STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 14-M-0094 - Proceeding on Motion of the Commission to Consider a Clean Energy Fund.

CASE 18-M-0084 – In the Matter of a Comprehensive Energy Efficiency Initiative.

ORDER DIRECTING ENERGY EFFICIENCY AND BUILDING ELECTRIFICATION PROPOSALS

Issued and Effective: July 20, 2023

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on July 20, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 14-M-0094 - Proceeding on Motion of the Commission to Consider a Clean Energy Fund.

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(Issued and Effective July 20, 2023)

BY THE COMMISSION:

INTRODUCTION

The New Efficiency: New York (NE:NY) and Clean Energy Fund (CEF) portfolios are undergoing interim reviews, as required by the Public Service Commission's (Commission) Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 and Order Approving

Clean Energy Fund Modifications.[1] These reviews are intended to provide an opportunity to assess progress to date and consider modifications that will improve the management of the portfolios, increase the effectiveness of the programs, and ensure alignment with evolving State policies for future energy efficiency (EE) and building electrification (BE) programming.

The Commission's Order Initiating the New Efficiency: New York Interim Review and Clean Energy Fund Review directed Department of Public Service Staff (Staff) to file a report summarizing the performance of the EE/BE portions of the Utilities' and the New York State Energy Research and Development Authority's (NYSERDA) portfolios, to date, and posing questions to solicit input from parties to be considered as a component of the review.[2] On December 20, 2022, Staff filed the Energy Efficiency and Building Electrification Report (Staff

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[1] See Case 18-M-0084, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) (January 2020 NE:NY Order); see also Case 14-M-0094, et al., Order Approving Clean Energy Fund Modifications (issued September 9, 2021) (CEF Modifications Order).

[2] Cases 14-M-0094 and 18-M-0084, Order Initiating the New Efficiency: New York Interim Review and Clean Energy Fund Review (issued September 15, 2022) (Order Initiating NE:NY/CEF Review). The Utilities include Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E).

EE/BE Report).[3] The Commission received extensive public comments on the Staff EE/BE Report.

In this Order, following the public input on the questions outlined in the Staff EE/BE Report, the Commission establishes a Strategic Framework and provides other policy guidance and administrative modifications to guide the development and implementation of post-2025 ratepayer funded EE/BE portfolios to better align with the State's climate policy objectives, and directs the Utilities and NYSERDA to submit budget-bounded portfolio proposals within 90 days.

STAFF EE/BE REPORT

The Staff EE/BE Report covered four main areas of the NE:NY and CEF interim reviews: 1) the Non-Low- to Moderate-Income (Non-LMI) Electric and Gas Energy Efficiency portfolios administered by the Utilities; 2) the New York State Clean Heat program administered by the Utilities and associated NYSERDA activities; 3) NYSERDA's Market Development portfolio; and 4) the Statewide Low- to Moderate-Income (LMI) Portfolio jointly administered by the Utilities and NYSERDA. For each of these portfolios, the Staff EE/BE Report reviewed its performance through the second quarter of 2022, offered Staff's observations, and posed questions to solicit feedback to inform the direction of the portfolios in the remaining years of the NE:NY period and establish a new framework for the future EE/BE portfolios.

In addition to reviewing the four programmatic areas listed above, the Staff EE/BE Report highlighted seven cross-cutting issues related to the regulatory construct within which

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[3] Cases 14-M-0094 and 18-M-0084, Department of Public Service Staff Energy Efficiency and Building Electrification Report (filed December 20, 2022).

the portfolios operate. Staff's observations and questions across the portfolios, as well as those specific to each portfolio, are summarized below in the following sections.

Observations and Questions Across Portfolios

1. Adoption of a framework for assessing energy efficiency and building electrification measures

Staff recommended developing a framework to categorize potential programs and/or measures as strategic, neutral, or non-strategic according to their alignment with State policy objectives.[4] Staff proposed that such a framework may be useful in determining how best to focus ratepayer funding and sought input from stakeholders on the definitions of strategic, neutral, and non-strategic measures.

2. Delivering benefits to Disadvantaged Communities

Staff solicited input on approaches to meeting the Climate Leadership and Community Protection Act's (CLCPA) requirement that a minimum of 35 percent, and a goal of 40 percent, of benefits of clean energy and energy efficiency program spending accrue to Disadvantaged Communities. Staff requested comment on the strengths and weaknesses of existing EE and BE programs in providing benefits to Disadvantaged Communities and posed questions regarding program design and implementation and the implications of the CLCPA requirement for the establishment of portfolio budgets and targets.

3. Metrics used to assess portfolio performance

The primary metrics used to direct and assess NE:NY and NYSERDA's CEF Market Development programs and portfolios are

[4] Such a framework was initially suggested by the Energy Efficiency and Building Electrification Strategic Advisory Group (SAG), which was established to advise Staff on market-related issues as part of the NE:NY Performance Management and Improvement Process. See Matter 20-01201, Performance Management and Improvement Process.

annual megawatt hour (MWh) or Metric Million British Thermal Unit (MMBtu) savings and unit costs.[5] Staff questioned whether these metrics remain appropriate to drive performance of the portfolios as they evolve to meet expanded climate goals. Staff expressed concern that the historic metrics may not be adequate to evaluate and compare performance across different types of EE and BE initiatives. Staff also cautioned that continuing to emphasize unit cost reductions could inhibit the evolution of utility portfolios, and that it may be necessary to establish a new, higher unit cost baseline going forward. Staff's questions on this topic pertained to the number and types of metrics that could be introduced.

4. Budget and target time periods

Staff outlined the relative benefits and drawbacks of annual portfolio budgets and targets and longer-term, multi-year budgets and targets. Staff invited input on the optimal time period, or combination of time periods, for portfolio budgets and targets going forward.

5. Fuel neutrality

Pursuant to the Commission's Order Authorizing the Clean Energy Fund Framework, funding for NYSERDA's CEF initiatives is collected from electric customers only, and NYSERDA may pursue CEF objectives in a fuel-neutral manner.[6] In contrast, utility programs are funded through specific collections from either gas or electric ratepayers and the

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[5] The NYSERDA CEF Portfolio includes other "primary" metrics. However, MWh, MMBtu, and unit cost are generally relied upon to assess performance, particularly in the Staff EE/BE Report. See CEF Modifications Order, Appendix C (containing additional CEF metrics).

[6] Case 14-M-0094, et al., Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) (CEF Framework Order).

energy savings targets are established for their relevant fuel category, except for the statewide heat pump program (New York State Clean Heat).[7]

In the report, Staff observed that a fuel-neutral approach would be complicated for the Utilities, especially in areas where gas-only utilities operate and utility service territories overlap. Nonetheless, Staff maintains that there is a need for more integrated EE and BE programming that provides streamlined access to comprehensive energy solutions, and that the current fuel-specific regulatory framework may need to be modified to achieve this objective.

Staff posed several questions designed to elicit feedback on fuel neutrality, the role of gas utilities in building electrification efforts, and approaches to EE and BE programs in overlapping gas and electric utility service territories.

As an issue tangentially related to fuel neutrality, Staff also recommended addressing Con Edison's petition regarding energy efficiency programming for steam system customers in the context of the Interim Review.[8]

6. Earnings Adjustment Mechanisms

Staff raised several concerns about Earnings Adjustment Mechanisms (EAMs), which reward utility shareholders for a utility's focus on and extraordinary achievement of policy goals. Staff indicates that the Share-the-Savings structure of current EE and BE EAMs, which rewards cost savings, does not

[7] The Utilities' New York State Clean Heat program is funded by electric ratepayers with energy savings expressed in MMBtu.

[8] Case 18-M-0084, Petition of Consolidated Edison Company of New York, Inc. for Commission Authorization to Provide Energy Efficiency Incentives to Steam Customers and to Implement a Revenue Decoupling Mechanism (filed November 8, 2022) (Con Edison Steam EE Petition).

fully align with the current clean energy goals that rely upon utilities pursuing deeper, often more expensive, efficiency and electrification measures. More broadly, Staff expressed the view that it is inappropriate to ask ratepayers to bear additional costs to reward utility shareholders for a utility's engagement in activities that are already fully funded by ratepayers to attain a mandated goal. Staff proposed that negative revenue adjustments for failure to attain the required achievements, on the other hand, may be an appropriate mechanism for focusing the Utilities' efforts. Staff invited comment on whether and how EAMs or negative revenue adjustments should be applied.

7. The respective roles of NYSERDA and the Utilities

Staff called for a review of the division of roles and responsibilities between NYSERDA and the Utilities as administrators of EE and BE programs. In past orders, the Commission envisioned a complementary arrangement in which NYSERDA focuses on addressing barriers to clean energy adoption while utility programs focus on enabling service delivery to customers. Staff detailed its perception of the relative strengths, weaknesses, and capabilities of NYSERDA and the utilities as Program Administrators and solicited stakeholder feedback on these observations.

Specific Portfolio Observations and Questions

The Staff EE/BE Report reviewed the performance of the Non-LMI Electric and Gas Energy Efficiency portfolios administered by the Utilities, the New York State Clean Heat program administered by the Utilities and associated NYSERDA activities, NYSERDA's Market Development portfolio, and the Statewide LMI Portfolio jointly administered by the Utilities and NYSERDA. Staff made various observations and questions related to the performance and future of each portfolio, as summarized below.

1. Utility Electric and Gas Non-LMI Energy Efficiency Portfolio

The utility-administered Non-LMI electric and gas energy efficiency portfolios provide offerings to customers to encourage reduced energy consumption and the installation of energy efficient measures. The electric and gas utilities have budgets and targets authorized through 2025.[9]

a. Utility Electric Non-LMI Energy Efficiency Program Performance

Staff commended the Utilities for their strong performance within the framework established by the Commission, which, to date, has emphasized achievement of annual energy savings at the lowest cost. However, Staff believes that to fulfill State policy goals and keep pace with changes in the market, utility energy efficiency portfolios must transition toward programming that supports building electrification, envelope work, and more complex offerings like controls that can shift how energy is used within buildings.[10] Staff invited stakeholders to comment on the existing suite of utility electric Non-LMI energy efficiency programs and on changes to the regulatory framework that could drive the transition to more complex and comprehensive measures.

The Staff EE/BE Report pointed to lighting as an area requiring particular attention. Staff noted that the lighting market has changed dramatically, with high-efficiency lighting reaching a high level of market penetration and revised federal

[9] See Case 18-M-0084, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018) (December 2018 NE:NY Order); see also January 2020 NE:NY Order.

[10] In this Order, the terms shell, envelope, and electrification-ready are used interchangeably.

lighting efficiency standards adopted in 2022. While ratepayer-funded energy efficiency programs have been successful drivers of this transformation, Staff believes that incentive programs are no longer needed to promote efficient lighting. Staff invited comment on the role ratepayer-funded incentives should play in the residential lighting market, and whether that role should be different in the context of LMI programs or for customers in Disadvantaged Communities. On the commercial side, Staff asked stakeholders to comment on the need to revise aspects of the Commercial and Industrial Lighting Policy detailed in Appendix O of the New York State Technical Resources Manual.[11]

The Staff EE/BE Report identified three further program types that should be reassessed during the Interim Review: behavioral programs, specifically Home Energy Report programs; online marketplaces; and appliance recycling programs. While recognizing the modest success of these types of programs to date, Staff raised concerns about their continued efficacy amid evolving markets and federal efficiency standards and, in the case of Home Energy Report programs, their ability to achieve durable savings at a scale commensurate with State policy goals. Staff posed questions to stakeholders regarding the future of these types of programs.

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[11] New York Standard Approach for Estimating Energy Savings from Efficiency Programs – Residential, Multi-Family, and Commercial/Industrial, known as the Technical Resource Manuel (TRM). Available at: https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/72c23decff52920a85257f1100671bdd/$FILE/NYS%20TRM%20V10.pdf.

b. Utility Gas Non-LMI Energy Efficiency Program Performance

Staff observed that, in the January 2020 NE:NY Order, the Commission directed the Utilities to shift their gas energy efficiency portfolios to focus on measures like building envelope improvements that deliver the more substantial, lasting energy savings necessary to achieve the State's efficiency goals. Staff believes that this transition is not yet in evidence. Staff acknowledged that the Commission's focus on cost-effectiveness within the December 2018 and January 2020 NE:NY Orders may have played a role in limiting the Utilities' embrace of more innovative or expensive program offerings. However, Staff pointed out that most of the Utilities have been achieving savings at well below the unit costs authorized by the Commission, and therefore have room to adjust their portfolios to fund deeper, more expensive measures, even at their current levels of funding.

Staff requested stakeholder input on several categories of gas energy efficiency programs, asking if they should continue and, if so, how they should evolve to better support CLCPA goals and avoid free-ridership, wherein Program Administrators are claiming savings that would have been achieved regardless of the program intervention. Staff singled out, for comment, incentives for gas-fired space and water heating equipment and gas commercial cooking equipment. In the case of behavioral programs, which contributed a more significant share of gas portfolio savings than they did of electric portfolio savings, Staff questioned whether they should be discontinued altogether, or reinvented as a customer engagement or marketing tool, more fully integrated with other program offerings, and deployed to all utility customers. Staff also requested stakeholder input on how to support the shift towards building envelope improvements and mitigate current barriers to programs offering these types of deeper, more comprehensive measures.

2. New York State Clean Heat Program Performance

The January 2020 NE:NY Order initiated a strategy to advance the adoption of efficient electric heat pump systems for space and water heating in New York State. The Staff EE/BE Report reviewed the performance of the two components of this strategy, the NYS Clean Heat program administered by the Utilities, and the NYS Clean Heat Market Development Plan administered by NYSERDA.

a. Electric Utility NYS Clean Heat Program Activities

Staff's review of the utilities' NYS Clean Heat program performance revealed that the vast majority of projects incented through the program during the review period were residential part-load and full-load Air Source Heat Pump projects, while Ground Source Heat Pumps represented only three percent of energy savings achieved through the program. The majority of Air Source Heat Pump installations were for full-load heat pumps, but only 15 percent included decommissioning of the existing fossil fuel system. Based on these findings, Staff invited stakeholders to comment on whether the Commission should introduce budgets for each heat pump technology type to redress the imbalance between Air Source Heat Pump and Ground Source Heat Pump installations. Staff also questioned whether ratepayer-funded programs should continue to support projects that do not fully electrify buildings' space and water heating uses, and how the Clean Heat program might be structured to avoid outcomes not fully aligned with State policy objectives.

Staff observed that the NYS Clean Heat program is relatively new and elements of the program are still being adjusted. In February 2022, Con Edison filed a petition requesting supplemental funding to meet the extraordinary and unexpected demand for the Clean Heat program in its service territory, which the Commission addressed in August 2022.[12] Subsequently, in February 2023, Central Hudson filed a similar petition requesting additional funding, stating that its Clean Heat Program had experienced consistently high demand since it was launched in April 2020, which the Commission addressed in June 2023.[13] As a result of this high demand and speed at which these utilities have exhausted their authorized NE:NY Clean Heat program funds, the NYS Clean Heat Joint Management Committee implemented changes to incentive levels and other program modifications that must continue to be monitored and refined. Stakeholders responding to Con Edison's petition raised further issues that will be contemplated in this review, including Clean Heat funding allocations between different building types, program specifications for large and multifamily building projects, and measures to facilitate program uptake for LMI customers. The Staff EE/BE Report noted some stakeholders have also suggested providing incentives for electrical panel and other electric service upgrades necessary for the proper installation and operation of a heat pump system. Staff posed questions for comment related to these and other issues related to the scope and structure of the NYS Clean Heat program.

b. NYSERDA NYS Clean Heat Program Activities

The Staff EE/BE Report reviewed the activities undertaken by NYSERDA as part of the NYS Clean Heat Market Development Plan, which are intended to complement the Utilities' heat pump programs by addressing market barriers and

[12] Case 18-M-0084, Order Approving Funding for Clean Heat Program (issued August 11, 2022).

[13] Case 18-M-0084, Order Approving Funding for Clean Heat Program (issued June 23, 2023).

needs. Staff observed that this collaborative model of program administration is both valuable and challenging. As evidence of the challenges of collaboration, Staff pointed to the dramatic variation in market response between different utility service territories, confusion regarding whether projects can receive incentives through both utility and NYSERDA programs, and issues with data-sharing between NYSERDA and the Utilities. Staff stated that progress has been made in these areas, but that more is needed to gain the full benefits of the collaborative model envisioned by the Commission. Staff invited stakeholders to comment on this collaborative arrangement and refinements to improve it. Staff also sought comment on workforce issues related to building electrification, asking stakeholders to identify workforce development and training needs that are not being met by current programs.

3. NYSERDA Non-LMI Market Development Portfolio Performance

The Staff EE/BE Report reviewed the performance of the energy efficiency and building electrification elements of NYSERDA's Market Development Portfolio. This portfolio is intended to complement utility offerings by addressing market gaps and non-monetary barriers to efficiency and electrification.

Staff's questions to stakeholders focused on the complementary nature of NYSERDA and utility programs and whether the Non-LMI Market Development portfolio takes advantage of NYSERDA's relative strengths as a Program Administrator. Staff requested stakeholder comment on in-field experiences demonstrating the complementarity of NYSERDA market development activities and utility programs related to energy efficiency or building electrification, including challenges to complementary operation. Staff also asked stakeholders to consider whether, given the nature of NYSERDA's market development activities, there are more appropriate performance targets than MWh and MMBtu savings that should be imposed to track performance and the impacts of these investments.

4. Statewide LMI Portfolio Performance

The Staff EE/BE Report presented the current state of the LMI portfolio and described the December 2018 and January 2020 NE:NY Orders, which instituted major changes in the administration of LMI energy efficiency programming. The Commission required that 20 percent of the Utilities' incremental funding authorized in those Orders be allocated to LMI programs. The Commission also ordered the development of a single platform for LMI energy efficiency program administration, the Statewide LMI Portfolio. This single portfolio represented a transition for NYSERDA, which had operated its LMI programs independently, as well as for the Utilities, most of which had not previously administered targeted LMI programs. Collectively, the Statewide LMI Portfolio represents over $1 billion in ratepayer funding through 2025.

In accordance with the aforementioned Commission Orders, NYSERDA and the Utilities formed an LMI Joint Management Committee (LMI JMC) and developed a Statewide LMI Portfolio of energy efficiency and building electrification programs for LMI customers, described in a jointly filed Statewide LMI Portfolio Implementation Plan.[14] The Statewide LMI Implementation Plan, filed in 2020, updated in 2022, and refiled in 2023, presents the portfolio's overall goals, implementation strategies, and individual and collective budgets and energy savings performance

[14] Statewide Low-to-Moderate Plans are filed within Case 18-M-0084. The Revised Version 3 of the Plan was filed on June 28, 2023.

targets, as well as other qualitative metrics for gauging impacts.

In the CEF Modifications Order, the Commission raised concerns about the level of progress demonstrated by the LMI Statewide Portfolio and identified NYSERDA and utility coordination as a programmatic area requiring strategic refinement. The CEF Modifications Order directed the institution of an LMI JMC Executive Council to help drive progress with the development and implementation of enhanced offerings necessary to serve the needs of the LMI market segment.

In its review of the Statewide LMI Portfolio, Staff relayed that Program Administrators had expressed concern about their ability to deliver the LMI energy savings ordered by the Commission for the LMI budgets authorized. Staff believes this contributed to delays in the delivery of services to LMI households by driving Program Administrators to seek less expensive approaches to the achievement of savings, which sometimes ran counter to the delivery of substantive services. Staff observed that current LMI budgets and targets were based, in part, on NYSERDA's historic LMI portfolio performance, as well as informed by the deliberations that led to the January 2020 NE:NY Order. Staff stated that while historic statewide performance data serves as a useful data point, the Commission should revisit the assumptions used to calculate appropriate unit costs for the Statewide LMI Portfolio.

While Staff affirmed the need to revisit unit costs, it also observed that Program Administrators have not aggressively sought opportunities to achieve the economies of scale enabled by a streamlined, statewide program design that leverages the unique strengths of each administrator. Rather, in Staff's view, utility Program Administrators appear to have privileged the coordination of program activities within their own energy efficiency portfolios (e.g., between non-LMI and LMI portfolios) at the expense of the development and delivery of a more streamlined Statewide LMI Portfolio at the lowest cost to ratepayers.

The Staff EE/BE Report noted a number of milestones achieved by the Statewide LMI Portfolio during the period under review. These include: 1) the launch of the NY Energy Advisor website, which provides streamlined access to information on LMI initiatives and services; 2) the launch of the Affordable Multifamily Energy Efficiency Program (AMEEP), a coordinated statewide program providing comprehensive services to affordable multifamily building owners; and 3) multi-year partnerships between NYSERDA and NYS Homes and Community Renewal and NYC Housing Preservation Department.

On the whole, however, Staff emphasized the underwhelming performance of the Statewide LMI Portfolio. Staff described this performance as unacceptable, especially during this time of heightened concerns regarding utility arrearages and energy affordability and stated that the significant underspending of the dedicated LMI funding intended to help New York’s most vulnerable customers must be addressed.

In Staff’s view, some of the primary factors contributing to the portfolio’s slow progress stemmed from difficulties inherent in the statewide, collaborative approach envisioned by the Commission. The Commission’s decision to require the Utilities and NYSERDA to work collaboratively to develop and implement the Statewide LMI Portfolio was based on the objectives to offer consistent services to LMI customers throughout the State while allowing some level of differentiation to meet regional needs, and to effectuate economies of scale and improve services to the LMI sector by utilizing each administrator's strengths in delivery. Staff observed that, in practice, the Statewide approach has struggled to deploy greater services to the LMI sector while requiring a disproportionate level of administrative resources on the part of the Program Administrators. In particular, Staff pointed to difficulties with the structure of the LMI JMC and noted that it was not organized to effectively resolve issues in a timely manner.

Staff sought insight from stakeholders on the barriers that have impeded progress in the deployment of the Statewide LMI Portfolio and the expected scaling of services to the LMI sector. Staff invited stakeholders to comment on whether the Statewide framework for LMI programming should continue; what could be done differently within the Statewide framework to improve performance and delivery of services to LMI customers; and what alternative approaches the Commission might take. Staff sought, in particular, comments on whether individual Program Administrator budgets and targets are incompatible with the Statewide approach. Staff posed further questions related to the unique strengths of the electric utilities, gas utilities, and NYSERDA as LMI Program Administrators. Finally, Staff asked commenters to identify any services or market segments not adequately addressed by the LMI Portfolio, as currently administered.

PUBLIC NOTICE AND COMMENT

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making was published in the State Register on January 4, 2023 [SAPA No. 18-M-0084SP7]. The time for submission of comments pursuant to the SAPA notice expired on March 6, 2023. Moreover, the Secretary to the Commission (Secretary) issued a Notice Soliciting Comment on January 9, 2023, seeking comments by March 6, 2023. The Secretary subsequently extended the comment deadline until March 27, 2023, pursuant to the Notice Extending Comment period that was issued on February 15, 2023.

In response to the above notices, the Commission received approximately 70 sets of comments. These comments are summarized and addressed below within the relevant sections of the Discussion.

LEGAL AUTHORITY

The Commission has the responsibility and authority under the Public Service Law (PSL) to ensure that utilities carry out their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.[15] Pursuant to the State Energy Law, the Commission is required to consider actions to effectuate State energy policy and the New York State Energy Plan,[16] which includes increased energy efficiency as a major contributor to New York's energy future. In fulfilling the mandates of the PSL and the State Energy Law, the Commission has directed the development and implementation of a number of programs to increase the deployment of energy efficiency resources in New York State, including NE:NY and the CEF. The activities directed and authorized in this Order will continue and build upon the progress made through those programs. Furthermore, these actions are in accordance with the CLCPA, which specifically authorizes the Commission, as well as other state agencies, to take actions to contribute to achieving the statewide greenhouse gas emission limits.

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[15] PSL §5(2); see also PSL §66(3).

[16] State Energy Law §§3-103 and 6-104.

DISCUSSION

The Commission finds that the Staff EE/BE Report sufficiently summarized the performance of the EE/BE portfolios and identified several areas requiring modifications to further align these portfolios with the State's climate objectives. The numerous questions posed to stakeholders and the robust input received have informed the actions taken in this Order to provide overall policy guidance and direction for the receipt of proposals from the Program Administrators for the future EE/BE portfolios.

In the January 2020 NE:NY Order, NYSERDA was directed to conduct a comprehensive statewide potential study (referred to herein as the Statewide EE/BE Potential Study or Study) to inform the design and planning of future State- and utility-administered EE initiatives within a timeframe that allowed for consideration of results in the Interim Review process.[17] The Study scope identified two objectives: 1) to identify and explore EE and BE potential opportunities in New York State's buildings sector statewide; and 2) to inform the design and planning of EE and BE interventions.[18] Although the Study scope purposely did not include estimating program potential that a prospective EE program could attain, the Study's findings are

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[17] NYSERDA was directed to consult with Staff, the New York State investor-owned utilities, the Long Island Power Authority, and the New York Power Authority in conducting the study.

[18] Case 18-M-0084, Assessment of Energy Efficiency and Electrification Potential in New York State Residential and Commercial Buildings, April 2023 (filed April 10, 2023).

informative in our development of guidance for the future EE/BE portfolios.[19]

In summary, the results of the Statewide EE/BE Potential Study indicate that significant EE and BE potential exists and there is noteworthy potential customer site savings for NYS residents. According to the Study, EE measures in New York hold the potential to drive significant energy savings above federal standards, ranging from a 9-12 percent reduction in 2030 estimated site energy sales from measures installed in 2023-2030. With BE, New York can accelerate impacts, resulting in an additional three to five percent savings potential.[20]

The Study also included numerous key findings, several of which directly support the Strategic Framework discussed herein, including:

- To drive significant savings above federal standards, EE incentive programs must transition away from lighting and towards deeper savings measures like building shell and space heating;
- In single-family homes, adoption of heat pumps and shell upgrades is responsive to incentives;
- The commercial sector is responsive to electrification incentives but sees minimal uptake of shell measures;
- In commercial buildings, Heating, Ventilation, and Air Conditioning controls and distribution improvement measures offer significant potential for heating and cooling energy savings. These EE measures are typically low-cost, mature,

[19] Program potential for programs offered by utilities and statewide initiatives would require a more detailed examination of planning for incentive levels, the possible eligible measures mix, and marketing and administration expenditures.

[20] The Study calculated impacts for three levels of potential: 1) technical; 2) economic; and 3) achievable scenarios.

and offer both heating and cooling savings; as a result, additional incentives do not significantly increase their adoption. An exception is that certain non-thermostat Heating, Ventilation, and Air Conditioning controls (for example, variable speed drives and economizers) do see higher savings with incentives; and

- EE and electrification have the potential to contribute strongly to NYS economy-wide climate goals.

In their comments, Efficiency and Electrification Advocates (EEA) (including Natural Resources Defense Council, the Regional Plan Association, Association for Energy Affordability, Urban Green Council, and New Yorkers for Clean Power) call attention to the Statewide EE/BE Potential Study, describing the need to scale EE and electrification targets, and appropriately adjust budgets, to help the State meet its energy system needs and carbon reduction goals. Specifically, EEA recommends that the Commission adopt a process that either utilizes 1) a potential model, which forecasts adoption to determine feasible programmatic goals for cost-effective procurement, or 2) an integrated resource plan, a co-optimization model of all resources a utility should acquire to meet future energy needs and policy goals. Recognizing the complexity of the integrated resource plan, EEA states that the Commission should use the potential method for the remainder of the current NE:NY Program term and scale the NE:NY Program targets consistent with the pathways and strategies identified in the Scoping Plan and the results of the Statewide EE/BE Potential Study.[21]

In response to EEA's comments to utilize a potential model to establish budgets and targets commensurate with CLCPA goals, as discussed below we find that ratepayer funded programs cannot be solely responsible for the attainment of these objectives. However, the Commission finds the Study results provide valuable information to inform the Commission's deliberation and support the continued shift in focus of EE/BE Portfolios to align with CLCPA and other current policy goals.[22]

Policy Context

The CLCPA, signed into law in July 2019, sets nation-leading climate and energy goals in the form of greenhouse gas (GHG) emissions reductions targets and standards to ensure that the benefits of clean energy investments directly serve Disadvantaged Communities in the State, which are disproportionately impacted by environmental pollution and the effects of climate change. The CLCPA established specific targets designed to achieve carbon neutrality in all sectors of

[21] EEA also notes that the Study, as initially filed in February 2023, lacked the economic potential results and did not provide the detailed measure level inputs, assumptions, and results. NYSERDA filed an updated study report on April 10, 2023, which included results for EE and electrification economic potential and a technical methodology appendix with detailed files and a results workbook.

[22] The January 2020 NE:NY Order noted the Potential Study, or components thereof, may warrant interim updates, but shall be conducted no less than every four years. The filed Statewide EE/BE Potential Study identified several areas for future work.

the economy and zero emissions in the electrical demand system by 2040.[23]

The buildings sector represents the largest source of GHG emissions in New York State, accounting for more than a third of overall emissions.[24] These emissions derive largely from the on-site combustion of fossil fuels for space and water heating. Analysis performed by NYSERDA indicates that any strategy to achieve CLCPA emissions reduction targets will include a significant degree of electrification of building heating, water heating, and cooking equipment.[25] In past orders, the Commission has emphasized that the transition from fossil fuels for use in New York's building stock must be undertaken carefully to ensure the continuation of safe and reliable utility service. As this transition proceeds, the State's EE and BE programs will play an important role not only in reducing buildings-sector emissions, but also in managing demand on the electric system.

The CLCPA also required the Commission to design programs in a manner to provide substantial benefits for Disadvantaged Communities, including LMI customers, at a reasonable cost while ensuring safe and reliable electric

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[23] In addition to the statewide mandate to reduce GHG emissions by at least 40 percent from 1990 levels by 2030 and by at least 85 percent from 1990 levels by 2050, the CLCPA also established electric sector-specific mandates. Among these is the directive for the Commission to establish a clean energy program under which, by 2030, the State's jurisdictional load serving entities procure at least 70 percent of the State's electric load from renewable energy resources, and, by 2040, the statewide electrical demand system is zero emissions.

[24] NYS DEC 2021 Statewide Greenhouse Gas Emissions Report, found at: https://www.dec.ny.gov/energy/99223.html#Process.

[25] New York State Climate Action Council Scoping Plan, Appendix G: Integration Analysis Technical Supplement, found at: https://climate.ny.gov/Resources/scoping-plan.

service.[26] Specifically, with regard to Disadvantaged Communities and LMI customers, the CLCPA requires, to the extent practicable, the Commission to: 1) direct available programmatic resources in such a manner that Disadvantaged Communities receive a target of 40 percent, with no less than 35 percent, of the overall benefits of spending on clean energy and energy efficiency programs, projects or investments;[27] 2) establish mechanisms, as part of a goal of achieving 185 trillion British thermal units of end-use energy savings below the 2025 energy-use forecast, that ensure, where practicable, that at least 20 percent of investments in residential energy efficiency, including multi-family housing, are invested in a manner that will benefit Disadvantaged Communities, including LMI consumers;[28] and 3) require NYSERDA and the Investor Owned Utilities to develop and report metrics for energy savings and clean energy market penetration in the LMI market and in Disadvantaged Communities and to post such information on NYSERDA's website.[29]

The CLCPA defined the concept of Disadvantaged Communities as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households."[30] The CLCPA provided a process through which a Climate Justice Working Group would establish specific criteria for identifying

[26] PSL §66-p(7).

[27] Environmental Conservation Law (ECL) §75-0117.

[28] PSL §66-p(6).

[29] PSL §66-p(7)(c).

[30] ECL §75-0101(5).

Disadvantaged Communities.[31] The Climate Justice Working Group finalized the initial set of Disadvantaged Communities criteria in March 2023.[32]

With specific reference to ensuring that a minimum of 35 percent, and a goal of 40 percent, of the benefits of EE/BE portfolio spending accrue to Disadvantaged Communities, the Commission notes the work Staff is conducting with Program Administrators to establish appropriate tracking mechanisms to enable the level of reporting necessary.[33] To ensure accurate reporting, the Commission will require Program Administrators to have systems in place that will geo-code all projects receiving place-based incentives through the EE/BE programs.[34] In consultation with Staff, NYSERDA and the Utilities shall provide an annual report on investments and benefits in Disadvantaged Communities. The initial Disadvantaged Communities report will include investments that have been made since the enactment of the CLCPA, beginning January 1, 2020, to track progress towards meeting the requirement of 35 percent and goal of 40 percent of

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[31] ECL §75-0111.

[32] Climate Justice Working Group, Disadvantaged Communities Criteria (March 27, 2023), available at: https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria.

[33] Given the Disadvantaged Communities provisions are broader than programs under the purview of the Commission, Staff is working with an interagency team (NYSERDA, Department of Environmental Conservation (DEC), New York Power Authority, and the Long Island Power Authority) to develop consistent approaches to the Disadvantaged Communities tracking and reporting.

[34] Geo-coding shall be conducted using the 2010 census information, available at: https://data.ny.gov/Energy-Environment/Final-Disadvantaged-Communities-DAC-2023/2e6c-s6fp. To the extent the source material is updated, Staff is directed to update relevant guidance documents to reflect this information.

clean energy and energy efficiency investments benefitting Disadvantaged Communities, no later than December 31, 2023. Following the initial report, reporting will commence annually, and align with New York State reporting on Disadvantaged Communities investments and benefits.

Several commenters, including the City of New York (the City), Rewiring America, Renewable Heat Now, Bright Power, Franklin Energy, and Sealed, Inc. (Bright Power, et al.), all noted that Non-LMI programs must also contribute to the delivery of benefits to Disadvantaged Communities. The Commission expressly agrees with this perspective and directs Program Administrators to ensure that benefits to Disadvantaged Communities also result from their Non-LMI programs. Further, although all Program Administrators are expected to deliver meaningful benefits to Disadvantaged Communities, the distribution of Disadvantaged Communities among each Program Administrator’s service territory may impact the opportunity for an individual Program Administrator to achieve the goal of 40 percent of benefits to Disadvantaged Communities. Therefore, for purposes of the EE/BE portfolios, the Commission will view compliance with this metric to be calculated across the total ratepayer funded LMI and Non-LMI EE/BE portfolios collectively for all Program Administrators, thereby allowing for optimization of the portfolios to increase the impact for Disadvantaged Communities. Staff is directed to develop an approach, in consultation with the Program Administrators, to determine compliance with the benefits to Disadvantaged Communities metric and to reflect this approach in relevant Staff issued guidance documents.

In the Disadvantaged Communities Criteria finalized on March 27, 2023, the Climate Justice Working Group included low-income households, defined as households with annual incomes at or below 60% of the State Median Income, for the direction and accounting of clean energy and EE investments and benefits by state agencies, authorities, and entities.[35] Given that the criteria recognized "low-income" households in this manner, the Commission will require more discrete tracking of program information related to budgets, expenditures, and benefits between "low" and "moderate" income customers. Staff is directed to work with Program Administrators to operationalize these directives, identify a reporting timeline that correlates with existing reporting schedules, and update any relevant guidance documents accordingly.

Energy Efficiency for All New York (EEFA NY), Bright Power, et al., Kinetic Communities Consulting (Kinetic), the New York Geothermal Energy Organization (NY-GEO), Recurve, Rewiring America, and Renewable Heat Now all expressed the viewpoint that higher incentives should be provided for projects in Disadvantaged Communities. Con Edison and O&R suggest that higher incentives are one lever that could be used, but counter that, in their experience, higher incentives are not always necessary to increase participation. In addition, Con Edison and O&R state that other tools could be employed to achieve this result, including different forms of marketing in Disadvantaged Communities, local (door-to-door) sales strategies, increased contractor bonuses for projects in Disadvantaged Communities, agreements with property owners of multiple properties in targeted areas, and expanded partnerships with community-based organizations. The Indicated Utilities do not recommend establishing a higher tier of incentives for projects in

[35] See New York State Climate Justice Working Group Disadvantaged Communities Criteria and List Technical Documentation, available at: https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria.

Disadvantaged Communities but believe utilities should have flexibility within their program design to meet the market's needs.[36] Multiple Intervenors (MI) takes no position as to whether higher incentives should be provided to projects within Disadvantaged Communities, but notes LMI projects currently receive higher incentives and questions whether Non-LMI projects should receive higher incentives – funded by all rate payers – merely because of geographic location. MI states its position is rooted in concern for the level of bill impacts these and other programs have on customers and that programs that result in greater costs than benefits are contrary to the public interest, irrespective of which customers may be targeted by such programs. MI further states that customers' ability to fund ever-increasing program costs is already at or very near (or beyond) the breaking point, and therefore pursuit of objectives other than maximizing the cost-effectiveness of EE and BE programs should lead to a relaxation of existing targets. Con Edison/O&R state that without additional funding, the ability for Program Administrators to meet energy savings goals and Disadvantaged Communities participation goals may be in conflict.

The Alliance for Clean Energy New York and Advanced Energy United (ACE-NY/AEU), the Urban Homesteading Assistance Board (UHAB), Comrie Enterprises, LLC, and Public Utility Law Project (PULP) all offer ideas on how to make program offerings more impactful in Disadvantaged Communities, including simplifying program processes and seeking diversity of contractors within a program, including minimizing language barriers as a key strategy that should be pursued. NYSERDA references additional insights on the strengths and weaknesses

[36] The Indicated Utilities include Central Hudson, KEDLI, KEDNY, NFG, NYSEG, Niagara Mohawk, and RG&E.

of current approaches that can be gleaned from the 2021 New York State Disadvantaged Communities Barriers and Opportunities Report.[37]

Lastly, EEFA NY, Kinetic, and Span, Inc. (SPAN) all discuss the need for additional funding to address additional work in Disadvantaged Communities, including health and safety issues and electric panel upgrades.

The Commission notes that the requirements of the CLCPA necessitate that we look at every facet of the programs to ensure the provision of meaningful benefits to Disadvantaged Communities. Higher incentives may be warranted but are certainly not the only modifications to programs that should be assessed. The Commission takes note of comments made by PULP that recognize many positive steps taken by the various Program Administrators to provide program information in multiple languages. However, the comments reveal that there is room to improve access to EE/BE programs for non-English speaking customers and customers who lack digital access.[38] Improvements in these areas should not wait until the post-2025 program period; therefore, Program Administrators are directed to conduct a comprehensive review of their EE/BE program information, in consultation with Staff, noting any deficiencies related to language access and a plan/timeline for addressing

[37] New York State Disadvantaged Communities Barriers and Opportunities Report, which NYSERDA published in coordination with the NYS Department of Environmental Conservation and the New York Power Authority in December 2021, can be found at https://climate.ny.gov/-/media/Project/Climate/Files/21-35-NY-Disadvantaged-Communities-Barriers-and-Opportunities-Report.pdf.

[38] Issues were raised related to websites that may provide access in multiple languages, but direct users to applications or other sites that are only in English, as well as links that were no longer functional.

within 60 days of the date of this Order. The Commission notes herein that, pursuant to PSL 44(4), that utilities are required, for counties where "at least twenty percent of the population regularly speak a language other than English according to the most recent federal census to offer, at the request of a residential customer residing in such a county, to prepare and send to such customer its messages on bills and notices in both English and the other language." Additionally, in recent rate cases, the Commission has approved greater language access initiatives by utilities though translation of "vital documents" on their websites and stand-alone documents, and through provision of simultaneous interpretation of phone or other verbal communications in a manner akin to that required of State agencies by New York's language access law. It is logical, therefore, that the CLCPA's requirements to comprehensively serve Disadvantaged Communities so that the populations of such areas are not "left behind" as the State moves towards in its CLCPA mandates, would also necessitate that those agencies with jurisdiction promote greater language access for Disadvantaged Communities' populations and New Yorkers that require language accommodations.

Program Administrators should also include within their proposals specific steps, beyond improved language access, they intend to take to deliver greater benefits to Disadvantaged Communities. Further, Staff is directed to work with the Program Administrators to develop a systematic review of the programs to highlight areas where improvements could be made, develop a course of action to implement improvements, and share this learning across Program Administrators.

<u>Strategic Framework</u>

The Staff EE/BE Report proposed a "Strategic Framework" to focus limited ratepayer funds in the most appropriate manner when considering the CLCPA and other current policies. The Staff EE/BE Report suggested definitions for Strategic, Neutral, and Non-Strategic programs and measures for this Strategic Framework, with a plan to grow and expand Strategic programs and measures and phase out those deemed Non-Strategic as early as practical. This Strategic Framework would impose a substantial evolution in programming from what is provided currently.

Commenters were supportive of the suggested Strategic Framework as presented, and the Staff definitions for Strategic, Neutral, and Non-Strategic, with some suggested clarifications.

Con Edison/O&R suggested Strategic measures should be those that generate savings which would not occur absent the program's intervention and suggested that Staff should develop a list of measures included in each category at the beginning of each three-year period. The Indicated Utilities generally agree with Con Edison/O&R though suggest the strategic category should also acknowledge the importance of early adopters. We agree with Con Edison/O&R's suggested clarification and will incorporate the explicit statement that any strategic measure or program must target measures and activities that would not occur without some sort of intervention into the definition of Strategic. This modification will explicitly ensure ratepayer funding is used most effectively to further the attainment of energy savings and electrification goals beyond that which is naturally occurring. As to the Indicated Utilities' suggested clarification, we agree that early adopters are important and are a part of the early stages of market transformation and new technology/measure adoption. The Commission, therefore, clarifies that a desired outcome of the Strategic framework is to avoid programs that provide incentives for measures with high rates of free-ridership; however, it is not the intent to exclude programs and measures for early adopters.[39]

NYSERDA suggested that housing-related strategic energy efficiency be further refined to ensure that if ratepayer support is provided to fully electrify a residential building's heating system, the building's shell/envelope should meet a level of energy performance that will keep occupants comfortable, support efficient electrification, and help minimize future system costs. NYSERDA also suggested clarifying that, to be strategic, measures must permanently reduce or eliminate on-site combustion of fossil fuels.

The City suggested an alternative definition of "beneficial electrification" for BE programs to qualify as strategic, which would require satisfying at least one of the following conditions, without adversely affecting the others, including: 1) saving consumers money over the long run; 2) enabling better grid management; 3) reducing negative environmental impacts; or 4) incorporating building envelope improvements, demand response, high coefficient of performance requirements at peak winter and summer conditions, or energy storage. While the Commission generally agrees with the intent of these recommended revisions to the definition of Strategic, such conditions may be difficult to assess at the outset of the implementation of the new framework. Therefore, at this time the Commission will not incorporate these additional conditions into the definition of Strategic, but will revisit whether such adjustments to the definition may be appropriate at a later date.

[39] Free-ridership refers to the portion of energy savings that participants would have achieved in the absence of the program through their own initiatives or expenditures.

MI recommends that greater focus be accorded to designing and then implementing programs as effectively and cost-efficiently as possible, rather than devoting material time and attention attempting to predefine what programs or measures may be deemed more “strategic” now. The Commission shares the same concerns as were raised in the Staff EE/BE Report regarding the impact of focusing on the most cost-effective measures resulting in the portfolios limiting their offerings. Specifically, this new framework is intended to best support the State’s significant climate goals and ensure a shift to more comprehensive, longer-lasting, and often more expensive projects and measures. Therefore, although the Commission agrees and maintains that Program Administrators must implement their portfolios effectively and cost-efficiently, it would be inconsistent with the intent of the new framework to apply a singular focus of “cost effectiveness” across the entire portfolio.

The Utility Intervention Unit (UIU) suggests that projects that decrease customers’ overall utility costs should be prioritized. Rewiring America and others state that only measures or programs that permanently eliminate gas usage should be considered strategic. Again, the Commission acknowledges these comments and will revisit them in the future. However, at this time, the Commission will not reflect these additional criteria into the definition of Strategic. The Commission acknowledges the value of incorporating measures that will reduce overall natural gas and electricity usage into the Strategic Framework, which in-turn will reduce overall utility costs. The Commission recognizes the need to continue supporting measures and programs that will reduce fossil fuel usage in addition to supporting measures that permanently eliminate fossil fuel usage. Measures and programs that reduce fossil fuel usage are strategic in that they optimize efficiency and position those buildings, where full elimination of fossil fuel usage is not yet an option, for the future.

The Commission agrees that the Strategic Framework is useful for establishing priorities for ratepayer funding, and adopts the following definitions for Strategic, Non-Strategic, and Neutral, as direction for what is to be contained in Program Administrator proposals. "Strategic Measures/Programs" are measures and programs that: 1) permanently reduce and/or eliminate electricity or natural gas usage on an annual basis, which would not occur absent the program's intervention; 2) permanently reduce and/or eliminate electricity or natural gas usage on a peak-hour or peak-day basis, respectively (in areas of current or anticipated near-term supply constraints), which would not occur absent the program's intervention; 3) improve the building envelope resulting in near-term reduction in electricity or fossil fuel usage that will also serve to mitigate future winter peaking on the electric grid in the event the buildings heating system is electrified; or, 4) permanently reduce and/or eliminate on-site combustion of fossil fuel usage on an annual basis, through the installation of efficient space heating or hot water electrification, which would not occur absent the program's intervention.

"Non-Strategic Measures/Programs" are those that either: 1) jeopardize the advancement of Strategic energy efficiency and/or building electrification programs or measures; 2) increase the use of fossil fuels; 3) have an Effective Useful Life of six years or less; 4) do not promote conservation behaviors and result in use of more energy through increased operation of a measure; or 5) are naturally occurring energy efficiency that results from codes and standards, or through routine market adoption which typically occurs without targeted financing options, rebates, or incentives. Lastly, "Neutral Measures/Programs" are those that neither advance nor jeopardize Strategic programs or measures, but produce overall reductions in annual energy consumption and do not have any characteristics considered Non-Strategic.

As guidance for application of this Strategic Framework, the Commission directs that proposals for portfolios starting January 1, 2026, be based on the following composition: 1) a minimum of 85 percent of portfolio budgets dedicated to Strategic Measures/Programs – namely electrification and electrification-readiness (e.g., building envelope improvements); 2) no funding to Non-Strategic Measures/Programs, with possible exceptions in LMI portfolios if it can be demonstrated that those measures meaningfully advance energy affordability; and 3) up to 15 percent of budgets for Neutral Measures/Programs. These guidelines are to be applied discretely at the Non-LMI portfolio and LMI portfolio level. To aid in the transition to the Strategic Framework described herein, while not required, the Commission encourages Program Administrators to start shifting away from Non-Strategic Measures/Programs in advance of 2026, to the extent practicable.

The Staff EE/BE Report also raised significant concerns regarding the continuation of specific measures and program-types. Commenters offered various viewpoints with regard to these specific measures/programs, including recognizing that market adoption may no longer warrant incentives to support the continued adoption due to the presence of tangible bill reductions. As further direction on the Program Administrator proposals, the Commission explicitly prohibits the use of ratepayer funds for customer incentives after 2025 for the following measures:

1) Natural gas-fired equipment: No customer incentives for residential natural gas space heating or domestic hot water equipment, natural gas fireplaces, and other miscellaneous natural gas equipment, or natural gas commercial cooking equipment;
2) Lighting: Given increased federal standards and high levels of market adoption for efficient lighting has occurred, in part due to the decades-long support for lighting in EE programs, incentives for lamps/light sources should be eliminated, though advanced lighting controls may be allowed for non-residential projects when installed in conjunction with other strategic (e.g., electrification or weatherization) measures; and
3) Appliances: Electric plug-in appliances such as refrigerators, freezers, and any other residential or commercial equipment that is not permanently connected to the building. This is inclusive of recycling programs. Given the advancement of standards in this area, it is unnecessary to continue to support these measures with limited ratepayer funding.[40]

The Staff EE/BE Report raised concerns with regard to two additional programs offered by most, if not all, Program Administrators (i.e., Home Energy Reports and Marketplaces). With respect to Home Energy Reports, Staff suggested the elimination of Home Energy Reports as a stand-alone program that claims savings toward EE targets. Some commenters note Home Energy Report programs offer limited long-term (strategic) EE/BE savings potential and should evolve. Others support Home Energy

[40] As noted in the Strategic Framework Guidelines, exceptions may be considered for LMI programs where the Program Administrator can make a demonstration that the inclusion of these measures meaningfully advances energy affordability.

Reports as a low-cost approach to savings that can reach a broad range of customers and are useful as an engagement/outreach tool. The Commission agrees with the Staff recommendation and finds these reports may be continued through the normal course of utility business in providing information to all customers, which would require funding outside of the EE budgets, perhaps through customer outreach and engagement.

In relation to Marketplaces, the Commission finds that there is insufficient value in continuing to support the current marketplaces given the prevalence of residential lighting as the primary measure and the federal standard changes now in place. The Commission takes note of NYSERDA's pilot marketplace, tailored to LMI customers and including financing, as an interesting alternative that may provide additional value; however, given that it is just getting underway, data does not yet exist to fully assess this option.

The Indicated Utilities noted in their comments that customers turn to their utilities for information and support in reducing their energy use, and the online marketplaces serve as an important entry point for customer engagement. Further, Indicated Utilities, Enervee, Bright Power, et al., and Uplight, note the potential for NYS marketplaces to evolve beyond lighting to other DER-related equipment and provide the opportunity for customer enrollment in load modifying/demand response programs. MI questioned whether online marketplaces provide enough value to warrant continuation and note the products sold on online marketplaces are routinely available from other merchants that do not rely on financial recoveries from utility customers.

Given the lack of information to make a full determination at this time, the Commission directs any Program Administrator who plans to continue operating an online marketplace post-2025, to provide justification within their proposal for the continued support of the marketplace, addressing the concerns stated above and in compliance with the Strategic Framework.

Beyond specific measures/programs for which the Commission prohibits the use of ratepayer funds, the Commission provides the following additional guidance for the conduct of strategic building electrification programs. The Commission has a strong preference that ratepayer funds only support electrification combined with, or following, a certain level of insulation/air-sealing as it is in the public interest to mitigate future electric winter-peak. Commenters generally reinforce the importance of pursuing building weatherization measures in conjunction with electrification, but most recommend against requiring buildings to meet minimum envelope efficiency standards or complete weatherization measures before receiving electrification incentives. NYSERDA supports an "efficiency-first" approach for LMI buildings, where there is a risk that electrification without adequate shell upgrades will increase customers' utility bills. Many commenters point to the challenges of implementing strict prerequisites, which include determining the current level of envelope performance in an efficient and scalable manner, and the fact that building envelope contractors are not likely the same contractors who install heat pumps.

The Commission recognizes the challenges noted above and finds that any strict requirement for a minimum level of building envelope efficiency is premature. In the forthcoming proposals, Program Administrators should propose how to balance these challenges to ensure that ratepayer funds do not support electrification projects that risk high energy use and exacerbating winter peak demand, while continuing to build market momentum for efficient BE.

The Staff EE/BE Report also sought input regarding partial or hybrid electrification solutions. Most commenters support partial electrification in the interest that any heating or domestic hot water electrification is beneficial at this point of market development. NY-GEO and Rewiring America disagreed, calling for incentives only for full electrification. NYSERDA suggested tiered incentives to address partial electrification, while the City suggested incentives based on the reduction or elimination of gas usage.

The Commission considers that Strategic programs should not support part-load applications that simply result in incenting air conditioning. Proposals should identify their definition for “partial, supplemental, and/or hybrid” applications, subject to the guidance that any hybrid projects should be designed and installed with the heat pump as the primary heating source, and any fossil fuel system utilized as supplemental or for resilience, instead of the legacy fossil fuel system being the primary heating source.

Since 2020, the NYS Clean Heat program has served as New York’s primary BE program combining the market development activities of NYSERDA with customer incentives to buy down the cost of installing heat pumps provided by the Utilities. In the January 2020 NE:NY Order, the Commission recognized the practical necessity of focusing on residential customers in the early phase of the State’s heat pump program, but also recognized significant potential in the non-residential market and signaled its expectation that the program would evolve to support non-residential heat pump applications. Experience in the field has shown this has occurred in some areas of the State, and while this is a positive in terms of advancing BE, it can, and has, caused strain on the program's ability to serve the various sector needs without unduly impacting any one sector. For example, given current program design, a small number of larger commercial projects could utilize the majority of available funding and result in the need to significantly reduce incentive levels to maintain program operations or, ultimately, program closure. Therefore, the Commission concludes that there is value in establishing a core prescriptive heat pump program to serve residential/small commercial applications, while larger, more complex, applications should be addressed through a different programmatic design, process, and incentive structure, ideally embedded within other programs targeting these sectors. This would negate the possibility of larger projects being "over-incented" and/or utilizing a disproportionate amount of program funds. The Commission does recognize the value of the NYS Clean Heat branding as well as the statewide approach to avoid multiple program approaches that could be confusing to and not conducive to the development of this market. Therefore, Program Administrators are instructed to include within their proposals an approach that would retain the value of the statewide model while incorporating additional offers to better meet the needs of the larger/complex heating electrification projects.

Customer awareness and engagement is another important factor Program Administrators must consider as they design their EE/BE portfolios. While New York's Program Administrators have delivered relatively effective programs and results for years now, concerns persist about the rates of customer adoption and industry investments in EE/BE as hindrances to the achievement of New York's ambitious policy objectives. In part, this certainly reflects a lack of customer awareness and confidence, and thus underpins an ongoing need for customer outreach and education. In addition, programs and program delivery should be modified as to minimize friction, burden, and delay and to encourage customer and industry investments in EE/BE solutions in New York, while still protecting against improper use of public funds.

The Commission notes that the emphasis in the Strategic Framework on BE and building envelope improvements represents a significant evolution of New York's EE/BE programming, and also necessarily represents a significant departure from the current approach. The Commission expects Program Administrators to be mindful of this reality, and to make the most thoughtful possible proposals on how to deliver the new portfolios, programs, and measures. All Program Administrators have BE programs under way today, but the scale of achievement sought, both in this EE/BE proceeding and in the broader CLCPA objectives are more ambitious. This will likely require program design and execution that is different than today on such topics as streamlined project development, program processes that are conducive to customer uptake and contractor engagement, optimal and real-time clarity as to who is eligible for what incentives, and supportive engagement with market actors such as manufacturers and retailers. Best possible performance along these and similar lines is absolutely essential for the best achievement and economics for customers and ratepayers. Similarly, as Program Administrators transition away from measures now classified as Non-Strategic, they will need to ensure their proposals are similarly thoughtful.

Statewide LMI Portfolio

The Commission first considered the Statewide LMI Portfolio to achieve the important policy objectives of improving energy affordability and increasing access to clean energy solutions for the most vulnerable New Yorkers in the

December 2018 NE:NY Order, calling for a proposal from the Utilities and NYSERDA to develop an integrated portfolio of LMI programs. Ultimately, the Statewide LMI Portfolio, with coordination provided by the LMI JMC, was developed to increase the impact of ratepayer funds, reduce administrative burden, and improve customer experience. While the Staff EE/BE Report recognizes a number of milestones that the LMI JMC was able to effectuate during the performance period, the Commission must assess the performance of the Statewide LMI portfolio in terms of dollars invested in LMI projects and benefits delivered to LMI customers, which is ultimately the goal of the portfolio. From this view, the Staff EE/BE Report documents inferior performance to date.

For example, through June 2022 (i.e., 42 percent of the pro-rated time through the performance period), it would be expected that at least 42 percent of the authorized budgets and targets would be reached. However, as the Staff EE/BE Report identifies, no utility electric LMI programs have expended more than 27 percent of their funding, with only one of the six electric utilities (i.e., Con Edison) reporting savings greater than 42 percent.[41]

The Staff EE/BE Report details similar findings regarding the LMI gas EE portfolio's performance. Only one of the nine gas utilities (i.e., Con Edison) was close to 42 percent achievement of the savings target for the six-year period of 2020-2025 at 38 percent of the target achieved for the performance period, while no utility has expended more than 32 percent of its total authorized LMI gas energy efficiency portfolio budget.[42]

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[41] See Staff EE/BE Report, Table 21.

[42] See Staff EE/BE Report, Table 24.

As discussed in the Staff EE/BE Report, NYSERDA's LMI Portfolio delivers electric MWh, gas MMBtu and other fuel MMBtu savings all under a single, fuel-neutral budget. Therefore, the progress of NYSERDA's performance of electric and gas EE programs are combined when compared against financial progress. Comparatively, for the performance period through June 2022, NYSERDA expended 31 percent of its approved LMI Plan budget, while layering on the encumbrances, combined for 58 percent of its LMI approved budget.[43] Through this period, NYSERDA had acquired 20 percent of its electric efficiency; 14 percent of its gas efficiency; and 21 percent of its other fuel efficiency targets. On an acquired-only basis, NYSERDA's performance also appears as lagging; however, its commitments represent a significant portion of the anticipated 2025 acquired savings outcomes. Taking both acquired and committed savings into account, the portfolio has achieved 87 percent for electric; 49 percent for gas; and 76 percent for other fuels savings targets for the 2025 NYSERDA Statewide LMI portfolio. As noted in the Staff EE/BE Report, these figures are useful to identify, as they illustrate the upper bounds of the range of the LMI portfolio's achievements in each fuel-savings category for the performance period.[44]

The evidence noted above suggests that the current structure is not conducive to delivering the scale of services and benefits to LMI households that was envisioned in the January 2020 NE:NY Order. Staff describes a number of

[43] Until the CEF Modifications Order directed NYSERDA to convert the CEF targets to expenditure-based, NYSERDA had a ten-year commitment-based target set by the CEF Framework Order. Accordingly, it is appropriate to combine expenditures and encumbrances, as well as acquired and committed savings, when reviewing its performance through the performance period.

[44] See Staff EE/BE Report, p. 60.

compelling factors that they believe have contributed to the difficulty in advancing the Statewide LMI portfolio. Specifically, Staff concludes that the staffing resources required by the collective Program Administrators was not fully appreciated nor supported and that the assignment of individual Program Administrator budgets and targets within a Statewide Framework resulted in a focus on the attainment of individual targets over collective outcomes.

Several LMI Program Administrators acknowledge the inefficient administrative structure within their comments. NYSERDA opines that a statewide LMI framework with individual Program Administrator budgets and targets inhibits effective streamlining and scaling of program delivery, and disincentivizes focus on achievement of collective goals. NYSERDA continues, noting that individual targets for Program Administrators provides an incentive for administrators to focus on attainment of individual rather than collective objectives. Further, NYSERDA observes that the administrative burden of negotiating co-funding agreements further diminished the efficiency returns that could have materialized to target more participants or move more expeditiously towards program goals. Within its comments, Con Edison/O&R indicates that, in both Statewide portfolios, the current approach has redirected time, effort, and energy away from program implementation in areas where that focus is most needed, resulting in resource constraints.[45] Further, the Indicated Utilities note that, to facilitate the success of the LMI portfolio and to ensure utilities have operational input to Program Administrators' goals/targets, the priorities and operational approaches of

[45] Con Edison/O&R's comments related to the Joint Management Committee encompass both the LMI JMC as well as the NYS Clean Heat Joint Management Committee.

NYSERDA and the utilities need to be better aligned to facilitate easier coordination and decision making.

As Con Edison/O&R posit, the laudable goal of achieving statewide administrative efficiencies could be better achieved if the Commission were to establish more specific guidelines and expectations for the work of each Joint Management Committee, including specific deliverables and deadlines for each group. According to them, these groups should be focused on sharing lessons learned and best practices, identifying issues with implementation and eligibility, and addressing relevant stakeholder feedback.

As described earlier, the Commission must make the most strategic and efficient use of the ratepayer dollars authorized for these programs. This is not limited to the types of programs offered or measures incented, but also applies to the administrative model we adopt to deliver the programs that require human resources, which ultimately are fully supported by the ratepayer. The level of resources currently being allocated to the LMI Statewide portfolio relative to its performance is imbalanced and must be corrected.

With regard to whether the Statewide Framework should continue to be explored as a policy objective, and whether individual Program Administrator budgets and targets can effectively work within this framework, or if modifications should be made to the administrative model, parties offered a variety of viewpoints. United/ACE NY and Bright Power, et al. state that individual budgets and targets can be compatible with a statewide framework and offer the experience of the NYS Clean Heat program as an example in which this operates. The Indicated Utilities stated that considerable time and effort has been devoted to the LMI JMC to date, which has now overcome earlier barriers and is now successfully implementing the AMEEP effort for multifamily buildings. In addition, they stated their belief that improvements will continue to be made, including addressing regional differences and aligning reporting.

Public Utility Law Project of New York, Inc. (PULP) does not believe that it would be incompatible to impose individual Program Administrator budgets and targets within a statewide portfolio approach and therefore supports individualized budgets for each entity. However, PULP also states that it would consider supporting a re-structuring, or slightly alternative approach that leverages NYSERDA's unique strengths, recognizing, as stated in the Staff EE/BE Report, NYSERDA is the "only entity that has Statewide deployment potential which can provide consistency and standardization that may benefit and simplify administration and/or the development of markets."[46] Given that NYSERDA, as compared to the Utilities, was also better at meeting their budgeted targets, PULP suggests that NYSERDA could be directed to oversee and manage the activities and budgets related to the delivery of EE services of the Utilities.

Con Edison/O&R recommend specifically, as it relates to LMI programs, that utility targets and budgets for the one to four family sector be transferred to NYSERDA and that implementation of the multifamily program be divided between the upstate utilities and downstate utilities. The companies base this recommendation on the current structure which has resulted in utilities transferring budgets to NYSERDA to operate the one to four family EmPower program but retaining the targets for NYSERDA's achievement. As a result, according to Con Edison/O&R, the Utilities depend on NYSERDA's performance to

[46] PULP Comments, p. 18.

meet their goals, but do not control how those savings are achieved or at what cost. They further note NYSERDA's ability to leverage federal and taxpayer funding to operate the EmPower program and suggest that the Utilities should have a small budget available to continue to coordinate with NYSERDA to provide referrals and coordinate marketing and outreach.

As for the affordable multifamily market segment, Con Edison/O&R recommend implementation of the AMEEP should be split between the downstate market (i.e., Con Edison and KEDNY) and the upstate market (i.e., the remaining utilities). This approach follows the market realities, namely that the multifamily building stock in New York City and Westchester County varies significantly in its characteristics and contractor network than the multifamily building sector in the rest of the state, including differing needs due to building age, size, configuration, history of investment, rent regulation status and requirements, and weather. The companies argue that the utilities are best suited to serve affordable multifamily buildings downstate due to their strong customer relationships and experience deploying programs. Con Edison/O&R also suggest that smaller utilities' role in the multifamily program be re-evaluated as part of this transition. For example, O&R's budget can only serve a few small projects each year and it could easily serve this market through its custom Commercial & Industrial program, thereby reducing administrative expenses and effort.

NYSERDA agrees with the Staff EE/BE report that the current Statewide LMI framework is not working as intended, is inhibiting effective program delivery, increasing costs to ratepayers, and reducing customer value and benefits to this critical segment of the market. NYSERDA believes a revised approach that focuses on collective achievement of the portfolio and customer value is needed. NYSERDA further states that its ability to combine multiple funding sources, operate consistently statewide, and coordinate with other State entities delivering LMI services are unique strengths that could be better leveraged by taking on an increased leadership role in designing and delivering LMI programs.

This review is an opportune time to consider any adjustments necessary to better position the future ratepayer supported EE/BE programs for success. The Commission is particularly sensitive to the need to take decisive action to improve energy affordability and increase access to clean energy solutions for our most vulnerable customers through the clean energy transition. Therefore, considering the last five years of development and performance of the Statewide LMI Portfolio, we will take steps here to better align the administration of these critical initiatives to achieve the outcomes we seek.

The Commission agrees with those commenters who assert that the Statewide LMI Portfolio approach continues to be a sound public policy objective. The Commission also recognizes the significant opportunity that exists with the availability of federal funding through the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, which include significant provisions for income-based eligibility. This creates an opportunity to combine these sources of funding with ratepayer funding into a unified approach that provides more substantive services to LMI households in the most efficient manner for a unified approach. NYSERDA, as New York's State Energy Office,[47]

[47] Public Authorities Law, Article 8, Title 9, §1850.

is the designated recipient for much of this funding and is favorably positioned for this role.[48]

In addition, while the CEF's NY-Sun and NY Green Bank portfolios are not addressed in this Order, we seek to further increase the impact for LMI customers by improving the alignment between the administration of the Statewide LMI Portfolio and the CEF's NY-Sun Program and NY Green Bank portfolios. Further, the Commission notes the relevance of the Utility-administered Energy Affordability Program to the objective of ensuring delivery of benefits to low-income customers in alignment with the related objectives of the CLCPA, and also notes the opportunity to coordinate access to these EE/BE and solar programs with the Energy Affordability Program to provide more holistic reductions in the energy burden of low-income customers.[49]

Therefore, with this Order we will adopt modifications to the administration of the ratepayer funded LMI portfolio that differentiate the roles and responsibilities of the Program Administrators, improve collaboration across the Program Administrators, and set expectations for the role of Staff in the oversight of the Statewide LMI Portfolio. The Commission's new Strategic EE/BE framework places renewed focus on LMI customers and Disadvantaged Communities, and on providing resources and benefits to these communities and market segments.

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[48] The Inflation Reduction Act included funding to be allocated to State Energy Offices for the administration of the Home Owner Managing Energy Savings rebate program and High Efficiency Electric Home Rebate Act. NYSERDA will be the administrator for these federally funded programs in New York State.

[49] Case 14-M-0565, Energy Affordability for Low Income Utility Customers, Order Adopting Energy Affordability Policy Modifications and Directing Utility Filings (issued August 12, 2021).

As discussed further below, these modifications place responsibility for administering:

- LMI programs statewide for the one to four family home segment with NYSERDA;
- LMI programs upstate for the affordable multi-family segment with NYSERDA;[50]
- LMI programs downstate for the affordable multifamily segment with NYSERDA and the downstate utilities (Con Edison, KEDLI, KEDNY); and,
- LMI programs for affordable new construction segment with NYSERDA.

The Commission notes its strong interest in engaging the Long Island Power Authority so as to achieve the most effective coordination and best outcomes. To the extent practicable, the Commission encourages NYSERDA to coordinate its LMI activities with the Long Island Power Authority, in consultation with Staff, to further align programmatic offerings across overlapping jurisdictional service territories.

For the one to four family home market segment, NYSERDA currently administers a statewide program that incorporates several funding sources, effectively coordinates with other state programs, and includes a robust contractor network. To maintain consistency in the provision of services to this segment of the market and the economies of scale associated with a statewide model, NYSERDA will continue to serve as the lead Program Administrator for these buildings on a statewide basis. Budgets associated with this portfolio will be

[50] Affordable multifamily segment is defined as buildings with five or more units.

collected statewide from electric and gas ratepayers and provided directly to NYSERDA for administration.[51]

While NYSERDA will serve as the lead Program Administrator, the one to four family segment of the LMI sector cannot be served effectively without leveraging the unique strengths that the utilities possess. Utilities have customer insights and data that can be used to identify and prioritize customers for service, as well as to support efficient and timely program implementation and evaluation. Utilities can also use their points of contact with customers to conduct outreach and facilitate the enrollment of customers into these important programs. Some of these functions are a natural fit or outgrowth of existing utility functions and should not warrant incremental funding to support them, however the Commission will consider allowing up to three percent of the NYSERDA LMI budgets to be reserved for utility coordination activities. NYSERDA is directed to detail this approach within its LMI Proposal.

The affordable multifamily segment of the LMI sector is diverse in its composition, ownership, and regulatory status across the state, with barriers unique to these characteristics. With regard to the model best suited to effectively serve the affordable multifamily segment, the Commission is persuaded by comments noting these differences, in particular, between building characteristics of upstate and downstate affordable multifamily buildings and believes these should be considered in the administrative model. Further, the needs of this market segment require interventions that include project incentives,

[51] With natural gas customers contributing towards NYSERDA's one to four family LMI program offerings beginning in 2026, NYSERDA will extend those offerings to the KEDLI service territory at that time and KEDLI will no longer offer its one to four family LMI program after 2025.

technical assistance, and access to financing solutions. As such, the Commission seeks to establish administrative roles for affordable multifamily programs by region and by intervention to address the regional characteristics of the affordable multifamily segment.

The downstate utilities (Con Edison, KEDNY, and KEDLI) and NYSERDA will collectively serve the affordable multifamily sector. As evidenced by the performance of the AMEEP program to date, the Utilities have struggled to design a program that results in comprehensive work scopes for this building sector, with only one comprehensive project completed through 2022. The comprehensive pathway of AMEEP was designed to incorporate NYSERDA's technical assistance and services and the Program Administrators should continue to pursue this cooperative relationship. Further, NYSERDA's work to date in establishing models for incorporating clean energy upgrades within the affordable housing portfolios of the NYS Housing and Community Renewal and the NYC Housing Preservation Department through the provision of incentives and technical assistance to the housing agencies represents a transformative opportunity for affordable housing that needs to be further cultivated as part of the LMI Portfolio.[52] Additionally, as noted, NYSERDA should ensure and build upon synergies between projects being served by utilities and financing opportunities through offerings of the New York Green Bank. Therefore, the Commission believes NYSERDA and the downstate utilities working together to leverage each other's strengths, while eliminating any redundancy in program

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[52] Kinectic, the Association for Neighborhood & Housing Development (ANHD), and UHAB's joint comments noted favorably Con Edison's AMEEP program working with the NYC Housing Preservation Department to design an Integrated Physical Needs Assessment pilot to streamline the process to commit utility funding prior to loan closing.

offerings, may represent the best approach to serving the affordable multifamily market downstate.

NYSERDA and the downstate Utilities are directed to mutually agree upon an effective implementation model to meet the needs of the affordable multifamily segment by leveraging the strengths that they each possess. This includes considerations for both regulated housing as well as naturally occurring affordable housing. The design must address how affordable multifamily buildings can access technical assistance and incentives in a cohesive manner, how buildings that may need access to finance are made aware of finance offerings through the New York Green Bank and available federal subsidies, and how customers of Con Edison and downstate National Grid can receive holistic service through one offering. Plans for meeting these program design requirements and the manner in which the Program Administrators will work together shall be detailed in their respective LMI proposals.

NYSERDA will take over responsibility for serving the affordable multifamily segment in the upstate utility service territories. The Commission recognizes that the smaller utilities have pursued serving the affordable multifamily segment by leveraging their small business or Commercial & Industrial contractors to gain some operational efficiencies from their company’s perspectives. However, this approach results in variation in offerings available for affordable multifamily buildings across utility territories, which is counter to the intent of the Statewide LMI Portfolio, as we are seeking to provide consistency in available service for customers, regardless of location. This approach is also limited in that it does not recognize the need to address unique barriers faced by owners, managers, and tenants of affordable multifamily buildings, which require experience with this market segment to adequately design and implement the program. Further, for smaller utilities, the budgets available are split between two important sectors and, with the relative cost of these projects, a minimal amount of affordable multifamily projects can be supported.

As is the case today, NYSERDA will retain its role as the lead Program Administrator for Affordable New Construction programs serving affordable housing, as this market segment requires designing interventions based on code, and supporting the design and construction communities to build to increasingly higher performance through a market development approach, which NYSERDA is best positioned to deliver.

Finally, these structural changes are intended to minimize some of the consternation that appeared present within the deliberations and functions of the LMI JMC. However, the LMI JMC still plays an important role as a venue for collaboration, and we take this opportunity to provide further guidance on its purpose and functions. With the changes to the roles and responsibilities of the Program Administrators in the implementation of LMI programs, we expect that the LMI JMC will focus its collaborative efforts on those areas where there are interdependencies in the administration of programs, such as outreach and enrollment of customers in one to four family homes and the alignment of incentives with technical assistance and a cohesive approach to working with housing agencies in the affordable multifamily space. Further, the Commission expects Staff to play a more direct role in providing oversight to the LMI JMC and subsequent workstreams to ensure that the Program Administrators work effectively together in the advancement of the objectives of the Statewide LMI Portfolio.

Given the experience to date and the need to remain diligent in the effort to improve the delivery of services to

LMI customers, Staff is directed to assess the current form and function of the LMI JMC and to initiate adjustments necessary to improve the efficiency and effectiveness of the collaboration across Program Administrators. This work cannot wait until the new administrative structure takes effect in 2026 and should begin in earnest immediately and be in place to support the transition of the Statewide LMI Portfolio, as described herein. Further, Staff is expected to actively manage the Statewide LMI Portfolio to address challenges in implementation and to seek new ways to increase the impact of the ratepayer funded LMI programs. To aid in the management of the Statewide LMI Portfolio and to provide transparency to the public on the progress of the Statewide LMI Portfolio, Staff will be required to establish performance indicators for the Statewide LMI Portfolio and develop a process for effectively monitoring performance.

NYSERDA and Utility Roles

Prudent and efficient use of ratepayer funds is paramount in our deliberation on the future of ratepayer supported EE/BE programs. The overall level of funding, as articulated in the budget bounded approach described herein, is a critical component. However, other considerations are also necessary to remove redundancy and confusion in the marketplace and to take full advantage of the inherent relative strengths of the Program Administrators. The Staff EE/BE Report identified these relative strengths and sought comments on them.

Commenters agreed with the relative strengths as presented. The New York Energy Consumers Council (NYECC) noted their experience that utilities are also prone to moving at a slow pace when implementing various incentive programs, which becomes a weakness. Con Edison/O&R and the Indicated Utilities agree with the relative strengths, but note a few exceptions.

First, in Con Edison/O&R's view, utilities also possess strengths with regard to complex or comprehensive projects and maintaining relationships with community-based organizations. The Indicated Utilities offer evidence of the utilities' strengths by highlighting their ability to provide incentives for deep envelope and electrification upgrades through the NYS Clean Heat program and their implementation of the comprehensive pathway via AMEEP. Second, Con Edison/O&R take issue with Staff's characterization of utilities' risk aversion pointing out that the companies' success in implementing programs has come from their willingness to innovate and evolve program offerings to meet market needs, while efficiently and effectively investing customer dollars towards policy objectives. The Indicated Utilities posit that the utilities risk aversion is partially a product of the structure of the NE:NY portfolio and prioritization of managing impacts to ratepayers, including annual acquired savings targets and less flexibility to encumber funds on projects with little understanding of outcomes.

The Commission notes the programmatic features highlighted by the utilities as evidence of their strengths in providing support for more complex and comprehensive projects. However, reporting to date has shown very little, if any, uptake in these program offerings. This, combined with lighting having accounted for 68 percent of the utility electric Non-LMI savings for all sectors in 2021 does not demonstrate that this area is a relative strength.[53] The Commission does note the increase in deep savings measures within the Con Edison portfolio as an indication of progress being made in this area.

[53] Staff EE/BE Report, p. 23.

The Indicated Utilities argue that the framework within which they operate the EE/BE programs can lead to further risk aversion, while Con Edison/O&R argue they have been innovative, i.e., have taken risks, to successfully deliver programs. The Commission believes both viewpoints are instructive in developing the framework that will guide the future EE/BE portfolios. Experience has shown the level of risk aversion an individual Program Administrator may exhibit differs among and between Program Administrators and may be influenced by several factors including, but not limited to, the existence, level, and structure of Earnings Adjustment Mechanisms, corporate culture, organizational mission, and stature of EE/BE work within the organization. Within the proposals, Program Administrators should identify any components of the regulatory structure that introduce risk and describe potential modifications, strategies, and/or mechanisms to mitigate such risks associated with the development and implementation of EE/BE programs. That said, as Program Administrators begin to align their portfolios with the Strategic Framework and define the roles each respective Program Administrator will play, the Commission expects all Program Administrators will deliver quality programming that actively incorporates lessons learned from active portfolio management and timely evaluation, measurement, and verification activities to make any necessary modifications to programs, thus ensuring efficient use of ratepayer funds to achieve policy goals established by the Commission.

The Commission generally endorses the relative strengths, as expressed in the Staff EE/BE Report, and has taken them into consideration in the assignment of the respective roles for both NYSERDA and the Utilities in the development of the future portfolios. The establishment of distinct roles are intended to provide clear guidance that will enable more efficient use of ratepayer funds and ensure that the activities are truly complementary.

1. NYSERDA

In addition to the LMI roles described previously, the Commission finds the following additional roles to be best served by NYSERDA, as a single statewide Program Administrator: (a) workforce development; (b) codes and standards; (c) technical assistance/audits; (d) purposeful demonstration pilots; and (e) general consumer awareness and education. Although these roles will be led by NYSERDA, the Commission directs these activities to be closely coordinated with utility programming targeting end-users such that the initiatives are truly complementary in nature and do not lead to market confusion, unproductive protracted negotiations regarding savings claims, or competition in the marketplace resulting in driving up the cost to New York's ratepayers.

a. Workforce Development

The current workforce in New York supporting EE and BE is not sized to support the level of ambition required to meet the CLCPA's goals. Commenters nearly unanimously agreed that support for workforce development should be a critical component of the future EE/BE portfolios. To illustrate the need, commenters cited the following areas as all needing additional training, increased workers/businesses, or upskilling to address the needs of CLCPA, including energy modelers, designers, architects, engineers, drill operators, building operators, plumbers, pipefitters, electricians, crew leaders, home builders, manufacturers, distributors, and the trades unions. Many commenters also highlighted the need for these workforce activities to prioritize offerings targeting LMI workers, Disadvantaged Communities, Minority-Women Owned Businesses, and others who historically have experienced barriers to employment.

MI, while stating they are not aware of whether there are any "critical building electrification workforce training and development needs" that currently are not being met, opine that should such needs be identified ratepayer funds should not be used to support these activities, as they are beyond the scope of the Commission's expertise.[54] MI further states that attracting, training, and retaining qualified staff is the responsibility of the private companies offering these services and should not result in increased bills to ratepayers. New Yorkers for Cool Refrigerant Management (NY4Cool) states that there is a gap in properly training and certifying the Heating, Ventilation, Air Conditioning, and Refrigeration workforce and ensuring the adoption of best practices related to refrigerant management and the resulting hydrofluorocarbons and other short-lived climate pollutants that contribute significantly to global warming potential. However, NY4Cool also suggests non-ratepayer sources should be used to provide additional funds to support the needed climate-related transition while ratepayer funds should be focused on expenditures that reduce burdens on ratepayers in the long-term.

The Commission agrees that attainment of the CLCPA goals cannot be borne solely by ratepayers. However, the Commission disagrees with MI's premise that growing the workforce to deliver these programs and ensuring ratepayer supported projects are completed in a quality manner is outside the purview of the Commission. Given the importance of ensuring a sufficient and appropriately skilled and trained workforce, and given the breadth of workforce needs identified, it is

[54] Comments of Multiple Intervenors, p. 16.

critical to focus, prioritize, and unify this work on a statewide basis. Therefore, the Commission is assigning a single Program Administrator the responsibility of developing and implementing a well-defined and targeted approach that prioritizes the greatest areas for meaningful impact for the level of funding available. This role will be best served by NYSERDA, which is able to leverage available federal funding, other state agency capacity, and other state-supported initiatives. To facilitate this role, the Commission directs NYSERDA to consider comments provided on this topic, and to engage with other agencies and organizations that have relevant capacity and activities, and to propose any modifications to its current workforce approach that can best and most appropriately invest ratepayer funds to develop a sufficient and appropriately skilled EE/BE workforce.

b. Codes & Standards

Incentive-based programs have historically been a primary mechanism to encourage a building owner's decision to proceed with an EE/BE investment. Advancing ambitious and practical energy codes and standards that mandate energy efficient and electrification actions is a necessary complement, and one that is essential to reaching the scale required by the CLCPA. This is a field that requires coordination and joint action with other relevant local, state, and federal agencies. NYSERDA has played a statewide role in this area with its work on NYStretch codes[55] and the adoption of New York State Appliance

[55] NYStretch-2020 is a supplement to the 2020 Energy Conservation Construction Code of New York State (State Energy Code), developed by NYSERDA, and available for voluntary adoption by local governments as a more stringent local energy code.

and Equipment Efficiency Standards.[56] This is an area the Commission envisions as appropriate and increasingly important to continue, which may include, but not be limited to, advanced energy code development, supporting code enforcement training for code officials to increase code enforcement/adoption, a focus on "codes" for existing buildings (sometimes referred to as Building Performance Standards), and certain additional appliance standards.

c. Technical Assistance/Audits

As EE/BE projects evolve from simple measures and "widget-based" approaches to supporting more comprehensive and complex EE and BE projects, building owners will require access to streamlined, efficient, and useful technical assistance and building energy audits. These services should not only provide the building owner with an understanding of the energy savings and electrification potential for their buildings, but to develop a practical plan with decision-quality data for how to pursue those options.

Con Edison/O&R and the Indicated Utilities support NYSERDA's role in providing technical assistance to projects, complementing utility incentive programs. Bright Power, et al. reference NYSERDA's work in this area as a good example of NYSERDA's complementary role alongside the utilities' end-user resource acquisition-based programs. United/ACE NY are complementary of NYSERDA's FlexTech and Low Carbon Capital Planning Programs which they believe provide high-quality technical assistance to multifamily and commercial buildings in need of EE and electrification expertise, which can serve as a

[56] Under the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022, NYSERDA, in consultation with the Department of State, is required to adopt efficiency standards for products and appliances that reduce energy and/or water consumption.

feeder into utility incentive programs and can also expand the types of measures a building owner otherwise would consider (e.g., solar, energy storage, and deeper electrification). United/ACE NY further state these efforts should continue as "it is the most valuable contributor to existing building implementation of retrofits and electrification across the state."[57] NYECC agrees, stating that these programs push electrification forward.

Cadence One Five offers an opposing view stating that ratepayer funds should no longer be used to incentivize engineering studies that do not result in a near-term built project. Although it has been the stated policy of NYSERDA for many years to drive down soft costs, according to Cadence One Five, many NYSERDA programs, particularly in the multifamily and Commercial & Industrial sectors, allocate substantial rebates to offset the high cost of detailed energy studies without any corresponding requirements that EE and electrification projects recommended by these studies are implemented. In the view of Cadence One Five, studies that never get implemented are a pure opportunity cost, and studies undertaken today that might get implemented at some point in the future are at risk of becoming significantly outdated and misguided as implementation means and methods, as well as market pricing, rapidly evolves.

Kinetic, ANHD, and UHAB offer their experience to demonstrate that there is a lack of coordination among the State's energy efficiency programs, including, but not limited to, NYSERDA's FlexTech, NYSERDA's Low Carbon Pathway, AMEEP, and the Housing Finance Agencies Integrated Physical Needs Assessment. According to these commenters, these programs require customers to hire an approved energy service provider to

[57] Comments of United/ACE NY, p. 28.

submit an application and energy calculation tool separately for each program in which the customer is interested in enrolling. In these commenters' view, this creates a confusing patchwork of requirements resulting in an additional financial burden for affordable housing buildings, which ultimately increases the costs to tenants and can result in inaction as the costs of participation can outweigh the incentives provided. Further, these commenters state that better coordination across these programs would alleviate confusion among customers, expedite the administration of services, and reduce the cost to tenants.

The Commission agrees that NYSERDA demonstrates experience in this area and that this role could effectively be played by a statewide administrator. The Commission appreciates the comments that offer real-world experiences and agrees that these experiences demonstrate a lack of coordination. The Commission believes that it is necessary for utility end-user incentive programs to recognize and accept the technical assistance/audit provided through NYSERDA. It is inefficient and unduly cumbersome to require customers to engage in redundant processes and it is unacceptable to force this additional administrative burden and increased cost on a building owner, its service provider, and ultimately the building tenants. At the same time, the Commission directs NYSERDA to take all practical steps to ensure that its technical assistance/audit service is genuinely used by and useful to building decision makers, taking note of the comments from Cadence One Five. In short, NYSERDA should have the statewide responsibility of designing and making these services available and ensuring they are correctly implemented. While other commenters expressed a differing view, the issues raised appear to be more prevalent in serving the affordable housing market given the focus of the commenters offering this experience. The

Commission finds that other actions, described herein, related to the administration of the LMI portfolio, may also help alleviate the experiences described.

The Commission also agrees with the comments that indicate that we have not yet met the goal of providing ready access to useful analysis and recommendations to support building owners and their EE/BE investment decisions. NYSERDA and the Utilities are directed to work collaboratively with market actors and market providers to identify the necessary information to support this type of alignment, and to pursue ways in which the processes can be improved to result in higher conversion rates to advancing projects. The standard of success for such services is that they meet the needs of building owners and result in their increased willingness and confidence to undertake EE/BE investments. The Commission notes that this amounts to a requirement that NYSERDA and the Utilities ensure that these services are usefully available. It does not mean that NYSERDA and the Utilities have a special right to develop and/or provide these services, and indeed in circumstances where market actors are better able to develop and provide such service, NYSERDA and the Utilities' most useful role can be to create market awareness and uptake of these services.

d. Purposeful Demonstration Projects

As the State's ratepayer funded programs evolve to focus on strategic measures, it is important to recognize that Program Administrators, service providers, and building owners/tenants, have relatively less experience with these technologies than those that have been part of the programs for decades. Demonstration projects can play a powerful role in demonstrating the performance of these measures and the customer experience with utilizing them. The value of demonstration projects is that the learning is intended to be shared broadly and that projects are designed for replicability and for actual replication.

Aeroseal states that the Utilities should have the flexibility to implement pilot programs and bundle efficiency and electrification measures in ways that work best for their customers and service territories, and that the Commission can and should codify principles and offer guidance on strategies like measure bundling that can lead to more effective outcomes. United/ACE NY and Bright Power, et al. state that NYSERDA is well positioned to demonstrate market-based programs that require minimal active program administration and support the stacking of NYSERDA investments with utility resource acquisition efforts.

Con Edison/O&R and the Indicated Utilities more pointedly suggest NYSERDA should continue to focus on initiatives that involve piloting new, innovative technologies with statewide application and continue to work with equipment manufacturers and vendors to increase market presence of priority technologies. Con Edison/O&R and the Indicated Utilities further state that NYSERDA should continue to undertake market studies and gather statewide learnings on market activity.

The Commission views the role of demonstration projects as complementary to end-user incentive programs offered by the Utilities and finds this is an area, as commenters suggest, that NYSERDA is positioned to serve in a lead role. However, the Commission emphasizes the importance of transparency and need for clarity in how the demonstration projects will, if at all, be combined with other incentive programs. Specifically, unnecessary layering of incentives from various ratepayer funded programs for a single project must be avoided. It is also paramount that demonstration projects have an effective pathway to share the learnings and result in replication. NYSERDA is directed to include details on how it will address these requirements in its proposal. The Commission also agrees that the function of market studies and market activity share similar attributes to the role of demonstration projects in that their purpose is to inform; therefore, NYSERDA should continue to undertake this role, with the requisite access to utility programmatic data to inform such studies.

e. General Awareness and Education

The clean energy transition envisioned by the CLCPA will, over time, result in a complete change to the way in which New Yorkers heat and cool their buildings. This shift will require significant advances in consumers' and service providers' general understanding of the available technologies, benefits of their use and how to operate them. The NYS Clean Heat Program provides a current example of how NYSERDA's marketing and education activities work in tandem with the Utilities' end-user heat pump incentives and can serve as a starting point for future awareness and education campaigns. The Commission expects that NYSERDA-initiated general awareness and education activities will not wholly replace the need for utility specific program marketing, such as utility outreach to Disadvantaged Communities within their service territories.

The Commission also notes that market actors, such as contractors, retailers, and manufacturers have their own capacity and will make their own investments in outreach, education, and marketing. The Commission expects NYSERDA to work with these partners to achieve the greatest collective effectiveness.

NYSERDA will also continue to implement community-based work on a statewide basis to provide capacity building and community-led outreach and engagement with a focus on

Disadvantaged Communities, along the lines of their existing Regional Clean Energy Hubs. To take advantage of this infrastructure, the Commission hereby requires NYSERDA and the Utilities to coordinate to ensure that the Hubs connect customers with utility programs and directs NYSERDA to incorporate into its annual reporting the effectiveness of such connections and on the benefits delivered to customers.[58]

Finally, the Commission notes that outreach, education, and marketing are notoriously difficult to evaluate and manage to measure and improve results. The Commission directs NYSERDA to explain its intended methods for tracking and ensuring the goal of creating additionality in the uptake and adoption of EE/BE as objectively and usefully as practical in its proposal.

The Commission recognizes that the EE/BE landscape in New York contains a large number of programs that offer various levels and forms of support for the kinds of EE/BE projects we seek to advance. This is both positive and negative – positive because collectively the support provided by these many programs can make a significant difference in the economics for customers and ratepayers, while negative because it creates a confusing, uncertain, and opaque situation for customers (and contractors and other market actors). The confusion, uncertainty, and opacity are compounded when there are multiple Program Administrators (including NYSERDA and the Utilities, but also other entities like weatherization agencies), federal incentive programs, tax credits, and various adjustments for income level and Disadvantaged Community status.

[58] The Commission notes that this will require the provision of data from the Utilities to NYSERDA regarding program participation.

In this Order, we seek to minimize the level of overlap under the Commission’s jurisdiction and recognize that, in the long-run, it is likely worthwhile to bring about further alignment and rationalization of these and other State programs. In the immediate term, the Commission asks whether it is possible to address customer confusion by presenting clear, reliable, and real-time information to customer about what they – in their particular circumstance and location, and with their particular EE/BE project in mind - are eligible for. Accordingly, the Commission encourages NYSERDA, in coordination with the Utilities, to assess this possibility, again mindful of the possibility that it may be market actors that are the best positioned to provide such a solution.

2. Utilities

As detailed in the Staff EE/BE Report, the Utilities have demonstrated varying levels of performance against the targets authorized by the Commission. In considering the natural roles of utility Program Administrators, we will speak generally to utilities as a group rather than the specific relative strengths of any one utility Program Administrator over another. It is also important to note, as with the natural roles described for NYSERDA, this does not necessarily indicate the Commission’s endorsement that activities in these areas have not been without issue or that they could not be improved upon, but rather they represent significant opportunities that could be further leveraged to support our policy objectives.

As stated earlier, commenters generally agree with the characterization of the relative strengths of the utilities as described in the Staff EE/BE Report. Several commenters further highlighted the utilities’ ability to deploy mass market programs at scale as well as to tailor programs to best serve their customers. The Commission generally agrees with these observations, particularly given the utilities' ability for direct outreach to their customer base and access to their customers energy usage data to best tailor program offerings. Therefore, we will retain the role of primary administrator of Non-LMI end-user incentive programs (e.g., resource acquisition) to the utility Program Administrator. In the administration of these programs, the Commission calls attention to the following specific areas of relative strengths that the utilities possess, but for which we find have not been fully utilized and should be a focus of the forthcoming proposals, including: (a) coordinating efficient building electrification programs with system planning functions; and (b) utilization of customer owned data, as well as system data to tailor program offerings and expand accessibility to information made available to the market.

Successfully electrifying New York's building stock will require far more interventions than the end-user incentives contemplated within this proceeding. Some of these interventions are outside the purview of the Commission and include other regulations, adoption of building codes and potentially other legislative mandates. However, one area that has not been fully leveraged, as noted in NYSERDA's comments, is the utilities' unique position to provide public information about what parts of the electric grid are ready for accommodating increased electric load. NYSERDA further states there are a number of examples of such "grid-ready" maps today, including Con Edison's Distributed Generation Hosting Capacity map and their Electric Vehicle Charging Capacity map, which indicate what parts of the grid are suitable for hosting distributed generation and electric vehicle charging. Accordingly, to help advance building electrification, utilities could produce building electrification-ready maps that provide geographic information on local grid capacity (or existing "headroom") for electrification as well as planned upgrades. This could assist in targeting near-term areas for BE in places with excess grid capacity and provide transparency and confidence to residents and building owners.

The Commission agrees with this perspective and further notes its action taken that resulted in the Electric Vehicle Charging Capacity Maps.[59] These maps have provided valuable information with regard to transportation electrification, and we seek to produce additional information that could be of use for BE. Therefore, the electric utilities are directed, in consultation with Staff, to expand the Electric Vehicle Load Serving Capacity Maps into "Electrification Load Serving Capacity Maps" within 180 days of this Order.

3. NYSERDA/Utility Collaboration

The Commission's refinement of the respective roles of the Program Administrators is a critical element of setting the EE/BE portfolio up for success. However, such an approach includes the need to "make the whole work," so that New Yorkers benefit from a systematic approach to achieving its EE/BE goals, as opposed to the sum of thoughtful but independent approaches by individual Program Administrators. The Commission emphasizes that it expects the Program Administrators to accept the task of "making the whole work" and to collaborate to achieve this outcome. Additionally, Staff is directed to monitor the extent to which this is being achieved, and to take action (up to and including reassignment of "natural roles" and retraction of flexibility), if warranted.

In this collaborative model, whereby NYSERDA and the Utilities have differentiated roles but are working in tandem

[59] Case 18-E-0138, Electric Vehicle Supply Equipment and Infrastructure, Order Establishing Electric Vehicle Make-Ready Program and Other Programs (issued July 16, 2020).

towards the achievement of the policy objectives, as opposed to siloed independent approaches, it is necessary that all Program Administrators have access to timely and relevant information that allows for the ability to assess the performance of their program approaches and make well-informed modifications, as needed. Appropriate access to customer and project-level data will better enable the assessment of progress toward program and policy goals that NYSERDA has been mandated to perform, including conducting potential, baseline, and market-characterization studies, as well as other NYSERDA-funded evaluation and measurement activities that aim to better understand the total impacts of such programs. Further, as noted by Con Edison/O&R, NYSERDA can support coordination via early engagement and information sharing with the Utilities on the projects for which it is providing technical support. This information sharing is proposed to include a structured, recurring process by which NYSERDA can communicate these project leads to utilities and utilities can incorporate these leads into their project pipelines and planning.

As the Commission continues to deliberate and finalize broader data access issues, such as through the proceeding under Case 20-M-0082 to consider the strategic use of energy related data, the Commission believes it is imperative for the collaborative model established herein to, at a minimum, include consistent and intentional customer consent language for inclusion of the information and data necessary to support NYSERDA’s market development initiatives and other evaluation and measurement activities related to NYSERDA’s responsibilities. This includes, but is not limited to, customer consent language that fully encompasses the ability to use customer and project data to assess the effectiveness of the full suite of ratepayer supported programs, regardless of Program Administrator.

Therefore, NYSERDA and the Utilities are directed, in consultation with Staff, to adopt standard consent language to allow for the proper evaluation of all ratepayer supported programs, regardless of Program Administrator, and to file it within 45 days of this Order. It is the Commission's expectation that this consent language shall serve as a model for the various programs that will be offered, negating the need to negotiate such language each time a program is developed. However, to meet the most immediate needs of the existing portfolio, consent language associated with the NYS Clean Heat program and the Statewide LMI Portfolio shall be prioritized for action.

Regulatory Construct

1. Metrics

In the Staff EE/BE report, Staff noted that annual MWh and MMBtu savings and unit costs are the primary metrics applied to the EE/BE portfolios and questioned whether these are the appropriate metrics to guide and evaluate EE/BE portfolios going forward. Many commenters responded that different or additional metrics are needed to align our EE/BE portfolios with State policy goals and ambitions.

Commenters proposed a multitude of performance metrics to consider, from health impacts to peak demand reduction to customer participation.[60] Commenters were divided over the number of metrics that should be employed. American Council for an Energy-Efficient Economy (ACEEE), among others, contends that multiple metrics should be used, with some applying across all programs and others only to certain program types and customer

[60] See, e.g., City of New York Comments, pp. 19-20; Multiple Intervenors Comments, pp. 7-8; Oracle/O Power Comments, p. 4.

classes.[61] Other commenters, like Bright Power, et al., advocate for using fewer metrics, stating that when too many outcomes are prioritized, nothing is a priority.

The Indicated Utilities and Con Edison/O&R support shifting from an annual energy savings measure (AMMBtu) to a lifetime energy savings measure (LMMBtu) to better reflect and enable the evolution of the NE:NY portfolios towards longer-lived, deeper efficiency measures that Staff and the Commission have called for. Con Edison/O&R state that expressing targets as LMMBtu will place greater value on measures with longer Effective Useful Lives like heat pumps and envelope work, and "will signal utilities to optimize portfolios around durable energy savings ... and facilitate clear and streamlined reporting across Program Administrators."[62] Con Edison/O&R further propose that the Commission introduce sub-targets for each portfolio that are tailored to particular policy goals and integrated with performance incentives. Examples of sub-targets proposed by the companies include the share of the portfolio made up of strategic measures and the share of program expenditures directed towards a specific customer segment.

In contrast to the utility commenters, United/ACE NY oppose a wholesale shift from annual to lifetime savings as a primary metric and recommend instead that EE portfolios should strike a balance between investments in annual and lifetime savings. United/ACE NY argue that annual savings not only promote accountability, but also ensure that some benefits and customer bill savings are realized immediately.

[61] ACEEE, p. 2. ACEEE notes that the State of Vermont uses eight metrics to evaluate EE programs and the District of Columbia uses seven.

[62] Comments of Con Edison/O&R, p. 12.

The City and several others commented that carbon emissions reductions should be the primary metric applied to EE and BE portfolios. The Indicated Utilities and Con Edison/O&R oppose using carbon savings as a primary metric because of the complexity of calculating the emissions reductions associated with EE and BE measures in the context of an electrical generation mix that varies regionally, hourly, and seasonally and evolves over time.

As an alternative single, unifying metric, the Efficiency and Electrification Advocates endorse versions of the Total System Benefits (TSB) metric developed by the Natural Resources Defense Council and adopted in 2021 by the California Public Utilities Commission. A TSB metric, as described by Efficiency and Electrification Advocates, "aggregates all electric system benefits, and relevant environmental externalities that accrue to distributed energy resources (DERs), including efficiency, electrification, and demand response, to comprehensively value a DER's ability to meet future electric system needs and environmental policy goals."[63] According to Efficiency and Electrification Advocates, the TSB metric is comparable to the numerator in typical utility benefit-cost test analyses and is calculated for energy efficiency resources as "the sum of the product of a measure's load-shape and its time varying avoided costs through a measure's lifetime."[64] Efficiency and Electrification Advocates comment that although the TSB is compatible with the NY-Sun Value of DERs value stack and other DER programs for storage, demand response, or managed electric vehicle charging, they are currently only recommending the metric for adoption by the EE/BE

[63] Efficiency and Electrification Advocates Comments, p. 11.

[64] Efficiency and Electrification Advocates Comments, p. 14.

program measures at this time. Other parties supporting a TSB-style metric include the EEFA NY, United/ACE NY, Recurve, and SPAN.

Many commenters, even some who advocate using fewer, more streamlined metrics, agree that NYSERDA's market development activities require a different set of tools to evaluate. NYSERDA proposes that EE and BE portfolio investments should be separated into two categories, namely "1) those that deliver direct or project-based energy impacts and 2) those that promote broader market transformation," with the caveat that some investments fall under both categories.[65] NYSERDA recommends establishing a common metrics framework for market transformation programs, with specific metrics associated with each of the three phases of market transformation: Consumer Engagement, Provider Capacity Building, and Adoption. Bright Power, et al. propose an alternative model in which market transformation programs are evaluated on the basis of cost reductions for strategic measures.

The Commission recognizes the diversity of viewpoints that commenters expressed regarding the most suitable metrics for guiding and gauging the performance of EE and BE portfolios. The Commission also recognizes that the comments point to a variety of different ways in which these metrics can be applied, from determining data to be tracked and reported to establishing single portfolio-wide targets, multiple portfolio-wide targets, sub-targets for portfolios or individual programs, and targets for utility shareholder incentives.

[65] NYSERDA Comments, p. 56. Some other commenters, such as EEFA, propose using the three categories adopted by California as part of their TSB Framework: Resource Acquisition, Market Support, and Equity. See EEFA Comments, p. 6.

The Commission sees merit in the arguments made by commenters both for and against adopting LMMBtu as the primary unit for portfolio targets. The Commission acknowledges the position of the Indicated Utilities and Con Edison/O&R that expressing portfolio targets in LMMBtu would shift the emphasis of the utilities' EE and BE portfolios towards deeper, longer-lived efficiency and electrification measures. However, the Commission maintains that implementing the Strategic Framework, as described above, is a more direct and effective way to bring about the desired changes in the composition of EE and BE portfolios. It will remain critical to track and report LMMBtu savings for EE and BE programs where relevant, as is done currently. However, shifting the onus of driving portfolio evolution onto the Strategic Framework may relieve some of the pressure to reframe portfolio targets in terms of LMMBtu savings exclusively.

The Commission agrees with commenters who state that different portfolios and program types may call for different metrics to set appropriate goals and evaluate performance. This is especially true for NYSERDA's Market Development portfolio, whose objectives and achievements are not always suitably expressed in terms of acquired energy savings. The Commission agrees with NYSERDA and other commenters that multiple metrics may be necessary to capture a fuller picture of the performance of market development activities, but stresses that consistency across key metrics is essential so that the performance of different programs can be compared. The same principle applies to all utility and NYSERDA EE/BE programs, where the usefulness of multiple or program-specific metrics should be balanced with simplicity of implementation and ease of comparison across and between portfolios.

With respect to proposals for a version of the TSB metric recently adopted in California, the Commission recognizes there may be value in employing such a metric, but does not direct its adoption at this time. As commenters point out, a New York TSB could potentially integrate the measurement of progress toward related, but distinct, priorities established by the CLCPA, including EE improvements and GHG emissions reductions. Further, it could bring uniformity to the measurement of outcomes across multiple programs, ranging from EE to DER deployment to the development of non-pipes alternatives projects, and thereby facilitate cost allocation decisions while guiding improvements to program design. However, development and application of a New York TSB would be a substantial undertaking involving, among other things, creating a tool like the Avoided Cost Calculator used in California to estimate avoided GHG emissions on an hourly basis. In addition to likely requiring the creation of new tools, such an undertaking would also require evaluating and possibly modifying, consolidating, or discarding tools and metrics currently in use to steer and evaluate the outcomes of other programs. The scope of this undertaking would go beyond the management of the EE/BE portfolios being considered in this proceeding. With respect to the management of EE/BE portfolios, the Commission finds that adopting the Strategic Framework will serve the near-term purpose of directing investments consistent with current policy needs.

The Utilities and NYSERDA are directed to include in their proposals both the types and the applications of metrics that are most appropriate to the programs being proposed. The Commission notes its intention to ultimately adopt a goal, or suite of goals, for each Program Administrator to be held responsible for, and recognizes that there may be additional metrics that it will require to be tracked and reported as part of regular reporting requirements. The Program Administrators are invited to indicate these distinctions within their proposals. For example, while not necessarily a primary metric, the Commission notes its interest in ongoing tracking and reporting of energy expenditure savings for participants. These proposals will give the Commission a more solid basis for deliberating on the metrics to be adopted for EE/BE portfolios.

2. <u>Annual versus Cumulative Budgets/Targets</u>

The Staff EE/BE Report describes the considerations we must weigh in determining whether to authorize annual or cumulative budgets and targets. We recognize that cumulative budgets and targets provide Program Administrators with the flexibility to moderate their EE and BE offerings to respond to changing market conditions and arguably better supports a program design that allows Program Administrators to make multi-year commitments that are necessary for complex or comprehensive projects or capital planning cycles. Most commenters who addressed budget and target time periods support multiyear budgets and targets, with many proposing three- or four-year budgets and targets, and some advocating for a combination of multiyear targets and interim annual checkpoints. However, as the State enters the next phase of our EE/BE portfolios, the Commission expects that the portfolios will eventually reach stasis, at which point activities and associated expenditures will flatten out and become much more consistent year over year. It follows that the ratepayer investments in EE and BE will eventually reach an apex and it is more important than ever to hold Program Administrators accountable for managing those ratepayer funds in a manner that will not require the Commission to address ad hoc requests for additional funding, as was the case with the Con Edison and Central Hudson Clean Heat Programs.

The Commission authorized a significant ramp up in EE and BE investments by ratepayers during the 2019-2025 period and determined that flexibility across years would be needed to allow utilities to respond to the unknown reception to the expanded EE/BE efforts. Currently, significant flexibility is provided to the Program Administrators to shift savings achievement and spending across years with the expectation that by the end of the authorization period, 2025 for utilities and 2030 for NYSERDA, the cumulative achievements will equal the cumulative authorized target within the authorized budget. However, the Commission expects Program Administrators to be moving toward a steady state of EE and BE activities. Therefore, beginning in 2026, the Commission expects all Program Administrators to operate within an annual budget. We will allow Program Administrators to propose specific annual allocations that may differ from the Annual Budgets put forth in the Appendix of this Order (and propose corresponding annual targets), but our expectation is that once established, Program Administrators will have limited flexibility to shift funds and targets across years. Program Administrators are encouraged to include recommendations regarding the rules and procedures associated with such flexibility within their proposals. In addition, any utility proposals should also address how such flexibility could be addressed within a potential generic shareholder incentive mechanism, if adopted in the future. The specific conditions for flexibility will be set forth in the future order(s) in which the Commission acts upon the proposals directed herein.

3. Portfolio Composition

The Staff EE/BE Report highlighted a distinction between the ways that NYSERDA and the Utilities' portfolios are funded and administered. Funding for NYSERDA's EE/BE portfolios is collected from electric ratepayers only, but NYSERDA may pursue the objectives of those portfolios in a fuel-neutral manner, while the Utilities, to date, generally pursue gas- or electric-specific savings with funding collected from ratepayers of the relevant fuel category given the targets assigned by the Commission. Staff remarked on the need for a more integrated approach to utility portfolio design and program administration, especially given the growing role of beneficial BE within the NE:NY initiative, but also noted the difficulty of implementing a fuel-neutral approach in situations where different utility service territories overlap.

Staff specifically requested comment on whether gas utilities should administer BE programs, which have heretofore been administered solely by electric utilities (and funded by electric utility ratepayers). Commenters were sharply divided on this question. Several commenters expressed strong support for allowing gas utilities to implement electrification programs. Reasons given for this support include enabling a more integrated, comprehensive approach to efficiency and electrification programming,[66] alleviating rate pressures on electric ratepayers,[67] and "the high societal benefits of building electrification."[68] Alliance for Clean Energy New York (ACE-NY) and Advanced Energy United (AEU) submit that "gas utilities should have electrification program budgets just like electric utilities, with similar rate recovery and performance incentives."[69] Renewable Heat Now states that gas ratepayer contributions, which in the past have funded incentives for

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[66] Rewiring America Comments, p. 9.

[67] NYECC Comments, p. 2.

[68] Dandelion Energy Comments, p. 5.

[69] ACE-NY/AEU Comments, p. 13.

efficient gas appliances, should be redirected towards building shell improvement and electrification.

MI opposes allocating any of the costs of electrification to gas customers, stating that doing so would violate basic cost-of-service principles and unfairly burden gas ratepayers. UIU and Efficiency and Electrification Advocates share MI's concern about the potential impacts on gas ratepayers, but with a different emphasis; they caution that allowing gas utilities to undertake electrification programs would contribute to a negative feedback loop or cost spiral in which decreasing gas demand drives up rates for a diminishing pool of gas customers, who then shoulder an increasingly greater proportion of the fixed costs of the system.

To avoid this outcome, and for several other reasons, Efficiency and Electrification Advocates urge the Commission to make the electric utilities the sole Program Administrators of not only all electrification programs, but for all EE initiatives. Con Edison/O&R likewise propose not only that BE programs continue to be administered by the electric utilities and funded by electric utility customers, but that responsibility for building envelope measures should also be transferred entirely to electric utilities and ratepayers, as discussed in more detail below.

In contrast, UIU concedes that due to "the timing of State climate policies and the natural turnover of housing stock," it may be necessary to allow gas utilities to offer electrification programs.[70] UIU supports allowing gas utilities to administer electrification programs on two conditions: that weatherization measures be completed prior to electrification, and that the administration costs of electrification be

[70] UIU Comments, p. 4.

reimbursed by the customer's electric utility in order to "balance potential cross subsidization between the electric and gas businesses that serve the customer."[71] The Indicated Utilities state that gas utility involvement in electrification programs is a complex issue requiring further discussion, but they suggest that it might be appropriate to use gas ratepayer funding for electrification measures in certain circumstances, such as to support partial or hybrid electrification measures or as part of a Non-Pipe Alternative.

Commenters were similarly divided on the question of the optimal roles for gas and electric utilities in delivering building weatherization programs. Con Edison/O&R make the case that as more buildings electrify, energy savings due to building envelope improvements will increasingly be electric savings. Therefore, only electric utilities should implement these programs, with gas utilities able to contribute adders for Non-Pipe Alternatives or projects addressing gas system needs. The Indicated Utilities present a contrary view, stating that weatherization measures still result predominantly in gas savings, and transferring these programs to the electric utilities would be premature.

Whatever the gas utilities' role is in funding or administering weatherization and electrification programs, many commenters stress the importance of avoiding competing programs and providing customers with clear, comprehensive information about available programs and single, streamlined applications. Where utility service territories overlap, ACEEE states that "[g]as and electric utilities can develop combined programs or one utility can be the primary Program Administrator with the

[71] UIU Comments, p. 4.

other utility sharing credit and costs."[72] NYSERDA recommends "a statewide delivery model for single-family (1-4 unit) homes with one implementer (with one set of rules, forms, systems and processes) and one program to guide customers to the best decisions and most beneficial incentives."[73]

The wide range of viewpoints on this topic are evidence that a simple solution would be challenging to adopt at this time. Therefore, the Commission directs Program Administrators to consider these viewpoints and provide a detailed description regarding their role in administering weatherization and BE programs within their forthcoming proposals. In addition, for utilities with overlapping service territories, the proposals must also address the manner in which their programs will be coordinated with those of the other Program Administrator(s) operating programs within their service territory. To the extent possible, these proposals should be developed in coordination with the relevant partner utilities.

4. Earnings Adjustment Mechanisms

The Commission first introduced the concept of EAMs in 2016 as a transitional way in which to reward utility shareholders for a utility's focus on and extraordinary achievements of overarching policy goals as the utilities shifted away from the traditional utility business model.[74] Since 2016, EE and/or BE EAMs have been developed and implemented within individual utility rate cases and, to date, all but NFG are subject to EE and/or BE EAMs.

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[72] ACEEE Comments, p. 4.

[73] NYSERDA Comments, p. 64.

[74] Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) (REV Track Two Order).

Commenters expressed varying viewpoints related to the topic of EAMs. Commenters that were supportive for the continuation of EAMs, such as EEFA NY, Natural Resources Defense Council, Pace Energy and Climate Center, ACEEE, Franklin Energy, ACE-NY/AEU argue that EAMs are critical in incentivizing utilities to accomplish decarbonization. The investor-owned utility companies posit that EAMs remain appropriate given the pace and scale of continued evolution of efficiency programs. The Utilities also note that positive incentives, such as EAMs, are important signals that allow utilities to sustain the required level and priority of support for these programs. ACE-NY/AEU indicated that they would also support consideration of EAMs that had both positive incentives and penalties.

Commenters that were supportive of discontinuing positive-only EAMs, such as the City, NYECC, MI, PULP, Rewiring America, and Renewable Heat Now, agreed with the Staff EE/BE Report in that ratepayers should not bear the additional costs that positive shareholder incentives require simply to reward shareholders for engaging in already-required activities, especially when those activities are already funded by ratepayers. If utilities are not performing as expected, these commenters expressed the view that the use of negative revenue adjustments may be an appropriate inducement for them to improve.

The one issue associated with EAMs that most commenters agreed upon was that if EE or BE EAMs were to continue in the future, they should be done generically, not in individual rate cases, and all utilities should have the same metric(s) and method for calculating targets and awards.

Although the Commission has provided some broad guidance on how EE and BE EAMs should be structured, as noted, the specific details of the EAMs have been subject to negotiations within individual utility rate proceedings and differ across the Utilities. Recently, most of the EE and BE EAMs adopted within the utility rate proceedings have been designed as Share-the-Savings metrics, allowing utility shareholders to earn a portion of the difference between a baseline cost per lifetime energy savings and the actual expenditures per acquired lifetime energy savings. The Share-the-Savings design rewards utilities for achieving a lower cost per unit of lifetime energy savings than an agreed upon baseline.

By design and in practice, EAMs and other incentive mechanisms have influenced the way in which utilities design and implement their EE/BE portfolios. As noted in the Staff EE/BE Report, the focus on cost savings for EAMs, while an important consideration, does not fully align with the current clean energy goals that rely upon utilities pursuing deeper, often more expensive, energy savings such as building envelope measures. Additionally, the cost savings claimed by utilities are highly dependent upon a predetermined baseline. Establishing these predetermined baselines can be a contentious endeavor in rate proceedings and a poorly established baseline could lead to undeserved utility shareholder awards at the expense of ratepayers. This issue is now compounded by the fact that Staff and other parties lack certainty regarding what post-2025 utility portfolio budgets and targets will look like, and the measures that will make up utility portfolios, until the Commission authorizes future budgets, establishes future targets, and provides guidance on the composition of desired portfolios through this Interim Review process.

Due to the concerns discussed above, the Commission hereby indicates that it will not consider EE or BE EAMs proposed or included as part of any new rate case filing or joint proposal submitted after the effective date of this Order and until such time as the Commission determines an appropriate path forward. Further, it would be premature to provide such EAM opportunities to utilities until the Commission and Staff have a better understanding of what the EE and BE portfolio budgets and targets will look like beyond 2025, and whether or not positive-only incentives are needed to encourage achievement of those targets. In the REV Track Two Order, the Commission noted that "the specific set or portfolio of EAMs may also change over time, as some objectives are achieved or become standard practice, allowing an EAM to be retired while other EAMs are created or modified as new needs are identified in the future."[75] In the Commission's Order Eliminating Interconnection Earnings Adjustment Mechanism,[76] the Commission acknowledged the expectation that EAMs would be a transitional component of regulatory redesign and reiterated its expectation that the specific portfolio of EAMs may change over time as some objectives are achieved or become standard practice. Due to the passage of the CLCPA, EE and BE programs have become a standard practice. Therefore, the Commission's directs a pause to the development and institution of new EAMs tied to these programs, which it believes is in keeping both with the Commission's original intention, as expressed in the REV Track Two Order, and more recent orders related to the evolution of EAMs over time.

This pause should not be interpreted, in any way, as to minimize the expectation for Program Administrators to strive for strong performance of their portfolios. As this process

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[75] REV Track Two Order, p. 60.

[76] Case 16-M-0429, Earnings Adjustment Mechanism and Scorecard Reforms Supporting the Commission's Reforming the Energy Vision, Order Eliminating Interconnection Earnings Adjustment Mechanism (issued April 24, 2019).

moves forward through the proposal stage and authorizations in subsequent orders, the Commission will seek to ensure the best approaches for holding all Program Administrators, utilities, and NYSERDA, accountable for the performance of their portfolios and pursue options for how to address instances of poor performance.

Budget Bounding

Under the CLCPA and the Climate Action Council's Scoping Plan, New York is committed to ambitious EE and electrification efforts as a strategy to reduce GHG emissions. In fact, the Integration Analysis of the Climate Action Council's Scoping Plan indicates that annually, more than 250,000 housing units will need to adopt electric heat pumps and energy efficiency measures from 2030 onward, which represents an increase in market activity of more than ten times current levels.[77] Historically, the funding for the State's clean energy and climate initiatives is predominantly provided by ratepayers. However, the scale of the EE/BE efforts required to comply with the CLCPA objectives cannot be funded through ratepayer collections alone. Indeed, the CLCPA and the Climate Action Council's Scoping Plan call for an economy-wide Cap-and-Invest program to, among other things, help generate the funds necessary for attaining the State's clean energy goals.[78]

To support these commitments, the Commission is adopting the Strategic Framework, as described herein, that will accelerate the deployment of EE and BE while also preserving affordability for all ratepayers. Specifically, for purposes of

[77] New York State Climate Action Council Scoping Plan, Chapter 1, page 14 found at: https://climate.ny.gov/Resources/scoping-plan.

[78] New York State Climate Action Council Scoping Plan, Chapter 1, page 22 found at: https://climate.ny.gov/Resources/scoping-plan.

developing proposals for Commission consideration, the Commission is adopting a "budget bounding" approach that will establish a transparent upper limit on the ratepayer funded EE/BE Programs. This approach is consistent with the budget-capping approach adopted in the CEF Framework Order and echoes the focus in the December 2018 NE:NY Order on achieving targets in the most cost-effective manner. In this Order, the Commission is establishing budget bounds and directs Program Administrators to propose programs and targets that align with the purposes and prioritizations of the new Strategic Framework and the guidance provided in the body of this Order.

There are several reasonable budget bounding scenarios that could generally be applied to both the Utility and NYSERDA portfolios. The Commission considered: Actual Annual Expenditures/Projections, Average Annual Budget/Projected Spend, and the Highest Annual Budget/Projected Spend.[79]

Utilizing Highest Projected spend or budget is not advisable as many Program Administrators have not demonstrated they are scaling to such a level. There is concern that some Program Administrators may not have the ability to effectively spend to highest levels projected and those approved for 2025.

The 2022 actual, 2023 projected, and average annual 2021-2025 approved budgets all converge at approximately $1 billion per year. The Commission is sensitive to the ratepayer impacts imposed by these programs. While highly dependent upon the specific utility, all - or a significant portion - of this level of funding is already represented in the utility rates and therefore minimizes incremental bill impacts.

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[79] The Commission authorized annual budgets for the Utilities but authorized a total 10-year budget for NYSERDA. Rather than annualizing the 10-year NYSERDA budget, NYSERDA's actual 2021 and 2022 expenditures along with projected 2023 through 2025 annual expenditures were considered for "average annual."

This level of overall funding strikes an appropriate balance between the State's goals set forth within the CLCPA and ratepayer-funded programs in the area of EE/BE, particularly as we enter what we expect to be a more consistent level of ratepayer-supported EE/BE activities. The total $1 Billion per year budget that Program Administrator proposals shall adhere to is shown in detail in the Appendix of this Order.

This emphasis on purposeful prioritization is particularly appropriate given: 1) the programmatic shifts required by the strategic initiatives discussed elsewhere in this Order; and 2) the strengthened direction regarding natural roles discussed elsewhere in this Order. All of this requires meaningful realignment of activities and associated budgets. In consideration of the budget-bounding approach, the Commission also recognizes certain other sources of funds currently expected to contribute toward clean energy initiatives outside of those funded directly by ratepayers.

1. Federal Funding

While this Order is specifically addressing ratepayer funded EE/BE portfolios, the Commission notes that there are various streams of funding available to help the State meet its ambitious clean energy goals. These sources of federal funds include, but are not limited to:

- Infrastructure Investment and Jobs Act (IIJA), and Inflation Reduction Act (IRA). These Acts provide roughly $50 billion nationally for energy efficiency implementation in buildings. Roughly half of this funding is expected to support programs and tax incentives for efficient upgrades and electrification of existing homes.[80] Moreover, the IIJA and IRA are

[80] Home Energy Upgrade Incentives: Programs in the Inflation Reduction Act and Other Recent Federal Laws, ACEEE September 2022, available at: https://www.aceee.org/policy-brief/2022/09/home-energy-upgrade-incentives-programs-inflation-reduction-act-and-other.

covered programs under the Federal Government's Justice40 Initiative, which requires "40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities."[81] This is consistent with New York's Climate Act.

- The major federal programs funded through IIJA and IRA include:
    - Weatherization Assistance Program (WAP). This program provides grants to cover the cost of home weatherization for income-eligible households at or below 60 percent state median income.[82] New York State Homes and Community Renewal administers the WAP program, including the BIL allocation of roughly $289 million WAP to be spent over several years.
    - The Home Energy Performance-Based Whole-House (HOMES) rebates. These rebates are expected to result in approximately $159 million total of funding to New York. NYSERDA, as New York's State Energy Office (SEO), will operate this Department of Energy (DOE) formula grant program to provide performance-based rebates for home retrofit packages based on the reduction in whole home energy use.
    - The High-Efficiency Electric Home Rebate Program (HEEHRA) rebates, which are expected to result in approximately $158 million total of funding to New York. This DOE formula grant program will also be administered by NYSERDA, as New York State's energy office, and will provide rebates to low- and moderate-income households to install heat pumps and other efficient upgrades including insulation and air sealing and upgrading electric service and wires.
    - Both BIL and IRA include related funding for workforce training: Both bills include funding and resources aimed at building a diverse clean energy workforce of the future.

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[81] https://www.whitehouse.gov/environmentaljustice/justice40/

[82] See, https://hcr.ny.gov/weatherization-applicants.

- o Greenhouse Gas Reduction Fund: This is a $27 billion set of programs administered by Environmental Protection Agency (EPA). The programs will provide competitive grants to states, tribes, cities, and nonprofit organizations who provide financial and technical assistance for projects to reduce or avoid GHG emissions and other forms of air pollution through mobilizing financing and leveraging private capital (financing solutions). Most of the funds are for use in low-income and disadvantaged communities.

- o HUD’s Green and Resilient Retrofit Program: Approximately $2 billion administered by the US Department of Housing and Urban Development (HUD). This program provides grants and loans to HUD-assisted properties to improve energy or water efficiency; enhance indoor air quality or sustainability; implement the use of zero-emission electricity generation, low-emission building materials or processes, energy storage, or building electrification strategies; or make the properties more resilient to climate impacts.

- o Tax Credits, such as 25C Energy Efficient Home Improvement Credit: A tax credit capped at $3,200 per home, for approved energy-efficient improvements, this incentive applies to efficiency improvements installed between January 1, 2023 to 2032. This program is targeted primarily at first time home buyers. Property owners or landlords who do not use the property as their primary residence are ineligible.

The Commission expects all Program Administrators to access all relevant federal funding opportunities and directs the Program Administrators to demonstrate the way in which these funds will be obtained and employed in their proposals. In addition, the Commission directs all Program Administrators to integrate such federal funding steams into existing programs and portfolios in a way that is additive and incrementally impactful and provides simplified access to those funds for all eligible households and businesses.

2. New York Cap and Invest Funding

The Commission recognizes that the recently enacted New York State Fiscal Year 2024 Budget advanced the creation of a Cap-and-Invest program, which was endorsed by New York's Climate Action Council as the most environmentally effective and economically feasible way to support the achievement of New York's ambitious climate goals.[83] The work to implement such a program is underway, but its timing, rules, and availability of funds are not yet certain. For the interim, EE/BE programs need to continue with enhanced and accelerated focus, as the Commission is directing in this Order. Once there is more certainty around the details of the Cap-and-Invest program, the Commission anticipates initiating a process to consider how, when, and to what degree ratepayer funding for these EE/BE programs should wind down in the event funding from Cap-and-Invest proceeds become available to support EE and BE efforts.

Requirements of Proposals

Within 90 days of the date of this Order, NYSERDA and the Utilities shall submit budget bounded proposals utilizing the budgets detailed in the Appendix and responsive to the discussion in the body of this Order, for Commission consideration. The Program Administrators are directed to provide proposals for their EE/BE portfolios that cover a five-year period (i.e., 2026 through 2030); however, we note this does not preclude the Commission from making adjustments to the time period or budget levels, in subsequent order(s) acting on the proposals. NYSERDA, Con Edison, KEDNY/KEDLI shall submit individual LMI EE/BE Portfolio proposals. NYSERDA, Con Edison, KEDNY/KEDLI, Central Hudson, O&R, NFG, Niagara Mohawk, NYSEG,

[83] New York State Cap-and-Invest Program, found at: https://capandinvest.ny.gov/.

and RG&E shall submit individual Non-LMI EE/BE Portfolio proposals.

The Proposals shall include, at a minimum, the following items:

1) Portfolio Objectives, and details on programs to be offered;
2) Proposed performance metrics and program targets both for the overall portfolio, and as appropriate, for individual programs by year;
3) Proposed budgets, by year, represented in the following budget categories: portfolio administration; portfolio evaluation, measurement, and verification (EM&V); and all other program activity, including any co-funding Arrangements, particularly leveraging expected federal funds such as those anticipated through the Inflation Reduction Act, and how such co-funding would work in concert with the proposed programs;[84]
4) Proposed rules and procedures regarding flexibility to shift funds across years;
5) The proposed cost-recovery mechanism and process;[85]

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[84] The NYSERDA budgets set forth in this Order include costs associated with labor. However, labor is not a component of the utility budgets set forth herein as those costs are recovered through utility rates. Therefore, for informational purposes, the Utilities shall provide additional annual labor costs associated with their EE and BE portfolios in their proposals.

[85] Currently all but one utility have EE/BE costs embedded within delivery rates in accordance with their respective rate plans. Separating portfolio authorization from cost-recovery has resulted in the varying different approaches across the utilities. The implementation of CLCPA, also requires a more discrete level of reporting and transparency that would be supported better through the return of cost recovery through a

6) Specific approaches to be employed to ensure provision of benefits to Disadvantaged Communities; and,
7) Description of how the portfolio will work cohesively with programs offered by other Program Administrators.

As noted, the focus of the proposals is for the 2026-2030 period; however, the Commission may entertain limited proposals by Program Administrators for current programs that advance strategic objectives for which adjustments to budget or targets may be necessary to continue program operations through 2025. Such proposals should only be considered after all available steps have been taken to extend program operations given the current level of flexibility granted to Program Administrators, (e.g., reduction of incentive levels or reallocation of funds from other programs).

To aid interested parties in the review of the proposals, Program Administrators are directed to hold a series of Technical Conferences, in consultation with Staff, within 45 days of the filing of the Proposals.

CONCLUSION

The actions taken in this Order set the stage for a transformation of the current program portfolios that have reliably served their purpose to the portfolios of the future that will rise to the challenge of supporting the achievement of our climate objectives. This is the first step in this process to be followed by Program Administrator proposals and further opportunity for stakeholder comment. The Commission appreciates the level of engagement through the comment process to date and

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surcharge mechanism. NYSERDA EE/BE programs are currently funded solely by electric ratepayers, however the Commission believes spreading these costs across both electric and gas ratepayers may be appropriate.

encourages parties to continue to express their input to aid the Commission's deliberations and ultimately approval of the future EE/BE portfolios.

The Commission orders:

1. The New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall consult with Department of Public Service Staff and file annual reports on investments and benefits in Disadvantaged Communities, as discussed in the body of this Order. The initial report shall be filed no later than December 31, 2023, followed by reports filed annually thereafter in compliance with Department of Public Service Staff issued Guidance.

2. The New York State Energy Research and Development Authority shall incorporate into its annual reporting the effectiveness of Regional Clean Energy Hubs connecting customers with utility programs and on the benefits delivered to customers.

3. Department of Public Service Staff shall consult with the New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and

Electric Corporation to, as discussed in the body of this Order: a) ensure that the benefits of their Non-Low- to Moderate-Income programs also benefit Disadvantaged Communities; b)develop an approach to determine compliance with the benefits to Disadvantaged Communities metric across the Program Administrators' Energy Efficiency and Building Electrification portfolios and reflect this approach in relevant Staff-issued guidance; and c) develop a systematic review of the programs to highlight areas where improvements could be made, develop a course of action to implement improvements, and share this learning across Program Administrators.

4. Department of Public Service Staff shall consult with the New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to ensure implementation of discrete tracking of program information related to budgets, expenditures, and benefits between "low" and "moderate" income customers, as well as to identify a reporting timeline that correlates with existing reporting schedules and to update any relevant guidance documents, as discussed in the body of this Order.

5. The New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National

Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, within 60 days of the date of this Order, conduct a comprehensive review of their energy efficiency and building electrification program information, in consultation with Department of Public Service Staff, and file a report detailing any deficiencies related to language access and a plan and timeline for addressing such deficiencies, as discussed in the body of this Order.

6. The New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall submit individual proposals, within 90 days of the date of this Order, utilizing the budgets detailed in the Appendix for their Non-Low- to Moderate-Income Energy Efficiency/Building Electrification portfolios, and inclusive of the matters discussed in the body of this Order.

7. The New York State Energy Research and Development Authority, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, and The Brooklyn Union Gas Company shall submit individual proposals, within 90 days of the date of this Order, utilizing the budgets detailed in the Appendix of this Order for their Low- to Moderate-Income Energy Efficiency/Building Electrification portfolio, and inclusive of the matters discussed in the body of this Order.

8. The New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas

Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, within 45 days of filing the proposals directed under Ordering Clause Nos. 6 and 7 above, hold a series of technical conferences, in consultation with Department of Public Service Staff, as discussed in the body of this Order.

9. The New York State Energy Research and Development Authority, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall consult with Department of Public Service Staff and develop standard consent language within 45 days of this Order, as discussed in the body of this Order.

10. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, within 180 days of this Order, consult with Department of Public Service Staff, and expand the Electric Vehicle Load Serving Capacity Maps into "Electrification Load Serving Capacity Maps," as discussed in the body of this Order.

11. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for

the extension, and must be filed at least three days prior to the affected deadline.

12. These proceedings are continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

$1 Billion Annual Budget Detail for Proposals			
Non-LMI and LMI Budgets Allocated to Program Administrators			
Electric	Non-LMI EE/BE	LMI EE/BE	Total
Central Hudson	$ 27,018,549	$ -	$ 27,018,549
Con Edison	$ 272,386,077	$ 20,000,000	$ 292,386,077
NiMo	$ 82,564,779	$ -	$ 82,564,779
NYSEG	$ 52,234,989	$ -	$ 52,234,989
O&R	$ 14,383,956	$ -	$ 14,383,956
RG&E	$ 20,274,527	$ -	$ 20,274,527
Total	$ 468,862,876	$ 20,000,000	$ 488,862,876
Gas	Non-LMI EE/BE	LMI EE/BE	Total
Central Hudson	$ 1,312,231	$ -	$ 1,312,231
Con Edison	$ 39,032,187	$ 58,658,571	$ 97,690,758
KEDLI	$ 23,070,760	$ 9,823,884	$ 32,894,644
KEDNY	$ 31,489,448	$ 11,517,545	$ 43,006,993
NFG	$ 9,778,645	$ -	$ 9,778,645
NiMo	$ 16,470,064	$ -	$ 16,470,064
NYSEG	$ 3,494,511	$ -	$ 3,494,511
O&R	$ 2,493,948	$ -	$ 2,493,948
RG&E	$ 3,995,331	$ -	$ 3,995,331
Total	$ 131,137,124	$ 80,000,000	$ 211,137,124
Combined Electric and Gas	Non-LMI EE/BE	LMI EE/BE	Total
Central Hudson	$ 28,330,780	$ -	$ 28,330,780
Con Edison	$ 311,418,264	$ 78,658,571	$ 390,076,835
KEDLI	$ 23,070,760	$ 9,823,884	$ 32,894,644
KEDNY	$ 31,489,448	$ 11,517,545	$ 43,006,993
NFG	$ 9,778,645	$ -	$ 9,778,645
NiMo	$ 99,034,843	$ -	$ 99,034,843
NYSEG	$ 55,729,499	$ -	$ 55,729,499
O&R	$ 16,877,904	$ -	$ 16,877,904
RG&E	$ 24,269,858	$ -	$ 24,269,858
Total	$ 600,000,000	$ 100,000,000	$ 700,000,000
NYSERDA	Non-LMI EE/BE	LMI EE/BE	Total
NYSERDA-MD EE/BE	$ 100,000,000	$ 200,000,000	$ 300,000,000
Note: The annual budgets shown in this appendix are to be used for PA proposals in compliance with this Order.			