

1 4-14-2022 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5
6 Thursday, April 14, 2022

7 10:30 a.m. until 2:17 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 (On the record; 10:29 a.m.)

3 CHAIR CHRISTIAN: Okay. Good morning.

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

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

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

14 COMMISSIONER BURMAN: Present.

15 CHAIR CHRISTIAN: Commissioner James
16 Alesi?

17 COMMISSIONER ALESI: Here.

18 CHAIR CHRISTIAN: Commissioner Tracey
19 Edwards.

20 COMMISSIONER EDWARDS: Present.

21 CHAIR CHRISTIAN: Commissioner John
22 Howard?

23 COMMISSIONER HOWARD: Present.

24 CHAIR CHRISTIAN: Commissioner David
25 Valesky?

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2 COMMISSIONER VALESKY: Here.

3 CHAIR CHRISTIAN: Commissioner John
4 Maggiore?

5 COMMISSIONER MAGGIORE: Hi, there.

6 CHAIR CHRISTIAN: Thank you, everyone.
7 Before we begin with the regular -- before we begin
8 with the regular agenda, I'd like to remind everyone
9 that this is dig month and to dial 8-1-1 before you
10 dig, very important feature for public safety. So
11 thank you, everyone, for that little reminder.

12 And now we will go on to our first
13 item for discussion today. Item 201, as it relates
14 to the Orange and Rockland Utilities rate cases, it
15 will be presented by Administrative Law Judge Maureen
16 Leary, Tim Canty, Deputy Director of Office of
17 Accounting, Audits, and Finance. Mike Rieder, Deputy
18 Director, Office of Electric, Gas, and Water.

19 Nicola Jones, Chief of Downstate Rates
20 and Tariffs. Aric Rider, Deputy Director of Office
21 of Consumer Services and Brandon Goodrich, Managing
22 Attorney are available for questions. Judge Leary,
23 please begin.

24 A.L.J. LEARY: Thank you, Chair. Good
25 morning. Good morning, Chair Christian,

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2 Commissioners Alesi, Burman, Edwards, Howard,
3 Maggiore, and Valesky. I was assigned to oversee
4 these rate proceedings, which were filed by Orange
5 and Rockland Utilities in January, 2021.

6 Before you is a draft order seeking
7 Commission approval of a joint proposal that
8 establishes 3-year electric and gas rate plans that
9 begin or began -- would begin on January 1st, 2022
10 and extend through December 31st, 2024.

11 If approved, the draft order will
12 adopt the joint proposal which is also before you
13 with additional reporting and other requirements
14 which will be outlined in greater detail later in my
15 presentation. In addition to the company and
16 Department of Public Service trial staff, the
17 signatory parties to the joint proposal include the
18 New York Power Authority, the New York Geothermal
19 Energy Organization, and New Yorkers for Cool
20 Refrigerant Management.

21 Intervenors, Public Utility Law
22 Project which I will refer to as PULP and the
23 Alliance for Green -- a Green Economy, which I will
24 refer to as AGREE, along with individual Intervenor
25 Bruce Levine were not signatories to the joint

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2 proposal and filed statements in opposition to the
3 Commission's adoption of it.

4 The opposition asserted by PULP
5 focused primarily on a 9.2 percent return on equity,
6 amortization of \$15.5 million in unspent low income
7 discount bill funds that had already been collected
8 from rate --ratepayers, language access, and the
9 Climate Leadership and Community Protection Act, or
10 C.L.C.P.A.

11 Intervenors AGREE and Bruce Levine's
12 opposition primarily focused on the C.L.C.P.A.
13 issues. And again, these issues will be addressed in
14 greater detail during my presentation. The
15 background of these proceedings is set forth in
16 detail in the order. I will only summarize certain
17 provisions of the joint proposal.

18 In its initial filing in January of
19 2021, O&R sought a \$24.5 million increase to electric
20 revenues and an \$11.1 million increase to gas
21 revenues, which would have resulted in increases to
22 monthly bills for a typical electric and gas customer
23 of 7.5 percent and 9.1 percent, respectively.

24 The company also sought a 9.5 percent
25 return on equity and an approximately 50 debt to --

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2 50/50 debt to equity ratio. On March 31st, the
3 company updated its filing and increased its electric
4 revenue requirement by an additional \$3.4 million.

5 For a total revenue requirement of
6 \$27.8 million. The company decreased its gas revenue
7 requirement by \$8.6 million for a total revenue
8 requirement of only \$1.2 million. D.P.S. staff and
9 other parties filed testimony and exhibits responsive
10 to the company's filing and O&R submitted rebuttal.

11 In its testimony responding to the
12 company's filing, D.P.S. staff recommended a 1-year
13 electric revenue increase of 2.3 million and a gas
14 revenue increase of \$700,000. Staff also recommended
15 an 8.75 percent return on equity.

16 On June 11th, 2021, the company filed
17 a notice of the initiation of settlement negotiations
18 and thereafter agreed to multiple extensions of the
19 suspension period, the last of which will expire on
20 May 25th, 2022. All extensions were conditioned upon
21 the company being made whole.

22 Settlement negotiations among the
23 parties resulted in the filing of a joint proposal on
24 October 29th, 2021. Thereafter, the parties filed
25 statements in support and in opposition to the joint

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2 proposal. In December we held a 1-day evidentiary
3 hearing at which intervenors PULP and Bruce Levine
4 conducted cross examination and adduced additional
5 testimony and evidence.

6 With respect to public notice and
7 compliance with the State Administrative Procedure
8 Act, timely notice of these proceedings was published
9 in the State register on May 12, 2021. In addition,
10 in late April, the ALJs conducted 2 public statement
11 hearings at which only 3 public comments were
12 received, but 8 additional public comments were later
13 filed electronically in the department's Document and
14 Matter Management System or D.M.M.

15 All comments received at the public
16 statement hearing and in D.M.M. objected to the
17 company's request for increased electric and gas
18 rates, noting among other things, the financial
19 impacts of the COVID-19 pandemic and the significant
20 number of customers in arrears on their utility
21 bills.

22 I will now summarize certain relevant
23 terms of the joint proposal. With respect to the
24 electric rate plans, under the joint proposal, the
25 company's electric revenues are levelized over 3

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2 years and will increase by \$11.7 million in each rate
3 year.

4 Total electric bill increases for
5 typical residential customers using 600 --
6 approximately 600 kilowatt hours per month would
7 increase by 1.4 percent in rate year 1, 2.7 percent
8 in rate year 2, and 3.1 percent in rate year 3.

9 Fixed customer charges are modestly
10 increased from the current \$19.50 to \$20.50 in rate
11 year 1, \$21.50 in rate year 2 and \$22 in rate year 3.
12 With respect to the gas rate plans, under the joint
13 proposal the company's gas revenues are levelized
14 over 3 years and will increase by \$4.2 million in
15 each rate year.

16 Total bill increases for a typical
17 residential customer using 110 C.C.F. of gas --
18 natural gas would increase by 3.2 percent in rate
19 year 1, 1.9 percent in rate year 2, and 2.3 percent
20 in rate year 3. Fixed customer charges are modestly
21 increased from the current \$19.50 to \$20 in rate year
22 1, \$21 in rate year 2 and \$22 in rate year 3.

23 The return on equity in the joint
24 proposal is 9.2 percent with earnings sharing
25 percentages, benefiting customers triggered at and

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2 above 9.7 percent. PULP and AGREE objected to the
3 9.2 percent R.O.E. citing the Commission's recent
4 orders, specifically in the Central Hudson and
5 Niagara Mohawk rate cases, which set a 9.0 percent
6 R.O.E.

7 The order before you rejects PULP's
8 objections in this regard, finding that the record
9 reflects a change in the economic environment during
10 the pendency of these proceedings; D.P.S. staff
11 testified as much. The order also notes the
12 company's financial risk over a 3-year versus 1-year
13 rate plan and found that it's full -- and the order
14 finds that both of those factors fully support a 9.2
15 percent R.O.E. which reasonably balances the
16 interests of customers with those of the company and
17 its investors.

18 The joint proposal sets approximately
19 a 50 to 50 debt to equity ratio. I'll turn to the
20 rate mitigation measures which enabled the bill
21 impacts to be mitigated to an extent. There are
22 several, first wage increases for senior management
23 will be limited over a 27-month period.

24 Second, the company will credit
25 customers with approximately 9. -- \$975,000 in

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2 payroll tax credits realized from COVID relief under
3 the federal employee retention tax credit. Third,
4 the joint proposal contains certain productivity and
5 efficiency adjustments, whereby the company will
6 impute approximately \$19.6 million in forecasted
7 savings for the benefit of customers.

8 Finally, the timeframe for
9 amortization of balances of unprotected excess
10 deferred federal income tax balances related to the
11 Federal Tax Cuts and Jobs Act of 2017 will be
12 shortened from the remaining 12 years to 6 years.
13 PULP objected to the 6-year amortization timeframe
14 and asserted that a 3-year timeframe was more
15 appropriate.

16 The order before you rejects PULP's
17 objection echoing D.P.S. staffs' concerns with future
18 rates stability. I'll now turn to the low income
19 provisions which were also the subject of objections.
20 The order before you finds that the joint proposal
21 will continue to provide funding for payment
22 assistance to O&R's customers who have difficulty
23 timely paying their utility bills.

24 This is consistent with the
25 Commission's August 2021 Phase 2 Energy Affordability

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2 Order in case 14-M-0565. For example, the 2022 level
3 of funding projected for the bill discount credits
4 subject to symmetrical deferral is projected to be
5 almost \$10 million for electric customers and \$5.4
6 million for gas customers.

7 In addition, the joint proposal
8 provides that during the 3-year term of the rate
9 plans, the company will continue to waive its rec --
10 reconnection fee for any customer enrolled in the
11 company's low income program. The joint proposal
12 returns approximately \$15.5 million in unspent low
13 income billed discount program funds to ratepayers
14 from whom those funds were collected during the last
15 rate plan -- plans.

16 These unspent funds are the result of
17 the company's misclassification of certain low income
18 customers, and the failure to provide bill discount
19 credits to those customers. The order includes a
20 requirement that the company file a plan within 30
21 days of the issuance of the order before you,
22 explaining the misclassification, accurately
23 calculating same, and immediately providing bill
24 discount credits to affected customers.

25 In other words, the order assures that

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2 those customers are made whole. Notably, the company
3 is also required to identify and/or propose to
4 implement internal controls so that the
5 misclassification of low-income customers or other
6 errors in this program do not happen again.

7 I turn to PULP's objection regarding
8 the return of the \$15.5 million to ratepayers. PULP
9 asserted that these funds instead should be used to
10 benefit the misclassified and adversely affected low
11 income customers.

12 The order finds that although the
13 Commission shares PULP's concerns with the impacts
14 realized by low income customers, that the make whole
15 requirement in its order effectively addresses this
16 objection. The order also expressly finds that
17 returning these unspent funds to ratepayers from whom
18 they were initially collected is an appropriate and
19 commonly utilized rate mitigation strategy.

20 And it does, in fact, operate as a
21 rate mitigation strategy here. PULP also objected to
22 customer arrears management. And these arrears are
23 now estimated to be in excess of approximately \$1.7
24 billion. PULP requested that the company be required
25 to mirror any arrearage collaborative language that

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2 is determined in the Consolidated Edison pending 2022
3 rate case.

4 The order before you finds that
5 arrears management issues are more appropriately
6 addressed in the context of the energy affordability
7 policy proceeding. And also notes that the
8 stakeholder collaborative working group established
9 under the Commission's Phase 2 order recently filed a
10 status report updating the Commission on its work.

11 Thus, the order before you indicates
12 that arrears reduction solutions are currently being
13 actively addressed in that proceeding. In addition,
14 as the Commission is aware, the legislature passed
15 the State budget last weekend which contains arrears
16 relief of approximately \$250 million.

17 Notably, PULP has applauded the
18 legislature's action in its press releases about this
19 legislation. And it is my understanding that the
20 department staff is actively working on
21 implementation of that funding. The C.L.C.P.A.'s
22 requirements, I believe, the Commission is well aware
23 of them having seen them in many of the last rate
24 cases, if not all, within the last year or two since
25 the passage of the C.L.C.P.A.

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2 As the Commission is aware, it
3 mandates New York's greenhouse gas emissions be
4 reduced by specific levels. It also requires under
5 Section 72 that the Commission and all other State
6 agencies determine in the context of their
7 administrative decisions, whether their decisions are
8 consistent with, or will interfere with achieving the
9 C.L.C.P.A.'s emission reduction objectives.

10 The order before you finds that the
11 Commission can and should serve both the Public
12 Service Law's requirements to assure safe and
13 adequate service, and the C.L.C.P.A.'s requirement to
14 foster emission reductions and assure the Commission
15 determinations approving rate plans such as the one
16 before you do not interfere with achieving the
17 State's emission reduction targets.

18 The order finds that the joint
19 proposal is consistent with the C.L.C.P.A.'s
20 objectives, and specifically the "C.L.C.P.A. related
21 efforts that are set forth in Appendix 20 of the
22 joint proposal." I'm going to just briefly review
23 what some of those efforts will be and I highlight
24 only a few, which I believe, the Commission will see
25 as very specific and -- and may result in real actual

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2 emission reductions.

3 First, the company will inventory its
4 total system emissions consistent with the
5 C.L.C.P.A.'s requirements, including upstream
6 emissions and include that information in its next
7 rate filing. That will address the 2019 levels that
8 -- I'm sorry, the 2009 levels that the C.L.C.P.A.
9 utilizes.

10 The company will continue to replace
11 leak-prone pipe annually, eliminate farm taps over
12 the 3-year rate term, target reductions in electric
13 sales by 6.6 percent due to energy efficiency
14 programs, target total reductions of 1.5 percent in
15 gas sales volume over the 3-year rate plans; these
16 are based on 2019 levels.

17 Invest additional 5 -- an additional
18 \$5 million in energy efficiency offerings and,
19 "strive to achieve 50 percent above those set by the
20 Commission in the N.E.N.Y. order". So the company is
21 going over and above those targets set in -- by the
22 Commission in that order.

23 The company will implement new
24 electric vehicle charging program in --
25 infrastructure in its service territory, acquire for

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2 its own fleet new, light-duty electric vehicles,
3 target 8 -- 86.4 megawatts of energy storage, and 120
4 megawatts of photo -- solar photovoltaic in its
5 system, eliminate website marketing that urge --
6 urges customers to convert to natural gas.

7 Promote efforts to reduce gas usage
8 and eliminate any expansion of natural gas and
9 including rebate pro -- programs. The company will
10 also study the potential for implementing a
11 geothermal neighborhood demonstration project later
12 this year.

13 The order before you reflects -- this
14 is notable because it reflects something that will
15 also result potentially in emission reductions. The
16 order before you reflects the continuation of
17 declining block rates for natural gas but approves a
18 flattening of rates for certain -- certain service
19 classes in rate year 3.

20 The order expresses the Commission's
21 expectation that in the company's next rate filings,
22 the company will propose to eliminate the use of this
23 rate design because it disincentivizes natural gas
24 conservation and the reduction of consumption.

25 The declining block rate design allows

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2 the price of natural gas to decline as more natural
3 gas is used. In other words, the higher the gas
4 usage -- usage, the lower cost per C.C.F. This
5 measure has the potential to result in additional
6 emission reductions over the long term.

7 Turning to PULP's objections and -- as
8 well as AGREEs and Intervenor Levine's. The
9 company's efforts they asserted, lag behind those of
10 its affiliate Consolidated Edison and the company
11 should be doing more. AGREE asserts that an
12 emissions inventory should have been presented in the
13 record in these rate cases and that the Commission
14 lacks the basis on which to make the requisite
15 C.L.C.P.A. consistency finding.

16 The order before you rejects these
17 objections and finds that based on the record, the
18 terms of the joint proposal are, in fact, consistent
19 and will result in emission reductions. The joint
20 proposal contains additional electric and gas
21 programs, I will not go into detail about them.

22 There's a continuation of many
23 programs and the implementation of new programs, but
24 just by way of example on the electric side, the
25 joint proposal continues the Pomona Non-Wires

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2 Alternatives Project that thus far has eliminated the
3 need for very costly construction of a new substation
4 and associated facilities.

5 In addition, the company will
6 implement a customer owned streetlight pilot project
7 involving energy saving L.E.D. lights and dimming
8 potential for those lights. This pilot will -- will
9 be consistent with ongoing Statewide efforts by the
10 New York Power -- Power Authority and other
11 stakeholders to facilitate the transfer of
12 streetlights to municipalities and other -- other
13 governmental agencies, which will result in both
14 energy and cost savings.

15 On the gas side, the content -- the
16 company will continue to re -- relocate indoor meters
17 to the outside and will train emergency responders.
18 And will work jointly with Consolidated Edison in a
19 pilot program to purchase certified natural gas.

20 Also continuing will be certain
21 performance mechanism and associated targets with
22 positive and negative revenue adjustments. This will
23 assure that the company will continue to improve in
24 its performance in areas such as gas safety, among
25 other things. Customer service provisions also will

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2 continue and there are some new programs, these are
3 detailed in the order before you and I will not go
4 into those.

5 Other noteworthy sections of the joint
6 proposal include the company's revision of its
7 revenue requirement downward to exclude all
8 membership fees and organizations engaged in
9 lobbying. This provision is consistent with Public
10 Service Law, Section 114-a which was recently
11 amended.

12 The order also contains major storm
13 reserve amounts but imposes limitations on the
14 company's ability to pass on to customers costs in
15 excess of those reserve amounts through the use of a
16 revenue adjustment mechanism. This also has
17 associated reporting provisions. The order in -- in
18 an effort to keep costs down, also requires the
19 company to update cost -- estimates for the
20 department's review for the installation of 15,400
21 A.M.I. enabled natural gas detectors, which per unit
22 are approximately \$450 each resulting in a projected
23 cost of approximately \$7 million.

24 In addition, the costs for the
25 reliability-based Millennium back feed project must

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2 be updated once an agreement is reached with the
3 Millennium pipeline owner. In conclusion, the draft
4 order documents the Commission's finding based on the
5 record that the joint proposal meets the public in --
6 interest standard, mitigates rate impacts, while
7 fostering the company's financial stability that will
8 enable it to provide safe and adequate service to
9 customers at just and reasonable rates.

10 The order also recites that the joint
11 proposal produces a result consistent with, and in
12 many instances superior to, the range of potential
13 outcomes that could have been achieved in a fully
14 litigated proceeding. This, of course, is in
15 compliance with the Commission's well-established
16 settlement guidelines.

17 The order before you adopting the
18 joint proposal is consistent with the environmental,
19 social, and economic policies of the Commission and
20 the State, including the C.L.C.P.A. All interested
21 parties had a full and fair opportunity to
22 participate in these proceedings, and the joint
23 proposal is supported by parties with diverse
24 interests.

25 Accordingly, we recommend the

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2 Commission's adoption of the joint proposal subject
3 to the additional requirements set forth in the order
4 before you. This concludes my presentation. I would
5 like to express many thanks to the senior advisor
6 staff for their assistance. And also, to commend the
7 signatory parties for their effort in reaching a
8 resolution of these proceedings.

9 We are available to respond to any
10 questions the Commission may have regarding the order
11 before you. Thank you.

12 CHAIR CHRISTIAN: Thank you, judge
13 Leary. Again, thank you very much for the overview.
14 As usual, your presentation is thorough and
15 thoughtful, and I appreciate the detail you provided.
16 As noted in your statement, the change in the
17 economic environment during the proceedings is having
18 impact throughout on all aspects of our economy. And
19 particularly on commodities and the various raw
20 materials needed to maintain the infrastructure at
21 play.

22 I'm encouraged by the various steps
23 taken to mitigate the rates, but I'm also encouraged
24 by the alignment with the C.L.C.P.A. presented today,
25 particularly the transition away from investments and

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2 gas infrastructure, get marketing, elimination of
3 incentives for gas conversion, and particularly the
4 move away from declining block rates.

5 I'm also encouraged by the commitment
6 to move forward and address the issues experienced in
7 working with L.M.I. customers and I look forward to
8 seeing how the company proceeds in addressing that.
9 That said, comments from Commissioners , Commissioner
10 Burman?

11 COMMISSIONER BURMAN: Thank you. I am
12 respectfully voting yes on this rate case before us
13 today, although I have concerns. If a no vote was
14 the majority opinion today, that would be a bad
15 result for ratepayers in terms of the size of the
16 rate impact. The worst result would be from either a
17 1-year temporary rate based on staff testimony, which
18 would be higher than the joint proposal, or absent
19 having temporary rates prepared which they are not.

20 The outcome of rejecting the joint
21 proposal would be to revert to the original much
22 higher request by the utility. I believe we have an
23 obligation to carefully examine the joint proposal
24 terms, the entire record before us and the language
25 in the draft order.

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2 I generally like to encourage parties
3 to -- to go to the negotiating table in good faith,
4 and I would have preferred to see a larger group of
5 signatories to the joint proposal who represent more
6 varied interest. I also have a general concern with
7 too many issues being punted to generic cases,
8 particularly when I am unsure of the timing of when
9 those cases will come to the Commission.

10 Many of these generic proceedings that
11 were commenced by the Commission were assumed would
12 be completed long ago. And those same proceedings,
13 as well as the C.L.C.P.A. related proceedings are, in
14 my opinion, in need of updated information and more
15 detailed study and review that might not even be
16 happening.

17 Issues have been raised, and problems
18 identified over the last several rate cases, and
19 other matters that come before us. Where we say,
20 well, we will do X, but as for Y, or Z, we will leave
21 that to these generic proceedings. In this case,
22 arrearages, for example, were punted to the Energy
23 Affordability Policy proceeding. I understand that;
24 it probably makes sense.

25 And the joint proposal also sets forth

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2 a litany of C.L.C.P.A. related efforts that will be
3 undertaken. Some parties expressed concern that more
4 C.L.C.P.A. -- C.L.C.P.A. actions not included with
5 respect to the future of gas utilities.

6 But staff does not yet have guidance
7 for the gas planning generic proceeding. There does
8 not seem to be an overarching policy to -- to guide
9 how we pick and choose what is left for other
10 proceedings and what gets done in a particular matter
11 whether it is a rate case or other specific
12 proceeding.

13 I believe we should strive to be more
14 diligent in completing the generic cases that we
15 started so that staff and parties have more guidance
16 when it comes to negotiate a rate case. We also must
17 be mindful that we can't just dust off generic
18 proceedings without warning to parties when we
19 unilaterally decide that the time is right to decide
20 them.

21 The record may be stale, comments may
22 no longer be relevant, real-life situations may be
23 changed, and we may need to be transparent in our
24 processes and give parties and other potential
25 parties an opportunity to weigh in before we just go

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2 headlong into saying now we're going to decide that
3 generic proceeding because we're ready to go.

4 How to address the C.L.C.P.A.
5 challenges may well be an important part of the
6 State's energy policy, but it is our obligation to
7 ensure that all ratepayer money is spent effectively.
8 We should strive to decide all the issues before us,
9 or at least give a clearer picture of exactly where
10 we will tackle the outstanding ones and set some
11 clear guardrails on what is most important to us.

12 I recognize staff is working to bring
13 their analysis of important issues to us, there are
14 many other venues outside of the Commission that will
15 also impact our work. But for me, many of the
16 pressing issues need to be decided before, not after
17 ordering a rate increase, especially as we see the
18 energy policy decisions that are currently being
19 discussed in other venues may be major drivers of
20 future rate increases.

21 For these reasons, and as articulated
22 by the A.L.J., I will be voting yes, although I have
23 concerns. Thank you.

24 CHAIR CHRISTIAN: Thank you,
25 Commissioner Burman. Commissioner Alesi?

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2 COMMISSIONER ALESI: Thank you, Mr.

3 Chairman. This joint proposal provides sufficient

4 funds to maintain safe and reliable service.

5 Sufficient funding will ensure long-term viability

6 that complies with the C.L.C.P.A. as well as New

7 York's social, economic, and environmental policies.

8 And to that extent, the joint proposal

9 was clearly in the public interest, so I will be

10 supporting it.

11 CHAIR CHRISTIAN: Thank you,

12 Commissioner. Commissioner Edwards?

13 COMMISSIONER EDWARDS: Thank you very

14 much, Chair. I am extremely concerned about this

15 joint proposal and especially the timing that was

16 outlined in the background piece of it. So just to

17 take a step back, our New York State Controller,

18 January 21st, 2021 issued a economic outlook report

19 that said that the economy and finances in the COVID-

20 19 era where 2.8 million adult New Yorkers, were

21 having a difficult challenge to pay their normal

22 household expenses.

23 This then tariff amendment was

24 submitted on January 29th, only a week later for a

25 \$11 point million increase with 7.5 to 9.1 percent.

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2 While I understand in March 31st, there was a
3 reduction on the gas side, there was an increase on
4 the electric side.

5 And then this process started to
6 unfold where our Public Service staff recommended an
7 increase of 2.3 million and then a gas increase of
8 700,000. You know, I firmly believe that if the
9 starting point was lower, we would not be as high as
10 we are today.

11 And while I comment the Administrative
12 Law Judge and the staff at getting it as low as it
13 is, I still don't think that it is low enough, I
14 could -- I think that it could have been lower. And
15 to reflect the change and state that this is a
16 economic environment that supports a 9.2 percent
17 R.O.E., you know, it's an economic environment also
18 that is putting customers in a tremendous economic
19 condition themselves.

20 I'm also mindful that we have other
21 items on the agenda related to the C.L.C.P.A., that I
22 believe are critical in order to get this whole
23 overall issue of emissions under control. We really
24 have to be mindful that those things are going to be
25 at a cost, which means that we have to double our

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2 efforts to re-examine all of the other costs that are
3 associated with rates.

4 I think that the company could have
5 done a better job with the C.L.C.P.A. requirements
6 and put that inventory in this rate filings, it's my
7 belief. I also believe that the filing of 30 days
8 after this order to explain and calculate and provide
9 discounts, that is a concern for me. I think that
10 they could have done that now. So for all of those
11 reasons, I will not be supporting this draft order.

12 SECRETARY PHILLIPS: Chair.

13 CHAIR CHRISTIAN: Yeah.

14 SECRETARY PHILLIPS: I'm sorry, may I
15 just jump in? We're having reports of issues with
16 the webcast. So it's very important to consider your
17 distance to the microphone when you're speaking.
18 Apparently, if you're too close, it's getting blurry.
19 And if you're too far, it's not coming up, so just a
20 reminder.

21 CHAIR CHRISTIAN: Okay.

22 SECRETARY PHILLIPS: Thank you.

23 CHAIR CHRISTIAN: Thank you for that.

24 Okay. Thank you, Commissioner.

25 COMMISSIONER EDWARDS: Was that for

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2 me, did they not hear me or what?

3 SECRETARY PHILLIPS: No, I -- I think
4 you we are okay. I'm -- I just get emails
5 periodically from people when there are issues, but I
6 got no emails with respect to yours.

7 COMMISSIONER EDWARDS: Okay, very
8 good. Thank you.

9 CHAIR CHRISTIAN: Okay. Next, we'll
10 go to Commissioner Howard.

11 COMMISSIONER HOWARD: Thank you.
12 First of all, I want to thank Judge Leary and I want
13 to thank the history of this Commission and the well-
14 founded and well-tested settlement proceedings that
15 bound and guided this settlement to its current
16 conclusion.

17 It is a good process. Is it a perfect
18 process? No. Is it transparent? You betcha. Does
19 it allow for customers, other affected people to
20 participate at a meaningful level? Yes, it does.
21 Does it allow for a broad input from customers and
22 others and a relatively tertiary level? Yes, it
23 does.

24 So, to that extent, congratulations.
25 I do will note, and I will note it today, and I will

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2 note it later in some other agendas. I wish this
3 process was universal. I wish this process was
4 universal. We know with great precision, in some
5 cases to the pennies in some cases of what the
6 individual expenses and inputs are to this -- this
7 rate case.

8 That is not the case for other
9 proceedings that we're going to do later today. The
10 issue of energy affordability, as the Judge
11 mentioned, was clearly on the mind of the State
12 legislature and I do praise them for the
13 appropriation of \$250 million to dealing with
14 arrears.

15 However, that's what they did in terms
16 of energy affordability. At the same time, the
17 legislature appropriated nearly \$600 million, not
18 appropriated, accounted for nearly \$600 million in
19 energy tax cuts, in this case, motor fuel tax cuts,
20 which dealing with this case, we in this case,
21 encourage or discourage the increased use of fossil
22 use by rate design, which is into everyone's best
23 interest, particularly that of the climate.

24 Cutting motor fuel taxes does the
25 absolute opposite, it encourages more fossil fuel

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2 use. And I do believe if the legislature was truly
3 interested in helping energy consumers that we would
4 have paid attention to not just their motor fuel
5 inputs, which is important, but their other energy
6 bills as well.

7 Greater energy efficiency, long-term
8 savings for customers, I believe would have been a
9 far better use of those dollars than merely
10 suspending motor fuel taxes for a period of time. I
11 do have one question I have, and this is probably --
12 Jeff probably already anticipates this.

13 What is the local property tax burden
14 during the period -- during the period of this case
15 for O&R?

16 MR. HOGAN: I'm actually going to
17 defer Commissioner Tim Canty --

18 COMMISSIONER HOWARD: Okay, great.

19 MR. HOGAN: -- I believe he'll have a
20 better answer for you.

21 COMMISSIONER HOWARD: Thank you, Tim.

22 MR. CANTY: It's -- it's in -- in
23 Orange and Rockland's territory, it's about 10
24 percent of the bill.

25 COMMISSIONER HOWARD: About 10 percent

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2 of the bill. At no time, while many in local
3 government have decried the settlement and said it
4 was too expensive, did I see one at the county, town,
5 village, or school-board level saying that we need to
6 reduce our levies on our utilities so people can
7 afford their bill.

8 At no time was that even remotely
9 discussed, so to the extent that local governments
10 want to help on helping energy customers save money,
11 it isn't the ball is in their court. Again, I think
12 this process was thorough, I had the ability to
13 monitor -- watch it from the Chairman's point of view
14 for a period of time.

15 And again, I was as always, duly
16 impressed with the process itself. And while no one
17 wants to raise rates and never before this Commission
18 do we ever see a rate case with unanimity of opinion,
19 this -- and I do sincerely appreciate those
20 commenters who do not agree with this case.

21 But however, in balance, I think it
22 does what it needs to do. The issues of energy
23 affordability and how they relate to Commissioner
24 Edwards' concerns on how we balance those energy
25 affordability issues as we decarbonize our economy,

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2 are issues that we have not dealt with.

3 And to Commissioner Burman's comments,
4 we do need to have our generic proceedings proceed at
5 pace. Without that guidance, we are going to do a
6 variety of one-off decisions, which I don't think
7 connect all the dots. So -- but with that being
8 said, Mr. Chairman, I will be supporting this
9 petition.

10 CHAIR CHRISTIAN: Thank you,
11 Commissioner. Next, Commissioner Valesky?

12 COMMISSIONER VALESKY: Thank you,
13 Chair Christian. And certainly, first of all, to you
14 Judge Leary, and to the entire team here at D.P.S.,
15 thank you for, again, outstanding work on this rate
16 case and getting to these joint proposals.

17 I do -- I think, this case more than
18 the other 3 or 4 that I've participated in since
19 joining the Commission almost a year ago now. I have
20 seen more issues than not where there have been
21 points of concern, and I understand and appreciate
22 where those concerns are coming from, whether they be
23 from PULP, whether they be from AGREE, Bruce Levine,
24 around rate of equity, around rate mitigation, low
25 income provisions, arrears management and certainly

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2 the -- the C.L.C.P.A.

3 But that having been said, I do think
4 that -- that you, Judge, under your leadership and
5 the entire team here have clearly created a
6 compelling case in each and every instance to justify
7 this joint proposal.

8 I know it's been a challenge, I'm sure
9 it's been a challenge getting to this point, but --
10 but I appreciate all of that work. I also do
11 understand that and or my sense is that this is a
12 order that could have been ready to go a month ago or
13 so for our consideration.

14 I appreciate scheduling it here in
15 April, so that we've had an opportunity to hear from
16 our partners in government, specifically on -- on
17 arrears. And I think those \$250 million, which
18 obviously doesn't only apply in the O&R service
19 territory, but Statewide is a significant step in the
20 right direction so I -- I do appreciate that. And in
21 conclusion, I just want to share your conclusion.

22 Again, I also find that the joint
23 proposal does meet the public interest standard by
24 mitigating rate impacts while fostering the company's
25 financial stability that will enable it to continue

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2 to provide safe and adequate service to customers at
3 just and reasonable rates. Thank you.

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

6 COMMISSIONER MAGGIORE: Thank you,
7 Chair. I do have a few questions. Judge, thank you
8 very much for your excellent presentation.
9 Commissioner Burman alluded to the consequences of --
10 of what would happen if this Commission voted the
11 rate case down. But can you explain or just walk
12 through what -- what would be the range of outcomes
13 if we rejected this?

14 A.L.J. LEARY: Better than I could
15 probably do, Commissioner Burman was right on the
16 money in terms of how the process would play out.
17 And the likely result would be a -- a temporary rate
18 plan and that -- followed by a permanent rate plan
19 with another rate case pending before the Commission
20 which may not and probably would not contain as
21 beneficial a set of terms as the joint proposal.

22 Just by way of example, there are
23 numerous provisions in the joint proposal here that
24 are not subject to the Commission directing the
25 company to do. Specifically, things that are related

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2 to the C.L.C.P.A. and, I believe, as Commissioner
3 Burman noted, if we had a generic proceeding in which
4 we engaged all of the utilities in what the
5 C.L.C.P.A. implementation may look like in a rate
6 case, that potential becomes greater.

7 But in terms of a negotiated
8 resolution versus a Commission- ordered resolution,
9 those kinds of provisions would not be in place, so
10 that there would be a loss of customer beneficial
11 provisions, including -- I believe, the performance
12 mechanisms, is that -- isn't that correct, Judge
13 Lecakes?

14 JUDGE LECAKES: Yeah. So in the last
15 litigated rate case that the Commission decided
16 without a joint proposal was the 2016 National Fuel
17 Gas rate case. And in that rate case, it was
18 determined by the Commission not to pursue the
19 metrics that are used to gauge performance of
20 electric reliability and safety, gas reliability and
21 safety, of course N.F.G. has no electric.

22 But I mean in this -- the analogy for
23 this case would be that they probably would not be
24 put on the company through a litigated result.

25 A.L.J. LEARY: So in short, there --

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2 there's a real question mark about whether the result
3 that the Commission would ultimately order, a 1-year
4 rate plan would actually be as beneficial to both
5 customers as well as the State's policies. So I
6 think it's important to view this settlement in -- in
7 that context, you know, this is -- this is not
8 everybody wins, not everybody loses everything.
9 That's how negotiations are.

10 And from a customer benefit, as well
11 as Statewide policy benefit, I think that the joint
12 proposal here certainly, you know, would be superior
13 to the alternative of the Commission deciding
14 temporary rates and a 1-year rate plan.

15 JUDGE LECAKES: Right. And -- and if
16 I may add to -- to Judge. Leary's response. The
17 Commission has a legal obligation to make sure that
18 the utilities are meeting their obligation to serve,
19 but in return for that, they're constitutionally
20 entitled to recover their costs of service and a fair
21 opportunity for return on their investments.

22 And as was pointed out, the underlying
23 litigation papers demonstrate that the company's
24 existing rates are not collecting enough to cover
25 those costs right now. And so the Commission would

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2 have to determine what that legal or -- or that just
3 and reasonable rate would be going forward.

4 Going back to 1977 in the Commission's
5 policy -- statement of policy on test periods and
6 major rate proceedings, Commission has long
7 recognized that its obligations in rate setting
8 proceedings are to forecast future looking rates, the
9 rates that are going to be charged at the time that
10 the service is being delivered, not just historic
11 costs.

12 And so that whole process would have
13 to develop over the course of some period of time as
14 both Commissioner Burman and Judge Leary mentioned,
15 it would probably involve the setting of temporary
16 rates and the ability for, once a permanent rate was
17 established, the ability of the utility to make up
18 any difference if they were -- if those temporary
19 rates were undercharged, or the requirement that
20 money be put back to customers if they were
21 overcharged.

22 But during that temporary rate period
23 the customers would be seeing a rate that was
24 basically determined eventually to be too high. The
25 process would also likely need to address the timing

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2 of any rate decision while that process was going on.
3 Again, turning to the 1977 statement on policy of
4 test periods in major rate proceedings, the company
5 would likely have to be allowed to update its
6 information as well as the other parties.

7 So it would take some period of time
8 to determine what those permanent rates are, to the
9 extent that the company was not allowed to, there
10 would have to be some discussion about how the
11 suspension period would work through all of this and
12 eventually, discussion of whether the company would
13 be allowed to file for a new rate case, while the
14 permanent -- the temporary rate -- permanent rate
15 proceeding was going on.

16 It is a difficult decision that the
17 Commissioners have to make when evaluating these case
18 -- cases. And I empathize greatly with your
19 decisions here today. Some of the things that
20 Commissioner Edwards brought up are -- are absolutely
21 valid concerns.

22 But in many ways, as -- as
23 Commissioner Howard pointed out, they implicate
24 policies and -- and processes that are outside of
25 what the Commission does when it sets rates, and out

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2 of the control, for example, with taxes and things
3 like that, for the Commission to do any ordering on
4 other than a pass through those costs to the
5 ratepayers.

6 A.L.J. LEARY: I wanted to make one
7 more point that became very clear to me in working
8 with Tim Canty, who is -- is like this brilliant man
9 in this building. He's so brilliant and I have to
10 thank him because he was so responsive.

11 But you know, certainly some would
12 say, why do we care about the financial stability,
13 viability of the utilities in our State? Why is that
14 a concern? It's a concern because the cost of debt
15 that they will pay and pass on to ratepayers is
16 higher, the more their viability is questioned on the
17 street.

18 And so it actually inures to the
19 benefit of ratepayers because you keep your cost of
20 debt low or lower. Now, who knows what's going to go
21 on in terms of what the Feds going to do in the next
22 year or months.

23 But the fact is -- is that this
24 company and its viability is an important component
25 of what customers are going to see in rates. And

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2 that's something that I -- it was not particularly
3 clear to me, and I have to thank Mr. Canty for making
4 it very clear. All of that goes into the mix.

5 And I think that staff in -- in all of
6 the rate cases that I've been involved in is acutely
7 aware of all of these factors and there are many of
8 them. It's very difficult to -- to sit here and
9 identify all of them, but certainly that's one that
10 is -- should be of some concern because it will
11 directly impact ratepayers ultimately.

12 COMMISSIONER MAGGIORE: It was very
13 informative. Thank you very much. Two quick
14 questions about the R.O.E. You had explained during
15 your presentation how we got from 8.75 to 9.2. But
16 can you go through a little bit more detail on how we
17 settled at 9.2?

18 A.L.J. LEARY: During the briefings I
19 was astounded at how, you know, clear, Jeff Hogan's
20 explanation was, so I'm going to turn that over to
21 him, if you don't mind.

22 COMMISSIONER MAGGIORE: Absolutely.

23 MR. HOGAN: Good morning,
24 Commissioner. Yes, so the 9. --.

25 COMMISSIONER MAGGIORE: Good morning.

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2 MR. HOGAN: Good morning. The 9.2
3 percent is a negotiated outcome of course between
4 staff and the other parties. And it's for a 3-year
5 rate plan that's important to -- to know. The staff
6 had originally testified to an 8.75 percent return in
7 May of 2021. And so that was for a litigated case,
8 in other words, a 1-year period of time.

9 As Judge Lecakes said we're trying to
10 forecast future costs, so we're trying to forecast
11 what investors are going to require, and to pivot a
12 little bit and talk about financial stability and
13 what investors require and the -- and the environment
14 of -- of the financial markets. I understand
15 Commissioner Edwards's concerns with the financial
16 environment in terms of the pain customers are
17 feeling, and how many people we can see from the
18 arrears.

19 Nobody wants to be in debt to the
20 utility companies. They're -- they're -- they're
21 forced in a situation. That environment is a little
22 bit different than what we're talking about. We're
23 talking about the interest rate environment and the
24 equity return environment. And so what we're trying
25 to do is forecast what investors are currently

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2 requiring in order to provide capital to the
3 companies.

4 And it is debt as -- as Commissioner
5 Leary, sorry, Judge Leary explained, but it's also
6 equity, we want both to be provided in reasonable
7 terms. And in order to have that financial stability
8 that allows the company to do all the cap experts
9 want them to do, we -- we need to have a reasonable
10 rate of return. And so to -- to -- to come up with
11 that reasonable rate of return, for the past 25 years
12 or so the Commission has been following an approach
13 that -- that originated out of what we call a generic
14 finance case.

15 And it was a -- a recommended decision
16 that came out of that which said to use two different
17 models, the discounted cash flow model and the
18 capital asset pricing model and use those models
19 which have the inputs of utility stock prices,
20 interest rate costs, and a few other -- a few other -
21 - the -- the -- the market return as a whole. Those
22 are the variables that end up impacting what the
23 R.O.E. of the companies are going to be.

24 Staff uses this model that again, kind
25 of tried and true and they use it every -- every

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2 testimonial case. They've used that model and they
3 came up with 8.75 percent. But they always conclude
4 their testimony by saying that this amount should be
5 updated at the time of the Commission decision in the
6 litigated case, because what we want to do is we want
7 to forecast the -- as best we can what the future
8 costs are going to be.

9 And so with property taxes, if we get
10 a new -- we have actuals forecasted, if during the
11 pendency of negotiations or a rate case, actual
12 property tax bills come in, we would use that to --
13 to say what this -- what the cost should be. So
14 staff is continually looking at how to and -- and
15 what the current R.O.E. model is. And during this
16 case when they ended up signing the joint proposal in
17 October of 2021, the model was at 9.0 percent.

18 It had raised -- it had increased
19 twenty-five basis points. And so while some parties
20 may say 9 percent was recently approved, you should
21 approve that, that was reasonable given the base
22 R.O.E. for litigated case plus what we call a stay-
23 out premium, which I'll discuss in a second. But
24 when the under -- when the underlying litigated 1-
25 year result is 9 percent, 9 percent is a multiyear

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2 deal it doesn't really make sense, because there are
3 additional risks related to a 3-year rate plan having
4 -- having instead of rates being locked in for 1
5 year, you have 3 years.

6 So you're taking this financial risk,
7 we're all familiar with certificates of deposit or
8 bonds having higher returns when you -- when you lock
9 in your money for a longer period of time. We're
10 also familiar with the fact that here we're locking
11 in the business costs of this company. Many of the
12 costs for rate year 2 and 3 are forecast due to
13 increase in inflation. The inflation used in this
14 case is roughly 3 percent.

15 If inflation ends up being 6, 7, 8
16 percent over this case, it will be a negative impact
17 on the company. And that's a risk that's usually --
18 risk is usually recognized by a higher return. And
19 so the Commission has a long practice over the past
20 25 years of having a stay-out premium to account for
21 this extra risk. In this case, staff is looking at a
22 9 percent underlying R.O.E. in the model, and they
23 added 20 basis points for stay-out premium.

24 That's in the very low end that stay
25 out premiums that have been put in place over the

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2 last few decades. 20 to 60 basis points is fairly
3 typical. So I think that you know my -- my final
4 point I guess would be, that the -- the outcome of
5 this case 9.2 percent is very reasonable relative to
6 national averages 9.4, 9.5, both in the October '21
7 timeframe when the case was filed as well currently.
8 It's also very reasonable in light of what the
9 economic environment was in terms of investor rate of
10 return requirements when staff signed.

11 COMMISSIONER MAGGIORE: Thank you --
12 thank you, Mr. Hogan. I -- I have one follow-up
13 question. And -- and Judge Leary, I -- I -- I think
14 I'm directing this to Mr. Hogan because we disagree
15 that this is a little higher than our -- the last two
16 rate cases. Are we setting the precedent for an
17 upward trajectory for future rate cases? And you've
18 heard me use this term, which I think I made up. Are
19 we experiencing an R.O.E. creep?

20 MR. HOGAN: No, we are not
21 experiencing an R.O.E. creep and we won't, if we --
22 if the Commission continues to follow the precedent
23 that it's been following, which is to use the
24 underlying model. And that -- that's going to rise
25 and fall. And we were being responsive to what

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2 investors required to provide capital, recognizing
3 the -- the amount -- the -- the -- the rate changes.
4 So that model will remain the touchpoint for staff on
5 what a reasonable return on equity is.

6 There will be an adder for the
7 additional business and financial risk in multiyear
8 cases, and that adder I would fully expect to remain
9 in the 20 to 60 basis point range. So allowing a 9.2
10 today after having a 9.2 last year, doesn't mean
11 we're going to have a 9.4 or a 9.6 later. In fact,
12 the -- as the underlying model -- the underlying
13 R.O.E. for the -- for the model was down, you could
14 expect the R.O.E. to actually creep downward. And I
15 note -- note that in some recent testimony, I believe
16 we have a little bit below 9 percent right now for
17 the model.

18 So the -- the future R.O.E.s are tied
19 to the variables I discussed in terms of how we
20 identify what investors are requiring for return, and
21 not precedential based on what you decide today.

22 COMMISSIONER MAGGIORE: Thank you very
23 much. Chair Christian, I'm going to vote yes on
24 this. I -- I think as it's been explained that I
25 think the -- if we voted this down that the outcome

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2 would likely be worse for customers as well as
3 potentially worse in the context of our attempt to
4 keep policy in alignment with the C.L.C.P.A. I'd
5 like to note that I think some of the rate mitigation
6 efforts here are very great and positive.

7 And Judge Leary, I'm glad you
8 mentioned the action of the legislature on arrears
9 that makes me feel more comfortable voting for this.
10 I do share some of the concerns that were expressed
11 by my colleagues, but I think that this is the --
12 voting yes would produce the best and most likely
13 outcome. So my -- my vote would be yes, Chair.
14 Thank you.

15 CHAIR CHRISTIAN: Thank you. So I'll
16 do the call to vote. My vote is in favor of the
17 recommendation to adopt the terms of the joint
18 proposal as discussed. Commissioner Burman, how do
19 you vote?

20 COMMISSIONER BURMAN: Yes. Yes.

21 CHAIR CHRISTIAN: Commissioner Alesi?

22 COMMISSIONER ALESI: I vote, yes.

23 CHAIR CHRISTIAN: Commissioner
24 Edwards?

25 COMMISSIONER EDWARDS: I vote no.

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2 CHAIR CHRISTIAN: Commissioner Howard?

3 COMMISSIONER HOWARD: I vote yes.

4 CHAIR CHRISTIAN: Commissioner

5 Valesky?

6 COMMISSIONER VALESKY: Yes.

7 CHAIR CHRISTIAN: Commissioner

8 Maggiore?

9 COMMISSIONER MAGGIORE: Yes.

10 CHAIR CHRISTIAN: Okay. We have
11 sufficient votes, so this item is approved. And the
12 recommendations are adopted. Thank you all.

13 A.L.J. LEARY: Thank you.

14 CHAIR CHRISTIAN: Okay. We'll now
15 move on to the second item for discussion today.
16 Item 301, case 15-E-0302 related to the Clean Energy
17 Standard, and the Tier 4 procurements. Today's
18 presentation will be given by our General Counsel Bob
19 Rosenthal, and Marco Padula, Director of Office of
20 Markets and Innovation. Warren Myers, --

21 MR. MYERS: Yes.

22 CHAIR CHRISTIAN: -- Leka Gjonaj and
23 Tom Dwyer are available for questions. Bob, when
24 you're ready, please begin.

25 SECRETARY PHILLIPS: Before we begin,

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2 can I just remind everyone, please turn on your mic
3 when you're speaking, and then turn it off when
4 you're not. Thank you.

5 MR. ROSENTHAL: Thank you, Chair
6 Christian, and good morning Commissioners. So I am
7 going to summarize most of the draft order before
8 you. And Marco Padula will be addressing the
9 ratepayer impacts. Let me start by talking about the
10 genesis of the Tier 4 of the Clean Energy Standard,
11 which was first proposed as part of staff and
12 NYSERDA's white paper issued on June 18th, 2020 for
13 the purpose of recommending modifications to the
14 Clean Energy Standard to meet C.L.C.P.A. mandates.

15 The focus of the white paper was on
16 meeting the two primary Commission-specific
17 C.L.C.P.A. mandates, first, by the year 2030, 70
18 percent of electricity used in New York must be from
19 renewable resources. And second, by the year 2040,
20 the statewide electrical generation demand must be
21 zero emissions. As relevant here, a key question
22 posed in the white paper was whether existing
23 programs under the Clean Energy Standard could be
24 expanded in a manner sufficient to address these
25 C.L.C.P.A. mandates.

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2 The white paper answered this question
3 with an unequivocal no, finding that the existing
4 C.E.S. programs as modified would not result in
5 attaining C.L.C.P.A. mandates because of the unique
6 challenges regarding the delivery of electricity into
7 New York City. As explained in the white paper,
8 "nearly all of the roughly 22,500 gigawatt hours of
9 electricity generated within New York City is from
10 fossil fuel, not renewable generation."

11 The white paper found that within --
12 with respect to the Tier 1 program for land-based
13 renewable generation, most of the projects under that
14 program are expected to be developed in Upstate New
15 York. And thus without new -- new transmission
16 capacity tying this generation directly into New York
17 City, Tier 1 renewables, "will not on its own
18 increase the penetration of renewable energy consumed
19 in New York City to a level that are -- enable
20 statewide compliance with the 70 by '30 target".

21 With respect to offshore wind, the
22 white paper found that, "resource diversity concerns
23 limit the extent to which New York City can rely
24 solely on offshore wind to achieve the C.L.C.P.A.
25 requirements." Specifically, unlike fossil fuel

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2 fired generation, which is dispatchable and has a
3 high capacity value, because of its variable nature,
4 offshore wind is not dispatchable and has a
5 relatively low capacity value, and thus cannot be
6 relied upon alone to displace enough in-city fossil
7 generation to the extent necessary to meet those
8 C.L.C.P.A. mandates.

9 It was all of those concerns that
10 prompted staff and NYSERDA to recommend the creation
11 of a new C.E.S. Tier 4 focused on projects that
12 deliver renewable energy directly into New York City
13 and siting large scale renewables in New York City.
14 Through its order issued on October 15th, 2020, which
15 we referred to as the C.E.S. modification order, the
16 Commission adopted the Tier 4 proposal based on many
17 of the concerns that were outlined in the white
18 paper.

19 As the Commission noted, and I'm going
20 to be quoting "New York City's reliance on fossil
21 fuels is the central challenge to achieving the
22 C.L.C.P.A. 70 by '30 target. Without displacing a
23 substantial portion of the fossil fuel fire
24 generation that New York City currently relies upon,
25 the statewide 70 by '30 target would be difficult to

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2 achieve. And last, transmission constraints and a
3 lack of adequate sites have made New York City
4 uniquely reliant on fossil fuel fired generation.”

5 So again, based on these concerns, the
6 Commission adopted a new C.E.S. Tier 4 as part of the
7 C.E.S. modification order that was issued in October
8 of 2020. Let me next discuss the parameters
9 established by the Commission regarding eligible Tier
10 4 projects and related issues. First, the resources
11 must either be developed in Zone J, which is New York
12 City, or delivered to Zone J through a transmission
13 line.

14 Second, non-hydro renewables are
15 eligible only if they start operations after the date
16 of issuance of the C.E.S. modification order.
17 Existing or under construction hydropower resources
18 are also eligible but are subject to additional
19 modality requirements. The most important --
20 important of which is the supplier G.H.D. baseline
21 calculated as the historical average of hydropower
22 generated and requiring that eligible hydropower be
23 incremental to such baseline.

24 Third, the Commission established a
25 non-binding procurement limit of 1500 megawatts that

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2 could be exceeded up to 3000 megawatts if proposals
3 are "sufficiently compelling". Fourth, the
4 Commission set the evaluation criteria to be used by
5 NYSERDA as the same criteria that it uses with
6 respect to Tier 1, 70 percent based on price, 70
7 percent, I'm sorry, 20 percent based on viability and
8 other factors, and 10 percent based on economic
9 benefits.

10 Finally, unlike any of the other
11 C.E.S. Tiers, the Commission specified that any
12 contract entered into by NYSERDA would be subject to
13 P.S.C. approval through a petition jointly filed by
14 NYSERDA and D.P.S. staff. That petition was filed
15 with the Commission on November 30th of 2021.
16 Explained -- as explained in the petition, NYSERDA
17 ended up issuing a solicitation for Tier 4 RECs on
18 January 13th, 2021 and received 33 bids from seven
19 proposers demonstrating the competitive nature of the
20 R.F.P. process.

21 After review of the bids over the next
22 several months, NYSERDA selected two projects for
23 consideration that are described in the order before
24 you. First is Clean Path New York or C.P.N.Y. A
25 174-mile, 1300-megawatt, high voltage, direct current

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2 or H.V.D.C. transmission line from the Fraser
3 Substation in Delaware County to the Rainey
4 Substation in Queens that will be tied to 23
5 generation sources including a mix of solar and wind
6 as well as the 1160 megawatts Blenheim-Gilboa hydro
7 storage facility owned by NYPA that will be used to
8 provide formative services to maximize availability
9 and reliability.

10 The capacity factor of the project is
11 projected to be 69 percent. And the expected
12 commercial operation date of C.P.N.Y. is June 30th,
13 2027. Second is a project proposed by the U.S.
14 affiliate of Hydro-Quebec or H.Q.U.S. A 375-mile,
15 1250-megawatt H.V.D.C. transmission line from Quebec
16 to Astoria that would be connected to hydropower
17 resources located in Quebec. The U.S. portion of the
18 project known as the Champlain Hudson Power Express
19 or CHPE has all of its permits, except for a Section
20 60(e) permit that is pending before the Commission.

21 The capacity factor of the H.Q.U.S.
22 project is projected to be 95 percent, and it has an
23 expected commercial operation date of December 15th,
24 2025. Before I get into the substance of the order,
25 it's important to note the number, the depth, and the

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2 quality of stakeholder comments received in response
3 to the Tier 4 petition seeking approval of the two
4 contracts.

5 On a conservative count 98 out of the
6 128 organizational commenters either support or do --
7 or do not object to approval of both the two
8 contracts. I should also note that the Commission
9 received 5200 letters and emails from private
10 individuals, mostly in support, but some in
11 opposition of one or both of the projects. Let me
12 next explain the standard of review established in
13 the C.E.S. modification order for the Commission to
14 apply in determining whether to approve or deny any
15 Tier 4 contract.

16 The order specifies that the
17 Commission's determination must be made on the basis
18 of whether the project or projects advance the public
19 interest. The Commission specified that its public
20 interest analysis will incorporate principles
21 articulated in the Commission's B.C.A. framework
22 order and include but not be limited to six factors.
23 The order before you applies each of these six
24 factors as follows. First is cost-effectiveness.

25 The petition applied the formula and

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2 inputs required under the B.C.A. framework order and
3 found significant net societal benefits between \$2.3
4 and \$5.8 billion in net present value. The B.C.A.
5 examined a range of benefits comprising a volume of
6 voided benefits in the electricity system, carbon
7 value, and health benefits from air quality
8 improvements.

9 Based on application of the B.C.A.
10 framework, the order before you would find that the
11 net societal benefits demonstrate that the 2 Tier 4
12 contracts before you are cost-effective and
13 constitute a cost-effective means of meeting the
14 C.L.C.P.A. mandates. The second factor is the extent
15 to which the C.P.N.Y. and H.Q.U.S. projects would
16 enable reduced reliance on fossil fuel fired
17 generation located in Zone J.

18 The 18 terawatt hours per year of
19 generation from the two combined projects would
20 result in a 51 percent incremental reduction in
21 electricity generated by those in-city fossil fuel
22 generators, which the draft finds is significant.
23 The third factor relates to whether the projects
24 complement the deployment of offshore wind. The
25 analysis in the petition projects no incremental

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2 curtailment of current offshore wind procurements as
3 a result of the Tier 4 generation and that by 2040,
4 the Tier 4 projects would result in 16 percent less
5 offshore wind curtailment, compared to the reference
6 case.

7 The fourth factor relates to project
8 viability which coincides with one of the elements of
9 the scoring criteria. Without getting into details,
10 the Tier 4 petition summarizes the Scoring
11 Committee's project viability assessment of both the
12 C.P.N.Y. and H.Q.U.S. projects. Noting that the
13 strength of the two projects contributed --
14 contributed to them being the top two ranked projects
15 bid into the R.F.P.

16 The fifth factor relates to the
17 economic benefits of the projects. Combined, the 2
18 projects have committed an 8.2 billion investment in
19 labor, materials, and development, which would be
20 geographically diversified, including throughout
21 Upstate New York and in New York City. And then
22 finally, the sixth factor relates to the impact of
23 the projects on disadvantaged communities.

24 Each contract provides significant
25 commitments to disadvantaged communities but let me

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2 mention two. C.P.N.Y. has committed to establishing
3 a 270 million Disadvantaged Communities Investment
4 Fund, and H.Q.U.S. has committed to providing 189
5 million in community benefit funds for support of
6 disadvantaged communities, Hudson River and Lake
7 Champlain restoration, workforce development and job
8 retraining for fossil industry workers, as well as
9 capital improvements in host communities.

10 Based on the application of these six
11 factors, the order before you would find that the
12 C.P.N.Y. and H.Q.U.S. projects advance the public
13 interest in accordance with the 6-factor test set
14 forth in the C.E.S. modification order. One more
15 factor that the Commissioners must consider is one I
16 alluded to at the beginning under the C.E.S.
17 modification order. If the project's combined are
18 greater than 1500 megawatts, then the Commission must
19 also find that they are sufficiently compelling.

20 So let me go through a -- a few key
21 points that are made in the draft order on this
22 issue. First is the 2021 power grid study prepared
23 on behalf of staff, which projects that by 2040,
24 statewide electric generation will increase by at --
25 at least a third because of all the electrification

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2 efforts that are going to be made by the State and
3 because of normal increases in demand. But 17,000
4 megawatts of dispatch -- dispatchable generation
5 would still be needed in the State to maintain
6 reliability, of which at least 7000 megawatts are
7 needed in New York City.

8 Wind and solar are not dispatchable,
9 and battery storage cannot fill the gap during any
10 low wind heat waves that hit New York City multiple
11 times per year. Other than hydrogen and renewable
12 gas, neither of which may turn out to be eligible as
13 renewables under the C.L.C.P.A., the selected Tier 4
14 projects are the only other option of bringing clean,
15 dispatchable capacity to New York City to displace
16 current fossil generation and capacity.

17 And as already noted, the projects
18 collectively are projected to displace 51 percent of
19 the existing in-city fossil fuel generation and
20 associated pollution. For these and related reasons
21 the order before you would also find that the
22 combined projects are sufficiently compelling to
23 approve the contracts associated with both the
24 C.P.N.Y. and the H.Q.U.S. contracts. Let me next
25 discuss the issue of cost allocation, which many

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2 stakeholders addressed in their comments.

3 Consistent with other C.E.S. tiers as
4 well as the offshore wind standard, the order before
5 you would obligate the State's load serving entities
6 or L.S.E.s to purchase Tier 4 RECs based on their
7 volumetric, megawatt-hour load-based share. As the
8 order before you notes, the Commission already
9 determined in the context of the C.E.S. modification
10 order that the load ratio share cost recovery
11 mechanism would apply to Tier 4 projects, and no
12 party sought rehearing of this part of the order or
13 challenged it in court.

14 For this reason, the order revisits
15 the Commission's prior determination for the limited
16 purpose of reexamining the policies underlying its
17 prior ruling and related issues that have arisen
18 since issuance of that ruling. As the draft order
19 notes, the Commission first applied the load ratio
20 share methodology in the context of the original
21 C.E.S. order issued on October -- on August 1st,
22 2016, where it applied this methodology in the
23 context of Tiers 1 and 3.

24 For example, the Commission found in
25 applying the load ratio share methodology in the

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2 context of the Tier 3 program that "applying the
3 obligation in a vol -- volumetric basis is rational,
4 and the most appropriate basis to broadly allocate
5 the costs given the nature of carbon emissions that
6 are a creature of the volume of electric generation
7 and consumption. The Commission is instituting this
8 program to prevent widespread damage from carbon
9 emissions that affect everyone. It is fair and
10 appropriate for all consumers to participate."

11 This is a noteworthy ruling because
12 the Tier 3 ZECs payments being made in accordance
13 with this allocation are provided to the three
14 nuclear power plants located in Northern New York,
15 adjacent to Lake Ontario, and arguably benefit
16 Northern New York and the Northern New York economy
17 more than other areas of the state.

18 As explained in the order for large
19 scale clean energy programs like the various C.E.S.
20 tiers, the cost causation is consistent with a load
21 ratio share or megawatt hour approach because
22 consumption of energy generated by combusting fossil
23 fuels causes climate change. Several commenters
24 argue that the Tier 4 costs should be allocated by a
25 formula designed for transmission projects in --

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2 intended to maintain reliability or increased
3 deliverability.

4 But that argument is inept here.

5 Reliability-based transmission and distribution
6 project costs are allocated on a capacity basis in
7 megawatts because it is peak capacity use that causes
8 the need for those types of transmission upgrades.
9 As noted, Tier 4 is not aimed at reliability, but at
10 addressing climate change. For these and other
11 reasons, the draft order would reaffirm that the
12 volumetric load ratio share allocation applies to the
13 two Tier 4 projects.

14 Before I hand it over to Marco Padula,
15 let me last address the contract between New York
16 City and NYSERDA and its beneficial effect on the --
17 on the cost allocation. On November 30th, 2021, the
18 City of New York filed a notice stating its intent to
19 enter into a 25-year contract with NYSERDA to procure
20 Tier 4 recs.

21 Under the contract, the City has
22 agreed to purchase approximately 20 percent or about
23 four terawatt hours of the combined Tier 4 RECs
24 produced by the C.P.N.Y. and H.Q.U.S. projects, which
25 when combined with New York City's load share based

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2 allocation of offshore wind RECs would be equivalent
3 to its entire load. The notice also requests that
4 NYPA's voluntary load share commitment to purchase
5 Tier 1 RECs and Tier 3 ZECs made on behalf of New
6 York City be reduced by an amount corresponding to
7 its percent of overall load.

8 The notice estimates that presuming
9 New York City's allocation under Tiers 1 and 3 is
10 reallocated to other L.S.E.'s. The total benefit of
11 the York City's Tier 4 commitment to the State's
12 other ratepayers would be between \$2.1 and \$4.3
13 billion. Given the significant cost savings, the
14 order before you would thus reallocate New York
15 City's Tier 1 RECs and Tier 3 ZECs commitments as
16 requested.

17 Outside of the ratepayer savings, New
18 York City's contract commitment is significant for at
19 least three other reasons. First, it shows that the
20 City is taking a lead to reduce G.H.G. emissions by
21 backing up its policies with a significant financial
22 commitment. Second, the New York City contract
23 represents a model for other branches of State and
24 municipal governments to follow.

25 In this respect, last Friday, the

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2 State Office of General Services or O.G.S., filed a
3 letter of intent in the docket stating that it would
4 also be entering into a contract with NYSERDA for
5 Tier 4 RECs associated with energy used by all State
6 agencies located in New York City.

7 D.P.S. sees this all of government
8 approach as a significant development that will
9 meaningfully reduce utility ratepayer impact of
10 implementing the C.L.C.P.A. and it also will strongly
11 encourage other branches of government to make
12 commitments under Tier 4 similar to those made by New
13 York City and O.G.S. Third, New York City has also
14 committed to reducing G.H.G. emissions through
15 legislation, namely Local Law 97, which requires
16 building owners in New York City to significantly
17 reduce building emissions.

18 An alternative compliance mechanism
19 under Local Law 97 is for building owners to purchase
20 RECs associated with energy delivered directly into
21 New York City. The New York City Department of
22 Buildings still needs to adopt regulations specifying
23 precisely how the purchase of RECs would offset
24 building emission reductions. However, both New York
25 City and representatives of the New York City real

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2 estate industry have filed comments urging the
3 Commission to approve both the C.P.N.Y. and H.Q.U.S.
4 contracts because they see these projects as
5 providing RECs that can be purchased to help comply
6 with Local Law 97.

7 In its comments, the Real Estate Board
8 of New York referenced the study showing that demand
9 for Tier 4 RECs could range from as much as 5.1
10 terawatt hours to 12.8 terawatt hours per year by
11 2030. Thus, although the order would apply the load
12 ratio share cost allocation methodology between the
13 commitments made by New York City and O.G.S.,
14 hopefully other commitments remain to come and the
15 alternative compliance mechanism under Local Law 97,
16 it appears highly likely that greater than 50 percent
17 of the Tier 4 RECs would be voluntarily purchased by
18 New York City-based ratepayers, thus providing a sig
19 -- significant reduction in impacts to the State's
20 other ratepayers.

21 And with that, let me hand it over to
22 Marco Padula who will discuss the ratepayer impacts
23 associated with the two contracts should the
24 Commission approve them. Thank you.

25 MR. PADULA: Good morning, Chair

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2 Christian, and Commissioners. I will address the
3 bill impacts associated with the costs of the two
4 Tier 4 projects. As you are aware, the contracts
5 have New York State ratepayers buying renewable
6 energy credits, or RECs associated with the clean
7 energy delivered to Zone J. The pricing of the REC
8 payment is based on an indexed strike price.

9 The C.P.N.Y. strike price is \$129.75
10 per megawatt hour, remaining constant each year. And
11 the H.Q.U.S. strike price starts at \$97.50 a megawatt
12 hour and then escalates two-and-a-half percent per
13 year. The actual program payments will be calculated
14 as the strike price minus referenced energy and
15 capacity payment prices as defined in each contract.

16 Since the REC payments are dependent
17 on future energy and capacity commodity prices, the
18 petition presents ratepayer impacts that are
19 projected as the net REC costs over time, under a
20 range of projected energy and capacity price
21 forecasts. Generally, lower commodity prices would
22 lead to a greater Tier 4 REC payment, and higher
23 commodity prices would lead to a lower Tier 4 REC
24 payment.

25 Once the Tier 4 REC program costs are

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2 determined, they're then allocated to all load
3 serving entities on a megawatt hour load ratio share
4 as Bob described earlier. The petition presented the
5 total cost and the percentage impact on customer
6 bills, both as levelized over the 25-year program
7 period and in 2028, as the first year of operation of
8 both projects.

9 The total cost of the program payments
10 for the purchase of Tier 4 RECs from the projects are
11 projected to be 5.9 to 11.6 billion. That's over the
12 total 25 years equating to an estimated increase in
13 customer electric bills of 2.1 to 4.1 percent, or \$2
14 to \$4 per month for the average residential customer
15 on average across the State for the 25-year period of
16 the Tier 4 contracts.

17 The range of these projections
18 reflects future uncertainties including energy and
19 capacity prices as I've described earlier. And they
20 include the benefits to ratepayers from the expected
21 purchase of the Tier 4 RECs by the City of New York.
22 Now focusing on the near term first-year impacts, the
23 2028 timeframe, the additional cost of the two
24 contracts is projected to be in the range of four-
25 tenths to seven-tenths of a cent per kilowatt hour.

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2 It's important to note that the same
3 dollar per kilowatt hour cost of the program will be
4 paid by all ratepayers across the State except for
5 those customers like the City of New York, that
6 voluntarily choose to purchase a greater share of the
7 Tier 4 RECs, resulting in a higher dollar per
8 kilowatt hour cost. The four- to seven-tenths of a
9 cent per kilowatt hour equates to \$2 to \$4 of
10 additional cost per month on a typical residential
11 customer bill using 600 kilowatt hours per month.

12 Because actual utility bills across
13 the State vary due to regional commodity and delivery
14 price differentials, the near term impact of the
15 additional cost on a percentage of total bill basis
16 is 1 to 4 percent for residential customers with a
17 higher than average bill, and 4 to 8 percent for
18 residential customers with lower than average
19 statewide bills.

20 Lastly, the bill impact percentages
21 for large commercial customers, even though equal on
22 a per kilowatt hour basis to all other customers
23 could be up to double the utility wide average. That
24 concludes our presentation, and we are available to
25 address any questions that you may have.

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2 CHAIR CHRISTIAN: Thank you for the
3 detailed presentation this afternoon. And I want to
4 thank you Bob, Warren, and Marco, for that overview.
5 I also want to thank NYSERDA for their work in
6 developing the R.F.P. implementing and managing the
7 procurement. And I want to thank Clean Path New York
8 and Champlain Hudson Power Express teams, as well as
9 all the other entities that submitted bids.

10 You know, last year when NYSERDA
11 released this solicitation, we were seeking proposals
12 that could effectively, reliably, and responsibly
13 deliver renewable energy to New York City. And as
14 you all know, New York City is an area of the State
15 that relies heavily on aging fossil fuel generation.
16 Simply put, if we can't deliver renewable energy to
17 New York City, we can't reduce emissions from that
18 fossil fuel fleet.

19 So we're here today, after nearly 18
20 months of rigorous State agency analysis and
21 deliberation, months of review of thousands of
22 comments -- public comments to consider these
23 contracts for the Clean Path New York Project and the
24 Champlain Hudson Power Express Project to deliver
25 clean, renewable solar, wind, and hydroelectric power

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2 from Upstate New York and Canada to New York City.

3 These projects are transformative.
4 They represent the single largest investment in
5 transmission infrastructure in the last 50 years.
6 And they'll represent a third of New York City's
7 annual electric consumption and will significantly
8 reduce New York City's reliance on fossil fuel
9 electric generation. And as a result, we'll have
10 significant reductions in emissions from New York
11 State's power generation sector.

12 As a result of this, more than 60
13 percent of New York's power overall will come from
14 renewable energy sources. The 18 million megawatt
15 hours of clean energy these projects produce annually
16 during the State, excuse me, annually will bring the
17 State on target to meet its 2030 renewable energy
18 goals. Based on the over 30 proposals received,
19 these options are the best available.

20 If approved, these projects will
21 create thousands of new jobs, billions in direct
22 investments, and many other new opportunities
23 throughout the State for all New Yorkers. The
24 projects will improve the resiliency and reliability
25 of the transmission system and significantly reduce

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2 the State's reliance on fossil fuel generation. Now,
3 during the months of review of these thousands of
4 public comments, we've seen many significant changes;
5 changes that served to reinforce the need for moving
6 forward and accelerating our efforts to meet our
7 renewable energy targets, some of which were alluded
8 to earlier.

9 The price of oil and natural gas have
10 skyrocketed. Prices for construction materials have
11 also gone up, interest rates are rising, and
12 inflation is picking up. Now based on these factors
13 alone, it stands to reason that a delay something
14 suggested in many comments on the record, either by
15 picking one project over another or a wait-and-see
16 approach where we try again and hope for a better
17 deal. Such a delay won't yield better results.

18 In fact, should we delay and
19 reconsider our approach and try again at a later
20 time, we'll very likely run the real risk of putting
21 ourselves in the unenviable position of paying more
22 for future projects with lesser benefits, and having
23 even less time to complete them by the deadlines
24 codified into law. Of note is the ample evidence in
25 the record of an all-of-government approach to

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2 mitigate costs.

3 And there's good reason to believe
4 that the cost presented here today will be lower over
5 time through voluntary purchases of the Tier 4 RECs.
6 As noted earlier, the New York City Government has
7 already committed to purchasing a significant share
8 of the Tier 4 RECs from these projects, an action
9 that will reduce costs by billions of dollars.

10 I was also very encouraged to see that
11 the State Office of General Services has committed to
12 join New York City in this regard, an action which
13 will further reduce costs. These are encouraging
14 signs, signs that future investments will not solely
15 be borne by ratepayers but spread out equitably
16 through a more expansive all-of-government approach.

17 Other State and federal government
18 customers in New York City may eventually join as
19 well. And many comments received, including those
20 from the Real Estate Board of New York, highlighted
21 the growing demand for RECs through voluntary
22 corporate and consumer action as another potential
23 source for savings. It is likely that many building
24 owners will procure Tier 4 RECs, potentially a very
25 significant quantity of RECs for compliance with

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2 various local laws, such as Local Law 97 in New York
3 City.

4 As a reminder, every Tier 4 REC
5 purchased, be it by a governmental customer or
6 private industry, will be one less Tier 4 REC that
7 all other ratepayers must procure. And there will be
8 direct reduction in ratepayer impact associated with
9 such action. It's entirely possible that the demand
10 for this resource will outstrip supply, decreasing
11 the cost of these projects to ratepayers over time.

12 Further, in addition to supporting the
13 goals set by the C.L.C.P.A., this project aligns with
14 the New York State Constitution supporting each
15 person's right to clean air, water, and a healthful
16 environment. So as an officer of the State of New
17 York, I swore an oath to support the Constitution of
18 the U.S. and that of New York State, and to discharge
19 the duties of this office with that understanding in
20 mind.

21 As Chair of the P.S.C. I view this
22 project as integral to meeting the goals established
23 by the C.L.C.P.A. in a cost-effective manner, while
24 maximizing reliability. So considering the numerous
25 benefits known to us today, the billions to be

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2 invested in New York State, the potential significant
3 reductions in fossil fuel generation and associated
4 emissions, the thousands of jobs to be created, the
5 resulting public health benefits, and the fact that
6 delay is not in the public interest, I wholeheartedly
7 support this project.

8 I again want to thank Bob Rosenthal,
9 General Counsel, Marco Padula, Director of Markets of
10 Innovation for your presentation today. And I want
11 to extend a special thanks to your teams for all the
12 hard work that went into bringing this forward today.
13 Thank you all. And with that, Commissioner Burman,
14 your comments.

15 COMMISSIONER BURMAN: Thank you so
16 much. Before I begin, I do want to see if the WebEx
17 can hear me, since apparently my voice is the problem
18 voice. I feel like it's at the Oscars where they
19 turn off my mic. So if someone can check that the --
20 my voice is heard. I don't know I -- Are you able to
21 hear me? I guess --

22 CHAIR CHRISTIAN: I can.

23 COMMISSIONER BURMAN: -- they can't,
24 because my fellow colleagues aren't waving that they
25 can hear me. Can you hear me well? Okay --

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2 CHAIR CHRISTIAN: Yeah, your fine.

3 COMMISSIONER BURMAN: -- good. All
4 right. Great. Okay. So with that, thank you both
5 for your presentations. They were very helpful. I
6 also do want to thank your teams, all of them for all
7 the due diligence on this. It has been very helpful.
8 I really do have for a -- talk -- make my -- some
9 comments. I do have just a couple of questions
10 really related to, you know, the -- the bill impacts.

11 It is really -- I don't think there's
12 any dispute that we are looking at significant bill
13 impacts on ratepayers in particular, the bill impacts
14 dynamics, particularly borne by the ratepayers in the
15 Upstate utilities. And we saw NYSEG, and R.G.& E.
16 submitted comments about their concerns with that.
17 And we did see M.I., as well as some of the Upstate
18 businesses weighing in on their concerns with that.

19 And we also saw Empire State
20 Development submitting comments while in support,
21 recognizing that they saw -- and I actually do want
22 to take a pause. I want to thank Empire State
23 Development for submitting those comments because it
24 is something that I think we do need to see more of.
25 I actually, in a prior administration, worked at

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2 Empire State Development and I think that Empire
3 State Development should be getting under the hood a
4 lot more.

5 They have a lot of analysis that they
6 can be providing to us in our proceedings. And when
7 I was a staffer at Department of Public Service, it
8 was not -- it was fairly routine that our economic
9 development team would work with their team in
10 engaging in a lot of the discussions on different
11 projects and the energy needs. And so just my own
12 sense is, it's important for us to engage much more
13 directly and robustly as we go forward.

14 But the thing that is sort of
15 questioning is, it doesn't seem like to me, other
16 than the general statements about hundreds and
17 thousands of jobs that will be created, it doesn't
18 seem like we have really quantifiable evidence of the
19 net jobs that will be created. But we also have
20 evidence of the huge rate impacts. And we also have
21 evidence of the impacts on the Upstate businesses and
22 the impacts that that will mean for them, which also
23 may have a problem with the loss of jobs that -- that
24 they do.

25 So I'm really curious about the

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2 analysis that Empire State Development may have done,
3 specifically drilling down on that issue, because
4 they did allude to it as being something that they
5 were concerned with, something that they were looking
6 to be working on, of what they have been -- have been
7 doing on that. And if they have some specifics,
8 because that's really, highly critical, not only
9 here, but generally as we move forward on our energy
10 policies.

11 MR. ROSENTHAL: So let me try to
12 answer that. So you know, we agree with you,
13 obviously. We're happy that they filed comments, and
14 that they expressed an understanding of the need to
15 partner with us, you know, in addressing electricity
16 rates, which are definitely a fundamental issue for
17 businesses in New York, and particularly Upstate New
18 York.

19 I don't have the specifics regarding
20 any proposals, but what I think we can work to do and
21 are happy to do is to arrange with them to come to
22 speak with, you know, the Commissioners individually
23 or in, you know, groups to talk about their very
24 specific, you know, programs in place and you know,
25 potentially ideas of programs to implement to address

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2 those issues.

3 COMMISSIONER BURMAN: Okay. That's --
4 Thank you. That's very helpful. I will say we will
5 be or I -- I know I will be really harping on this as
6 we go forward with very specific demands that we --
7 that I will be looking to see as we are -- have
8 before us a great need for clarity. As I talked
9 about in the rate case on how this fits, we are
10 economic regulators, and our energy policies need to
11 be fiscally responsible.

12 And if we are to be looking at what
13 we're doing, we have to have a visual on what the
14 impacts are, especially as we are working on, you
15 know, attracting businesses and we don't -- we need
16 to understand that. So for me here, even seeing that
17 E.S.D. dipped its toe in the water here and
18 acknowledged that they realized that there is a
19 negative impact on Upstate and we see, you know, that
20 there are comments on that, it's -- it's -- it's a --
21 it's a concern.

22 So thank you very much for that and I
23 appreciate that. So now, I'm just going to sort of
24 give my comments so I'm -- I'm done with questions if
25 -- you can take a break if you need to. All right.

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2 So, all right.

3 CHAIR CHRISTIAN: At ease.

4 COMMISSIONER BURMAN: So -- and again,
5 I'm still being heard, right, so. Okay, good. As
6 I've stated in previous meetings of the Commission, I
7 am very concerned about the affordability of utility
8 services to consumers and businesses in the State. I
9 believe our core mission to ensure that utilities
10 provide safe and reliable service at just and
11 reasonable rates is of paramount importance.

12 The Commission has an important role
13 to play in implementing the C.L.C.P.A. But the
14 Commission must balance the C.L.C.P.A. with its other
15 statutory obligations. The C.L.C.P.A. enacted by the
16 legislature sets forth a number of requirements of
17 the Commission, including the creation of a renewable
18 energy program to achieve the 70 percent renewables
19 by 2030, and zero emission grid by 2040 targets,
20 which arguably, directly results in the creation of
21 programs like Tier 4.

22 Tier 4 may not be aimed at
23 reliability, but we in our mission, and public
24 interest standard, must ensure all we do under our
25 clean energy policies not overlook reliability. And

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2 to me, that is paramount. The C.L.C.P.A. does not
3 specify a method of payment for these ambitious
4 climate goals and as such, the burden of this and
5 other clean energy investments to meet the goals of
6 the C.L.C.P.A. have largely been borne by ratepayers.

7 There are already billions of dollars
8 in climate investments underway, that are placing
9 upward pressures on utility rates. This is
10 unsustainable and truly problematic. In fact, the
11 very legislators and others who demand for the
12 C.L.C.P.A. related energy policies to be implemented
13 A.S.A.P., while at the same time, not wanting us to
14 increase utility rates need to examine their magical
15 thinking around that.

16 It just is an unfair demand. Energy
17 policies that have fiscal implications need to be
18 clearly understood on what those are. Those same
19 energy policies that have impact on reliability also
20 need to be carefully understood and they need to be
21 thought through before standing up those energy
22 policies. So to be clear, continuing to allow energy
23 policies to be implemented without enough regard to
24 both the fiscal impact on ratepayers and the
25 instability on grid reliability is irresponsible.

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2 I also recognize part of the need here
3 for this matter comes arguably as a partial results
4 of the closure of Indian Point. The unintended
5 consequences from that one energy policy decision are
6 still a challenge for all of us. But we have, I
7 hope, learned from that and our need to be more
8 thoughtful in our energy policy decision-making as we
9 move forward.

10 Thus, when I consider the evaluation
11 of these Tier 4 contracts in the context of the
12 public interest standard review, I struggle with
13 being able to approve these projects at a time when
14 consumers all across the State are already
15 experiencing rising energy supply costs and record-
16 high inflation. I truly appreciate the efforts of
17 staff and the Chair to highlight the various ways in
18 which the ratepayer impacts may have been mitigated.

19 The fact that New York City has
20 committed to purchasing RECs for the governmental
21 load is ostensibly meaningful. But it still leaves
22 very significant costs to all other ratepayers, in
23 particular, Upstate ratepayers. I believe the O.G.S.
24 letter filed on the record last week, which signaled
25 its intent to doing the same governmental purchase

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2 for State Building is genuine, has the potential to
3 add value.

4 And I look forward to reviewing any
5 future petition by O.G.S. and/or its service provider
6 to approve any reallocation of C.E.S.s other tier
7 allocations consistent with New York City's proposal.
8 But frankly, that proposal is not yet before us.
9 Moreover, that letter only signals an intent, and not
10 the intent of other entities like the M.T.A., or Port
11 Authority.

12 And I'm not so sure that the Local Law
13 97 requirements in New York City, especially as
14 they're being molded on amendments to be made, may
15 result in additional voluntary purchases of RECs,
16 although an argument can be made, they may. But
17 they're not solid commitments for such purchases in
18 the record that completely resolve the cost impacts.
19 That's troubling and unacceptable. As I see it, we
20 have an obligation to reduce the risk for all
21 ratepayers.

22 Approving these projects today would
23 not be in the public interest, not just because it
24 contains a severe inequity between Upstate
25 ratepayers, but also because we lack necessary

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2 certainty and commitments from the project developers
3 on other conditions, we should demand they give. And
4 I believe this may include, among other things, in
5 some fashion, a firmer commitment or level of
6 certainty, specific to providing installed capacity
7 to Zone J, during the winter capability period with
8 enforceable penalty provisions for failure to live up
9 to their commitments.

10 Now I get it. I understand the
11 argument that NYSERDA's agreements are for the
12 procurement of RECs only. And this requirement to
13 provide capacity is not in the Tier 1 and offshore
14 wind standard procurement contracts. I get it, I got
15 it. However, I would say in light of the challenges
16 we are now faced with, information we have in the
17 record from among other things, New York I.S.O.'s
18 forecasts, we have an obligation in determining if
19 this meets the public interest standard to address
20 this clear winter reliability risks more
21 definitively.

22 Our order is not just about approving
23 contracts, our order can and should set forth
24 necessary conditions and terms that are applicable to
25 our Tier 4 program that must be followed and

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2 enforced, that will enable what is in the public
3 interest. This reliability issue to me is enough of
4 a concern that rises to that level that I want firm
5 certainty now.

6 We have to vote on these projects
7 based on what is in the record as the known cost to
8 ratepayers. And as of today, those costs are
9 unacceptably high in my opinion. In fact, while
10 folks may differ on the forecasted costs, there's no
11 real disagreement that there will be costs that will
12 have to be borne by ratepayers.

13 I also don't see in the record that
14 for every individual and entity that supports these
15 projects going forward, I don't see that they fully
16 understand a) it's not certain these projects will
17 actually happen, b) that there will be high ratepayer
18 impacts, and/or c) not all the peaker plants will be
19 shut down merely because of these projects.

20 I believe part of our public interest
21 review needs to be whether the outreach and education
22 on the project impacts, positive and negative have
23 been fully explained and understood. I don't have a
24 clear picture from those in support that this -- that
25 this occurred. I am deeply concerned about the

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2 impact multibillion-dollar investments like these
3 will have on maintaining affordable utility rates and
4 the corresponding effect that could have on economic
5 development, not just on Upstate, but also on our
6 most vulnerable low income customers.

7 This to me is how I am balancing the
8 various statutory obligations we have to meet as
9 Commissioners. With today's decision, if adopted, we
10 would be inexplicably imposing rate increases on
11 ratepayers while not actually solving the critical
12 need to transition our critical -- our electrical
13 system to be more reliable, resilient, affordable,
14 and sustainable for all New Yorkers.

15 Therefore, I respectfully dissent as
16 this is too costly to ratepayers and the Commission
17 has not taken in my opinion, sufficient steps to
18 adequately and completely ensure the issues embedded
19 in this matter are more fully vetted among us, and
20 that we seek to extract more definitive commitments
21 and conditions more firmly while also lessening the
22 burdens on ratepayers. Thank you.

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

25 COMMISSIONER ALESI: Thank you, Mr.

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2 Chairman, and I will be succinct. I am deeply
3 concerned of fairness to all ratepayers.
4 Nevertheless, the ultimate goal in New York is to
5 employ the cleanest renewable energy whenever and
6 wherever we can.

7 And to that extent, and I knew this is
8 part of an ongoing and multifaceted effort that
9 ultimately works towards the benefit of all New
10 Yorkers. And I will be voting yes.

11 CHAIR CHRISTIAN: Thank you,
12 Commissioner. Commissioner Edwards.

13 COMMISSIONER EDWARDS: I just have one
14 question and then some comments. So General
15 Counselor Rosenthal, is there a mechanism currently
16 to compel these partnerships? It's, you know, what
17 New York City did in terms of offering what they had
18 done and now one of the State agencies, but it
19 doesn't look like that, you know, it looks like it's
20 on a volunteer basis. Is there any type of mechanism
21 to compel these partnerships to continue?

22 MR. ROSENTHAL: I'm not --

23 COMMISSIONER EDWARDS: The financial
24 partnerships.

25 MR. ROSENTHAL: -- I'm not exactly

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2 sure what your question is. Do you mean, to stay
3 together or?

4 COMMISSIONER EDWARDS: So the City --
5 so the City offered, right? And now they are -- they
6 are -- they helped reduce the costs or contributing
7 to the cost of this. But they did that on a
8 volunteer basis, right?

9 MR. ROSENTHAL: They did it on the
10 voluntary basis, but they also have actually signed a
11 real contract now, that's a binding contract with
12 NYSERDA.

13 COMMISSIONER EDWARDS: Okay. And then
14 O.G.S., that was on a voluntary basis as well,
15 correct?

16 MR. ROSENTHAL: Correct. And the
17 difference being that they filed a notice of intent
18 to enter into a contract and, you know, we'll -- one
19 would suspect we'll enter into a contract in the next
20 couple of months.

21 COMMISSIONER EDWARDS: Okay. So there
22 is really nothing right now that compels
23 municipalities and agencies to help with this effort.

24 MR. ROSENTHAL: Correct.

25 COMMISSIONER EDWARDS: Right?

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2 MR. ROSENTHAL: The only --.

3 COMMISSIONER EDWARDS: Okay. All
4 right.

5 MR. ROSENTHAL: That's -- that's
6 accurate, yes.

7 COMMISSIONER EDWARDS: Okay. Because,
8 you know, that -- that to me, I think would be
9 tremendous. If we were able to ensure that we had,
10 you know, this has to be an all-in exercise, you
11 know, for -- for everybody.

12 And I'm hoping that as we go forward
13 with this, you know, there is a way for us to do
14 that. You know, it's unfortunate that the original
15 language in the C.L.C.P.A. did not compel, you know,
16 if for lack of a better word, because that would have
17 been helpful, you know, in terms of -- in terms of
18 the cost.

19 So that's just really what my -- what
20 my question is. So before I go into, you know, my
21 comments, did you -- did I interrupt you at all?

22 MR. ROSENTHAL: Did you interrupt me
23 at all? No, the only thing I was -- the only thing I
24 was going to add is just sort of personally, there is
25 Local Law 97. It is real. And it definitely has

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2 mandates and that they are mission mandates.

3 There is an alternative compliance
4 mechanism that will allow building owners to offset
5 part of their emissions obligations through the
6 purchase of RECs associated with energy delivered
7 directly into New York City.

8 Like Tier 4 RECs. There is just one
9 outstanding issue, which is, as I noted, the
10 Department of Build -- Buildings or D.O.B. needs to
11 implement regulations that it's just going to specify
12 to what extent, you know, emission offsets and RECs
13 will interact. That hasn't been done yet.

14 I think that what's very important is
15 that we've gotten comments, both from New York City,
16 showing that it's committed to, you know, adopt such
17 regulations. And from the building owners themselves
18 who obviously support the two projects because they
19 see them as a mechanism to purchase RECs to offset
20 the building emission requirements.

21 So from my perspective, there's a very
22 high likelihood that those things are going to
23 happen.

24 COMMISSIONER EDWARDS: Okay. That's
25 great. You know, because I, you know, I have all

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2 kinds of stickies all over the place, so you'll have
3 to just, you know, bear with me.

4 I, you know, I'm from the school of,
5 if -- you can't get different results by doing things
6 the same way, and I think it is comes down to, you
7 know, priorities.

8 You know, I'm concerned that, you
9 know, which is why I voted no on the previous rate
10 case because I think that we can find our way clear
11 sometimes to vote for the same, getting the same
12 results, but we are rightfully concerned about the
13 costs of doing things differently.

14 And I believe that we do have an
15 obligation and a moral and health responsibility to
16 do things differently. You know, I -- I'm not
17 comfortable with continuing to spend ratepayer money
18 on the same dirty fossil fuel results.

19 If there is an alternative before us,
20 and I think the C.L.C.P.A. has given -- has given us
21 a path to get out of this, not only for ourselves but
22 for future generations. You know, I think about my
23 grandchildren and their grandchildren.

24 And while I understand the mission,
25 you know, of a just and reasonable rate, and that was

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2 in 1907 when that first started. I mean, just think
3 about what the air quality was in the emissions in
4 1907.

5 So sometime, you know, we have to move
6 past that, just like how the Civil Rights Act
7 evolved. We have to evolve with it. And I see this
8 as just -- it's a critical thing that we have to do.

9 I wish that the language in the
10 C.L.C.P.A. came with a 100 percent cost. I -- I
11 really do. I think that that was a missed
12 opportunity, but to do the same thing and continuing
13 to approve the same rate cases in the same way, and
14 not put our priorities on this for a cleaner future.
15 That's what we need to be doing, which is, you know,
16 one of the reasons why I'm just very concerned about
17 not doing this.

18 Is it perfect? You know, absolutely
19 not. Do I think that we will get better over time as
20 this -- these projects continue? Yes, I do. Do I
21 welcome the Empire State Development and everyone
22 understanding the importance of this, I believe that
23 this will definitely get better, but we got to start.

24 It's -- we're never going to be able
25 to achieve the goals of the C.L.C.P.A. and to have a

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2 cleaner New York, if we are not moving forward. And
3 we don't have every single answer locked down. I get
4 that, but to further delay, and reopen, and question
5 all this other stuff, but at the same time that we're
6 still approving the same results for the same dirty
7 futures, you know, that that we have.

8 And we can see our way clear to do
9 that. I am -- I'm in favor of this. I really think
10 that we need to move forward. And I respect the
11 organizations, you know, counted 40 out of a 128 that
12 had either opposed both, or object to one, or want us
13 to stop and -- and look at us, you know, some other
14 things before we go forward.

15 I, you know, respectfully concur with
16 Commissioner Burman's points. You know, we all have
17 valid points, but you got to make a judgment call and
18 you have to make a decision, and my decision is for
19 moving forward.

20 I am excited about the possibilities
21 of starting this because we -- we're running out of
22 time. You know, we're just so reliant on the same
23 old, same old, that if we analyze everything until it
24 gets 100 percent right, we're not going to be able to
25 move forward.

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2 I -- I see this as an obligation for
3 us. And I'm not going to reach back into 1907 to say
4 that this is, you know, we need to just figure out
5 and move forward on just and reasonable rates. And I
6 -- and I get the fact of the cost, I want to make
7 sure that the costs are lower as we move forward too.

8 And one of the reasons why I want to
9 look very critically on a going forward basis and on
10 these business-as-usual rate cases and recovering
11 costs of the rate cases because we need to shift. We
12 need to shift and spend the money that we are going
13 to spend on a cleaner future for New York.

14 So I will be voting in -- in favor of
15 this. Excuse me for all of my stickies, but I wanted
16 to make sure that I got through all of the different
17 points. Thank you.

18 CHAIR CHRISTIAN: Thank you,
19 Commissioner. Commissioner Howard.

20 COMMISSIONER HOWARD: Thank you, Mr.
21 Chairman. It is no understatement for me to say that
22 this is the most difficult case that I've had to vote
23 on since joining the Commission.

24 And I do truly want to thank staff for
25 their patience to me personally, because Lord knows

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2 I've tortured them over this item over and over and
3 over again. And I also want to extend my personal
4 thanks to Chairman Christian for his efforts to
5 making this proposal better.

6 Having been privy to much of the
7 process surrounding the development of these
8 contracts, I believe, I have a perspective that may
9 be different from some of my fellow Commissioners.
10 I'm also increasingly concerned about the nature of
11 the process and proof -- proving this and other zero
12 emission tiers.

13 As detailed and as open as the
14 Commission's process is, particularly in regard to
15 rate cases, I believe, in many ways, this case is the
16 opposite.

17 While every rate class and customer
18 advocate participates in a very high level in rate
19 cases, I don't believe that this process lends itself
20 to the full involvement of New Yorkers statewide.

21 Little, if any, public discussion
22 occurred on this item west of the Hudson River. In
23 fact, of those entities who commented from Central
24 and Western New York, they were by and large opposed
25 to this order.

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2 While this petition received extensive
3 press coverage from the New York City based media,
4 nearly a word was written about it in Upstate in the
5 Upstate media. So any discussions I had with
6 individuals Upstate, they had little or no awareness
7 of the impacts to customers in their region.

8 This lack of proactive outreach is to
9 say at the very least troubling. In future cases
10 where bill impacts are varied and load sure share --
11 load share based, I believe it is imperative that
12 this Commission aggressively seek the opinions of
13 those customers who will pay the majority of the
14 bills.

15 As a bit of my personal history
16 regarding these projects. In the early '90s, I
17 worked extensively on what was then a proposed
18 contract between the New York Power Authority and
19 Hydro Quebec.

20 I had the opportunity to travel many
21 times to the areas of James Bay and Hudson Bay, to
22 see the construction and progress and sites for
23 future large hydro projects.

24 The issue surrounding the far north
25 and its effect on the Cree and Inuit First Nations

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2 were and remain issues of tremendous controversy.

3 However, I do believe, excuse me, in the 1980s the

4 New York Power Authority developed two large

5 transmission projects, the 765 line, and the Marcy

6 South projects, which would have been the highway for

7 this proposed commerce.

8 With energy flowing in both directions

9 to complement Quebec's winter peaking needs with New

10 York's summer peak. I believe now and I believed

11 then, continued belief in establishing a strategic

12 relationship between New York State and Hydro Quebec

13 makes sense for a variety of reasons, particularly

14 with the idea of resource diversity with a partner,

15 which is probably the most zero emission, large

16 energy system in the planet.

17 However, the original contract between

18 H.Q. and NYPA was ultimately rejected for one simple

19 reason. It costs too much compared to other

20 alternatives. However, Hydro Quebec still is a major

21 supplier of electricity to our State and will

22 continue to be with or without this petition.

23 Two parallel projects going on

24 currently, one, with -- would allow greater

25 throughput from Northern New York into Central New

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2 York into the balance of our system are underway
3 today, which I believe will result in even greater
4 loose juice purchases from Hydro Quebec.

5 In regard to the current proposals,
6 when voting to authorize the Tier 4 solicitation by
7 NYSERDA, I now believe I voted wrong. The load share
8 ratio for paying for a Tier 4 was wrong.

9 In retrospect, I believe that Tier 4's
10 benefits disproportionately accrue to New York -- New
11 York I.S.O. area J, New York City. There are real
12 and measurable local health impacts to reducing the
13 burning of fossil fuels in New York City for electric
14 generation, a point emphasized by many supporters of
15 these petitions.

16 I also believe that the benefit cost
17 analysis significantly understates these local-wise
18 benefits and overstates the carbon reduction
19 benefits. Thus, giving greater justification for
20 having all New York ratepayers subsidize the cost of
21 Tier 4.

22 In regard to the comparing it to Tier
23 3, I do have to point out that the nuclear plants in
24 New York State were paid for by largely Upstate
25 ratepayers. The initial capitalization, which was

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2 many times its initial prediction was absorbed by
3 those ratepayers.

4 So Tier 3 being a pure carbon play,
5 one would make sense would want to go statewide.
6 Additionally, the issue of any local -- the benefits
7 of the Tier 3 program are extraordinary localized.
8 They do not go very far from Oswego.

9 By the time you get to Rochester and
10 Buffalo, they are de minimis if not zero. Because it
11 was -- because if we were just dealing with carbon
12 reduction for Tier 4, there are far less expensive
13 ways to get carbon reduction. Globe -- that will
14 benefit not only New York State but the entire globe.

15 Currently, this petition would have 60
16 percent of the Tier 4 costs paid for by electricity
17 comm -- customers outside of New York City where even
18 today we have heard over and over and over again, the
19 vast majority of benefits to this proposal accrue to
20 New York City because -- actually, because customers
21 pay for Tier 4 on a pure kilowatt hour basis,
22 combined with a relatively lower cost retail electric
23 cost outside of New York City, particularly Upstate,
24 the percentage of increase on customer's bills will
25 be higher Upstate.

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2 This will also have a disproportionate
3 impact on large customers, including manufacturers,
4 hospitals, education, institutions, and government.

5 As we have stated in past sessions, we
6 cannot sacrifice Upstate New York's economic
7 competitiveness as we decarbonize our economy. There
8 are those who have stated that Upstate industrial
9 customers often pay below the national average for
10 electricity and therefore can absorb these new costs.

11 If you're in a vacuum, that may be
12 true. But Upstate New York is by no means a low cost
13 place to do business. Taxes and other costs make
14 attracting new energy intensive industry very
15 difficult without large State and local incentives.
16 And I'm particularly troubled by the actual long term
17 lack of analysis on the possible effects of what
18 double digit bill increases may have on large Upstate
19 customers.

20 I have been told anecdotally that many
21 plant managers and decision makers are already
22 deciding where to bid the next line of manufacturer.
23 And we are in a global and regional competitive
24 nature. And any inputs that put this out of that
25 competition, make it very, very, very, very

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2 difficult.

3 I believe it's folly to believe that
4 90 -- subsidies alone can make up for whatever costs
5 are imposed on large customers. And in respect to
6 the current State efforts to secure large new
7 factories to manufacture microchips, expect that
8 these facilities require substantial energy subsidies
9 far below what the retail market can supply.

10 And undoubtedly will exempt these new
11 customers from paying their full Tier 4 obligations.
12 There was a time when the need for nurturing and the
13 fostering of growth in Upstate economy was priority
14 one in New York State, I believe that we have lost
15 our focus.

16 In regard to the voluntary REC
17 purchases, from the outset of the discussions and the
18 financing mechanisms of Tier 4, the concepts of
19 ameliorating the cost of Tier 4 through quote,
20 voluntary purchases of Tier 4 RECs by certain
21 customers, was an idea.

22 Two distinct categories of customers
23 were identified as Tier 4 volunteers. Government
24 customers and the private real estate companies who
25 need to comply with aspects of New York City Local

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2 Law 97.

3 In this regard, I truly appreciate New
4 York City's efforts, in this regard, by -- and
5 applaud them for committing to go 100 percent fossil
6 free for its electric load, which ironically, it
7 largely was at one time when Indian Point was
8 operating under the control of the New York Power
9 Authority.

10 And for its helping reduce the
11 electric price impact throughout New York State to
12 customers outside of New York City. One question
13 would be how can New York City afford this? Well,
14 one answer I have is the 25 percent of every Con Ed
15 ratepayer dollars they take in local taxes.

16 The recent letter sent to the
17 Commission by the Office of General Services to
18 commit to having New York State purchase Tier 4 RECs
19 is also praiseworthy. However, the rate impacts
20 outside of New York City on this purchase will in
21 fact be very small.

22 As a broader commitment by New York
23 State to purchase Tier 4 RECs, I believe this
24 exercise and effort has fallen way, way short. Given
25 that there are other State entities that are far

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2 greater users of electricity than in New York State
3 general government.

4 The Metropolitan Transportation
5 Authority, the Port Authority of New York and New
6 Jersey, New York City Housing Authority all should
7 step up and do the right thing and purchase RECs
8 commensurate with their load if they are truly
9 committed to a zero emission future.

10 In terms of Local Law 97 compliance,
11 until final rules are established on how many RECs
12 property owners will be allowed and/or required to
13 purchase is known, the impact of the quote, voluntary
14 REC purchases is largely unknown.

15 I believe until Local Law 97
16 regulations are in place and the State authorities
17 have commitments, it is premature to approve these
18 petitions. Additionally, there was made reference of
19 another possible way to ameliorate the cost of this
20 project was federal government funding.

21 I do believe and if anybody has
22 watched the actions from Washington, we're not going
23 to get a nickel. And we are certainly not getting a
24 nickel by this morning where I have to take this
25 vote.

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2 Local impacts. While the Champlain
3 Hudson has garnered local support throughout Eastern
4 New York, I believe that support comes from two
5 specific sources. Local governments who will realize
6 increased property tax revenues through mostly I.D.A.
7 sponsored payment in lieu of tax payment agreements,
8 and trade unions who will be employed to construct
9 the infrastructure.

10 Both are tangible but if very
11 localized benefits. It is far less clear to me what
12 benefits will accrue to localities for the Clean Path
13 Project. If the majority of the west of the Hudson
14 construction takes place on NYPA tax exempt right-of-
15 way it's unclear if any local property taxes will be
16 paid.

17 And in terms of funds dedicated to
18 local communities in grants by the two projects. I
19 am troubled by the lack of specificity on how these
20 funds will be dispersed. Using ratepayer dollars
21 doled out by private companies gives me pause.

22 Nearly \$500 million will be
23 distributed. And I know that many of the supporters
24 of these projects have used these funds as a reason
25 for their support. Since these projects are

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2 supported by ratepayers statewide, such funds need to
3 mirror -- mirror the same ratio as where the funds
4 originated.

5 However, I do appreciate the recent
6 language in this order, providing better oversight
7 mechanisms of these funds. But I still remain
8 uncomfortable with its entire scheme.

9 In conclusion, well, no, I'd be voting
10 no on this item, not because I oppose these projects.
11 In fact, I very much want these energy systems
12 completed.

13 I do not support the financing
14 mechanisms before us and how to pay them. I have
15 stated many, many times, our current system for our
16 State's -- paying for our State's decarbonations
17 efforts and C.L.C.P.A. compliance exclusively through
18 electricity bills is unwise, unfair, and
19 unsustainable.

20 And I will note in this year's budget,
21 when we had more money than I've ever seen in my 40
22 years in State government, little or no money was put
23 to specific capital needs to reduce costs for these
24 large renewable projects.

25 I believe we can make Tier 4 much

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2 better. And as we pursue other C.L.C.P.A. mandates,
3 I plead with the State legislature to report -- to
4 reprioritize spending that makes our vital efforts at
5 decarbonizing our electricity system, not at the
6 expense of our local economies. With that, Mr.
7 Chairman, thank you.

8 CHAIR CHRISTIAN: Thank you,
9 Commissioner. Commissioner Valesky.

10 COMMISSIONER VALESKY: Thank you, Mr.
11 Chair. Commissioner Maggiore, as usual, you and I
12 have a tough act to follow once again today. And I
13 just -- I'm going to offer some some comments and
14 some thoughts on a few items.

15 But before I do that, in all
16 seriousness, you and I, Commission Maggiore, have the
17 benefit of hearing from our talented colleagues at
18 every session and I think this one certainly
19 highlights that from Commissioner Howard -- Professor
20 Howard, always appreciate your history lesson that
21 you -- that you bring to so many items here.

22 Chair Christian, your -- your
23 background and your steady hand at the wheel,
24 particularly with this item is -- is admirable to say
25 the least and I want to personally thank you for

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2 that.

3 Commissioner Burman, my friend of
4 many, many years, in many ways, the bedrock of this
5 Commission, I continue to learn so much from you and
6 to our colleagues in other parts of the State.

7 Commissioner Alesi reminds us, in his
8 succinctness, that if you can say something in fewer
9 words than more, go ahead and do that. So thank you
10 for that, as well Commissioner Alesi and -- and to
11 Commissioner Edwards, all I can say is, I love it
12 when you talk from your sticky notes. Thank you for
13 your passion. It is so important not only for us on
14 the Commission, but for New Yorkers in general to
15 hear.

16 So just some comments. And first of
17 all, I just want to pick up Bob to you, Commissioner
18 Burman's first point or one of the first points that
19 she made regarding support and programs from Empire
20 State Development.

21 I might just add as it relates to the
22 impact to Upstate commercial payers. You know, the
23 power authorities ReCharge New York Program is a
24 significant program. Love to have an update as to --
25 as to where -- to where those efforts stand.

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2 And I think the Power Authority itself
3 has in the record noted as such, and their -- their
4 willingness, perhaps to expand that program to be
5 helpful. So I do want to maybe mention that.

6 So a few items here, you know, public
7 opinion really does matter. I appreciate, Bob, you
8 stating, I think you said 98 out of 128 organizations
9 either support both projects or don't oppose one or
10 the other. I think that's really significant.

11 There is certainly no unanimity of
12 public opinion on this as in almost anything that we
13 do here in New York State and that's okay. But it's
14 important to note and I'm not going to read through
15 the organizations, but I always like to, you know,
16 you find some organizations that don't necessarily
17 agree with each other.

18 You do in this case. You find things
19 like the Business Council supporting, and the
20 Building and Construction Trades in support, that's
21 not always the case. You'll find the Real Estate
22 Board of New York and the Natural Resources Defense
23 Council are supporting -- in support.

24 The League of Conservation Voters
25 supports but Sierra Club doesn't. So I think, you

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2 know, it shows a wide breadth and range of public
3 opinion across the State, and that's important. And
4 it's important that -- that each and every one of us
5 listen to that, and that's very clear in -- in the
6 record, and I appreciate everyone who has taken the
7 time and continues to -- to contact us right up until
8 -- until this morning.

9 Public opinions, of course, sorts of -
10 - sort of leads in terms of what we do as regulators
11 into the whole area of public interest and is
12 something in "the public interest" or not. And in
13 the previous item, I quoted Judge Leary in her
14 conclusion on the O&R rate case, that that, in fact,
15 was in the public interest.

16 And I would just note in the case
17 here, Bob, I appreciate your taking the time to walk
18 us through the six criteria that were established by
19 the former P.S.C. or the P.S.C. at the time that
20 established the modification order and instituted
21 Tier 4 in the first place.

22 So and again, very quickly, net
23 societal benefits, through a B.C.A. test, the
24 displacement of fossil fuel generation in New York
25 City. Projects that complement the deployment of

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2 offshore wind, a project's viability, the economic
3 benefits to the State, and impacts to disadvantaged
4 communities.

5 So thank you for taking time in your
6 presentation to walk through all of those. I want to
7 highlight another issue that -- that I have had
8 concern about, and I think appropriately raised,
9 Commissioner Burman raised it as well.

10 I think Commissioner Howard did as
11 well, this role of capacity and particular winter
12 capacity. Some in the record have clearly argued
13 against specifically the H.Q. project because it does
14 not -- in their -- from their perspective account for
15 the winter capability period, particularly down the
16 road, when we move from a summer peaking to a winter
17 peaking capability state.

18 I would just -- I'm just going to --
19 and I pulled this out of the -- out of the order
20 itself, and I do want to quote. So this is not a
21 question, Bob, but I do want to state this for the
22 record, because I think it's significant.

23 So this is from the order that's
24 before us, "capacity is not procured by NYSERDA. It
25 is procured in the State pursuant to market rules

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2 administered by the New York Independent System
3 Operator, as approved by the Federal Energy
4 Regulatory Commission."

5 Interestingly, the same commenters
6 that raised this issue, support the Clean Path
7 contract, but do not note in their comments that the
8 contract for that project also lacks any requirement
9 to provide capacity. So I think that's important to
10 highlight.

11 I want to talk a little bit about
12 costs, because I share all of the cons -- concerns of
13 my colleagues before me in regard to cost. This is
14 really, really a critical issue. I want to start
15 with the New York City contract.

16 And if I can, Bob, I may have a
17 question here for you on the voluntary contract, to
18 purchase Tier 4 RECs. And thank you, Commissioner
19 Edwards, for your questions in regard to the
20 voluntary nature versus some level of mandatory
21 purchase.

22 So as I understand the contract, Bob,
23 and I don't think you highlighted these items in your
24 presentation, but in the order itself, I'll just pull
25 out two points. The purchase term of the New York

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2 City contract covers a 25-year period starting from
3 the earlier C.O.D. of the Tier 4 projects. That
4 means -- what does that mean?

5 MR. ROSENTHAL: That means it's very
6 likely that once CHPE comes online, that's when the
7 contract would be triggered. That's when the
8 contract would start.

9 COMMISSIONER VALESKY: Okay. And
10 number 2, and I think this is really important. The
11 contract is conditional upon the Commission approving
12 both of the recommended Tier 4 contracts. I guess
13 that's not a question that sort of -- it sort of --
14 it's self-obvious.

15 But I want to articulate that very
16 clearly because there are many comments in the record
17 that support one project and not the other and many
18 commenters have been suggesting to us that we approve
19 one project, not the other project.

20 I think it's important to be clear on
21 that point, for two reasons. One, the reason I just
22 articulated, that should -- were we to approve one
23 contract and not the other would definitely upset
24 that applecart of the New York City contract.

25 MR. ROSENTHAL: That's accurate.

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2 COMMISSIONER VALESKY: The purchase,
3 correct?

4 MR. ROSENTHAL: Yes, it is.

5 COMMISSIONER VALESKY: Okay. And
6 number 2, the order before us today is one order, one
7 vote, two contracts or two projects, correct?

8 MR. ROSENTHAL: Correct, yes.

9 COMMISSIONER VALESKY: Okay. So there
10 is not an opportunity for this Commission today to
11 say yes to one and no to the other. Is that correct?

12 MR. ROSENTHAL: I would -- I would say
13 that that's not actually -- actually correct. You
14 could say one to one, and no to the other.

15 COMMISSIONER VALESKY: Even though
16 only one order is before us?

17 MR. ROSENTHAL: Correct. You could do
18 that if you wanted to.

19 COMMISSIONER VALESKY: Okay. Okay. I
20 think it's important to note though, that one order
21 is before us?

22 MR. ROSENTHAL: Correct.

23 COMMISSIONER VALESKY: Right. Okay.
24 Okay. I want to also mention the O.G.S. commitment,
25 which is significant. And thank you to everyone who

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2 -- who had a role in making that possible.

3 I want to also talk about and I'm
4 going to make -- I'm going to quote again from the
5 record in terms of voluntary purchases by private
6 entities. This is a quote from the Real Estate
7 Board's testimony.

8 Quote, it's particularly notable that
9 the Tier 4 program includes a mechanism to allow
10 voluntary buyers such as building owners to purchase
11 Tier 4 RECs from NYSERDA. This design ensures that
12 market participants who have the most demand for such
13 credits can pay for them directly, absorbing program
14 cost, and mitigating the financial burden on New York
15 ratepayers.

16 Additional commentary from 13 of the
17 largest property owners in the City under a separate
18 cover. "We are eager to explore participating in
19 this voluntary market to determine how purchasing
20 these RECs can enhance our corporate goals and Local
21 Law 97 compliance strategies".

22 I certainly associate myself with both
23 Commissioners Burman and Commissioner Edwards in
24 regard to the voluntary nature as opposed -- as
25 opposed to the mandatory nature, but the reality of

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2 Local Law 97 cannot be understated and is
3 significant, to say the least.

4 So I think these are important
5 commitments. They are meaningful commitments in
6 terms of reducing the impact of these projects on
7 ratepayers across the State. But make no mistake,
8 more needs to be done, not just as it relates to
9 these projects, but regarding all of the State's
10 efforts to fight climate change and meet the
11 ambitious targets as established in law by the
12 C.L.C.P.A.

13 More and more from ratepayers cannot
14 be the answer. A whole-of-government or all-of-
15 government approach must be the framework from which
16 energy related projects are brought to fruition. We
17 can find steps in the right direction in the recently
18 enacted State budget.

19 We can find additional steps in the
20 Environmental Bond Act, should it be approved, of
21 course, by the voters in November. But the time is
22 near, if not here already, for not steps, but leaps
23 and bounds from the federal government, from the
24 State government, from the private sector.

25 An over reliance on utility bills

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2 cannot be how we get to 70 percent renewables by 2030
3 and 100 percent zero emission electricity by the year
4 2040.

5 With that, I want to thank you again,
6 Chair Christian, for your leadership and for giving
7 me the opportunity to speak and most especially
8 thanks to the staff, both here at the Department of
9 Public Service and at NYSERDA as -- as was mentioned
10 earlier.

11 I know an awful lot of time and effort
12 has been put in preparing this order and making it
13 available for us to consider today. Thank you very
14 much.

15 CHAIR CHRISTIAN: All right. Thank
16 you, Commissioner. And now, to Commissioner
17 Maggiore.

18 COMMISSIONER MAGGIORE: Thank you,
19 Chair Christian. Mr. Rosenthal, I have several
20 questions. I'm going to start with questions having
21 to do with the environmental impact of these projects
22 and these questions are based on my reading of some
23 of the public comment and I'm seeking clarity before
24 casting my vote.

25 So let me start with this. The CHPE

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2 Project limits on new impoundments does not include
3 energy generated from dams currently under
4 construction. Because power is fungible, Hydro
5 Quebec could build new dams to serve existing
6 customers without violating the requirements
7 associated with this project. What -- what is --
8 what is your response to this observation?

9 MR. ROSENTHAL: So it's -- I don't
10 believe it's accurate to connect it to the contract
11 as an appendix that defines all the assets that are
12 included in the H.Q.U.S. contract.

13 In particular, as it regards to the
14 supplier G.H.D. baseline. Those -- those assets are
15 fixed. And only incremental megawatt hours generated
16 from those assets can be used toward Tier 4 RECs.

17 So like let me be specific about that.
18 The contract specifically prohibits Tier 4 RECs to be
19 paid out to the extent related to dams that are not
20 under construction or to like fossil fuel related
21 resources.

22 Should the company want to add to its
23 portfolio, wind or solar, that that would be allowed,
24 and they could amend the portfolio, and they could
25 add the energy from those facilities to the

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2 transmission to the extent, you know, feasible.

3 And I would just note, you know,
4 recent announcements that I at least, have heard from
5 the company that pursuant to their 5-year plan, they
6 do expect to build a significant amount of solar and
7 wind in the coming years.

8 COMMISSIONER MAGGIORE: Thank you.

9 The next question is that some of the public
10 commentary -- commentor have observed that NYSERDA's
11 cost benefit analysis indicates New York State would
12 actually realize lower net societal benefits if it
13 contracted with both -- both C.P.N.Y. and CHPE rather
14 than if it just contacted -- contracted with the
15 C.P.N.Y. alone.

16 If this is true, doesn't it make more
17 sense to do one but not both?

18 MR. ROSENTHAL: So I'm fortunate to
19 have sitting next to me two economists and it's
20 really a question for them. So I'm going to leave it
21 for Mr. Padula to answer for you.

22 COMMISSIONER MAGGIORE: Thank you.

23 MR. PADULA: I think I could take
24 that, Commissioner. So really, you know, focusing on
25 just the net benefits is really too narrow of a

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2 focus. Selecting both projects as -- as described in
3 detail in the order significantly increases the
4 overall benefits of system resource value, carbon
5 value, local air quality benefits.

6 So while the net benefits of two
7 projects is less than the net benefits of one and
8 that happens, whether you select one or the other,
9 not -- not really, any combination of the two,
10 increases the overall benefits to New York State.

11 I would also point out that there are
12 benefits beyond the 25 years of the contracts that,
13 you know, are not reflected in the B.C.A. that would
14 in -- and are -- and accrue to the benefit of all
15 ratepayers.

16 So really selecting 2 would be the --
17 the way to go to maximize the clean energy benefits
18 for the State.

19 COMMISSIONER MAGGIORE: Thank you.
20 Next question is, will the CHPE Project allow Hydro
21 Quebec to redirect energy currently being generated
22 for use in Upstate New York, to Downstate New York
23 without producing a net increase in clean energy?

24 MR. PADULA: So that will not, you
25 know, I can take that one as well. It really goes to

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2 the --

3 COMMISSIONER MAGGIORE: Okay.

4 MR. PADULA: -- supplier G.H.G. --

5 G.H.G. baseline that Bob described earlier, and that
6 process includes all of the current H.Q.S. generation
7 resources and -- and REC payments are only provided
8 to incremental generation above the historical
9 average.

10 COMMISSIONER MAGGIORE: Thank you. So
11 this next one has sort of been touched on already
12 today. But I -- I'm going to try to ask it in a
13 different way.

14 Does Hydro Quebec have to provide
15 energy through the CHPE line during winter?

16 MR. PADULA: So the answer is no, but
17 with both contracts, and with any REC contracts,
18 there is only REC payments made for the delivery of
19 energy.

20 In this particular example, for
21 delivery into Zone J. So there is every incentive
22 for the project to deliver energy. There is no
23 revenue received by the project unless they deliver
24 energy and get paid a REC payment for that -- for
25 that delivery into Zone J. And it's the same for

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2 both projects.

3 MR. ROSENTHAL: And if I could just --

4 COMMISSIONER MAGGIORE: Okay. Thank
5 you.

6 MR. ROSENTHAL: If you wouldn't mind
7 me, because there -- a couple of the Commissioner
8 raised this point. This agency is a reliability
9 agency, like, number one priority for this agency is
10 reliability.

11 I -- we do believe that the capacity
12 value of these two projects, you know, separately,
13 well, they're, you know, we have to see what how
14 NYSERDA treats it, but will likely result in the
15 actual retirement of New York City based, you know,
16 fossil fuel capacity.

17 We don't know what that number will be
18 yet. My suspicion is that it will -- it will be over
19 1,500 megawatts which is significant. But I also
20 want to stress the other side of that, which is that
21 we're projecting New York City needs 7,000 megawatts
22 of non-di -- of dispatchable capacity by the year
23 2040.

24 So this eats into that a little bit,
25 maybe by 20 or 25 or 30 percent but we don't have any

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2 other technology in existence right now to shut down
3 any of the other power plants. You know, we're
4 looking for it or, you know, hopefully scientists are
5 out there, you know, moving quickly on those issues.

6 This is the best we can do right now
7 in the existing state of technology with respect to
8 these two transmission lines that one -- one of which
9 is tied to a hydro resource. Hydro is dependent on
10 the amount of rainfall and hence the reason why, you
11 know, H.Q. was -- H.Q. was actually provided bids;
12 one with which they would -- would have guaranteed
13 capacity and one without.

14 The one where they guarantee capacity
15 was way in excess of cost than with the one without.
16 And the reason why NYSERDA ultimately went with the
17 latter and instead of the former, but it is -- it
18 ultimately is a hydro facility. But this is the best
19 we can do with existing technology right now to bring
20 in a dispatchable resource into New York City.

21 COMMISSIONER MAGGIORE: Thank you.

22 I'm going to now ask a couple of questions about the
23 environmental trust fund. As part of the CHPE
24 Project, T.D.I. will establish \$117 million
25 environmental trust fund.

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2 What that fund will be spent on will
3 be determined by a governance committee that is
4 comprised of some public entities, but also a handful
5 of non-public entities such as River Keeper.

6 Is River Keeper on record arguing that
7 this fund is inadequate to mitigate the environmental
8 impact of the CHPE Project on the Hudson River?

9 MR. ROSENTHAL: No, it's not.

10 COMMISSIONER MAGGIORE: It's not.

11 Okay. Yet River Keeper is on record objecting to the
12 P.S.C. approval of this project, which if we went
13 along with that recommendation would necessarily
14 prevent the \$117 million fund from coming into
15 existence.

16 In fact, as part of River Keeper's
17 February comments on this item before us today, there
18 is several issues that seem relevant to the purpose
19 of the trust fund. One that CHPE cable will stir up
20 contaminants during construction that could cause
21 ecological harm.

22 Two, anchors deployed in an emergency
23 could snag the cable. Three, many species of fish
24 including sturgeon can detect magnetic fields caused
25 by buried cables and change their behavior.

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2 So my question is, were these very
3 issues raised several years ago in the CHPE Article 7
4 case?

5 MR. ROSENTHAL: They were all raised
6 in the Article 7 case. I would say a lot of them
7 were raised by the environmental groups, including
8 Hudson River Keeper, and the entire purpose of the
9 trust fund was to address those exact issues that
10 were raised by those groups.

11 And it was a reason why, because I
12 knew about what was going on contemporaneous when
13 that case was happening. It was the reason why that
14 they signed the joint proposal in the case.

15 COMMISSIONER MAGGIORE: They signed
16 the joint proposal. Okay. Now, this was before my
17 time on the Commission. And you implicitly, I think,
18 answered this question. But just to be very clear,
19 did we explicitly respond to those issues?

20 MR. ROSENTHAL: The order in the case
21 explicitly responds to the -- and obviously D.P.S.
22 staff was involved in those negotiations, and they
23 signed the J.P. as well.

24 COMMISSIONER MAGGIORE: Yeah.

25 MR. ROSENTHAL: So D.P.S. staff

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2 obviously, thought that it was addressing those
3 issues and the order did as well.

4 COMMISSIONER MAGGIORE: Okay. Is
5 River Keeper on record disagreeing with those
6 responses?

7 MR. ROSENTHAL: It is not.

8 COMMISSIONER MAGGIORE: It's not.
9 Okay. Let me be even more specific here. Is it part
10 of the public record that River Keeper disagreed with
11 this position of the P.S.C. Arguments made by those
12 in opposition to the CHPE Project ignore the
13 beneficial effects of the \$117.15 million trust fund
14 for enhancement of water quality in the Hudson River
15 and Lake Champlain?

16 MR. ROSENTHAL: Implicit from its
17 signature on the J.P. is it disagrees with those
18 arguments being made by parties that oppose -- that
19 now oppose the project.

20 COMMISSIONER MAGGIORE: Okay. All
21 right. All right. Now, as I mentioned before,
22 several State entities, including the D.E.C. are part
23 of the trust fund committee. Is that correct?

24 MR. ROSENTHAL: That's correct.

25 COMMISSIONER MAGGIORE: Okay. Is it

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2 also correct that these projects funded by the trust
3 fund cannot replace projects that would otherwise be
4 funded by State aids?

5 MR. ROSENTHAL: In theory, you know,
6 you never know what the State would do, but arguably
7 that's correct.

8 COMMISSIONER MAGGIORE: Okay. So is
9 it fair to say that the projects do not have stand
10 alone value unless the transmission line is built?

11 MR. ROSENTHAL: Basically, that's --
12 that's -- that's correct. COMMISSIONER

13 MAGGIORE: Okay. And would it also be fair to say
14 that the P.S.C. rejects this petition, that the
15 priority projects that would be funded by the trust
16 fund would not then be picked up by the State because
17 the State cannot substitute the use of this fund for
18 projects that they would otherwise be funding?

19 MR. ROSENTHAL: That's accurate.

20 COMMISSIONER MAGGIORE: Okay. And the
21 last question on this topic. Again, this one could
22 be used to address environmental issues in every
23 geographical part of the State that would be funding
24 the CHPE Project, which is to say the entire state?

25 MR. ROSENTHAL: To the extent that

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2 it's related to the project, that it has to have a
3 nexus to the project.

4 COMMISSIONER MAGGIORE: Okay. So
5 that's -- that's actually no?

6 MR. ROSENTHAL: Correct.

7 COMMISSIONER MAGGIORE: Okay. So I'm
8 going to shift my focus here. Thank you on those
9 questions. Why don't we get away from the
10 beneficiary pay principle?

11 MR. ROSENTHAL: So again, I'm
12 fortunate to have two economists next to me. Two of
13 whom really had been intricately involved in, you
14 know, addressing issues like cost allocation. I'm
15 going to leave it to them.

16 COMMISSIONER MAGGIORE: Okay.

17 MR. PADULA: I can take that one. So
18 we really did not get away from the beneficiaries pay
19 principle that if you look at how carbon emissions
20 are generated, by every megawatt hour that's produced
21 by fossil fuel generator, that is why we are
22 allocating costs of these clean energy projects on a
23 per megawatt hour basis. So it's aligning the cost
24 causation with the cost to reduce those emissions.

25 COMMISSIONER MAGGIORE: Thank you.

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2 Next question is when we talk about public health
3 benefits associated with these projects, will those
4 benefits be enjoyed by all across New York State, or
5 will it be more limited geographically?

6 MR. ROSENTHAL: It's -- I mean, the
7 greatest, obviously, this is, you know, 51 percent of
8 in-city fossil fuel generation is projected to be
9 displaced by the combined energy from the two
10 facilities.

11 That's in-city pollute, you know,
12 that's in-city pollution, wind -- prevailing winds
13 generally go from, you know, west to east and from
14 south to north. So it is going to benefit New York
15 City greater than any other region in the State.

16 COMMISSIONER MAGGIORE: Okay. Thank
17 you. Along those lines, the total of \$460 million in
18 community benefit funds, will every part of the State
19 have access to these funds?

20 MR. ROSENTHAL: That -- that is my
21 understanding.

22 COMMISSIONER MAGGIORE: It is. Okay.
23 All right. My last question before I'm going to
24 offer some comments. The order includes an estimate
25 of bill impacts.

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2 The bill impacts is a percentage of
3 the average bill per service territory. Is there any
4 assessment of the value of the impact as a percentage
5 of average household income per region?

6 MR. PADULA: So there is not an
7 assessment like that in the petition or the order
8 because we traditionally present bill impacts as a
9 percentage of total utility bills.

10 Now, you know, thinking about your
11 question, if you're asking as a percentage of total
12 household income, those percentages would be lower
13 than the percentage on a bill, but they would also,
14 relatively speaking, the impacts would be higher for
15 those regions with lower average household income
16 than for those regions with a higher average
17 household income.

18 COMMISSIONER MAGGIORE: Okay. I get
19 it. All right. Thank you. Thank you very much for
20 answering my questions. I'm now going to -- Chair
21 Christian, I'm now going to explain my vote.

22 As Commissioner Howard had indicated,
23 this is a challenging one for me as well. I am going
24 to vote yes on this item. Throughout my review of
25 the petition, I've been uneasy about this item, and

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2 I'd like to explain the evolution of how I got to
3 yes, which not to vary I believe, has a lot to do
4 with the decisions of New York City and O.G.S. to
5 purchase RECs.

6 Climate change is the most serious
7 challenge facing humanity today. New York State must
8 be a leader in addressing climate change. New York
9 State is in fact officially committed to being a
10 leader. This is expressed through several policy --
11 policies, notably the C.L.C.P.A.

12 During my confirmation hearings less
13 than a year ago, I reiterated my support for the
14 C.L.C.P.A. and that support is sincere. Although New
15 York State cannot solve the pressing challenge of
16 climate change by itself, New York must be a leader.

17 Compared to other countries, let alone
18 states, New York's economy is one of the largest in
19 the world. New York's history of innovation and bold
20 policy promulgation has helped other states and
21 indeed other countries to move along.

22 Once again, we have the opportunity to
23 demonstrate that quality of our forward looking
24 State. Nonetheless, while we have advanced the
25 discussion on how to address climate change, by far

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2 we have spent comparatively little time figuring out
3 the most equitable way to pay for the transformation
4 to green energy.

5 These two transmission lines will help
6 the State achieve its climate goals. However, since
7 the C.L.C.P.A. did not identify in an explicit way to
8 pay for investments necessary to achieve the State's
9 climate goals, a principal way of paying for them
10 today has been to tack the cost onto New Yorkers'
11 electric bill.

12 I do not believe that this is the most
13 equitable way to pay for project such as this as it
14 places additional pressure on energy affordability.
15 I view this as something of significance concerning
16 the Commission's mission, which is why we need
17 partners in the federal, State, and local governments
18 to also invest in the infrastructure necessary to
19 comply with C.L.C.P.A. and should be a part of our
20 shared climate objective.

21 The whole of the State government has
22 an entire toolbox in which to fashion methods of cost
23 recovery, that are more fair than what the Public
24 Service Commission has the ability to do with a
25 single tool.

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2 That said, I've gotten to yes, in
3 part, because of the two developments that bring
4 other significant resources to bear that will reduce
5 the ratepayer impacts associated with Tier 4.

6 First and most significant of these
7 two, the decision by New York City to purchase Tier 4
8 RECs. The second, which is the -- is the decision by
9 New York State as expressed through O.G.S. will also
10 buy RECs to serve the State's facility load across
11 the State.

12 I'd like to explain why these two
13 developments are significant to me. First, let me
14 stress that the problem as I see it is that adding a
15 charge to people's electric bills is further removed
16 from New Yorkers' abilities -- ability to pay through
17 other methods of cost recovery.

18 The State's toolbox includes an income
19 tax, tax breaks for certain projects, the ability to
20 issue debt, the ability to create a carbon tax, and
21 other methods that are more connected to New Yorkers'
22 ability to pay than what amounts to a surcharge on
23 utility bills.

24 New Yorkers' ability to pay in part is
25 based on New Yorkers income. So while my electric

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2 bill might be very similar to that of my next door
3 neighbor, I know that our household incomes are
4 different. The bill impact for me will be of
5 disproportionate significance than it is to them.

6 The significance of a dollar in my
7 household is different than the significance of a
8 dollar in that of my neighbors. This differentiation
9 is exasperated by regional differences and the
10 purchasing power of a dollar.

11 We do acknowledge in this order that
12 as a percentage of regional electric bills, the
13 average household will be charged different
14 percentages, as it was indicated by one of the
15 answers to one of my questions.

16 But we don't acknowledge that regional
17 differences and the average household income make the
18 purchasing power of that dollar different in
19 different parts of the States. All sorts of policies
20 acknowledge the differences between regions in the
21 purchasing power of a dollar.

22 The concept of location pay is not
23 unusual in New York. Even the State's minimum wage
24 policy is different in different parts of the State.
25 A whole section in today's New York Sun Order is

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2 titled geographic considerations, yet there is no
3 clear answer what the risks are.

4 It occurs to me that in parts of the
5 State, as in New York City, where the average
6 household income is on the high end, those with below
7 average incomes are impacted even worse than the
8 average household in parts of the State where -- with
9 comparatively low average household incomes.

10 So the issue is not simply regional
11 but the differences between regions are a factor in
12 all New Yorkers' ability to pay. In any case, I
13 don't think that the best way to pay for these
14 projects and a larger conversion of clean energy
15 should be so dependent on utility bill surcharges.

16 With that said, how did I get to yes.
17 First of all, New York City's decision to purchase
18 RECs actually increases the share New York City
19 residents are paying.

20 Before I go on, I'd like to make a
21 point, the carbon reduction that will result in these
22 two transmission lines are not New York City
23 benefits. They are not statewide benefits. They are
24 global benefits. We'll also acknowledge that the
25 system benefits are statewide benefits.

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2 However, the petitioners acknowledge
3 several features of these projects that have positive
4 impacts onto parts of the State at the expense of
5 other parts of the State. These include, but are not
6 necessarily limit -- limited to, the health benefits
7 that will largely be enjoyed by New York City and
8 those around New York City, including possibly other
9 states around New York City, economic development and
10 job creation, as a result of the construction of the
11 two power lines, which will largely be enjoyed by the
12 eastern portion of the State.

13 That \$170 million environmental
14 mitigation fund, which is explicitly designated for
15 use of the eastern part of the State and to the
16 extent construction jobs is a jobs program, as
17 opposed to economic development programs, will also
18 likely benefit workers from the eastern part of the
19 State.

20 Now, I was heartened by the answer to
21 one of the questions I asked that the disadvantaged
22 community funds are going to be accessible by the
23 entire State and I would like to ask staff to give
24 this Commission an update at future sessions about
25 the exact rules that are promulgated for accessing

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2 these funds.

3 Now, all of these positive effects,
4 job creation, economic development, health benefits,
5 environmental mitigation, they're all laudable goals
6 which I support. I'm happy for my tax dollars to go
7 for cleaner air in New York City, even though I don't
8 live in New York City.

9 But it makes sense that my tax dollars
10 go towards these programs that are designed to
11 address issues that are of concern to different parts
12 of the State. It does not make sense that my
13 electric bill pay for all of it.

14 As good as those features are, they're
15 not statewide goals established by the C.L.C.P.A. or
16 the Public Service Law. So by New York City buying
17 RECs, New York City is taking on greater financial
18 responsibility for paying for these projects.

19 And since New York City will be buying
20 RECs using general funds, which are in turn more
21 linked to the ability of New York City residents to
22 pay. This is a more equitable rate pay for these
23 projects that end up lowering the impact on
24 ratepayers' electric bills all over the State.

25 So I laud New York City's decision.

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2 Furthermore, New York City has stated that they are
3 continuing to advocate for other entities to buy
4 RECs. I believe New York City encouraged them to
5 keep up the good work in this respect.

6 The decision by O.G.S. to also buy
7 RECs both has a real impact on New Yorkers' electric
8 bills, but also as importantly, it is a good faith
9 signal from the State.

10 I will tell you that this is what
11 pushed me over the top as a yes vote. I would like
12 to see other governmental entities purchase RECs.
13 The M.T.A., the Port Authority, NYCHA, the federal
14 government to include buying RECs to advance their
15 own clean energy obligations.

16 What we have seen thus far, to me,
17 suggests that whether or not this happens is an open
18 question. I'm satisfied with the administration of
19 the State and City of New York are favorable to what
20 I'm talking about here and so I think it would not
21 help to advance the State's larger, laudable goals
22 for me to vote no.

23 Whether doing so would ignore the
24 significant -- whereas doing so would ignore the
25 significance of these two achievements. I'd like to

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2 thank Chair Christian for hearing my concerns
3 throughout this process and taking them into
4 consideration during the development of this order.

5 That is how this Commission should
6 work. I believe the Chair has listened to the
7 concerns of all the Commissioners, however, I will
8 only speak for myself and although the result is not
9 the same as if I was in charge of everything, I
10 believe that this Commission has made a difference in
11 crafting a better policy than would have existed
12 under a different type of system.

13 I'd like to be very, very clear that
14 the extent -- to the extent that the State and City
15 of New York responded to concerns with a sense we're
16 living in this condition, I applaud their actions. I
17 would say in a way it would be even better if they
18 didn't respond to us because that's a sign that all
19 votes are moving in the same direction naturally.

20 And if that's the case, we have every
21 reason to believe that more governmental entities
22 will purchase additional RECs and thus lower the bill
23 impact for all New Yorkers.

24 I'd also like to at least acknowledge
25 that REMEDY has expressed the likelihood that their

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2 numbers will also be purchasing RECs, which will
3 further lower the electric bill for all New Yorkers.

4 I believe this is a sincerely
5 expressed sentiment, but it does not factor into my
6 decision making today because it is not a commitment.
7 I do acknowledge that New York City is clearly
8 committed to implementing Local Law 97, and that
9 revenue numbers will likely procure Tier 4 RECs to
10 comply with the local law as they suggested in their
11 comments.

12 There is the potential for future
13 ratepayer benefits for these very -- from these
14 future voluntary REC purchases. We just can't count
15 on that for today's decision.

16 In addition to Chair Christian, I'd
17 like to thank my old friend, Commissioner John Howard
18 for raising several issues that probably would not
19 have occurred to me without his leadership and
20 guidance.

21 I believe that Commissioner Howard
22 raising these different issues -- because he has
23 raised these different issues, we have come up with a
24 better policy, and it's one that I feel comfortable
25 voting for. So thank you very much. I'm prepared to

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2 vote yes.

3 CHAIR CHRISTIAN: Okay. Thank you,
4 everyone. Thank you, Commissioner. Okay. We're
5 going to do a call for vote, and then we'll take a
6 short recess.

7 My vote is in favor of the
8 recommendation to grant the petitions and approve the
9 contracts for the purchase of Tier 4 RECs.
10 Commissioner Burman, how do you vote?

11 COMMISSIONER BURMAN: No.

12 CHAIR CHRISTIAN: Commissioner Alesi,
13 how do you vote?

14 COMMISSIONER ALESI: I vote -- I vote
15 yes, while I'm still in my '70s.

16 CHAIR CHRISTIAN: Thank you,
17 Commissioner. Commissioner Edwards?

18 COMMISSIONER EDWARDS: I vote yes.

19 CHAIR CHRISTIAN: Commissioner Howard?

20 COMMISSIONER HOWARD: No.

21 CHAIR CHRISTIAN: Commissioner
22 Valesky?

23 COMMISSIONER VALESKY: Yes.

24 CHAIR CHRISTIAN: Commissioner
25 Maggiore?

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2 COMMISSIONER MAGGIORE: Yes.

3 CHAIR CHRISTIAN: Would you mind
4 saying that again, please?

5 COMMISSIONER MAGGIORE: Yes, I vote
6 yes.

7 CHAIR CHRISTIAN: Thank you. With
8 that this item is approved and the recommendations
9 are adopted. Now, we've all been sitting here for
10 quite some time. It is one twenty-eight by my watch.
11 Why don't we take 15 minutes and return at that time.
12 I call a recess.

13 (Off the record, 1:28 p.m.)

14 (On the record; 1:55 p.m.)

15 CHAIR CHRISTIAN: Good afternoon,
16 everyone. Welcome back. Moving on with our agenda
17 for today. We're going to item, the third item, Item
18 302, Case 21-E-0629 related to the New York Sun
19 Program and the Solar Roadmap. Will -- will be
20 presented today by Warren Myers, Director of Office
21 and Markets and Regulatory Economics. Marco Padula,
22 Director of Office and Markets and Innovation is also
23 available for questions. Warren, please begin.

24 MR. MYERS: Good afternoon, Chair
25 Christian, and Commissioners. I will summarize the

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2 draft order before you for Item 302, New York Sun
3 Solar Roadmap. And as you said, after I'm done, Bob
4 Rosenthal, Marco Padula and I will be available for
5 any questions you may have. Hopefully, I have the
6 Goldilocks distance for microphone from my face. But
7 let me know if I need to change it.

8 The draft order starts by recognizing
9 the progress that we have made in the State in
10 developing distributed solar generation. In the 2014
11 order, this Commission set a goal of 3 gigawatts of
12 distributed solar by the year 2023. And in that
13 order, established the New York Sun Megawatt Block
14 program.

15 In May of 2020, the Commission
16 recognized the Climate Leadership and Community
17 Protection Act and extended that goal to 6 gigawatts
18 of distributed solar by 2025. And in that, it
19 established the Solar Energy Equity Framework or SEEF
20 to add to base incentives to develop projects that
21 provide benefits to low income customers and
22 disadvantaged communities.

23 In December of last year, staff from
24 D.P.S. and NYSERDA submitted a petition, which we
25 called the Solar Roadmap, recommending that the 6-

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2 gigawatt goal be further expanded to a goal of 10
3 gigawatts by the year 2030. The petition noted that
4 94 percent of the 6-gigawatt target is either
5 represented by completed projects currently
6 generating electricity or projects that are -- are in
7 advanced development.

8 Further, there are another 4 gigawatts
9 of projects in utility interconnection queues in
10 earlier stages of development. All community solar
11 incentive credits of the 6-gigawatt program are
12 committed at this time. The draft order adopts the
13 10 gigawatt by '23 goal that was recommended in the -
14 - the petition.

15 It accepts the conclusion in that
16 petition that we can achieve the 4-gigawatt goal by
17 incentivizing 3.4 gigawatts through the New York Sun
18 Megawatt Block Program. The remaining 600 megawatts
19 are expected to be developed on Long Island through
20 LIPA, and separate programs in a smaller amount of
21 megawatts Upstate.

22 The draft order adopts the
23 recommendation to lower the prevailing rate wage
24 threshold for projects that are 5 megawatts and
25 greater currently, to projects that are 1 megawatt

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2 and greater. And it accepts for the first incentive
3 block, incentive adders of 12.5 cents per watt
4 Upstate, and 20 cents per watt in Con Ed's service
5 territory.

6 In response to comments, the draft
7 order directs that the new prevailing wage threshold
8 will apply to projects that submit their initial
9 interconnection applications after the effective date
10 of this order. The draft order approves setting
11 aside a fixed budget amount for -- for projects that
12 are specifically developed in the Con Ed service
13 territory.

14 However, in response to comments, the
15 draft order modifies the incentive structure that was
16 proposed in the petition. Specifically, it decreases
17 base incentives. It adds a third category for
18 smaller, that is less than 200 kilowatt projects. It
19 increases incentives to communities solar and to low
20 income and Environmental Justice adders. And this is
21 all done to shift development toward community solar
22 and low income and disadvantaged community projects.

23 The draft order on -- in Tables 5 and
24 6 on pages 52 and 53 lay out -- accept the proposed
25 budget of \$1,474 million and breaks it out into

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2 approximately the following categories; \$544 million
3 for megawatt block incentives for the 5 Upstate
4 utility territories, \$396 million for Con Edison
5 projects for their megawatt block incentives, \$252
6 million for statewide solar energy equity framework
7 funds, \$239 million for statewide prevailing wage
8 adders, \$14 million for statewide brownfield or
9 landfill incentive adders, \$13 million for
10 administration and evaluation, and finally
11 approximately \$16 million for the necessary New York
12 State cost recovery fee.

13 The draft order modifies the
14 collection schedule from the one that was in the
15 petition to better align the collections with the
16 expected annual expenditures. These -- this budget,
17 it's calculated will lead to average and rate and
18 bill impacts of approximately, on average over the 10
19 years of collections 1.25 tenths of a cent per
20 kilowatt hour, which equates to about 75 cents per
21 month for the average 600 kilowatt hour residential
22 customer.

23 Of course, the expenses will vary from
24 year to year, depending on the pace of development.
25 And we anticipate the year 2024 will be the most

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2 expensive year. And in that year, we estimate that
3 the bill impact will be approximately 2.07 tenths of
4 a cent per kilowatt hour. And this will equal about
5 a \$1.24 per month for the average residential
6 customer.

7 And here again, it's important to note
8 that all customers throughout the State will pay the
9 same per kilowatt hour charge. Finally, the draft
10 order directs NYSERDA to file a midpoint review,
11 analyzing a number of factors that are discussed in
12 the order at pages 55 and 56.

13 And this review will be due to be
14 filed 60 days after either 50 percent of either the
15 Upstate, or Con Edison capacity allocations have been
16 committed, or December 31st, 2025. And with that,
17 I'm done summarizing the order, and we're available
18 to answer any of your questions.

19 CHAIR CHRISTIAN: Thank you, Warren.
20 Appreciate your time with us today. You've outlined
21 a fairly comprehensive roadmap, which is going to
22 expand the New York Sun initiative with a \$1.5
23 billion budget to achieve an incremental 4 gigawatts
24 of solar in New York State.

25 Through this action, we're going to

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2 get an additional \$4-or-so billion in private
3 investment leveraged through the -- fund put forward,
4 thousands of new jobs, and we're poised to make New
5 York Sun an initiative that's one of the most
6 inclusive solar programs of its kind in the nation.
7 We'll be increasing access to solar for all New
8 Yorkers and produce enough power to provide
9 electricity to over 700,000 homes. The various
10 strategies for deploying so -- solar are examined.

11 And the incentives are aligned to
12 maximize the benefits across a wide array of project
13 profiles, including rooftops solar, community solar
14 projects, and projects under 5 megawatts in size.
15 The program also includes requirements that reinforce
16 the State's commitment to creating quality jobs for
17 all as part of the clean energy transition and
18 establishes prevailing wage requirements for future
19 projects.

20 So I want to thank you for putting
21 this together. And appreciate all effort that went
22 into developing this. Commissioner Burman?

23 COMMISSIONER BURMAN: Thank you. I'll
24 be voting no on this item. While I think this has
25 some laudable goals in here, I am very concerned

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2 about the fiscal implications, especially at this
3 time, and especially coming right after the budget
4 where many of these things could have been addressed
5 in the budget by the legislature and the executive,
6 and we're not.

7 I don't think it's for us to be taking
8 up these with a lot of the fiscal implications. It
9 does concern me. And it's really in line with a lot
10 of what I've been saying about the C.L.C.P.A. and our
11 energy policies and needing to be fiscally
12 responsible as it impacts ratepayers.

13 I also am really concerned about the
14 increasing issues that we have multiple interveners.
15 In their comments, and the summary in our Appendix A,
16 I think really sums it up well about, the Commission
17 carefully must evaluate whether the roadmap
18 constitutes the most cost-effective means of
19 achieving the C.L.C.P.A. mandates, and that the
20 roadmap does not adequately justify either the
21 substantial increase in the SEEF budget, or the
22 inclusion of certain categories of costs, such as for
23 prevailing wages.

24 It does concern me that we are
25 increasing the prevailing wages here. I think that

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2 should be something done by the legislature and the
3 executive and not by us. I really am very concerned
4 about that. So because of the cost impacts as well
5 as us doing this, what I see is not our mandate in
6 the increasing prevailing wages, I'll be a no. Thank
7 you.

8 CHAIR CHRISTIAN: Thank you,
9 Commissioner. Commissioner Alesi?

10 COMMISSIONER ALESI: Thank you. I
11 have no comments or questions, but I will be voting
12 yes on this issue.

13 CHAIR CHRISTIAN: Thank you,
14 Commissioner. Commissioner Edwards?

15 COMMISSIONER EDWARDS: I do not have
16 any questions. I do support this. Thank you.

17 CHAIR CHRISTIAN: Thank you,
18 Commissioner. Commissioner Howard?

19 COMMISSIONER HOWARD: Thank you, Mr.
20 Chairman. I just -- just a couple of comments. I
21 want to echo Commissioner Burman's comments that this
22 was a program that the legislature could have bought
23 down this year, there was enough money in this budget
24 to buy down this program, particularly those aspects
25 of issues even in partially, even if it bought down

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2 the prevailing wage hit on this program, that would
3 have been a worthwhile expenditure of State
4 resources.

5 And the irony to me is between the
6 motor fuel tax cut and the cost that we are helping
7 pursue the N.F.L., we would have paid for this entire
8 project, this entire project with no bill impacts,
9 and with all the ensuing economic benefits that this
10 -- that this initiative will do.

11 The other thing that's very positive
12 about this, New York is number one in a lot of stuff,
13 local taxes, a variety of other negative things. But
14 we do lead the nation in -- in distributed solar.
15 And that is something that is certainly worth lauding
16 and -- and this moves us even further.

17 The other thing about the issue of
18 distributed solar because there are so many
19 individual projects, the risk of anyone project
20 failure is ameliorated by all the others. So it is
21 small cap, within reason, as compared to the big cap
22 items we did earlier.

23 But again, thank you for doing this.
24 I do believe and sincerely, it's -- this is the one
25 that we the taxpayers should have bought. Thank you.

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2 CHAIR CHRISTIAN: Thank you.

3 Commissioner Valesky.

4 COMMISSIONER VALESKY: Thank you, Mr.
5 Chair. Warren, thank you to you and your team. And
6 also, just an acknowledgment of the efforts of the
7 folks over at NYSERDA, who run the New York Sun
8 Program and run it very well over this last 8 or 9
9 years. It's clearly a program that's working, the
10 costs of -- of developing solar have come down
11 significantly and the order certainly make sense.
12 Thank you.

13 CHAIR CHRISTIAN: Thank you,
14 Commissioner. Commissioner Maggiore?

15 COMMISSIONER MAGGIORE: Thank you,
16 Chair. And thank you for the presentation. I have
17 no additional questions or comments.

18 CHAIR CHRISTIAN: Excellent. Thank
19 you, Commissioner. Okay. I'll call for a vote. My
20 vote is in favor of the recommendation to approve the
21 roadmap and the expansion of the New York Sun Program
22 as discussed. Commissioner Burman?

23 COMMISSIONER BURMAN: No.

24 CHAIR CHRISTIAN: Commissioner Alesi?

25 COMMISSIONER ALESI: Yes.

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2 CHAIR CHRISTIAN: Commissioner

3 Edwards?

4 COMMISSIONER EDWARDS: Yes.

5 CHAIR CHRISTIAN: Commissioner Howard?

6 COMMISSIONER HOWARD: Yes.

7 CHAIR CHRISTIAN: Commissioner

8 Valesky?

9 COMMISSIONER VALESKY: Yes.

10 CHAIR CHRISTIAN: Commissioner

11 Maggiore?

12 COMMISSIONER MAGGIORE: Yes.

13 CHAIR CHRISTIAN: Okay. The item is
14 approved, and the recommendations are adopted. Thank
15 you everyone.

16 We'll now move to the consent agenda.

17 Do any Commissioners wish to comment or recuse from
18 voting on any of the items on the consent agenda
19 today? I'll begin with Commissioner Burman.

20 COMMISSIONER BURMAN: Thank you. I
21 have 2 short items. Item 377, I'm voting no only
22 because it ties into 370 which I voted no on so it
23 would make -- only make sense to vote no on that
24 item. And then Item 562, this is a request for
25 interlocutory review of a January 18th, 2022, ruling

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2 establishing a procedural schedule and resolving
3 other procedural issues, dated February 2nd, 2022.

4 Here the movant also requested
5 expedited relief. Now previously, we also dealt with
6 another matter that came up before us after an A.L.J.
7 ruling. It also was from the same movant, and it was
8 from emergency motion. And we dealt with that.
9 Also, we also dismissed that and there was no further
10 review or appeal of that order that was requested.

11 And like before, the Commission was
12 not legally required to act here on this request for
13 interlocutory review, in any specific timeframe.
14 However, I think the rationale behind doing this
15 order today is similar to last time, which was we
16 wanted to make sure that we're addressing the
17 requests. We didn't want to leave any uncertainty in
18 the case schedule.

19 And so we were -- that the -- if this
20 goes forward, the Commission majority would be
21 feeling that they were, you know, being clear and
22 giving the petitioner the requests sought. I feel
23 strongly -- last time I voted no. And as I stated
24 before, I voted no, because I believed that the order
25 itself is completely unnecessary.

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2 And I didn't want any
3 misinterpretation about what we were doing, and the
4 fact that it was unnecessary. And I didn't want any
5 misinterpretation that we were picking a specific
6 A.L.J. And, you know, it was done. It was decided
7 and we did it. We didn't have to. We shouldn't
8 have, but we did and that's fine.

9 However, we're here again with the
10 same issue. You know, the petitioner is now coming
11 again, asking for expedited relief. And I just feel
12 that this is now bringing an appeal on a routine
13 procedural ruling that frankly appears bordering on
14 frivolous.

15 The A.L.J. has the discretion in the -
16 - setting these schedules unless there's some abuse
17 of discretion, which as far as I can tell, looking
18 completely at the record, there's no abuse of
19 discretion. There's no extraordinary circumstances
20 to warrant anybody on -- in any way looking at that
21 and seeing that there's any need to waste anybody's
22 time.

23 And so from where I see, we should be
24 telling the petitioner and I think the order does try
25 to do that, which is basically get back to work on

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2 the matter that's before that and stop wasting our
3 time. But more importantly, stop wasting the time of
4 the parties and stop wasting the time of the A.L.J.
5 And it's not fair.

6 I'm going to be voting no, because I
7 don't think that this is going to stop. But I am now
8 saying it a little bit more strongly than I did last
9 time, which I thought would have been heard. It's
10 got to stop. And I would ask my fellow
11 Commissioners, that if this comes again, that we not
12 take it up and/or we look at a little bit more
13 closely on what we need to do to ensure that these
14 types of things don't keep happening. So with that,
15 I'm going to be voting no. Thanks.

16 CHAIR CHRISTIAN: Thank you,
17 Commissioner. Commissioner Alesi?

18 COMMISSIONER ALESI: I voted yes on
19 the entire agenda. There's nothing, sir.

20 CHAIR CHRISTIAN: Thank you,
21 Commissioner. Commissioner Edwards?

22 COMMISSIONER EDWARDS: No questions,
23 no comments.

24 CHAIR CHRISTIAN: Thank you.
25 Commissioner Howard?

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2 COMMISSIONER HOWARD: Yes, I just have
3 one set of comments in regarding to the variety of
4 orders here dealing with the -- the interconnection
5 process and the result of the working group. But the
6 concept of continuous improvement is something that I
7 would want to applaud, and particularly continuous
8 improvements through collaboration. I think that is
9 self-evident in these -- in these petitions.

10 So again, with that I probably will be
11 supporting the balance of the consent agenda.

12 CHAIR CHRISTIAN: Thank you.
13 Commissioner Valesky?

14 COMMISSIONER VALESKY: No questions.

15 CHAIR CHRISTIAN: Thank you.
16 Commissioner Maggiore?

17 COMMISSIONER MAGGIORE: I'm just going
18 to comment on 1 item which is Item Number 161, which
19 is a -- we would be approving an appeal by Mr. Stuart
20 Chen. I don't know Mr. Chen, but in reading this
21 case, it seems like he asked a question of the
22 utility prior to May of 2019. And it's taken them
23 this long to get an answer.

24 And I -- I just want to express my
25 empathy for Mr. Chen. It seems like it shouldn't

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2 have taken this long. And that's my comment, but
3 I'll be voting yes on the entire agenda.

4 CHAIR CHRISTIAN: Thank you,
5 Commissioner. Okay. So I'll take a call for vote.
6 My vote is in favor of the recommendations on the
7 consent agenda. Commissioner Burman, how do you
8 vote?

9 COMMISSIONER BURMAN: I vote yes to
10 the entire agenda except for 377 and 562, where I'll
11 be voting no.

12 CHAIR CHRISTIAN: Thank you,
13 Commissioner. Commissioner Alesi?

14 COMMISSIONER ALESI: I vote yes on --
15 on all items.

16 CHAIR CHRISTIAN: Thank you,
17 Commissioner. Commissioner Edwards?

18 COMMISSIONER EDWARDS: I vote yes.

19 CHAIR CHRISTIAN: Thank you,
20 Commissioner. Commissioner Howard?

21 COMMISSIONER HOWARD: I'll also be
22 voting in yes on the consent agenda.

23 CHAIR CHRISTIAN: Thank you,
24 Commissioner. Commissioner Valesky?

25 COMMISSIONER VALESKY: Yes, on all

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2 items.

3 CHAIR CHRISTIAN: Thank you.
4 Commissioner Maggiore?

5 COMMISSIONER MAGGIORE: Yes, on all
6 items.

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

12 SECRETARY PHILLIPS: There's nothing
13 further.

14 CHAIR CHRISTIAN: All right. With
15 that I adjourn. Thank you everyone for your time.

16 COMMISSIONER ALESI: Thank you.

17 (Off the record.)

18 (The meeting concluded at 2:17 p.m.)

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2 STATE OF NEW YORK

3 I, JAMES MAGLARAS, 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 158, 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 18th day of April, 2022.

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13 JAMES MAGLARAS, Reporter

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