is now leading the nation on sound policy when it
15 comes to nuclear facilities. And it is also -- my
16 guess, is moving forward that these units will remain
17 a critical component of the State's zero emission
18 strategy going forward. So with that, I'll turn it
19 back to you, Mr. Chairman.

20 CHAIR CHRISTIAN: Thank you.
21 Commissioner Valesky.

22 COMMISSIONER VALESKY: Thank you, Mr.
23 Chairman. I certainly want to join my colleagues who
24 have already spoken in congratulating all of you on
25 the tremendous job that has been accomplished here,

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2 in so many ways and on so many levels. Just one
3 question, Judge Sipos, following-up on Commissioner
4 Howard's comment about the -- the local workforce.

5 And I had the great fortune of having
6 taken a tour of the FitzPatrick plant a month or two
7 ago, I guess now and saw first-hand how well that --
8 that facility is run during that particular period of
9 time. But you indicated in your -- in your
10 presentation that the company signed an M.O.U. with
11 I.B.E.W. Local 97.

12 So contained in that M.O.U., would
13 that be where some of the -- the commitments that --
14 that Commissioner Howard referred to earlier are --
15 are held in terms of the commitments to that local
16 workforce.

17 MR. SIPOS: I believe so. That is --
18 it's a recent document and I think it's intended to
19 be a roadmap for -- for going forward. And Exelon --
20 I don't want to put words in their mouth, but my
21 understanding is Exelon Generation and -- and the
22 I.B.E.W. Local 97 believe that they have, you know,
23 identified that pathway to go forward.

24 And they will -- I assume they will
25 continue to, you know, work on that both from a --

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2 from a reliability and a labor relations perspective.

3 COMMISSIONER VALESKY: That's
4 certainly good to hear and hope that we would be kept
5 in the loop as it -- as it were on those activities
6 moving forward. Sometimes, I think to really
7 appreciate the job well done. In this case, it's
8 often instructive to look at what others say about us
9 and -- and how we operate.

10 And I just want to call attention to
11 everyone if you haven't seen it. On December 2nd, in
12 a publication called Crain's Chicago Business, this
13 is written by a Steve Daniels, entitled, why Exelon
14 gave New York a better deal than Illinois. I just
15 refer to that, everyone, I'm not going to --
16 certainly not going to read it.

17 And there are a number of reasons in
18 his article as to why that's the case. One of them,
19 the fact, and the reality that here in New York, we
20 have a Public Service Law and a Public Service
21 Commission that gives us an opportunity to play a
22 role where many other states do not play.

23 Many other states and certainly
24 Exelon, I believe their -- their nuclear facilities
25 are -- are here, New Jersey, Pennsylvania, Maryland,

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2 and Illinois, many of those other states rely on the
3 U.S. nuclear regulatory Commission to in fact do all
4 of this. And -- and we don't do that here in New
5 York.

6 And I think the ratepayers and the
7 citizens of the State of New York are the ones that
8 benefit from it, for a number of reasons. And I'll
9 just highlight again, the significance of a 20-year
10 decommissioning plan compared to a 60-year
11 decommissioning plan that may be because that's
12 relatively far off into the future, I think.

13 And if I had to predict, I would
14 imagine when we get to that point in time, I'm not
15 sure any of us will be sitting here. But I do have a
16 feeling that those who are sitting here at that time,
17 will look back to the December 2021, session of the
18 Public Service Commission and specifically to this
19 point and how significant your efforts were in
20 reducing from 60 years to 20 years that
21 decommissioning process.

22 So again, job incredibly well done and
23 -- and thank you all for your tremendous service.

24 MR. SIPOS: If I could just make one
25 brief observation about that, right, the -- the

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2 federal approach, the federal philosophy is a passive
3 hands-off laissez-faire approach. And there are very
4 real economic and opportunity costs that are imposed
5 on communities that are facing a 60-year
6 decommissioning period.

7 And that is really at the -- that that
8 is a deferral or a deference to whatever the operator
9 wishes. So in this instance, you know, Exelon
10 stepped up. This is just me speaking personally, you
11 know, and did the right thing here.

12 And that will benefit the host
13 communities now and will benefit, you know, future
14 generations, you -- you spoke about, you know, people
15 down the line looking back, it will --- it will
16 benefit, you know, those who come after us, the --
17 the future.

18 And that's really it's important to
19 get these sites back on line for other productive
20 uses or whatever those uses are. It allows -- it
21 allows those communities to move forward and not just
22 have something that's laying fallow in the middle
23 that's really going to no use at all.

24 COMMISSIONER VALESKY: I couldn't
25 agree more. Thank you.

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2 CHAIR CHRISTIAN: Thank you.

3 Commissioner Maggiore.

4 COMMISSIONER MAGGIORE: Thank you. I
5 don't have anything substantive to add, but I would
6 reiterate the sentiments expressed by my colleagues.
7 So thank you very much.

8 CHAIR CHRISTIAN: Okay. Thank you
9 everyone. We have sufficient votes. And that said,
10 this item is approved. And --

11 SECRETARY PHILLIPS: Sorry. I'm
12 sorry, Chair, could you please call for the votes
13 individually.

14 CHAIR CHRISTIAN: I'm sorry, you're
15 right. Thank you. Let's get this done. So I'm
16 going to call for the votes starting with
17 Commissioner Burman.

18 COMMISSIONER BURMAN: Yes.

19 CHAIR CHRISTIAN: Commissioner Alesi?

20 COMMISSIONER ALESI: Yes.

21 CHAIR CHRISTIAN: Commissioner

22 Edwards?

23 COMMISSIONER EDWARDS: Yes.

24 CHAIR CHRISTIAN: Commissioner Howard?

25 COMMISSIONER HOWARD: Yes.

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2 CHAIR CHRISTIAN: Commissioner

3 Valesky?

4 COMMISSIONER VALESKY: Yes.

5 CHAIR CHRISTIAN: Commissioner

6 Maggiore?

7 COMMISSIONER MAGGIORE: Yes.

8 CHAIR CHRISTIAN: Okay.

9 SECRETARY PHILLIPS: One more second

10 and your vote?

11 CHAIR CHRISTIAN: I vote in favor.

12 Yes.

13 SECRETARY PHILLIPS: Thank you.

14 CHAIR CHRISTIAN: Thank you. So we

15 have sufficient votes. This item is approved. We'll

16 move onto the second item for discussion.

17 MR. SIPOS: Thank you.

18 CHAIR CHRISTIAN: Thank you, everyone.

19 Okay. Good morning, everyone. So thank you for

20 coming. This is Item 401, Case 20-W-0102, related to

21 the American Water Works Company, New York American

22 Water Company, and Liberty Utilities. This will be

23 presented by Administrative Law Judge Maureen Leary,

24 Tim Canty, Deputy Director of Office of Accounting

25 Audits and Finance.

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2 Mike Rieder, Deputy Director of the
3 Office of Electric, Gas, and Water. Aric Rider,
4 Deputy Director of Office of Consumer Services and
5 Brandon Goodrich, Managing Attorney are available for
6 questions. Judge Leary, please begin.

7 A.L.J. LEARY: Good morning.
8 Unfortunately my eyeglasses fog and this is a pretty
9 heavy mask, so I hope you can hear me clearly. I
10 apologize to have to remove my mask. Good morning,
11 Chair Christian, Commissioners Valesky, Commissioner
12 Burman, Commissioner Howard, Commissioner Maggiore,
13 Commissioners Alesi, and Edwards.

14 My name is Maureen Leary. I am the
15 Administrative Law Judge assigned to this proceeding
16 which was initiated in February 2020, by joint
17 petition, filed by American Water Works Company, New
18 York American Water Company, and Liberty Utilities
19 Eastern Water Holdings, which I will refer to today
20 as Liberty Eastern.

21 The joint petition sought Commission
22 approval pursuant to Public Service Law 89H of
23 Liberty Eastern's acquisition of 100 percent of the
24 outstanding capital stock of New York American Water.
25 It also sought Commission approval pursuant to Public

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2 Service Law 89F of the issuance of long-term
3 indebtedness by Liberty Utilities Incorporated, as
4 opposed to Liberty Eastern, they are affiliates.

5 To satisfy and replace New York
6 American Water's outstanding long-term intercompany
7 debt, Liberty Utilities will fund the satisfaction of
8 this debt. I will also refer to it as LUCo as it is
9 designated in the order. Before the Commission today
10 is a draft order adopting the terms of a joint
11 proposal, but also containing additional reporting
12 requirements.

13 In the draft order, the Commission
14 expressly finds that the joint proposal meets the
15 criteria of both Public Service Law Section 89H and
16 89F and is in the public interest. The all -- order
17 also reflects the Commission's finding that the
18 proposal meets the Commission's settlement guidelines
19 because it is within the range of likely litigated
20 outcomes and may in fact be superior to what those
21 outcomes may -- that outcome may have been.

22 A.L.J. LEARY: In addition to the
23 petitioning companies and Department of Public
24 Service trial Staff, it's notable that the joint
25 proposal was signed by all parties to the proceeding

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2 with the exception of one. The signatories include
3 two public entities, namely the Village of Sea Cliff,
4 and the Massapequa Water District.

5 It also -- two sig -- two additional
6 signa -- signatories were local ratepayer groups,
7 activists, namely the North Shore Concerned Citizens
8 and Glen Head Glenwood Civic Council. A separate
9 ratepayer group known as Long Island Clean Air, Water
10 and Soils, which I will refer to today as Long Island
11 CAWS, C-A-W-S was not a signatory to the joint
12 proposal and has filed opposition to it.

13 In adopting the terms and conditions
14 of the joint proposal, the order primarily recites
15 the benefits to ratepayers that are associated with
16 the acquisition. Those are well supported in the
17 record. New York American Water's history with the
18 Department is somewhat complicated and the order had
19 to cite some of that history.

20 Context here is important. Both the
21 joint proposal and the order before you have been
22 shaped by several events, including consistent public
23 claims of excessive rates in the service territory
24 and the efforts toward municipalization of parts of
25 the system before and during this proceeding.

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2 The order also seeks to meet the
3 objectives outlined in the Commission's 2018 order
4 that initiated an investigation into the inflated
5 real property taxes that New York American Water had
6 used to establish its revenue requirements in the
7 last rate case. Those efforts have resulted in
8 measures that will assure that those errors are not
9 repeated in the next rate case.

10 And then of course, there was the
11 COVID-19 pandemic and the difficulties associated
12 with negotiating agreement -- an agreement to
13 authorize this complicated transaction. I cannot
14 speak favorably enough in favor of both the -- the
15 companies, as well as D.P.S. trial Staff and the
16 other parties in making this happen.

17 And I have to, at this point in my
18 presentation, express many thanks to the Advisory
19 Council, Mr. Canty, Mr. Rider, Mr. Hogan, Mr.
20 Goodrich, Mr. Rieder, who -- Mr. Rosenthal, Mr.
21 Lecakes, all of whom collaborated to make this happen
22 in a very short timeframe.

23 So let me, before turning to the
24 specific provisions of the joint proposal, provide
25 that context I referred to. It's a brief timeline.

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2 In January 2018, as I mentioned the Commission
3 initiated an investigation into this erroneous
4 reporting of New York American Water's real property
5 taxes for the Sea Cliff District within its service
6 tor -- territory.

7 And during the 2016 rate case, the
8 joint proposal adopted by the Commission relied on
9 those numbers. The Commission approved customer
10 refunds thereafter, credits for overpayments, and
11 also ordered the retention of an independent monitor
12 to audit the company and its internal processes
13 involving how it reported, recorded, et cetera real
14 property taxes.

15 The independent monitor was in place
16 until September of 2021. And then in an October 2021
17 report made certain -- certain recommendations or
18 continued certain recommendations. The companies in
19 February 2020, as I mentioned, filed this joint
20 petition and less than a month later on March 7th,
21 the Governor declared a state of emergency in our
22 State due to the COVID-19 pandemic. That has had a
23 wide-ranging effect, I don't need to remind this
24 Commission, on almost every pending matter.

25 In June 2020, the Secretary issued a

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2 notice inviting municipalities and public authority
3 specifically in New York American Water Service
4 territory to submit comments, plans, proposals, et
5 cetera that would reflect their plans to acquire any
6 part of the New York American Water System
7 infrastructure.

8 This was really a critical measure
9 that the agency talked to and -- and it actually
10 generated specific valuation and feasibility reports.
11 In response to the Secretary's notice, the Village of
12 Sea Cliff and the Massapequa Water District, both
13 commit -- submitted separate valuation and
14 feasibility studies for acquisition of part of the
15 system. These are a part of our record.

16 In October and November, the parties
17 filed testimony. And at that point, the petitioning
18 companies filed a notice of the initiation of
19 settlement negotiations, which continued for
20 approximately one year thereafter. In November 2020,
21 Judge Lecakes and I held virtual public statement
22 hearings, I believe there were six.

23 And there was significant public
24 participation, also a part of this record. Many
25 commenters on Long Island and the service terr --

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2 territory expressed opposition to the acquisition,
3 complained about high rates and supported immediate
4 municipalization of all or part of the system.

5 In February 2021, additional public
6 forums were held that were specifically focused on
7 the issue of municipalization. So in short, we heard
8 a lot from the public and it was important that we
9 did that.

10 In March 2021, following the
11 Governor's direction to Department Staff, Staff
12 issued -- conducted a study examining the feasibility
13 of municipalization and filed a report finding that
14 in the service territory in Nassau County,
15 "municipalization is both feasible and under a
16 variety of scenarios in the public interest, even
17 with an upfront investment of nearly \$800 million for
18 the purchase of New York American Water's assets, or
19 a prorated amount for parts of the system."

20 Staff included in its analysis,
21 ongoing infrastructure improvements and transaction
22 costs in making that recommendation. The Staff made
23 a number of recommendations that actually have come
24 to fruition. Again, this was a study done very
25 quickly and comprehensively. And I really commend

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2 Staff for that.

3 In October 2021, the independent
4 monitor appointed to address the real property tax
5 errors filed its last report that reflected New York
6 American Waters' significant process -- progress in
7 revising its internal processes and controls related
8 to the real property taxes, data recording and
9 reporting and other measures to address the previous
10 errors.

11 The independent monitor documented
12 certain additional work that remained to be
13 implemented and/or tested. This can be seen in the
14 independent monitor's report, which is also a part of
15 the record. In early November 2021, Governor Kathy
16 Hochul signed into law legislated -- legislation that
17 created two new public water authorities for the
18 purpose of acquiring parts of New York American Water
19 System assets.

20 They're known as the North Shore Water
21 Authority and the South Nassau Water Authority.
22 Immediately thereafter, the joint proposal was filed.
23 After the parties filed statements in support and
24 Long Island CAWS filed a statement in opposition, we
25 held a one-day evidentiary hearing on November 16th,

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2 at which additional testimony and other evidence was
3 admitted.

4 Long Island CAWS was given the
5 opportunity to conduct and in fact conducted cross
6 examination. I will review some of the terms of the
7 joint proposal. My intent is not to cover every
8 single one, but to represent for the Commission
9 today, the overall holistic benefit to the public as
10 a result of the joint proposal.

11 As I mentioned, it calls for Liberty
12 Eastern's acquisition of 100 percent of New York
13 American Water's capital stock for \$608 million. And
14 Liberty Utility's replacement of New York American
15 Water's long-term intercompany debt that totals
16 \$198.6 million.

17 So under the joint proposal, New York
18 American Water will continue to be known by that
19 name, its operations will continue at the company's
20 Merrick, Long Island Headquarters. It will have
21 additional services provided by Liberty Utilities and
22 it will separately retain its own books and records
23 and be subject to an affiliate code of conduct with
24 its new affiliates.

25 New York American Water's existing

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2 employees and management will be retained for at
3 least two years and the existing union contract will
4 be honored. This will assure a smooth transition of
5 New York American Water's operations following the
6 acquisition.

7 In addition, New York American Water
8 will continue to operate under its current rate plan,
9 which was established in the Commission's 2017 rate
10 order. But as that order has since been revised by
11 the Commission in various subsequent orders,
12 including the one that dealt with the tax refunds and
13 those designed to address the COVID-19 financial
14 impacts.

15 The company will also -- the joint
16 proposal also calls for the company to operate under
17 a rate freeze until at least April 1, 2023. And in -
18 - in an interesting provision in the joint proposal
19 that would move that date possibly into 2024. The
20 joint proposal requires at least one year of Liberty
21 Eastern's ownership to make up the historic test year
22 that it presents to Staff in the next rate case.

23 So again, that could move the rate
24 freeze into 2024, another benefit for ratepayers that
25 remains to be seen, but is potential -- potentially

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2 going to happen. The joint proposal also provides
3 for a \$23.5 million positive benefit adjustment for
4 ratepayers specifically.

5 It will first be used to write off the
6 make-whole surcharge that resulted from the
7 Commission's various orders, the remaining amounts
8 will be used in a couple of ways to cover deferred
9 levelization surcharges for rate years 3 and 4 in
10 service area 1 and to mitigate rates in service area
11 2 in the next rate case.

12 But interestingly, and this is a big
13 plus for those entities seeking to municipalize part
14 of the system. It can't -- there are parts of this
15 public benefit adjustment that can be used as an
16 offset on the price of the acquisition for a
17 municipality or public entity.

18 There are also additional ratepayer
19 protections such as acquisition costs of the
20 transaction will not be a part of rates. They will
21 be separately tracked and reported to Department
22 Staff as a compliance filing. In addition, the costs
23 calculated within this transaction associated with
24 goodwill will also not be passed on to customers in
25 rates.

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2 Again, part of the compliance filing
3 in terms of reporting. The -- the surviving entity
4 also has certain protections that are required by the
5 joint proposal. For example, it is required to
6 maintain a triple B rating with the rating services.
7 It is required to maintain a minimum common equity
8 ratio, that is the common equity ratio used by the
9 Commission to set rates.

10 Dividend payments to shareholders are
11 prohibited if that equity -- minimum common equity
12 ratio is not maintained. I mentioned the code of
13 conduct and one other financial protection that's
14 significant in terms of its new affiliates is that it
15 limits New York American Water's participation in a
16 money pool to only participate with other regulated
17 entities.

18 It may not participate in a money pool
19 with unregulated entities. Again, financial
20 protections that inure to the benefit of ratepayers.
21 So customer service, there are several provisions
22 including the continuation of the negative rev --
23 revenue adjustments, this is a highlight to -- for
24 the joint proposal because of the history problems
25 with customer service.

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2 And as -- as the order reflects, these
3 customer service provisions are designed to really
4 improve the customer's relationship with the
5 surviving entity. There will be also future low-
6 income program.

7 The order provides for New York
8 American Water in its next rate to work between now
9 and its next rate case to present a program that will
10 ident -- that will identify low-income individuals
11 and hopefully will result in assistance being
12 provided them. This is somewhat new because of a
13 federal law that was passed, I believe just this year
14 2021, that provides dollars to the Office of
15 Temporary and Disability Assistance to identify these
16 customers.

17 This -- Department Staff is optimistic
18 that this actually could result in a pretty strong
19 low-income program for utilities that is similar to
20 those programs that we see on the electric and gas
21 side. Also, the -- the company has agreed to --
22 agreed to make good faith -- faith efforts to propose
23 financial assistance and arrearage management as the
24 Commission is aware during COVID-19 arrearages have
25 been increasing.

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2 And finally, in -- in my personal
3 view, one of the strongest parts of the joint
4 proposal are the municipalization provisions that
5 provide the framework for interested municipalities
6 to actually sit down at the table with the company
7 and negotiate in good faith to acquire part of the
8 system.

9 The additional benefit of that is that
10 those negotiations are actually subject to reporting.
11 So Department Staff will have a level of oversight
12 during that process to make sure that there are good
13 faith negotiations.

14 I want to call your attention to the
15 continuation of existing but the new reporting
16 requirements that also make this joint proposal and
17 the order adopting it robust. They include capital
18 expenditures reporting, that would -- will include a
19 5-year capital investment forecast with system
20 upgrades.

21 New York American Water must annually
22 report to the Commission on the status and completion
23 of its water treatment technologies to address
24 existing con -- contamination in parts of its system.
25 Again, very strong benefit to customers that this

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2 happens sooner than later. The order expresses the
3 Commission's expectation that the timeframes provided
4 by the company will be met.

5 That's not to say that there may not
6 be delays, there are provisions that provide for
7 that, but a showing is going to have to be required
8 to Agency Staff. Customer outreach on simplified
9 annual reports that address the contamination are
10 also required.

11 Finally, New York American Water is
12 required to submit, what I'll call, enhanced
13 reporting to Department Staff that would include
14 material facts and circumstances that may operate to
15 impair the provision of safe and reliable service.

16 They also are required to report on
17 cyber security risks, emergency preparedness,
18 response capabilities, and anything else that -- that
19 will otherwise affect the financial viability of the
20 surviving entity.

21 The -- and I don't think that there'll
22 be questions about the Internal Revenue Code 338
23 Election, as described in the joint proposal, this is
24 not an approval that's before the Commission, the
25 parties are simply acknowledging that this tax

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2 benefit is being sought by the companies.

3 And what the -- what the Commission
4 does say in the order is that the customers are
5 protected as a result of this election in the joint
6 proposal through the offset schedule that's contained
7 in Exhibit 1. So on the issue of indebtedness, it's
8 pretty simple. Liberty --

9 (Off the record/on the record)

10 THE REPORTER: I'm sorry. I got
11 static really bad.

12 CHAIR CHRISTIAN: We can hear you.

13 A.L.J. LEARY: It's because I'm going
14 on too long.

15 THE REPORTER: I don't think so. Is
16 your mic still on?

17 A.L.J. LEARY: It is.

18 THE REPORTER: Okay. Well, it went
19 away that was --.

20 CHAIR CHRISTIAN: Is everything back
21 to normal or --

22 THE REPORTER: Yeah, I think it's
23 good. We never have that happen here.

24 CHAIR CHRISTIAN: Okay.

25 THE REPORTER: Okay.

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2 CHAIR CHRISTIAN: All right.

3 A.L.J. LEARY: So-- so the debt issue,
4 it's pretty simple, the terms are better. And -- and
5 that's the bottom line. The interest rate is better,
6 there are -- there are a number of other benefits.
7 So a couple of things that are -- what I will call
8 additional requirements, the independent monitor's
9 recommendations, there was a little bit of a gap so
10 that the Commission in this order is requiring the
11 continued implementation.

12 Now that the independent monitor's
13 role is -- is finished, it was important to have the
14 company continue the implementation through this
15 transition. We wanted to stress -- or the Commission
16 stresses the expectation that those measures will
17 continue to be implemented.

18 Again, I mentioned the reporting on
19 the status of the updated treatment system. And
20 there is one minor modification procedurally to the
21 order. The order contained a requirement or a
22 contingency that the Commission act "expeditiously if
23 in approving a municipal agreement with New York
24 American Water."

25 There was no question in my mind that

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2 the Commission would do that kind of -- or to
3 undertake that type of expeditious action. But this
4 is not something that the Commission should be bound
5 to. There are -- there are too many potential
6 factors that could go into what expeditious means, et
7 cetera.

8 So that is the single modification.
9 And yet the order expresses exactly what the
10 Commission normally does, which is expeditiously deal
11 with every matter before it. Long Island CAWS
12 opposition to the joint proposal, in short, Long
13 Island CAWS raised valuation, rate issues, other
14 issues not before the Commission in this proceeding.

15 They are more appropriately raised in
16 the next rate case and the order before you rejects
17 their opposition, really to the municipalization
18 provisions. They did not meet their burden in
19 showing that those provisions were not in the public
20 interest.

21 In conclusion, the draft order
22 documents the substantial record in this proceeding
23 and supports the Commission's finding that the joint
24 proposal meets the public interest standard in Public
25 Service Law sections 89H and 89F.

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2 It protects customers, enables
3 municipalization, and mit -- mitigates rate impacts
4 through both the rate freeze and the positive benefit
5 adjustment. It also fosters New York American
6 Water's financial stability and assures a smooth
7 transition into new ownership that will enable it to
8 continue to provide safe and reliable service to
9 customers.

10 That concludes my presentation. We
11 are available for your questions. Thank you.

12 CHAIR CHRISTIAN: Thank you, Judge
13 Leary. And I want to thank you and your team for
14 doing a great job through the difficult circumstances
15 to make these accomplishments a reality. You know,
16 you did a great job of going through the variety of
17 accomplishments achieved through this, but in my mind
18 most significant are -- are two.

19 In part, the fact that residents of
20 these locations will have cleaner water in the future
21 and that there is capital plan set aside to make that
22 a reality through the water treatment that you
23 mentioned earlier.

24 And secondly, the various financial
25 protections that are put in place, the rate freeze,

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2 the potential for future -- muni -- municipalization
3 and other aspects. Create near term benefits and the
4 potential for future long-term savings as well. So I
5 think this was well conceived, well put together.

6 And I want to thank you for the hard
7 work you, and your team, and the others you mentioned
8 earlier for making this a reality. Okay. And we'll
9 go to other Commissioners for comments. Commissioner
10 Burman?

11 COMMISSIONER BURMAN: Thank you so
12 much. Judge, I want to thank you for a very detailed
13 and important summary of what the draft order is
14 before us. I do have a unique perspective in that,
15 not only as a former Long Islander, who was very
16 familiar with all of the towns mentioned.

17 But I was the -- I am the only
18 Commissioner currently that voted on the 2016 rate
19 case. And so for me, the history of sort of, from
20 the -- from that to how we got here is one that's
21 really important. There are a lot of lessons to be
22 learned. At the time that we voted on the rate case,
23 there are only two Commissioners at that time.

24 And we were strongly encouraged for
25 the need to vote on that rate case. Because if we

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2 did not vote at that time, there was a legal opinion
3 that we would be putting at risk the customers more
4 so by not having some finality and perhaps increasing
5 the rates eventually.

6 So with that, myself, and then-
7 Commissioner Chair Sayer voted on that rate case.
8 And I actually spoke at the session about the fact
9 that I was very concerned that I did not think that
10 this was something that we should embrace as a good
11 rate case, not because of what was before us from the
12 Staff, not because what was before us from the
13 parties, and not because what was before us from the
14 company.

15 But that a clear look at it was really
16 the property tax issue and the huge increases that
17 were outside of the utility itself, that having to
18 undertake that. And so, my sense of it was that this
19 was going to be very, very challenging and fraught
20 with issues. And that came really into fruition.

21 There are a lot of different missteps
22 collectively, myself included. And I do think it's
23 important for us to kind of look carefully at some of
24 the lessons that we can be learning as we move
25 forward.

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2 After the 2016 rate case was decided,
3 there were also some issues not just on the high
4 bills, the property tax issues, the challenges
5 between rate in -- in some communities versus others,
6 but also the conservation issues and the less than
7 candid issues related to the ORPS(ph) tax issue.

8 We actually at that time, Commissioner
9 -- then Commissioner Chair Sayer and myself, did not
10 approve as part of the joint proposal when we were
11 approving the order, though any of the low-income
12 program proposals that were put forth. And really
13 primarily that was because we didn't see at that time
14 that that would be helpful.

15 We saw that as a huge cost shift. And
16 we weren't seeing anything from the parties
17 themselves, and customers in the need for that. And
18 we didn't have this -- and we had the same -- we have
19 different challenges because we didn't have federal
20 monies from LIHEAP as to water that we could -- we
21 could utilize.

22 So we saw that would also be pancaking
23 on further rate increases to other customers and that
24 was a problem. For me, I feel like a lot then became
25 sort of setup to fail. We did a lot of fits and

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2 starts. We were as a Commission, as D.P.S., we were
3 trying to move forward in addressing a lot of the
4 challenges working with the company, working with the
5 customers, but there was a lot of outside
6 interference.

7 And that sort of took a -- took us in
8 a lot of different challenging ways. And also
9 remember, it was two Commissioners who voted on a
10 rate case, other Commissioners left, frankly before
11 and gladly, they had to decide what would be
12 perceived as a bad rate case.

13 That left a lot of holes to fill. But
14 it also left that anyone then coming in trying to
15 figure out what happened in the rate case with all
16 these other things. And I think for me, a good
17 lesson is a full Commission that's engaged in the
18 issues is very, very important. An ability for Staff
19 to have dedicated resources on these issues is
20 really, really important.

21 And also, we need to be as a body,
22 able to move forward in a way substantively with the
23 resources that we need to do that. And so at times,
24 while well-meaning, whether it's the legislature or
25 the executive, that interference can actually move us

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2 backwards rather than forwards.

3 So I share that because I do think
4 that for me as an insider looking in, it was very
5 unclear the lines of responsibilities. It was very
6 unclear the paths that we were following. And those
7 unique challenges did not help the situation.

8 In fact, the study that was directed
9 by the executive at the time was something that was
10 already being looked at in the pending proceeding in
11 what -- and -- and was going to be something that was
12 going to be addressed on through comments and also
13 analysis.

14 In a sense, that also contributed to a
15 lack -- in my opinion, a lack of respect for the
16 Commission and the Staff to be able to get under the
17 hood substantively and address those issues in their
18 proper forum. And it left customers as well as the
19 utility confused on which pathway to go, because it
20 many times felt like a whack-a-mole.

21 No matter what you did, things kept
22 coming back up and you weren't able to figure out the
23 right pathway to clearly identify and address the
24 issues. I think that, in my opinion, is something
25 that I've spoken about before.

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2 But for me, I share it now because we
3 do need to take account of our responsibility to
4 ensure that we are focused on the proper regulatory
5 oversight and role and how to make sure that we are
6 setting forth the right regulatory framework for our
7 decisions, rather than at times feeling like we're in
8 crisis mode and reacting to it, and trying to figure
9 out new pathways that aren't necessarily helping us
10 stay on track and moving forward.

11 Here, for me, it also gets back to my
12 sense of making sure that we do more collaborative
13 discussions, both internally and externally and make
14 sure we're focused on those pathways. As I go
15 forward and I look at this, I do think that this is
16 something that I could vote for, I will be
17 concurring.

18 I want to recognize though, that in
19 here, we are setting up a couple of things for the
20 next steps and the next phase. It does not mean that
21 we have implemented a full low-income water program.
22 What it means is that we have a framework to be
23 looked at in the next rec -- rate case.

24 And so it's our obligation as a
25 Commission, working with D.P.S. and others, to make

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2 sure that we get it right. This needs to make sure
3 that we are maximizing the resources available from
4 the Low-income Household Water Assistance Program.
5 That will be a clunky process in that we will need to
6 rely on the federal agencies involved, as well OTDA
7 to do this.

8 So for me, when I look at this, I want
9 to make sure that we do it and we make sure New --
10 New York gets as much as we can out of this program
11 and address any challenges at the get-go so that
12 customers are not negatively impacted by that. And
13 so it's for us to be very careful.

14 When we do look at the next rate case
15 that will involve that, we need to also not do a
16 cookie-cutter approach, which means that we need to
17 understand the utility customers in that area. We
18 need to understand the impact on both public and
19 private. And we need to make sure that we are
20 carefully managing that, and understanding that.

21 We could see -- we can actually look
22 to some of the challenges we saw in a -- other
23 utility, the Suez case where we had -- at that time
24 had a low-income program framework, and they were
25 supposed to come back and there were some challenges

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2 with that.

3 Some of those challenges are not --
4 not necessarily the same, that it might be in United
5 Water. But that gets to the second prong. The
6 issues with the 2016 rate case, as it related to the
7 Conservation Block, where we took a cookie-cutter
8 approach, we moved what was successful in the Suez
9 case, in my opinion, to the American Water case,
10 without a full understanding of what that would mean,
11 without actually fully, publicly discussing it in a
12 way that would be fully understood by folks.

13 And so when then it came to be, we
14 should have actually tested it in a way that would
15 have helped us rather than having to figure out how
16 to avoid the issues and have a bunch of different
17 emergency motions and other things come before us to
18 fix those challenging issues.

19 The other thing is by having a big
20 rate increase that was delayed due to COVID when we
21 finally had that increase it was nearly a 20 per six
22 -- 26 percent rate increase in May of 2021. For me,
23 that then was a rallying cry to the legislature to in
24 June adopt a legislation directing the municipality
25 this -- the water authorities.

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2 And so for me, I do believe that we as
3 a Commission, should have looked at some of this and
4 addressed it and gotten ahead of it, rather than
5 having the legislation now be something that -- that
6 sort of dictated a lot of the next steps.

7 In any event, I -- I look to the fact
8 that, in this case, in this matter, there are going
9 to be a couple of next steps, some of the rate cases,
10 the low-income programs and others, looking at some
11 of those financial impacts, the independent monitor,
12 et cetera. But there also will be three potential
13 transactions that will come back to the Commission.

14 The North Shore Authority -- Water
15 Authority, part of that may come here, the Massapequa
16 municipalization, as well as potentially the
17 Hempstead municipalization. Now, for me, I recognize
18 that the Hempstead one is one where the Town of
19 Hempstead was very much concerned about that, what
20 that would mean.

21 In fact, frankly, 90 percent of the
22 customers or thereabout fall into that category. So
23 we need to be very careful from our own management of
24 the next steps. Municipalization of a water utility
25 is not necessarily the saving grace and may also

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2 actually just be as, for some may say it's fair, some
3 may say it's unfair, a cost shift to the other
4 customers.

5 And so we need to make sure that it's
6 not an -- it's -- it's not an inappropriate apples to
7 apples comparison to say you see, American Water's
8 rate -- American Water's bills are so much less now
9 and we're not dealing with that over on the other
10 side.

11 And we also need to be very careful
12 that as Staff is negotiating in -- and -- and working
13 with folks in the next steps as it relates to
14 municipalization, that we take an approach that is
15 not an advocacy approach. That is not trying to
16 browbeat one particular group or another into what is
17 the right way, this is now a much more hands off
18 approach.

19 It's a local issue approach. And it's
20 one that really needs us to help in a way that is
21 collaborative, but not as trying to push a particular
22 way or not. From my own perspective,
23 municipalization can have some pros and can have some
24 cons. We're in a transition period right now.

25 The D.P.S. study, as I read it, is not

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2 making an assumption that municipalization is -- can
3 be as efficient as a private water utility. And so
4 there is no assumption on which may be more efficient
5 or not. But when we do the analysis, we need to be
6 really, really careful that we are giving a
7 factually-based analysis that is not trying to push
8 in one direction or another and looking at that.

9 So with that, I'm going to wrap up in
10 just saying that I want to thank all Staff who have
11 worked on all of these issues from when the 2016 rate
12 case was first filed, through all of the different
13 challenges. Nothing that I say here is in any way,
14 saying anything negative about Staff.

15 In fact, I have in highest regard,
16 each and every Staff who have really lived and
17 breathed all of the challenges thrown at them, and
18 dealt with it in a way that I think led us to a
19 better product, a better way of collaborating and
20 trying to move us in a path forward.

21 And so I raise these things really so
22 that we have some sort of insight and -- and
23 perspective on where we are. I do want to just point
24 out one minor thing. The change in the joint
25 proposal that takes out from the joint proposal

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2 directing the P.S.C. to act expeditiously; that I
3 think is appropriate.

4 But I think it's also something that
5 we need to generically also keep in mind as we go
6 into settlement discussions. Joint proposals, when
7 they're directing the P.S.C. to do something is
8 something that we need to be very mindful of, because
9 that's a delegation of authority that we need to
10 really carefully weigh in as a Commission body.

11 It's for us to weigh in to get
12 comments on what it should be. And it's also a
13 delegation for the Chair to work through on what some
14 of the proper timelines are on things. So I just
15 raised that because that's a good takeaway, not just
16 within this joint proposal, but just across the
17 board. So thank you so much.

18 (On the record.)

19 A.L.J. LEAHY: If I could just address
20 one, because I don't want the Commission and this is
21 a long document with lots of footnotes. I want to
22 refer the Commission to in fact, one of those
23 footnotes, which recognizes or expresses the
24 Commission's recognition of this sort of two sides to
25 municipalization in terms of the impact on the tax

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2 base of the municipalities.

3 So I think the order very fairly
4 presents that we are not taking some advocacy
5 position here. I wanted to reassure the Commission
6 and that may have been lost in translation. And I
7 actually -- I think that that is a better signal to
8 send than rah, rah, go, municipalization. It's a
9 much, you know, more, sort of middle of the road and
10 fair approach.

11 It is up to the local municipalities
12 and -- and water authorities.

13 COMMISSIONER BURMAN: Absolutely,
14 Judge. And that's actually one of the reasons that I
15 can vote in -- in concurrence with this. So thank
16 you.

17 A.L.J. LEAHY: Thanks.

18 CHAIR CHRISTIAN: All right. Thank
19 you, Commissioner, Alesi.

20 COMMISSIONER ALESI: Thank you, Mr.
21 Chairman. This will assure customers of safe and
22 reliable service and to that, and it is clearly in
23 the public interest. It is within the Commission
24 settlement guidelines consistent with the goals of
25 the C.L.C.P.A., and it provides improved and expanded

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2 focus on customer service and low-income customers as
3 well. And I'll be supporting it.

4 CHAIR CHRISTIAN: Thank you.
5 Commissioner Edwards.

6 COMMISSIONER EDWARDS: Yes, thank you,
7 Chair. You know, I will say that I agree with much
8 of what Commissioner Burman has said, so I'm not
9 going to repeat it. This was one of the major things
10 that when Commissioner Howard and I joined the Public
11 Service Commission, and I at that time truly could
12 not believe the service, quality, and the rates that
13 the customer had to endure.

14 This is definitely not a 100 percent
15 fix, because what we don't want is for the same
16 issues to creep up. But now it's with another
17 company, or now it's, you know, with
18 municipalization, which is complicated. I want to
19 thank the Staff for working so hard on this.

20 I also want to thank the Nadels, who
21 were actually customers who took the time to walk
22 through all of the complicated issues that -- that
23 were around this, the Nadels and other neighbors and
24 customers that were passionately talking about their
25 experience. So I agree that, you know, this is not a

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2 100 percent fix, it is definitely progress. And I
3 will be supporting it. Thank you.

4 CHAIR CHRISTIAN: Thank you.
5 Commissioner Howard.

6 COMMISSIONER HOWARD: Thank you.
7 First of all, in the world of -- Staff doesn't
8 deserve enough credit for doing the unpleasant for
9 years and years and years in a row. This is a
10 perfect example of a case that you guys really
11 persevere through difficult and often very
12 contentious times, not only with us in the
13 Commission, but those other affected parties.

14 I have a couple of questions first.
15 Of the three major water districts of New York
16 American Water, can -- can someone tell me how much
17 the tax burden is by each of the three you know, the
18 North Shore, Massapequa, and Hempstead properties?

19 MR. CANTY: Yeah, for -- for Hempstead
20 in is Hempstead and -- Hempstead and Massapequa it's
21 roughly about a third of the bill is property taxes
22 and up in Sea Cliff it's about 50 percent.

23 COMMISSIONER HOWARD: All right.
24 Thank you. And one other question. Are we aware of
25 any other potential tax cases out there long-standing

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2 that may in fact, accrue to the benefit of ratepayers
3 going forward?

4 MR. CANTY: You know, the company has
5 a number of tax challenges. And -- and there's one
6 in particular related to the -- when the class -- the
7 four class system was implemented in -- in Nassau
8 County. And initially, the way the law was written
9 it only applied to the county but it was -- but when
10 they effectuated it, they applied it to all the
11 villages and school districts.

12 And the -- the company has won on that
13 in court and it's being appealed and -- and
14 negotiated.

15 COMMISSIONER HOWARD: Do you have any
16 idea what the magnitude of that -- that outcome could
17 be for New York American Water?

18 MR. CANTY: You know, I don't want to
19 impact the, you know, any settlement negotiations
20 because a lot of this is interest from the date --
21 you know, from the date that it happened, which was I
22 think, early 2000. But it's -- it's significant.

23 COMMISSIONER HOWARD: Okay. Enough to
24 provide potential real rate relief to customers going
25 forward?

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2 MR. CANTY: Yes.

3 COMMISSIONER HOWARD: Okay. Now, the
4 rest of these are somewhat comments, Mr. Chairman.
5 First of all, it's unfathomable to me, of how local
6 elected officials could implement a system where more
7 than half of a customer's bill goes to taxes. It is
8 just unbelievable to the point of incredible. And
9 this is an issue that didn't just sneak up on
10 anybody.

11 You know, any examination of Nassau
12 County's four tier property tax system would see that
13 is clearly unfair, regressive, and I would dare say
14 use the phrase "usury". The last year in Nassau
15 County has seen a clarion call by property tax owners
16 on the need to fix Nassau County's real property tax
17 system.

18 Any reform to that system must
19 include, in my opinion, reforms to the taxes placed
20 on utilities by Nassau County. And as New York State
21 is poised to in billions and upgrades to our
22 electrical grid, it should not become an opportunity
23 for a windfall for local governments.

24 Under the current system, in
25 particular in Nassau County, and I would dare say New

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2 York City, these billions of dollars new investments
3 will real -- will result in hundreds of millions of
4 dollars of new taxes going to municipalities. And I
5 believe that all climate related infrastructure
6 spending that will be costly enough on its own.

7 That any additional cost to local --
8 and due to local taxes will require -- that require
9 ratepayers to pay twice is just unacceptable. And as
10 far as municipalization goes, Nassau County's
11 localities have had more than a century, more than a
12 century to municipalize its private water systems.

13 And many decades ago, New York City
14 purchased assets of the same company that now are
15 part of the broader New York City system that were
16 previously private. It is my belief that with over
17 \$40 million at stake in local property tax revenue, I
18 do not believe that the largest municipality in this
19 system, in this case the town of Hempstead, will go
20 and ever, ever municipalize due to the fact of the
21 fiscal hit that the town may actually take.

22 It is very unfortunate in this State
23 that policymakers often hide the impact on customers
24 through these, I would dare say phantom taxes, local
25 taxes, on utilities, because of the somehow broad and

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2 mistaken belief, that is the cust -- the companies
3 that pay these taxes, customers pay these taxes. It
4 is not the -- the utilities that do.

5 So a fair, transparent, progressive
6 taxation is needed. And quite honestly, and is my
7 hope and we knew that the Congress revives the SALT
8 deduction for -- for municipal taxes, that in fact,
9 it would be far better for Nassau County ratepayers
10 and taxpayers that these large tax increases be
11 shifted to taxes that are in fact deductible on my
12 federal income tax, whereas the embedded taxes is on
13 utilities is not.

14 Again, I would just implore that the
15 incoming administration in Nassau County at the
16 executive level and as the reconstituted legislature,
17 take this issue head on and it is not going away.
18 And as I give the cautionary tale, particularly as we
19 build out infrastructure in Long Island that will be
20 needed to integrate our offshore wind assets.

21 That could again be a major and
22 unnecessary windfall to local governments. But
23 again, I do congratulate you Judge and the Staff here
24 on coming to a pretty good solution given a bunch of
25 bad potential outcomes. And as Commissioner Burman

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2 said, there may be many years of sin that we are
3 trying to overcome here.

4 And, again, congratulations, and I
5 will be supporting this measure, Mr. Chairman.

6 CHAIR CHRISTIAN: Thank you.
7 Commissioner Valesky.

8 COMMISSIONER VALESKY: I have no
9 comments or questions other than to certainly salute
10 the -- the diligence and perseverance of D.P.S Staff
11 who have navigated the shifting sands over the years
12 underneath this issue and getting to the joint
13 proposal and getting that proposed -- proposal to the
14 order that is before us today. Thank you.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Maggiore.

17 COMMISSIONER MAGGIORE: Thank you. I
18 am going to vote in favor of this item. I thank
19 Staff and everyone who worked on it. Importantly, it
20 will result in some relief for ratepayers, at least
21 in the short term. Investor-owned utility water
22 systems are anomalous in New York State.

23 According to the Staff report that's
24 been referenced on the feasibility of municipalizing
25 New York American Water issued by D.P.S. Staff

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2 earlier this year, 96 percent of New Yorkers have
3 municipal water services and therefore do not pay any
4 property taxes through their water bills.

5 But privately owned water companies
6 must pay local property taxes and those taxes are
7 recovered in utility rates. The unusually high
8 property tax burden that's been referenced already
9 today that has fueled American Water's high rates
10 will not be erased by the takeover of Liberty.

11 I do think that the Staff report makes
12 a strong case for municipalization. And that an
13 important part of the settlement we are approving
14 today requires Liberty to work in good faith with
15 local authorities to municipalize parts of the
16 system. The greatest benefit of municipalization --
17 municipalizing American Water would be that a public
18 entity is not subject to property taxes.

19 Local government entities collect \$43
20 million in property taxes from American Water, which
21 are passed on to ratepayers. The ratepayers don't
22 see these property taxes as property taxes, but
23 rather as water rates. Since property taxes are
24 considered the type of prudently incurred costs that
25 utilities are legally entitled to recover, this body

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2 cannot lower water rates covering those expenses.

3 That said, you can squeeze a tube of
4 toothpaste on one end and cause it to bulge on the
5 other. But that doesn't lessen the amount of
6 toothpaste in the tube. There's a bit of a shell
7 game going on here. Reducing water rates by removing
8 property taxes from -- from the utility without
9 structural reform does not reduce expenses for the
10 local governments that rely on the property tax
11 revenue.

12 The D.P.S. study as well as others
13 referenced in that study suggests that real savings,
14 reduced expenses can be achieved through
15 municipalization. Perhaps more importantly, the
16 local government's revenue collection can be both
17 more transparent and more equitably distributed.

18 To quote from the study, "collecting
19 property taxes through water rates is regressive
20 inefficient, and not transparent to customers".
21 American Water customers are subsidizing local
22 government services for their neighbors who are
23 serviced by other entities in a way that is not
24 reciprocal.

25 This is not to say that most residents

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2 of Nassau County aren't familiar with high property
3 taxes. It's well established that Nassau County has
4 one of the highest median property tax bills in the
5 nation. This is not new. There are many reasons for
6 this, and this is not the forum to analyze all of
7 them.

8 However, multiple local government
9 entities, often with overlapping jurisdictions and
10 duplicative responsibilities contribute to the high
11 property tax burden in New York State. In Nassau
12 County, many special districts that could -- sorry,
13 many special districts, some of which might elsewhere
14 be reasonably characterized simply as administrative
15 units of other governmental entities rather than
16 local governments in themselves in Nassau County have
17 independently elected boards and/or taxing authority.

18 Multiple and overlapping local
19 governments can obscure the true cost of overall
20 government service or how those services are paid
21 for. Property tax assessed against a water utility
22 in this case provides a great example. The extent --
23 to the extent water rates are being charged to cover
24 property taxes.

25 The rates are essentially not going

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2 towards water, but other government services, not
3 necessarily just being provided to the ratepayers.
4 According to the D.P.S. municipalization study,
5 again, I'm quoting, "for the Sea Cliff service
6 territory taxes make up more costs than the combined
7 cost of actually running the company and delivering
8 water".

9 Paradoxically, attempts to slice and
10 dice rates add to the confusion. In this case,
11 property taxes account for half the bill in some
12 parts of the American Water service area, as has been
13 mentioned earlier and about a third in the other
14 parts. Utilities overall are assessed different
15 property tax rates than other entities again, as has
16 been mentioned earlier.

17 In fact, Nassau County is the only
18 county outside of New York City that has a four-class
19 property tax system. And one of those classes
20 charges higher rates to utilities. Municipal layer -
21 - I'm sorry. Multiple layers of government and
22 quasi-governmental entities is common across New York
23 State, but Nassau County is a special case.

24 As of a few years ago, although only 2
25 percent of special districts across New York State

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2 are independent, which is to say they have their own
3 elected boards and are not simply administered by
4 towns. A majority of them statewide are located in
5 Nassau County. 31 percent of all revenue collected
6 from special districts in New York State are
7 collected from Nassau County special districts.

8 More than half town revenues collected
9 in Nassau County come from special districts.
10 Special districts in Nassau County were responsible
11 for 65 percent of all real property taxes and
12 assessment revenues collected by towns.

13 Bills for services provided
14 specifically in Hempstead were reportedly up to three
15 times higher than those provided in other districts,
16 in part due to the number of special districts rather
17 than the level of services provided. In terms of
18 water districts, according to the D.P.S.
19 municipalization study, the Town of Hempstead alone
20 operates six water districts within its borders.

21 According to the D.P.S. study, for
22 those governmental entities, not 100 percent in
23 American Water service territory, tax revenue lost
24 from municipalization would have to be collected from
25 the entire tax base, not just from American Water

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2 customers. I think that makes sense again, because
3 the property taxes collected via water rates are
4 paying for services enjoyed by the entire tax base.

5 So what type of local governments are
6 being subsidized by property taxes assessed to
7 American Water? Well, according to the D.P.S. study,
8 they include the county, two towns, 34 school
9 districts and 18 villages. To quote from the study
10 again, "On a per customer basis, American Water
11 customers paid approximately \$141 per year more to
12 the Town of Hempstead than their neighbors with
13 municipal water".

14 There are a finite number of quality
15 public administrators and the more they're spread out
16 among governmental entities, the less overall impact
17 they have on the overall quality of governmental
18 services.

19 The D.P.S. municipalization report
20 notes that the 30-plus water systems in Nassau County
21 each have, " Separate billing systems, call centers,
22 management and supervision, design and construction
23 teams, operations and maintenance personnel, and
24 office and administrative support employees".

25 Moreover, there's an inverse

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2 relationship between the number of local government
3 units and the amount of press scrutiny devoted to any
4 one of them. The bottom line is that American Water
5 ratepayers are not just paying for their own water.
6 They're subsidizing all manners of government
7 services for their neighbors who get water from
8 public entities.

9 Today's actions address few or none of
10 these things. Again, while I do believe that the
11 Liberty takeover will result in some savings for
12 ratepayers, there are larger structural issues that
13 are beyond the scope of this action or the P.S.C.
14 Fundamentally, the tax rates by class are set
15 locally.

16 And the decision about whether to
17 municipalize is also a largely a local decision. The
18 order requires Liberty to engage with the local
19 taxing jurisdictions and authorities on
20 municipalization which, as I noted is one of the
21 positive elements in my opinion of the settlement
22 before us.

23 In parallel, I would strongly
24 encourage Liberty to also engage with local
25 jurisdictions on ways to bring more sensibility to

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2 the property tax situations affecting customers. So
3 thank you very much.
4 CHAIR CHRISTIAN: Thank you. So we'll
5 go to a vote. Okay. My vote is in favor.
6 Commissioner?
7 COMMISSIONER BURMAN: I concur.
8 CHAIR CHRISTIAN: Commissioner Alesi?
9 COMMISSIONER ALESI: Vote yes.
10 CHAIR CHRISTIAN: Commissioner
11 Edwards?
12 COMMISSIONER EDWARDS: I vote yes.
13 CHAIR CHRISTIAN: Commissioner Howard?
14 COMMISSIONER HOWARD: Yes.
15 CHAIR CHRISTIAN: Commissioner
16 Valesky?
17 COMMISSIONER VALESKY: Yes.
18 CHAIR CHRISTIAN: Commissioner
19 Maggiore?
20 COMMISSIONER MAGGIORE: Yes.
21 CHAIR CHRISTIAN: Okay. This item is
22 approved, and recommendations are adopted. Thank you
23 again, for your hard work on this. Okay. That said,
24 we'll now move to the consent agenda. Do any
25 Commissioners wish to comment or recuse from voting

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2 on any of the items on the Consent Agenda? I'll
3 begin with Commissioner Burman.

4 COMMISSIONER BURMAN: Thank you. I
5 have five items that I want to comment on. The first
6 is Item 164. This is a petition for rehearing by the
7 Ithaca Tompkins International Airport to have a
8 geothermal project funded. The Commission had denied
9 this in its June 21st, 2021, order in this
10 proceeding.

11 I would -- if this was just a straight
12 free-rider issue, I would be voting in favor of it.
13 I believe this is a larger issue that gets to the
14 heart of what we are doing in Tompkins County, what
15 we're doing in our clean energy space, and I have
16 raised in -- in numerous sessions my concern in
17 particular at the -- at the last session, as well, on
18 some other items related to Lansing and Tompkins.

19 I really think it's important for us
20 to really have a further discussion on what's
21 happening. This is in the heart of where there's a
22 gas moratorium. And as I look towards it, some of
23 the challenges that I have is that there have been a
24 number of both federal and State agencies involved in
25 the expansion program at the Ithaca Airport.

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2 In fact, the Ithaca Airport was very
3 much engaged with numerous State agencies on doing
4 this, not seeking it through gas, going through
5 geothermal, and -- and working with what they had,
6 where they needed gas, but to try to cut down some of
7 that demand.

8 In fact, this came about initially in
9 the 2018 R.F.P. that was submitted in the first NYSEG
10 R.F.P. Because I have raised these concerns before,
11 because I feel that we need to get a closer look and
12 a handle on it.

13 And because I do feel that when we are
14 looking at economic development issues, whether it's
15 through Empire State Development, NYSEDA, Regional
16 Economic Development Councils, many times the D.P.S.
17 and P.S.C. are not necessarily there and the utility
18 on the front end.

19 And what happens then is that people
20 move forward on projects looking at the potential
21 funding streams that may be there without necessarily
22 knowing that they have to go through a process and --
23 and the Commission may have to adopt it. In this
24 case, it was also a little clunky, because we picked
25 winners or losers in the NYSEG non-pipes alternative

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2 -- demand alternatives.

3 And for me, it leaves me still with
4 many questions about the path forward. And if the
5 airport is one that has been working with all of
6 these entities, the absence and silence from the
7 other State agencies on this here, leaves me with
8 further questions on what -- what may have happened
9 and how we could have gotten on the other side of
10 this in a better way.

11 So for that, I'm going to be voting,
12 no on 164. However, I do want to underscore, if it's
13 about a free-ridership issue in and of itself, that
14 is something that I would not be in favor of. I
15 don't think here that we can just use the free-
16 ridership issue though, as to -- well, it got
17 completed eight days after the second R.F.P. because
18 of all of the other underlying issues that were going
19 on. So I just want to make it clear.

20 Item 367. This is a petition to --
21 draft order to approve NYSERDA's administrative
22 funding request for the 2022 C.E.S. compliance year.
23 I'm a no. For me, I recognize that this petition is
24 an annual petition that has to come before us. I
25 recognize that NYSERDA did that. And I recognize

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2 that we now have an obligation to look at what we
3 should be doing in terms of their approval of
4 funding.

5 However, for me, as I look at this,
6 one of the issues in the order is it says that it's
7 reasonable that the NYSERDA team must grow as the
8 workload of the C.E.S. continues to grow. And
9 NYSERDA itself recognizes that there's -- there's
10 been a lot that's been done and pancaked on since the
11 C.L.C.P.A.

12 And in light of the growing role in
13 increased expansion of their renewable energy targets
14 pursuant to the C.L.C.P.A. they feel that -- NYSERDA
15 feels that it's going to need more Staff towards
16 those activities and therefore, they're seeking a lot
17 more funding. I believe very strongly that we should
18 look at the proper resources, Staff resources across
19 the board.

20 I'm tired of it just being NYSERDA,
21 who we're looking at. We need to have a further
22 discussion. We need to look, as a State at what
23 we're doing when legislation gets passed that has
24 significant cost drivers. Not just with the Staff
25 that may need to be done, but overall, what happens

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2 with that.

3 I'm left with blanks. And I think
4 that in my -- in this case, the fact that NYSERDA is
5 seeking additional funding directly related to clean
6 energy legislation that was recently passed. They
7 have an opportunity to ask for that in the budget,
8 where there can be a more robust discussion on
9 exactly what is needed.

10 I'd also like to see very clear lines
11 on how much of the resources go to different
12 activities, Climate Action Council being one of them.
13 And I'd also like to see us having more engagement on
14 those issues substantively so that our Staff can have
15 the resources. Our Staff and our Commission to the
16 extent that it's going to impact what we're doing, we
17 need to have that information.

18 I -- I don't doubt that they need more
19 bodies. But I don't doubt that we need to have a
20 better way of handling this in a way that helps all
21 of us in that. So I'm a no.

22 Item 377. This is the petition for
23 rehearing by New York City and the Northeast Clean
24 Heat and Power Initiative on our standby exemption
25 continuation order. This -- this order that they're

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2 seeking rehearing on is from the May 14th, 2021,
3 standby exemption continuation order.

4 Ironically, at the May session in
5 2021, it was also Item 377 for what that's worth.
6 And I concurred in part and dissented in part. And I
7 do believe that the City and Northeast Clean Heat and
8 Power Initiatives rationale for why they're seeking
9 petition for rehearing are absolutely on point and I
10 fully support that they should be granted rehearing
11 and we should be looking at that.

12 I do want to refresh people's memory
13 because I do believe strongly that this is one
14 petition for rehearing that should have been -- that
15 should be granted. The underlying order was
16 addressing the continuation, or not, of standby rate
17 exemptions. And the order in May supported
18 essentially three tracks for the existing standby
19 rate exemptions.

20 One, the Commission was going to
21 continue exemptions relating to Public Service Law
22 66-J and 66-L indefinitely. Two, the Commission
23 should -- was going -- was continuing exemptions
24 related to renewable energy and energy storage
25 technologies for another two years.

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2 And three, the Commission should not,
3 and I underscore that, because as part of my concern,
4 then as well as today, why I'm voting no should not
5 renew the exemptions related to Combined Heat and
6 Power C.H.P.

7 My concern still is and it's an
8 agreement with New York City and Northeast Clean Heat
9 and Power that I feel very strongly that the failure
10 to extend the C.H.P. exemption like the other
11 exemptions that are getting exempt -- extended, while
12 we await resolution on the standby rate policy
13 matters in other proceedings really makes no sense to
14 me.

15 We would grant this exemption again
16 for other exemptions. We're extending it while we
17 work that out, but yet we don't extend it for C.H.P.
18 I feel it's some misguided reliance on the fact that
19 we can't do that under State Energy Policy and saying
20 that since the C.L.C.P.A. Law doesn't allow it, we're
21 not going to grant the exemption extension for C.H.P.

22 That doesn't make any sense to me.
23 We're still working through that. We did it for the
24 others, I don't see why we wouldn't do it, except
25 that we're picking winners or losers and chilling,

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2 frankly, ongoing projects. I feel there's a great
3 opportunity for us to make sure we're consistent with
4 not the May order, but the ones before it in most --
5 in particular the 2019 Commission order that granted
6 the exemption extension for all existing exemptions.

7 And at that time said we'd look at
8 this in an ongoing collaborative in the standby rate
9 proceedings. Traditionally, when we have Commission
10 precedent, if we're going to change our rationale on
11 what we're doing, we need to really carefully and
12 with proper discretion, lay out the reasons for that
13 based on the record on what makes sense to do.

14 The -- the order, that's now a
15 petition for re -- before us on a petition for
16 rehearing had nothing in the record, in my opinion,
17 that would support or changing that Commission
18 precedent. I don't think it's helpful or prudent to
19 just cite to some oversimplification and erroneous
20 reliability on the State Energy Policy and
21 C.L.C.P.A., generically as a reason to change the
22 Commission precedent.

23 The underlying order, to me was
24 fundamentally flawed. I do believe we're actually
25 discriminating against the C.H.P. exemption extension

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2 by denying it versus the others. If we did grant
3 this extension for the limited duration to the others
4 while we're doing that, in the standby rate
5 proceedings, I don't understand why we wouldn't be
6 totally consistent in our actions and extend that
7 same one for the C.H.P.

8 Most importantly, would allow us to
9 address this issue more thoughtfully and perhaps with
10 collaboration in the proceedings. So for me, as I
11 look forward on this, I -- I do think that we may
12 actually, by not approving the petition for rehearing
13 and granting that exemption -- not granting the
14 exemption to C.H.P., it may actually take us
15 backwards if we eliminate this exemption
16 inappropriately without carefully looking at it more
17 holistically.

18 So I'm going to be voting no. On Item
19 461, which is the Suez Water approval, I'm going to
20 be concurring with reservations. I am going to raise
21 two issues. The multiple intervenors raised a
22 concern and -- and raised some concerns on what we're
23 doing. And the -- the draft order basically says
24 those are things to be discussed in a future rate
25 case.

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2 I feel for my own self that some of
3 their concerns are things that we should be tackling
4 a little bit more in-depth now and not just punting
5 on those to a future rate case, even if it's to flush
6 out some of the issues that may be there and wait,
7 what we may want to see in the rate case.

8 And I do just want to clarify that
9 here this also has a low-income assistance program.
10 And that the order does not specifically say it,
11 though I want to make clear my expectation is that
12 whatever is done collaborating with -- with parties
13 on the low-income assistance program must come back
14 to the Commission.

15 That is also the same for a
16 feasibility study on municipal -- municipalization
17 that is going to be being looked at. That must come
18 back to the full Commission body, not just filing it
19 in, you know, in D.M.M., but for us to actually look
20 at and -- and see what it is. It's really important
21 on both of those issues that the Commission looks at
22 carefully how to do that.

23 561. So 561 is one of these weird
24 items that most people would say, what's the big deal
25 that, you know, you're even talking about it. This

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2 is like one of these things that's really important
3 to me. I'm going to be voting no on this item.

4 COMMISSIONER BURMAN: To me, the issue
5 here is, I believe that the order itself is
6 completely unnecessary. And I don't see the value in
7 us having an order that is essentially codifying what
8 is being done in a way that could actually, when
9 we're all no longer here in December twenty years.

10 If this comes up where someone is
11 asking for an assignment of an A.L.J., they may cite
12 to this order as precedent for the Commission
13 deciding which A.L.J. should be assigned. So I want
14 to make it very clear. There is already assign in
15 A.L.J. that was done under the delegation of
16 authority to the Chief A.L.J. to decide who should
17 handle a case, and that was done.

18 The Commission does not need to assign
19 a specific A.L.J. or any A.L.J. to this case. The
20 reason the motion came about, the emergency motion
21 for us to say, you know, yes, please assign an A.L.J.
22 and also tell the A.L.J. that he or she must set up a
23 procedural schedule is because during a procedural
24 conference with the parties, there was at that time
25 not a petition filed on Universal Service Funds.

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2 And at that time, the A.L.J. who is
3 assigned, A.L.J. Sayer, made a comment appropriately
4 so, that he was not sure if he had authority or not
5 to set forth the procedural schedule without that
6 petition. That caused some parties to be concerned.
7 I think A.L.J. Sayer was absolutely right to raise
8 the question of whether or not he had the authority,
9 and then came this emergency motion, seeking us to
10 act.

11 In the meantime, since that motion,
12 the petition that would give him the clear
13 jurisdiction to set forth the procedural schedule as
14 he would do came through December 15th. Now, I would
15 say, the parties who moved for that petition -- who
16 submitted that petition should have also waited on
17 the no longer clear need for this emergency motion
18 because we already have an A.L.J. assigned, and we
19 have the petition that was, what was being waited for
20 to move on the procedural hearing.

21 I am very passionate on the fact that
22 I don't believe that this order is necessary and I
23 also don't want any misinterpretation that we are
24 handpicking a specific A.L.J. At this time or any
25 other time, we have to carefully weigh what that is.

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2 The order makes clear that there already is an A.L.J.
3 assigned and that we expect that he, in his due
4 diligence will set up a procedural schedule as he
5 sees fit.

6 So there's no harm in the order except
7 to the extent that we shouldn't be taking up
8 unnecessary orders. We shouldn't be wasting the
9 Commission or -- or Staff's time, and we should leave
10 it to A.L.J. Sayer, who's now -- who's already been
11 assigned, to set up a procedural schedule.

12 And if there are still ongoing issues
13 to make a ruling and if there is still ongoing
14 issues, the normal processes of appealing that ruling
15 that may, at -- at some point come to the Commission
16 can come. But I have no doubt that this was
17 something that could have been handled without the
18 expenditure of time and effort on our part.

19 So for that I'm going to be voting no.
20 Thank you.

21 CHAIR CHRISTIAN: All right. Thank
22 you. Commissioner Alesi?

23 COMMISSIONER ALESI: Nothing to say,
24 thank you.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Edwards?

3 COMMISSIONER EDWARDS: I'll be voting
4 yes on the consent agenda.

5 CHAIR CHRISTIAN: Thank you.
6 Commissioner Howard?

7 COMMISSIONER HOWARD: Yeah, I have a
8 comment on three different items. First on Item 164,
9 the application for -- the petition for the Tompkins
10 County Airport. I -- I just want to go on record
11 now, that the Tompkins County Airport has received
12 tens of millions of doll -- public dollars from the
13 State, federal, and local governments.

14 And I agree there is no need for
15 additional funds from ratepayers to underwrite the
16 capital needs of -- of this airport. Second, on
17 Item 367. I -- I feel it necessary to remind New
18 Yorkers that these funds, all funds virtually,
19 administered by NYSERDA come directly from ratepayers
20 and customer's bills, you know, as the vast majority
21 of NYSERDA funds do.

22 And the Commission in that regard acts
23 as a sole fiduciary on these levies. And -- and
24 that's contrasted on how the Department of Public
25 Service is actually funded, through State budget.

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2 Even though our operations are also paid by utility
3 customers through 18A Assessments, so -- so going
4 forward, there are two things that I would hope, I --
5 I concur with Commissioner Burman's comments that
6 those issues regarding C.L.C.P.A. compliance and
7 administration.

8 Those being in fact a -- a legislative
9 mandate, I believe that the legislature has an
10 absolute duty and responsibility to appropriate said
11 funds to in -- to implement those programs as opposed
12 to us who put in the levies to provide the cash to
13 make to make those funds go. I believe the -- the
14 legislative process is far more transparent, and
15 ongoing, subject to greater debate.

16 And I would hope that would be a
17 watchword as the next budget is adopted and certainly
18 going forward as we expect to see billions, possibly
19 hundreds of billions of dollars of new expenses
20 necessary and investment is necessary to -- to meet
21 our climate goals.

22 And finally on Item 461, you know,
23 many of the issues confronting the Suez system are
24 actually in parallel to those brought up in New York
25 American Water. And I just want to say there is

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2 nothing in this order that precludes any municipality
3 to take over part or all of any of the Suez systems.

4 That again, this -- this transfer of
5 ownership on the high level, if local governments
6 feel the need to pursue these things, they're
7 certainly within their ability to do it, and there is
8 nothing in this order that would preclude that. So
9 those are my comments, Mr. Chairman.

10 CHAIR CHRISTIAN: Thank you.
11 Commissioner Valesky?

12 COMMISSIONER VALESKY: No comments on
13 any of the items.

14 CHAIR CHRISTIAN: All right, thank
15 you. Commissioner Maggiore?

16 COMMISSIONER MAGGIORE: Thank you.
17 Two brief comments. One is on Item 164, Tompkins
18 County Airport, I'm going to vote in affirmative on
19 this item, I do want to note as Commissioner Howard
20 had indicated that the Ithaca Airport Project is a
21 significant economic development project in Tom --
22 Tompkins County and that the State has made
23 considerable investments in the same.

24 I wanted to make sure that denying
25 funding for the associated geothermal project would

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2 not throw a wrench in the larger airport project.
3 And I am satisfied that it will not, as geothermal
4 project is complete and the rationale for this order
5 makes sense to me.

6 Second item is 463, Bristol Water,
7 while I will vote in the affirmative on this item, I
8 wanted to acknowledge that many of the public
9 comments reflect a real sense of frustration with
10 this rate hike. I commend Staff for taking the
11 public comments seriously, running them down, and
12 addressing them in this order.

13 Further, I'd like to commend Staff for
14 their work and review on this case and I note that
15 the company's original request was for a 104.1
16 percent increase. We are not approving that request,
17 but instead, are approving a revenue increase of 57.2
18 percent, which is reflected in this order.

19 Unfortunately, I think the case for
20 the rate hike is pretty compelling and justified. So
21 I'm going to vote yes, but I have an empathy for
22 those expressing frustration. Thank you.

23 CHAIR CHRISTIAN: Thank you. So we'll
24 take a call for the vote. My vote is in favor of the
25 consent agenda. Commissioner Burman, your vote?

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2 COMMISSIONER BURMAN: Thank you. I
3 vote yes except 164, 367, 377 and 561, I vote no.
4 And 461, I concur. Thank you.

5 CHAIR CHRISTIAN: Thank you.
6 Commissioner Alesi?

7 COMMISSIONER ALESI: I vote yes.

8 CHAIR CHRISTIAN: Thank you.
9 Commissioner Edwards?

10 COMMISSIONER EDWARDS: I vote yes.

11 CHAIR CHRISTIAN: Thank you.
12 Commissioner Howard?

13 COMMISSIONER HOWARD: I also vote yes.

14 CHAIR CHRISTIAN: All right.
15 Commission Valesky?

16 COMMISSIONER VALESKY: I vote yes.

17 CHAIR CHRISTIAN: Commissioner
18 Maggiore?

19 COMMISSIONER MAGGIORE: I vote yes.

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

24 SECRETARY PHILLIPS: There is nothing
25 further.

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2 CHAIR CHRISTIAN: Thank you very much.

3 And with that, I adjourn. Thank you everyone for
4 your time, and happy holidays.

5 THE REPORTER: We are off the record.

6 (Off the record 1:30 p.m.)

7 (The meeting concluded.)

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2 STATE OF NEW YORK

3 I, JANET WALLRAVIN, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and place,
5 as stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription consisting of
7 pages 1 through 92, is a true record of all proceedings
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 20TH day of December, 2021.

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13 JANET WALLRAVIN, Reporter

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