

1 9/15/2022 - Monthly Meeting

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 MONTHLY MEETING

5  
6 Thursday, September 15, 2022

7 10:31 a.m. until 11:47 a.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 JAMES S. ALESI

15 TRACEY A. EDWARDS

16 JOHN B. HOWARD

17 DAVID J. VALESKY

18 JOHN B. MAGGIORE

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MICHELLE L. PHILLIPS, Secretary

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

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

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

9 CHAIR CHRISTIAN: Thank you. First,  
10 I'll conduct a roll call of the Commissioners. When  
11 I call your name, please confirm that you are  
12 present. Commissioner Diane Burman?

13 COMMISSIONER BURMAN: Present.

14 CHAIR CHRISTIAN: Thank you.  
15 Commissioner James Alesi?

16 COMMISSIONER ALESI: Present.

17 CHAIR CHRISTIAN: Thank you.  
18 Commissioner Tracey Edwards?

19 COMMISSIONER EDWARDS: Present. Good  
20 morning.

21 CHAIR CHRISTIAN: Good morning, thank  
22 you. Commissioner John Howard?

23 COMMISSIONER HOWARD: Present.

24 CHAIR CHRISTIAN: Commissioner David  
25 Valesky?

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2 COMMISSIONER VALESKY: Present.

3 CHAIR CHRISTIAN: Commissioner John  
4 Maggiore?

5 COMMISSIONER MAGGIORE: Present.

6 CHAIR CHRISTIAN: Thank you. We'll  
7 now move on to the regular agenda. Our first item  
8 for discussion is item 201 case 22-M-0429, related to  
9 the implementation of the Utility Thermal Energy  
10 Network and Jobs Act. It'll be presented today by  
11 our general counsel, Bob Rosenthal with Marco Padula,  
12 Peggie Neville, Chris Stolicky, Mary Ann Sorrentino  
13 are also available for questions. Bob, please begin.

14 MR. ROSENTHAL: Thank you, Chairman.  
15 Good morning, Commissioners. The order before you  
16 would initiate a proceeding to implement the Utility  
17 Thermal Energy Network and Jobs Act, which the  
18 Governor signed into law on October 5th, 2020 -- I'm  
19 sorry, on July 5th, 2022.

20 The primary purpose of the Act is to  
21 remove the legal barriers to utility development of  
22 thermal energy networks which the Act defines as all  
23 real estate, fixtures, and personal property owned or  
24 used in connection with utility scale distribute --  
25 distribution infrastructure project that supplies

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2 thermal energy.

3 The Act directs the Commission to  
4 commence a proceeding within three months of the  
5 effective date or by October 5th, 2022. To start the  
6 process of adopting rules and regulations to, among  
7 other things create fair market access requirements  
8 for utility owned thermal energy networks as part of  
9 the effort of reducing greenhouse gas emissions,  
10 exempt from regulations small scale thermal energy  
11 networks not owned by the utilities, and promote the  
12 training and transition of utility workers impacted  
13 by the transition away from fossil fuels.

14 As a separate matter, the Act requires  
15 that each of the seven largest gas, electric, or  
16 combination gas and electric corporations submit to  
17 the Commission for review and approval at least one,  
18 and as many as five proposed pilot thermal energy  
19 network projects, with at least one such project in  
20 each utility territory proposed in a disadvantaged  
21 community.

22 The Act requires these seven  
23 corporations to file their proposed pilot projects  
24 for Commission review within three months of the  
25 Act's effective date or by October 5th, 2022. The

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2            initiating order before you would address these  
3            initial matters.

4                    First, the order would comply with the  
5            October 5th deadline specified in the Act by which to  
6            commence the proceeding.  Second, consistent with the  
7            purpose of the Act, the order would direct staff to  
8            convene at least one technical conference to, among  
9            other things inform the submission of utility thermal  
10           pilot projects to be filed under the Act.

11                   And third, the most important and  
12            immediate purpose of the order is to address the  
13            requirement imposed on the seven largest gas,  
14            electric, or combination gas and electric  
15            corporations to file thermal network pilot projects  
16            for approval with the Commission by October 5th,  
17            2022.

18                   Let me summarize the high points of  
19            this aspect of the order.  The order notes that the  
20            Act does not identify or define the seven largest  
21            gas, elect -- gas, electric, or combination gas and  
22            electric corporations subject to the pilot project  
23            requirement.

24                   The order identified the seven largest  
25            such entities based on the criteria of a utilities,

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2 intrastate and annual intrastate gross operating  
3 revenue. A phrase that is applied and can be found  
4 under Public Service Law Section 25-A to the six  
5 combination gas and electric corporations in the  
6 State.

7 Using annual intrastate gross  
8 operating revenue as a network -- as a metric, the  
9 order finds that the pilot project requirement  
10 applies to those six utilities Con Edison, Orange &  
11 Rockland,, NYSEG, RG&E, Central Hudson, and National  
12 Grid. As well as to a seventh gas only corporation  
13 National Fuel Gas.

14 The order next addresses the  
15 requirement that the seven utilities file by October  
16 5th, 2022, between one and five pilot projects with  
17 at least one of those projects located in a  
18 disadvantaged community. To address this part of the  
19 Act the order would take a stepped approach regarding  
20 a pilot project, acknowledging that it may be  
21 difficult for the seven utilities to prepare a full  
22 panoply of five pilot projects under such a short  
23 timeframe, and leaving open, whether additional pilot  
24 projects may be proposed at a later date.

25 To meet the October 5th, 2022, filing

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2            deadline, the order directs the seven utilities to  
3            make a compliance filing by that date. That  
4            includes, one, a summary of each of the proposed  
5            pilot projects. Two, an implementation plan with  
6            respect to each project including the process by  
7            which sites and customers would be identified.

8                    Three, estimated costs of the  
9            projects. Four, a proposed cost recovery mechanism.  
10           And five, information otherwise required under the  
11           Act including a showing that the proposed projects  
12           would further the climate justice and emission  
13           reduction mandates of the C.L.C.P.A.

14                   As a second step, the order specifies  
15           that the seven utilities are to file by January 9th,  
16           2023 more specific versions of the same project  
17           proposals including a single line drawing identifying  
18           the geothermal energy sources, engineering plans, a  
19           description of potential energy use -- users per  
20           project, a development schedule detailing major  
21           milestones, the estimated capital and operation  
22           expenses associated with each project, funding  
23           sources including potentially federal tax credits,  
24           and proposed metrics by which to measure cost  
25           effectiveness.

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2 The order notes that while it is  
3 preferable for the utilities to identify a specific  
4 location of customers related to each proposed  
5 project, it would be acceptable if the proposal lacks  
6 that specificity so long as it provides a specific  
7 process by which project location and customers are  
8 to be identified.

9 In sum, the initiating order with  
10 direct staff to undertake at least one technical  
11 conference to inform the submission of thermal energy  
12 network pilot projects, and create a step process by  
13 which the utilities are to file such projects for  
14 approval with the Commission. Thank you. And I look  
15 forward to your questions.

16 CHAIR CHRISTIAN: Thank you, Bob. You  
17 know, through this order we begin the process of  
18 expanding the portfolio of choices available to our  
19 consumers. And we develop new opportunities for  
20 utilities to provide residents with heat and hot  
21 water in a manner that's aligned with the  
22 environmental considerations established in State  
23 law.

24 I'm encouraged by the stepped approach  
25 as it allows both the Commission and the utilities to



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2 learn and develop solutions that can be both durable,  
3 sustainable, and scalable for providing heating to  
4 New Yorkers going forward.

5 So thank you for your work in putting  
6 this together. And I look forward to the future  
7 steps. With that Commissioner Burman, do you have  
8 any comments on this matter?

9 COMMISSIONER BURMAN: Thank you so  
10 much. Can you hear me?

11 MR. ROSENTHAL: Yeah.

12 CHAIR CHRISTIAN: Yes.

13 COMMISSIONER BURMAN: Great. So we  
14 are commencing this proceeding to comply with a  
15 recently enacted statute that is designed to  
16 facilitate the development of a new business model  
17 and regulatory structure which would possibly allow  
18 the State's utility to build, own, and operate  
19 thermal energy networks.

20 I will not opine at this time on  
21 whether or not I think such a business model and  
22 regulatory structure is appropriate or even needed.  
23 The statute does ask us expressly to consider, and I  
24 quote, the appropriate ownership, market, and rate  
25 structures for thermal energy networks and whether

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2           the provision of thermal energy by gas and or  
3           electric utilities is in the public interest.

4                   We will need to, as we go forward,  
5           determine whether this regulatory structure is even  
6           appropriate and in the public interest. Today is for  
7           commencing that proceeding, pursuant to the statute  
8           and setting forth the next process steps.

9                   Again, I emphasize that review and  
10          determination on the appropriate business model and  
11          regulatory structure, and if it meets a public  
12          interest standard is not for us to decide today. But  
13          I do want to make a few -- some points about a number  
14          of concerns that I have that will -- I believe will  
15          make the statute successful implementation a real  
16          challenge.

17                   First, the law is very ambiguous as to  
18          which utilities it applies to. The seven largest  
19          utilities by revenue, by geographic reach, at  
20          corporate parent level, or at the affiliate level.  
21          The law frankly did not say, so we reviewed the  
22          landscape and identified the seven utilities we  
23          thought makes sense in this order.

24                   Importantly, we recognize that  
25          reasonable people could disagree on which criteria to

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2 use. So the order actually allows smaller utilities  
3 that didn't make our seven utility cut to petition us  
4 for consideration.

5 Second, it is unclear how utilities  
6 will be able to design and file strong pilot projects  
7 in the short timeframe given. The order requires the  
8 companies to comply with the Act which will result in  
9 the filing of pilot projects in a few short weeks.

10 To design, engineer, site, and develop  
11 financial analysis for projects such as these,  
12 frankly, requires more time than this. I fear that  
13 we may not get strong proposals that will provide any  
14 value to us when considering how to frame rules  
15 guiding this very new business model that we're still  
16 exploring.

17 That is why importantly, the order  
18 acknowledges, there may need to be refinements of the  
19 initial submissions with a subsequent filing due in  
20 January. Now, as a general matter, I am somewhat  
21 skeptical of the value of rushed demonstration  
22 projects. But we need to work with the utilities to  
23 get the maximum value from the statutorily required  
24 filings, and that's what this order will allow.

25 Third, the Act requires that the

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2 Commission review and act on these pilot projects  
3 within three months. As the order points out, we  
4 will comply with the statute. We will review the  
5 record in the statutory timeframe.

6 However, it is really important to  
7 understand that we also must comply with the State  
8 Administrative Procedures Act. We also must follow  
9 proper transparent and substantive regulatory  
10 analytical processes to properly evaluate based on  
11 the evidentiary record, what is in the public  
12 interest.

13 Accordingly, we will likely need  
14 additional time to make our final, prudent,  
15 evidentiary based determinations especially if they  
16 require rate recovery decisions. A thorough review  
17 is important for us to ensure that we balance the  
18 implementation of this proceeding, the evaluation of  
19 the pilot projects, and the development of  
20 regulations with the need to ensure continued energy  
21 system reliability, safety, and resiliency.

22 Additionally, although it is great  
23 that other funding opportunities at the State and  
24 federal level may be able to reduce the rate payer  
25 impacts of these projects, we will need to undertake

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2 a crucial analysis to evaluate the prudence of the  
3 funding being used for these pilots.

4 We may need to also look at what it  
5 means if we decide to approve or modify any projects  
6 that may have been proposed in a prior rate case or  
7 if utilities decide to work with each other to submit  
8 joint proposals to ensure the proper allocation of  
9 dollars and avoid any duplicative efforts.

10 Next, the statute identifies areas  
11 concerning labor, like project labor agreements,  
12 prevailing wage, and apprenticeships that are not  
13 technically in our normal statutory wheelhouse or  
14 expertise. We must be mindful not to get involved in  
15 prescriptive regulation related to labor management  
16 issues that are not for us.

17 Further, the order before us leans  
18 into a transition away from natural gas for use in  
19 New York's building stock. But we expressly state in  
20 the order that such transition should be undertaken  
21 in due course to ensure the continuation of safe and  
22 reliable utility service.

23 I underscore in due course or at an  
24 appropriate time really meaning that transition  
25 should occur only if and when we can assure safety

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2           and reliability.  And of course, as economic energy  
3           regulators we need to carefully consider  
4           affordability.  Moreover, this statute does expressly  
5           reference the importance of ensuring an adequate  
6           supply of reliable electric power.

7                   In fact, the focus on reliable energy  
8           system is mentioned several times throughout the  
9           statute.  The statute wants us to actually align with  
10          the C.L.C.P.A.  This statute's focus on reliable  
11          energy systems is implicitly in alignment with the  
12          C.L.C.P.A., which also zeros in on the need for  
13          reliability to be paramount.

14                   Now, I recognize that the passage of  
15          the Climate Leadership and Community Protection Act  
16          will be driving much of the regulatory activity in  
17          New York in the coming years, but I cannot underscore  
18          enough maintaining reliability and resiliency must be  
19          New York's number one priority.

20                   And I applaud the legislature and the  
21          executive in recognizing that number one priority by  
22          incorporating it into the relevant statutes like we  
23          have before us today.  However, we must not just pay  
24          lip service to reliability as a number one priority.  
25          We all must ensure our actions align with that

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2 priority.

3 In fact, the C.L.C.P.A. and this  
4 statute by incorporating reliable energy systems and  
5 reliability expressly in the language means to me  
6 that every agency, board, Commission, or entity  
7 tasked with aspects of implementing the C.L.C.P.A.  
8 have the statutory mandate to fully consider  
9 reliability in its actions.

10 And like us, with things that may be  
11 out of our wheelhouse, I remind folks that they will  
12 need to lean into the experts, and those who wheel --  
13 whose wheelhouse it is on reliability such as the New  
14 York I.S.O., the Reliability Council, and frankly,  
15 here at the Commission and D.P.S., I underscore this.

16 A prioritization of reliability and  
17 that the experts including the New York I.S.O., the  
18 P.S.C., and technical experts need to be leading this  
19 effort. And reliability has to be addressed first  
20 before we get to any other issue.

21 There must be also a recognition that  
22 good policy takes time. And the P.S.C.'s processes  
23 which involve significant public input and technical  
24 policy development can help provide a good avenue for  
25 addressing some of these significant policy

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2 development challenges.

3 In summary, this order is drafted to  
4 comply with the statute. And we will embark on this  
5 proceeding with every intention to ensure its  
6 success, and with a focus on protecting consumers  
7 throughout. But in my opinion, the process that  
8 we're required to follow in the statute is not the  
9 ideal way to develop a proper record, and make  
10 thoughtful, crucial, regulatory decisions on  
11 important matters such as these that could have  
12 significant consequences for ratepayers, and  
13 significant impact on the energy grid itself.

14 It is incumbent on us to ensure we do  
15 not short circuit our regulatory obligations merely  
16 to satisfy well-intentioned, but at best, truly  
17 clunky legislation. So I strongly urge the  
18 legislature and the executive to consider this  
19 experience, and work to avoid these kinds of  
20 challenges in the future.

21 Doing so will allow for more holistic,  
22 credible, and sensible policy development and  
23 sufficient time for stakeholder engagement and proper  
24 regulatory consideration. Thank you.

25 CHAIR CHRISTIAN: Thank you,



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2 Commissioner. Commissioner Alesi.

3 COMMISSIONER ALESI: Thank you, Mr.  
4 Chairman. I am going to support this, but I do it  
5 making these comments that it -- it is a poorly  
6 written piece of legislation that is directing us  
7 today. We've talked about unreasonable timeframes  
8 and unmanageable objectives. But the main thrust of  
9 the Act is to help reduce greenhouse gases. And  
10 achieve the goals of the C.L.C.P.A. through thermal  
11 energy networks.

12 On a personal basis, I think that  
13 these pilot projects could easily be done through the  
14 initiative of the utilities without some of the  
15 burdens found in the legislative intent. But at the  
16 end of the day, the goal is what we have to focus on,  
17 so I will be supporting.

18 CHAIR CHRISTIAN: Thank you,  
19 Commissioner. Commissioner Edwards?

20 COMMISSIONER EDWARDS: Thank you very  
21 much. So I -- I have a little bit of a different  
22 opinion than my colleagues. I -- you know, change is  
23 very hard. And we are all, I believe, working hard  
24 with the intent of getting this right.

25 And while I agree with our primary

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2           mission, which is to provide safe and reliable  
3           service at just and reasonable rates, I have said  
4           this before and I'm going to say it again. I do not  
5           think that that is our only mission. I do believe  
6           that we need to be supportive as we move as quickly  
7           as we can on the goals of C.L.C.P.A.

8                   And I do believe that we have a  
9           obligation to ensure that we are doing this in a way  
10          that promotes training, and transition for utility  
11          workers, and providing opportunities for others to  
12          get in this space. I do believe that that is our  
13          obligation.

14                   I do believe that we need to support  
15          it in a way that is providing wages that can be  
16          supportive for families in New York. You know, I do  
17          believe that we need to ensure that we are doing all  
18          of this in disadvantaged communities that giving  
19          everybody a chance to do this.

20                   So you know, we can -- we can read and  
21          criticize any piece of legislation that is there.  
22          But the intent of this is to continue to move as fast  
23          as we can. The intent of this is to provide that we  
24          are all stakeholders in this and not just the  
25          utilities. And I do believe that the legislature

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2 does have a role and so do we.

3 And that's why when you create  
4 legislation, there is amendments. Because when we  
5 find additional information, but if we have to do  
6 this as we go forward, then, we should do that. So I  
7 -- I am fully supportive of this.

8 And I think that all of this is a work  
9 in progress. We need to ensure that we are working  
10 earlier in the process, that maybe we could provide  
11 some additional guidance on how to make the  
12 legislation stronger. But I -- I'm glad to see that  
13 we have -- that we are moving as quickly as we can  
14 with the -- with this. And I am fully supportive of  
15 it. I do just have one question.

16 Mr. Rosenthal, in your comments you  
17 said that the pilot project in each utility territory  
18 proposed in a disadvantaged community. And I think  
19 it's possible that some of the largest ones overlap  
20 territories. But then, later on you did say that  
21 each utility must create one of their pilots in a  
22 disadvantaged community. So which one is correct?

23 MR. ROSENTHAL: It's the second --  
24 it's the latter. I mean, I think they're consistent,  
25 but it is the latter. So the law requires --

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2 COMMISSIONER EDWARDS: Okay.

3 MR. ROSENTHAL: -- if it -- if they  
4 submit between one and three, one has to be in a --  
5 in a disadvantaged community. If they submit one,  
6 that one has to be in a disadvantaged community. If  
7 they submit four or five, two have to be in a  
8 disadvantaged community.

9 COMMISSIONER EDWARDS: Okay. Great.  
10 All right, very good. And I think, you know, again,  
11 I've said this before, we need to update our mission.  
12 It's not just our only mission. It was done years  
13 and years ago, things have changed. And I think we  
14 have much more of a opportunity, and I believe an  
15 obligation to do more than just what is written on  
16 that piece of paper that was done about 300 years  
17 ago, whenever. Thank you very much.

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

20 COMMISSIONER HOWARD: Thank you, Mr.  
21 Chairman. This order and the statute does something  
22 that has not happened in this State in decades and  
23 decades and decades, creating a brand new class of  
24 utility. You know, we have utilities in the State  
25 that provide electricity. Those that provide natural

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2 gas, and those that provide steam energy. This will  
3 be the first new energy related utility service in to  
4 -- probably a hundred years.

5 So in that regard, getting it right  
6 the first time is important. And the most important,  
7 I think one of the most important aspects I believe  
8 of this order would be the convening of a -- of a  
9 technical conference because there's so many big  
10 unanswered questions.

11 You know -- you know, how much -- how  
12 do we engineer these things? What does that mean?  
13 What do customers buy? When we buy traditional  
14 energy sources, we know precisely what we buy. We  
15 buy kilowatts of electricity. We buy therms of  
16 natural gas, or we buy pounds of steam, and a  
17 guaranteed temperature, and pressure.

18 All of these questions, we don't know  
19 will we get, in each one of these pilots, a different  
20 engineering scenario that provides different outcomes  
21 to customers. So the -- the -- the most important  
22 thing as we go forward in order for this to expand in  
23 I think a right and meaning -- very much needed way  
24 is that universal rules, universal billing practices,  
25 universal -- we don't even know how we would meter

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2 this particular type of energy yet.

3 Does it comply with other  
4 environmental standards that, that may be it odds  
5 with doing deep drill geothermal projects. Those are  
6 all questions to be known. And that only through,  
7 you know, a rigorous oversight of this Department and  
8 Commission will we get to those answers.

9 And then, one of my favorite things  
10 here, how will we treat this new utility for real  
11 property taxes. Particularly, and I'm particularly  
12 concerned, and I believe that most of the -- some of  
13 the biggest advocates for this were from the City of  
14 New York.

15 You know, will we create a brand new  
16 potential windfall for utilities, special utility  
17 franchise taxes in the City of New York based on a  
18 brand new thermal -- thermal equity. Just to remind  
19 everybody, if you are within the ConEd service  
20 territory, twenty-five cents out of every dollar you  
21 spend goes to the City of New York. It doesn't go to  
22 buy energy, it doesn't go to buy services, it goes to  
23 buy the government of the City of New York.

24 So I think one of these, how we deal  
25 with that, and how taxing jurisdictions will deal

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2           with this new infrastructure because that's an  
3           unknown question.

4                   And in terms of process this bill was  
5           passed quick. It was written and passed in five  
6           days. Okay. There were no hearings on this. We're  
7           creating a brand new class of utilities and the  
8           legislature in their wisdom decided they didn't need  
9           to do a public hearings on what they thought the  
10          public should want and what our stakeholders would  
11          be.

12                   So that is a very unusual --  
13          historically, unusual occurrence in the -- in the  
14          legislature. And I think that my colleagues here  
15          who've served either in the legislature or staff to  
16          that understand that. And this -- this bill would  
17          have absolutely been better if that process had  
18          occurred.

19                   And particularly with greater outrage  
20          to stakeholders, and particularly on the technical  
21          side, dealing with -- and particularly here at the  
22          D.P.S., I think our technical staff could have  
23          provided great input on the front end to answer some  
24          of these questions in a what -- I agree with  
25          Commissioner Alesi, a relatively poorly drafted bill

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2 that could be -- could be much better.

3 So that -- that being said, this, I'll  
4 wholeheartedly support the concept. But getting from  
5 concept to reality and doing it right the first time  
6 is -- is our only -- this will be our only  
7 opportunity. And -- and we will need to get it  
8 right. And to Commissioner Burman's comments rushing  
9 won't help, rarely does. And to have to come back  
10 and redo it would be -- slow things down even more.

11 And thank you. Also making sure that  
12 we include outside funding wherever available that  
13 this -- because we don't even know what ratepayers  
14 are going to pay for this yet. Are they going to be  
15 gas ratepayers? Are they going to be electric  
16 ratepayers, or are they going to be a brand new class of  
17 ratepayers that don't exist currently? So all of  
18 those questions will -- will need to be sorted out in  
19 a very quick manner. But with that I'm going to be  
20 supporting this, Mr. Chairman.

21 CHAIR CHRISTIAN: Thank you,  
22 Commissioner. Commissioner Valesky.

23 COMMISSIONER VALESKY: Thank you, Mr.  
24 Chairman. First of all, I just want to make a -- a  
25 comment on -- on process. I -- I really appreciate



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2           the flexibility that so many of you have displayed in  
3           the process of -- of bringing this order before us.  
4           I certainly as one Commissioner, but I know most if  
5           not all Commissioners, have had extensive  
6           conversations, not only with you, Mr. Rosenthal as  
7           General Counsel but our Executive Deputy  
8           Commissioner, Chief of Staff, and all of you as  
9           program -- programmatic staff. So thank you very  
10          much.

11                                I think the -- the process after the  
12          new statute came here, the process of engaging with  
13          each of us as Commissioners, I hope that all of you  
14          would agree made for a better final product. So  
15          thank -- thank you for that, and -- and hope we can  
16          take some lessons away from that.

17                                But as a result of that, I -- I do  
18          have a couple of follow-up questions if we could just  
19          so I'm 100% clear as to where we finally landed,  
20          particularly in regard to the timeline that you've  
21          laid out in your presentation and then, certainly in  
22          the order. But I just -- again, for clarification  
23          so. By October -- by October 5th, the seven  
24          utilities are required to submit five or up to five?

25                                MR. ROSENTHAL: Up to five.

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2 COMMISSIONER VALESKY: Up to five,  
3 okay. And -- and up to five preliminary projects, I  
4 supposed we could refer to them, right?

5 MR. ROSENTHAL: Correct, correct.

6 COMMISSIONER VALESKY: And then by  
7 January 9th would be final versions of those projects  
8 or would they be allowed to create new projects  
9 between -- in that window?

10 MR. ROSENTHAL: The order says, of  
11 those same projects.

12 COMMISSIONER VALESKY: Of those same  
13 projects.

14 MR. ROSENTHAL: I think if, you know,  
15 we would definitely be willing to be flexible,  
16 however.

17 COMMISSIONER VALESKY: Okay. And the  
18 technical conference. The at least one tech --  
19 technical conference, at what point in that time  
20 frame would that technical conference occur?

21 MR. ROSENTHAL: Internally, we are  
22 shooting for some time in November.

23 COMMISSIONER VALESKY: Okay. So  
24 between the initial submission and final submission  
25 at some point in that.

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2 MR. ROSENTHAL: Correct.

3 COMMISSIONER VALESKY: Okay. And  
4 then, just for final clarification, those utilities  
5 that are not defined in this order as the seven  
6 largest, there's nothing that -- that would preclude  
7 any other utility from submitting any pilot project  
8 that they might choose to, is that correct as well?

9 MR. ROSENTHAL: In fact, the orders  
10 expressly authorizes them to file a petition.

11 COMMISSIONER VALESKY: And they would  
12 follow the same process then?

13 MR. ROSENTHAL: Correct.

14 COMMISSIONER VALESKY: Okay. Okay.  
15 Thank you very much. Again, thank you for -- for  
16 bringing this to our -- for our consideration, and I  
17 certainly will be supporting it.

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

20 COMMISSIONER MAGGIORE: Thank you. I  
21 don't have any questions. The only thing I'll say  
22 is, as some of my colleagues alluded to, the -- the  
23 legislation. Sort of put some challenges on your  
24 table in terms of drafting this order, so that it's  
25 consistent with the law. And I -- I think you did a

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2 good job.

3 I know it was a challenging piece of  
4 work. And I intend to vote in favor of this. But I  
5 have no additional questions, so thank you.

6 CHAIR CHRISTIAN: Thank you,  
7 Commissioner. That said, we'll do a call for vote.  
8 My vote is in favor of the implementation of the  
9 Utility Thermal Energy Network and Jobs Act as  
10 discussed. Commissioner Burman, how do you vote?

11 COMMISSIONER BURMAN: Yes.

12 CHAIR CHRISTIAN: Thank you.  
13 Commissioner Alesi?

14 COMMISSIONER ALESI: Yes.

15 CHAIR CHRISTIAN: Thank you.  
16 Commissioner Edwards?

17 COMMISSIONER EDWARDS: Yes.

18 CHAIR CHRISTIAN: Thank you.  
19 Commissioner Howard?

20 COMMISSIONER HOWARD: Yes.

21 CHAIR CHRISTIAN: Thank you.  
22 Commissioner Valesky?

23 COMMISSIONER VALESKY: Yes.

24 CHAIR CHRISTIAN: Thank you. And  
25 Commissioner Maggiore?

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2 COMMISSIONER MAGGIORE: Yes.

3 CHAIR CHRISTIAN: Thank you very much.

4 The item is approved, the recommendations adopted.

5 We'll now move on to our second item for discussion,

6 and before we go, thank you very much staff and

7 general counsel for your work.

8 We will now go on to the second item

9 for discussion. Item 202, case 14-M-0094 and 18-M-

10 0084 related to the New Efficiency New York and the

11 Clean Energy Fund that will be presented today by

12 Katie Mammen, Peggie Neville, Kevin Manz and Dave

13 Drexler will be available for questions. With that,

14 Katie, please begin.

15 MS. MAMMEN: Good morning, Chair, and

16 Commissioners. In its January 2020, order that

17 authorized the utilities New Efficiency New York

18 budgets and targets through 2025, and it's September

19 2021, order that approved modifications to the New

20 York State Energy Research and Development

21 Authorities or NYSEERDAs Clean Energy Fund or C.E.F.

22 portfolio.

23 The Commission required both

24 portfolios to undergo interim reviews. Also, in that

25 latter C.E.F. order, the Commission set forth the

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2 expectation that the reviews of these two portfolios  
3 would be aligned because they are so closely related  
4 and are central components of the State's efforts to  
5 meet it's clean energy goals.

6 The item before you today is  
7 procedural in nature and initiates the interim  
8 reviews of the New Efficiency New York and the Clean  
9 Energy Fund portfolios. This item does not include  
10 any decisions regarding current or future funding  
11 levels for these portfolios.

12 New -- New Efficiency New York and  
13 C.E.F. are large and varied portfolios of programs.  
14 Therefore, to facilitate a thoughtful and thorough  
15 assessment of the historical performance, ongoing  
16 implementation, and future direction of these  
17 portfolios, the review described in the draft order  
18 is segmented into four parts.

19 Group one consists of the Statewide,  
20 low to moderate income or L.M.I. portfolio  
21 implemented by the State's large electric and gas  
22 utilities and NYSERDA.

23 Group two covers the utility non  
24 L.M.I. energy efficiency and building electrification  
25 portfolio. Along with the energy efficiency and

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2           building electrification portions of NYSERDA's market  
3           development portfolio.

4                   Group three will focus on NYSERDA's  
5           innovation and research portfolio.  And finally,  
6           group four will address the NYSERDA New York Green  
7           Bank portfolio.  In each case, the process delineated  
8           in the order will facilitate a comprehensive review  
9           of each portfolio and will include multiple venues  
10          for public engagement.

11                   As described in the draft order before  
12          you today, the most immediate phase of the review  
13          will address groups one and two, the L.M.I. and non  
14          L.M.I. energy efficiency and building electrification  
15          programs implemented by the utilities and NYSERDA.

16                   This component of the review will  
17          assess all meaningful aspects of energy efficiency  
18          and building electrification, program design and  
19          administration, useful innovation, and governance  
20          oversight, as well as consideration of both existing  
21          targets and budgets, and post 2025 targets and  
22          budgets.

23                   As the first step in carrying out the  
24          energy efficiency and building electric --  
25          electrification review, the draft order directs staff

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2           to file a performance report on the L.M.I. and non  
3           L.M.I. energy efficiency and building electrification  
4           portfolios within 60 days of the issuance of the  
5           order.

6                                 The staff report will include  
7           quantitative and qualitative assessment, as well as a  
8           series of prompting questions for stakeholders to  
9           respond to through a public comment process. The  
10          draft order indicates the Commission's intention to  
11          consider the staff report and public input to  
12          establish criteria for energy efficiency and building  
13          electrification programs moving forward.

14                                The Commission will then require  
15          NYSERDA and the utilities to file responsive  
16          proposals that align with the established criteria  
17          for future Commission consideration. Beyond the  
18          formal written comment process, the draft order sets  
19          forth the requirement for utilities and NYSERDA to  
20          hold technical conferences following the submission  
21          of their proposals, to provide staff and interested  
22          parties an opportunity to engage with the program  
23          administrators, and gain additional insight into  
24          their proposals.

25                                Subsequent phases of the review will



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2 address group three NYSERDA's innovation and research  
3 portfolio, and group four NYSERDA's New York Green  
4 Bank portfolio. The draft order details these  
5 portions of the review will be initiated by petitions  
6 to be filed by NYSERDA, no later than July 1, 2024.

7 The petitions will include a  
8 performance review as well as specific requests for  
9 Commission consideration action. Again, the  
10 Commission would seek public comments on the NYSERDA  
11 petitions prior to making any determinations about  
12 the future of these portfolios.

13 Thank you. This concludes my  
14 presentation. Dave Drexler -- Drexler, Peggie  
15 Neville, Kevin Manz, and I are happy to answer any  
16 questions.

17 CHAIR CHRISTIAN: Thank you. Thank  
18 you for all the hard work that led up to this, you  
19 know, this is one of the central components to the  
20 State's ability towards reaching its various goals --  
21 goals, that I'll remind everyone are codified into  
22 State law, you know, this review is essential.

23 And it's essential to ensuring we stay  
24 on target and that we have the ability to adjust as  
25 needed based on new developments, whatever they may

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2 be. So I appreciate you putting all this together  
3 and laying out the plan. And I look forward to its  
4 execution. So thank you for your work in this  
5 development.

6 That said, I'll go to Commissioner  
7 Burman, should you have any comments.

8 COMMISSIONER BURMAN: I have no  
9 comments or questions on the order, direct order  
10 speaks for itself. Staff's presentation clarified  
11 that and I agree with your comments. So thank you.

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

14 COMMISSIONER ALESI: Thank you, Mr.  
15 Chairman. I have nothing to add. I'll be supporting  
16 the order.

17 CHAIR CHRISTIAN: All right. Thank  
18 you, Commissioner. Commissioner Edwards?

19 COMMISSIONER EDWARDS: I'm good.  
20 Thank you very much. Thank you, Katie, and the team.

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

23 COMMISSIONER HOWARD: Yeah, I have one  
24 question. Do we have a relative dollar amount for  
25 the balance in these funds currently? Those --

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2 particularly, those administered by NYSERDA, a  
3 ballpark would be close.

4 MS. NEVILLE: I -- Commissioner, I  
5 would hesitate to give a ballpark. As you know,  
6 there's -- these are very large portfolios in total,  
7 I believe the Clean Energy Fund administered by  
8 NYSERDA totals over \$6 billion.

9 They -- as we came before the  
10 Commission last September, I believe, 2021, focused  
11 on review of the Clean Energy Fund and focused very  
12 much on the need to pick -- quicken the pace of  
13 expenditures. 2021 did end on target, I can share  
14 that. I'm happy to get back to you on exact numbers.

15 Admittedly, there's still work to be  
16 done. There's a lot of funding in play in those  
17 portfolios. We track both commitments and  
18 expenditures. So obviously, you have to commit to  
19 projects before you can expend the dollars.

20 So that's something that we are  
21 engaged very closely with the NYSERDA team on to  
22 track things as we start to see things maybe coming  
23 off the line, we, you know, engage pretty quickly to  
24 say, you know, what's going on here, where can we  
25 make corrective actions.

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2 I think we'll see through this review,  
3 quite frankly, we'll have to look at that if there  
4 are funding -- if there's funding in the existing  
5 portfolios that will not be fully utilized by 2025,  
6 which would be the end mark of these.

7 We should take a quick look at that  
8 and say, should those continue to be put forth in the  
9 propose -- portfolios that exist today or are those  
10 potential funding dollars that could be used for  
11 future activities as opposed to purely looking at as  
12 an incremental spend on top of that.

13 COMMISSIONER HOWARD: Thank you. And  
14 the reason I ask is because this has been a perpetual  
15 problem. I don't think it's unfair that we've  
16 overtaxed because this is, in fact, a de facto tax on  
17 all ratepayers to pay for these programs.

18 And when you build up large fund  
19 balances of -- of administratively derived funds, it  
20 -- it's a problem. And also, how critically  
21 important this is going to be to meet any C.L.C.P.A.  
22 goals, maybe the cornerstone in some respects.

23 The other question I have and I know  
24 that, and thank you those who drafted this order,  
25 specifically making sure that the -- both utilities

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2 and NYSERDA take advantage of any new dollars that  
3 may have been provided, particularly by the federal  
4 government or the State government in that regard, to  
5 which in my opinion, should go dollar for dollar in  
6 reducing ratepayer dollars, you know, for these  
7 programs going forward.

8 And so I think that'll be a critical  
9 component. I think it's going to take some time  
10 before we actually figure out what the infrastructure  
11 law and the I.R.A. actually does. How we get the  
12 money, who gets it, does it go directly to utilities,  
13 does it go directly to individuals, does it make a  
14 stop at NYSERDA on the way to wherever.

15 Those I think are very critical issues  
16 dealing with program design and going forward and how  
17 that does. And particularly, that how difficult in  
18 some cases it is for consumers to access programs  
19 efficiently and with any meaningful ability to  
20 actually get stuff done at their business or -- or  
21 their residence.

22 So but those are -- that's -- that's  
23 my question and comments. And again, we really need  
24 a hard-nosed approach on this. This is too important  
25 not to provide the scrutiny and part of that hard-

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2 nosed approach will be what didn't work.

3 MS. NEVILLE: Uh-huh.

4 COMMISSIONER HOWARD: You know, we,  
5 you know, I know certain Commissioners have always  
6 said, we send things out, particularly in pilots that  
7 just never -- the pilot doesn't, you know, whatever,  
8 produce.

9 But I think we need to have that  
10 really hard-nosed examination, so we can actually  
11 direct funding to those programs that provide the  
12 absolute most bang for the buck. And to that I look  
13 forward to this going forward. Thank you.

14 CHAIR CHRISTIAN: Thank you,  
15 Commissioner. Commissioner Valesky?

16 COMMISSIONER VALESKY: I have no -- no  
17 questions. I certainly thank you for the work,  
18 Katie, to you and your team. And I would just say I  
19 think it's -- it's extremely well-written and in  
20 particular, in grouping the port -- portfolios as  
21 you've had, as you have done in the order. I think  
22 we'll certainly best be able to address some of the  
23 concerns that Commissioner Howard has just expressed.  
24 So thank you very much.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. And Commissioner Maggiore?

3 COMMISSIONER MAGGIORE: Thank you. I  
4 don't have any questions, Katie, thank you, for your  
5 presentation. And I look forward to the reading --  
6 the hearing about the results of the review. The --  
7 the issue before us right now, as you pointed out is  
8 procedural and I intend on voting, yes. Thank you.

9 CHAIR CHRISTIAN: Thank you,  
10 Commissioner. That said, I will bring us to a call  
11 for vote. My vote is in favor of initiating the  
12 review of the New Efficiency New York and Clean  
13 Energy Fund, as discussed. Commissioner Burman, how  
14 do you vote?

15 COMMISSIONER BURMAN: Yes.

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

18 COMMISSIONER ALESI: Yes.

19 CHAIR CHRISTIAN: Thank you.  
20 Commissioner Edwards?

21 COMMISSIONER EDWARDS: Yes.

22 CHAIR CHRISTIAN: Thank you.  
23 Commissioner Howard?

24 COMMISSIONER HOWARD: Yes.

25 CHAIR CHRISTIAN: Thank you.

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2 Commissioner Valesky?

3 COMMISSIONER VALESKY: Yes.

4 CHAIR CHRISTIAN: Thank you.

5 Commissioner Maggiore?

6 COMMISSIONER MAGGIORE: Yes.

7 CHAIR CHRISTIAN: Thank you. The item

8 is approved and the recommendations are adopted.

9 Thank you, staff, for your work.

10 We'll now move on to our third item

11 for discussion today. Item 203, case 19-M-0463,

12 related to the community distributed generation

13 billing. This will be presented by Tom Dwyer.

14 Warren Myers is also available for questions. All

15 right. And with that, Tom, if you're ready, please

16 begin.

17 MR. DWYER: Thank you. And good

18 morning, Chair Christian, and Commissioners. Item

19 203 is a draft order initiating processes to address

20 ongoing billing issues related to the distri --

21 distribution utility billing of Community Distributed

22 Generation or C.D.G.

23 For -- for background, on December 12,

24 2019, the Commission approved a net crediting model

25 for the consolidated billing of C.D.G. projects.



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2 Simplifying the process for members who, under this  
3 model, would receive a single monthly utility bill.

4 Unlike the dual billing model for  
5 C.D.G., the net crediting model allows the utility to  
6 add the C.D.G. monthly subscription fee to the C.D.G.  
7 member's utility bill. With that customer receiving  
8 a credit on the bill for the difference between the  
9 value of the credits generated by the C.D.G. project  
10 and the amount of the subscription fee due to the  
11 C.D.G. sponsor.

12 The utility then remits payment in the  
13 form of those subscription fees, minus a utility  
14 administrative fee to the C.D.G. sponsor. So since  
15 the adoption of net crediting, all the utilities have  
16 experienced delays with transitioning to a fully  
17 automated billing process, with several utilities  
18 still yet to implement automated C.D.G. billing.

19 Additionally, numerous complaints from  
20 customers, elected officials, and solar industry  
21 stakeholders have been brought to the Department's  
22 attention. These complaints take several forms, but  
23 generally relate to the accuracy and timeliness of  
24 utility billing for C.D.G. products.

25 As recognized by the Department

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2           staff's straw proposal on Opt-Out C.D.G., numerous  
3           ongoing billing issues related to utility billing of  
4           C.D.G. are impacting thousands of customers across  
5           the State and generating confusion surrounding energy  
6           costs and C.D.G. program benefits.

7                    There have been instances where  
8           customers do not receive a utility bill for several  
9           months and then later received multiple bills within  
10          a short period of time or one very large bill to  
11          cover that extended period. There have also been  
12          many reports of C.D.G. members not receiving the  
13          appropriate credits on their bills, fueling  
14          skepticism of the program itself.

15                   These billing deficiencies have also  
16          impacted the C.D -- C.D.G. sponsors themselves and  
17          their ability to bill and collect payments from the  
18          utilities and/or the customers for the generation  
19          that's been produced by these C.D.G. projects.

20                   So in order to address these billing  
21          issues, as well as the delay in automation efforts of  
22          some utilities, the draft order before you today  
23          establishes two processes. First, related to utility  
24          automation efforts, the draft order would direct the  
25          investor-owned utilities that have filed tariffs

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2 related to C.D.G. to file implementation plans  
3 associated with automated C.D.G. billing.

4 These implementation plans would  
5 include on the current billing system constraints  
6 preventing full C.D.G. billing automation. Two, the  
7 billing system changes necessary to effectuate  
8 automated C.D.G. billing and three, the steps and  
9 timeline necessary to achieve full automation.

10 The draft order would also require  
11 that these plans be updated quarterly until  
12 automation efforts are completed. Second, regarding  
13 the ongoing billing issues, the draft order would  
14 establish a process with two related objectives.

15 The first would be the development of  
16 C.D.G. cred -- crediting and building metrics to  
17 track and evaluate utilities performance and billing  
18 for C.D.G. And the second would be the development  
19 of a negative revenue adjustment mechanism to be tied  
20 directly to the utility's C.D.G. crediting and  
21 billing performances.

22 And finally, the draft order would  
23 require that any proposed performance metrics and  
24 negative revenue adjustments be filed for public  
25 notice and comment and come back before the

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2 Commission for consideration.

3 So that concludes my presentation on  
4 item 203. And Warren Myers and myself are available  
5 for any questions.

6 CHAIR CHRISTIAN: Thank you very much.  
7 We're all utility customers and we all know that the  
8 bills are among the primary line of communication  
9 between utilities and ourselves. And you know,  
10 ensuring the timeliness and accuracy of those bills  
11 is essential to ensuring that that communication  
12 remains effective.

13 I look at this action today, as a  
14 notice to reinforce the importance of that. And the  
15 improvements that we direct will ensure that  
16 customers who've already taken actions in support of  
17 the State's overall goals to advance clean energy and  
18 move towards a more efficient energy system overall,  
19 have the information they need to be able to ensure  
20 that the decisions they are making are in their own  
21 best interest.

22 So thank you both for your time in  
23 developing this order. And I look forward to the  
24 next steps and subsequent reports from the utilities  
25 on their progress. With that, I go to Commissioner

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2 Burman for your comments.

3 COMMISSIONER BURMAN: So I have no  
4 comments or questions. I -- I believe, again that  
5 the draft order, staffs comments at session, and your  
6 comments really take care of all of it. And I too  
7 look forward to the next steps, this is an important  
8 issue. Thank you.

9 CHAIR CHRISTIAN: Thank you,  
10 Commissioner Alesi, apologies. Thank you,  
11 Commissioner Alesi?

12 COMMISSIONER ALESI: Nothing further  
13 for me. Thank you.

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

16 COMMISSIONER EDWARDS: No, I just want  
17 to thank you, Tom, and Warren for -- for doing this  
18 and so thorough and this is -- I agree with the  
19 Chair, it's a critical issue, it's very important.  
20 And thank you both and the team for putting this  
21 together.

22 CHAIR CHRISTIAN: Thank you.

23 COMMISSIONER EDWARDS: That's it for  
24 me.

25 CHAIR CHRISTIAN: Thank you,

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2 Commissioner. Commissioner Howard?

3 COMMISSIONER HOWARD: Yeah, I just  
4 have a couple of questions. While this deals with  
5 billing, it does nothing about enrollment, correct,  
6 into a C.D.G. program?

7 MR. DWYER: That's -- that's right.

8 COMMISSIONER HOWARD: We do not change  
9 any of that?

10 MR. DWYER: Yeah, that -- that's  
11 right.

12 COMMISSIONER HOWARD: This currently,  
13 remind me, is an Opt-In program?

14 MR. DWYER: Yes.

15 COMMISSIONER HOWARD: Okay. Which I  
16 believe is appropriate. The -- the other things is  
17 that, you know, quite honestly, this does point to a  
18 bigger problem. We have several utilities where  
19 billing is just a mess, just a mess.

20 And the more particularly some  
21 utilities try to improve it, sometimes it just gets  
22 worse. And we -- and for many of these customers,  
23 particularly, you know, in certain utility, they've  
24 really been tortured for this, during this period.

25 And the thing that's most gratifying

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2            about this program is that this actually develops  
3            real hard assets in our State that you can go see and  
4            be part of.  And depending on your nature of your  
5            community, your local government can be part and  
6            parcel of making these things happen.

7                    But this involves real hard assets  
8            going to real customers.  And certain aspects,  
9            particularly of the recently passed federal  
10           legislation will put great deals of new resource into  
11           these types of programs.

12                   And it would be terrible if they get  
13           slowed down because we just can't get a bill to  
14           people that make sense.  I'd be also remiss to say  
15           that I do not want to conflate in any way a yes vote  
16           on this billing issue with C.D.G. to any comments  
17           that we may have and address with the C.C.A. program  
18           going forward.

19                   But again, I just think it's important  
20           for me to put that on the record because I have  
21           defined opinions on that program as opposed to this  
22           one.  So to that, thank you, but the real -- the real  
23           question is how much time are we going to give  
24           everybody to be right?

25                   MR. DWYER:  Well, there's been quite a

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2            delay so far, particularly on the automation, you  
3            know, it's a pretty quick turnaround, the -- the  
4            draft order requires utilities to file implementation  
5            plans within 30 days.

6                   And based off the substance of those  
7            implementation plans, you know, staff will assess the  
8            next steps to make sure that we can get everyone  
9            across the finish line, you know, some utilities, I  
10           will acknowledge have completed automation, I should  
11           say one and then some utilities have partial  
12           automation.

13                   But, you know, net crediting, the net  
14           crediting order was back in 2019. It's 2022 now,  
15           there's been quite a bit of time to get these  
16           automation efforts completed. So we're looking to  
17           move quickly.

18                   COMMISSIONER HOWARD: Well, to that  
19           extent, when we make reference to potential  
20           penalties, i.e. negative adjustments. How -- how  
21           soon do you think we could have an analysis to this  
22           Commission that any individual utility is doing,  
23           maybe subject to these negative adjustments?

24                   MR. DWYER: Well, I speculate to or I  
25           hesitate to speculate on a timeframe. I mean, we'll



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2 have to, you know, --.

3 COMMISSIONER HOWARD: That's good.

4 MR. DWYER: What's that?

5 COMMISSIONER HOWARD: Ballpark, you  
6 know.

7 MR. DWYER: Yeah, I mean, this isn't  
8 something I would see extending beyond like, next  
9 year. I mean, what we're going to meet and have some  
10 discussions regarding what these performance metrics  
11 would look like. And then develop the negative  
12 revenue adjustments to serve as a penalty for  
13 utilities that fail to hit those metrics.

14 COMMISSIONER HOWARD: Are there any  
15 considerations of issues of -- with customers who've  
16 experienced really horrendous things, in many cases  
17 wildly overpaid for -- for services that they didn't  
18 need to. And how do we, you know, make them correct?  
19 And this -- and this particularly on that whipsawing  
20 of, you know, no bills for many months and then one  
21 big giant one, you know, that really causes real harm  
22 to individual households.

23 So is there -- will there be a  
24 mechanism by which we can, I don't know, I don't know  
25 what the right phrase would be to -- but to

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2 acknowledge that those customers have been harmed in  
3 some way, deserve some recompense?

4 MR. DWYER: Well, you know, a lot of  
5 those issues are handled on a customer by customer  
6 basis, we'll see complaints coming to our call center  
7 and we'll work -- our office of consumer services  
8 will work with the utilities and the customer to get  
9 tailored relief. For example, in instances where,  
10 you know, they received a large bill for like three  
11 months, a month period.

12 While they did actually use that  
13 service and the bill is appropriate, it's still a  
14 hardship to be paid at once. So you know, you might  
15 require the utility to provide a payment plan to --  
16 to pay that bill off.

17 So it is a case by case determination.  
18 But, I mean, you're absolutely right, that this has  
19 impacted some customers pretty significantly.

20 COMMISSIONER HOWARD: Okay.

21 MR. SIPOS: And Commissioner Howard,  
22 this is John Sipos to that aspect in, you know,  
23 potential investigation and enforcement proceedings.  
24 The things that you just discussed are, you know,  
25 potential remedies that we could be looking at, as

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2 those cases go forward. So we will -- we will be  
3 keeping that in mind.

4 COMMISSIONER HOWARD: Great, thank  
5 you. My only -- my only request would be expedition  
6 would really count here. Thank you.

7 CHAIR CHRISTIAN: Thank you.  
8 Commissioner Valesky?

9 COMMISSIONER VALESKY: Nothing further  
10 to add. Thank you, both.

11 CHAIR CHRISTIAN: Thank you,  
12 Commissioner Maggiore?

13 COMMISSIONER MAGGIORE: Thank you. I  
14 don't have any questions. I would express empathy  
15 with any customers who have been on the receiving end  
16 of some of these problems, you know, as the Chair  
17 said, we're all utility customers.

18 And I would imagine being extremely  
19 aggravated if I was experiencing any of these  
20 problems. So I think I'm very happy to be voting  
21 yes, because we're trying to do something about it.  
22 So thank you for your good work and your presentation  
23 and I intend to vote, yes.

24 CHAIR CHRISTIAN: Thank you,  
25 Commissioner. With that, I'll take a call for vote.

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2 My vote is in favor of establishing the process,  
3 related to community distributed generation billing,  
4 as we just discussed. Commissioner Burman, how do  
5 you vote?

6 COMMISSIONER BURMAN: Yes.

7 CHAIR CHRISTIAN: Thank you.

8 Commissioner Alesi?

9 COMMISSIONER ALESI: Yes.

10 CHAIR CHRISTIAN: Thank you.

11 Commissioner Edwards?

12 COMMISSIONER EDWARDS: Yes.

13 CHAIR CHRISTIAN: Thank you.

14 Commissioner Howard?

15 COMMISSIONER HOWARD: Yes.

16 CHAIR CHRISTIAN: Thank you.

17 Commissioner Valesky?

18 COMMISSIONER VALESKY: Yes.

19 CHAIR CHRISTIAN: Thank you.

20 Commissioner Maggiore?

21 COMMISSIONER MAGGIORE: Yes.

22 CHAIR CHRISTIAN: And thank you. The  
23 item is approved and the recommendations are adopted.

24 Thank you, everyone. Thank you for your hard work.

25 Okay. And with that, we'll now move

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2 on to the consent agenda. Do any Commissioners wish  
3 to comment on or recuse from voting on any of the  
4 items in the consent agenda? I'll begin with  
5 Commissioner Burman.

6 COMMISSIONER BURMAN: Thank you so  
7 much. I will be voting no on one item. This is item  
8 376, the petition for approval financing pursuant to  
9 Public Service Law Section 69, the CHPE properties.  
10 The order states that the order is authorizing the  
11 Petitioners to enter into indebtedness of up to 6  
12 point -- \$6 billion dollars they --.

13 CHAIR CHRISTIAN: Commissioner Burman,  
14 I'm sorry. I'm going to have to interrupt you.  
15 We're having an audio quality issue. I want to take  
16 a moment and see if we can resolve. Commissioner  
17 Burman, would you mind repeating your statement from  
18 the beginning, please? There was interference on the  
19 line and I'm not sure if it was properly recorded.

20 COMMISSIONER BURMAN: Okay. Can you  
21 hear me now?

22 CHAIR CHRISTIAN: It's much clearer,  
23 yes. Would you mind starting from the top, please?

24 COMMISSIONER BURMAN: Okay.

25 CHAIR CHRISTIAN: Thank you.

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2 COMMISSIONER BURMAN: Sure. So item  
3 376, which is the petition for approval of financing  
4 pursuant to Public Service Law Section 69, the CHPE  
5 properties. I'm going to be voting no, in the order  
6 the Commission authorizes petitioners to enter into  
7 indebtedness of up to \$6 billion, payable over more  
8 than 12 months.

9 Petitioners are also granted authority  
10 to modify without prior Commission approval, the  
11 identity of the financing entities, payment terms,  
12 and the amount financed, so long as it does not  
13 exceed \$6 billion. And this authorization  
14 supplements prior authorization to incur indebtedness  
15 of up to 4.5 billion as authorized in the February  
16 2022, order.

17 I'm going to be voting no. I think  
18 going from February to now and seeking this is  
19 concerning to me. And doing so -- being able to  
20 modify without prior permission approval. My -- this  
21 is consistent with my vote at the February 2022,  
22 order which raised concerns and I'm going to be  
23 voting no here as well. Thank you.

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

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2 COMMISSIONER ALESI: I have no  
3 comments. I'll be supporting the consent agenda.

4 CHAIR CHRISTIAN: Thank you.  
5 Commissioner Edwards?

6 COMMISSIONER EDWARDS: I do not have  
7 any comments.

8 CHAIR CHRISTIAN: Thank you.  
9 Commissioner Howard?

10 COMMISSIONER HOWARD: Yeah, I have  
11 comments on two items. First on item 263, the  
12 Section 70 and Section 83 case dealing with Fortistar  
13 Digihost in North Tonawanda, the transfer of assets  
14 to a new owner. In a similar vote, one of my first  
15 votes that I cast here in the Commission was for a  
16 similar Section 70 permit dealing with Greenwich  
17 Energy and Gates County.

18 At that time, I opined that I didn't  
19 necessarily think that using fossil based -- in this  
20 particular case, the old fossil based generation for  
21 crypto mining was, "a good play." Since that time, I  
22 haven't -- I haven't been dispelled of that.

23 But I did take a yes vote on that  
24 order, largely because the statute is pretty clear,  
25 you know, that our mechanisms by which, particularly

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2 under the Wallkill Order are very clear and well-  
3 established.

4 There are those that would like to see  
5 this Commission use this particular case and anyone  
6 subsequent to that, to opine and create new  
7 regulation dealing with the end use of electricity by  
8 any given entity for a particular purpose, in this  
9 case crypto mining.

10 Again, the statute as currently  
11 written and interpreted does not allow that. And I  
12 believe, I know if we denied this petition, we'd have  
13 significant litigatory risks where we would not  
14 prevail with this not -- by not granting this  
15 petition.

16 That being said, I'm still -- we've  
17 had a long time for the State to come up with  
18 comprehensive policies dealing with crypto mining  
19 writ large whether the electricity is coming from a  
20 specific machine, you know, or off the grid either  
21 way. And in terms of -- of what it's benefits may be  
22 to the State in any individual community.

23 But we have not done that, you know,  
24 neither the legislature nor the executive have given  
25 clear direction on that. And it is -- puts this



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2 Commission in an -- now an untenable position of  
3 saying, well, you guys should make the judgment now,  
4 because you have this petition before you.

5 But our job is to follow the law as  
6 written. And this current petition, I do believe  
7 does do that. That being said, the issue of what  
8 type of energy for what activity should be allowed in  
9 New York State going forward in relation to the  
10 Climate Act or any other purpose is a very slippery  
11 slope.

12 Well, we may not like crypto mining,  
13 but we may like cannabis cultivation. We don't like  
14 crypto mining, but we do like chips fab --  
15 manufacturer. So any one of those sorts of things  
16 comes to a judgment as not been made yet.

17 And I believe that's a very difficult  
18 and slippery slope. And to one thing and in terms of  
19 a comparative analysis, as much as I may find the  
20 idea of using old fossil plants or even semi-new  
21 fossil plants for using to use for crypto energy. I  
22 am particularly distressed in how in Northern New  
23 York, how we use the cleanest, most benign  
24 electricity coming off the grid.

25 And because of its current

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2 constraints, transmission constraints, some of the  
3 most expense -- least expensive electricity in the  
4 State that funds crypto mining. I do not believe we  
5 get a good bang for that buck at all.

6 And again, I find that the use of  
7 potentially the most benign electricity for this  
8 purpose, more galling than -- than not. But I will  
9 be supporting this. But I do look for some direction  
10 from somewhere in the legislature, executive, or  
11 other regulatory agencies on a defined policy on what  
12 end use of electricity or any other energy source  
13 will be acceptable or unacceptable going forward as  
14 it relates to the Climate Leadership Protection Act.

15 I -- I know this vote will disappoint  
16 some who have written me, and particularly in light  
17 of my previous comments, but I think counsel has, you  
18 know, certainly to my satisfaction, said that this is  
19 -- this is a pretty straightforward and black letter  
20 law order. So with that, I will be voting yes.

21 I will be voting no on Item, pardon  
22 me, 6 -- 376 regarding the CHPE project, two  
23 different orders, one modifying their Article 7 and  
24 then a thing, another order dealing with their  
25 finances. Again, as I said, during our Tier 4 vote,

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2 there's nothing inherently objectionable. And I find  
3 many things actually really positive by the concept  
4 of building and construction of the CHPE line.

5 When I have a problem with again,  
6 consistently, is how we pay for it and making all  
7 ratepayers pay and sort of abandoning the broad and  
8 long held concept of, you know, beneficiaries pay.  
9 So to that extent, I am -- will be -- not supporting  
10 this going forward.

11 Additionally, I'd like to remind our  
12 colleagues in the city of New York who promised this  
13 Commission very clear and timely Local Law 97  
14 requirements when it comes to purchasing recs, in  
15 this case, Tier 4 recs that will -- it has the  
16 potential to greatly, you know, isolate customers  
17 Statewide from -- from unnecessarily bill increases.

18 But with that, Mr. Chairman, that --  
19 that is my only no vote and I'll be supporting the  
20 balance of the agenda.

21 CHAIR CHRISTIAN: Thank you,  
22 Commissioner. Commissioner Valesky?

23 COMMISSIONER VALESKY: Just one  
24 comment on item 376 with -- which both Commissioners  
25 Burman and Howard have already spoken, this is the

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2           CHPE item.  I did have concerns certainly at the time  
3           of the adoption of the Tier 4 order in February,  
4           which I articulated at that time I shared my  
5           colleagues concerns today.

6                   However, I do come to a different  
7           conclusion.  I did support that item in February and  
8           I will be supporting this item today.  Thank you.

9                   CHAIR CHRISTIAN:  Thank you.  And  
10           Commissioner Maggiore?

11                   COMMISSIONER MAGGIORE:  Thank you.  A  
12           couple of things.  I'm going to cast a no vote on  
13           263.  I am going to abstain on 374.  And I'm going to  
14           cast a yes vote on 376.  But I would like to explain  
15           my vote.  One of the concerns I had in evaluating  
16           this was, specifically whether the financing petition  
17           had any kind of impact on ratepayers and I'm  
18           satisfied that it does not.

19                   The other thing that I was looking at  
20           was, you know, as is already part of the public  
21           record, I have raised questions and some concerns  
22           about the CHPE project and some related matters in  
23           prior meetings.  But those concerns are ancillary to  
24           the item before us today.  So I don't really think  
25           that it's an appropriate moment to review some of

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2 those issues.

3 So just in terms of the items before  
4 us today, I'm going to vote yes on that. So no on  
5 263, abstain from 374. And then yes on everything  
6 else in the consent agenda. Thank you.

7 CHAIR CHRISTIAN: Thank you very much.  
8 Okay. So we'll now go to a call for a vote for the  
9 items on the consent agenda. My vote is in favor of  
10 the recommendations on the consent agenda.  
11 Commissioner Burman, how do you vote?

12 COMMISSIONER BURMAN: I vote yes on  
13 the consent agenda, except 376, I vote no.

14 CHAIR CHRISTIAN: Thank you.  
15 Commissioner Alesi?

16 COMMISSIONER ALESI: I vote yes on all  
17 items.

18 CHAIR CHRISTIAN: Thank you.  
19 Commissioner Edwards?

20 COMMISSIONER EDWARDS: I vote yes on  
21 all items.

22 CHAIR CHRISTIAN: Thank you.  
23 Commissioner Howard?

24 COMMISSIONER HOWARD: I'm voting  
25 supporting the consent agenda with the exception of

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2 item 376, where I will be a no.

3 CHAIR CHRISTIAN: Thank you.

4 Commissioner Valesky?

5 COMMISSIONER VALESKY: Yes, on all

6 items.

7 CHAIR CHRISTIAN: Thank you. And

8 Commissioner Maggiore?

9 COMMISSIONER MAGGIORE: Yes on all

10 items except for 263, which I'm voting no on, and 374

11 which I'm abstaining on. Everything else is a yes.

12 CHAIR CHRISTIAN: All right. Thank

13 you very much. With the votes in place, the items

14 are approved and the recommendations are adopted.

15 Thank you, everyone. Before we move on, I want to

16 note a few things. First, I want to note that for

17 stakeholders watching today, we will have our annual

18 presentation on utility winter readiness next month.

19 You've likely already heard about the

20 higher energy prices expected this winter, either

21 through your utilities or through the media in

22 general. During next month's session, the Department

23 will discuss the ongoing volatility in the global

24 commodity markets and provide a forecast on energy

25 prices for the coming winter season.

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2 To be clear, we are expecting higher  
3 energy prices this winter, higher than what we  
4 experienced this past winter. I know this is very  
5 concerning to households and businesses throughout  
6 the State. And it is very concerning to this  
7 Commission.

8 We've consistently encouraged  
9 utilities to have strong communications with their  
10 customers. But in times of increasing energy prices,  
11 like we find ourselves, these communications are even  
12 more important.

13 With advance notice of price  
14 increases, customers can take steps to prepare.  
15 Utilities have multiple communication channels that  
16 can be leveraged to directly reach their customers to  
17 promote various consumer protections. Protections  
18 such as bill payments assistance programs and energy  
19 use reductions programs.

20 Both of which are available to help  
21 customers struggling to pay heating and utility  
22 expenses. Last winter, I directed the utilities to  
23 enhance their communications with customers about the  
24 global commodity price volatility.

25 The utilities have continued those

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2           enhanced communications with customers throughout the  
3           summer, and will continue to do so, leading into this  
4           winter. My message to the utilities today is that  
5           this enhanced communications will likely need to  
6           continue for the long-term and possibly become the  
7           norm.

8                                I also want to emphasize that New York  
9           is not unique in this situation. The global  
10          commodity price increases are affecting markets  
11          worldwide. And to reinforce this point, they are  
12          largely driven by the combined impacts of the Russian  
13          invasion of Ukraine and the lingering supply demand  
14          imbalances caused by the pandemic.

15                               We here in New York will continue  
16          working on approaches to mitigate these cost impacts  
17          and take supportive actions to aid customers. The  
18          recent efforts of staff to implement low-income  
19          utility arrears program being one such example.  
20          Through this program, utilities have provided bill  
21          credits and other protections to more than 300,000 of  
22          our most vulnerable households in New York. And this  
23          is as of last month.

24                               The Energy Assistance Program Working  
25          Group will continue to do its work and we look



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2 forward to hearing what recommendations they will  
3 have to provide additional support for New Yorkers.  
4 This is incredibly important work given the extreme  
5 volatility we are seeing in the global markets.

6 And as I noted earlier, we will  
7 continue this discussion of winter readiness and  
8 price forecast in depth as a full Commission at the  
9 October session. So thank you for that. And with  
10 that, Madam Secretary, do we have any other items  
11 before us today?

12 SECRETARY PHILLIPS: There are no  
13 further items.

14 CHAIR CHRISTIAN: Thank you. And with  
15 that, I adjourn today's session. Thank you,  
16 everyone.

17 (The meeting concluded at 11:47 a.m.)  
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2 STATE OF NEW YORK

3 I, HANNAH ALLEN, do hereby certify that the foregoing was  
4 reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 1 hereof; that the  
6 foregoing typewritten transcription consisting of pages 1  
7 through 65, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 19th day of September, 2022.

11

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13 HANNAH ALLEN, Reporter

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