STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 12, 2022

COMMISSIONERS PRESENT:

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

CASE 22-M-0149 - In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act.

ORDER ON IMPLEMENTATION OF THE CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

(Issued and Effective May 12, 2022)

BY THE COMMISSION:

INTRODUCTION

The New York State Climate Leadership and Community Protection Act (CLCPA) is the most comprehensive and ambitious climate policy legislation enacted in the country.[1] The CLCPA set 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 that have been disproportionately impacted by climate change. The changes contemplated by the CLCPA are expected to profoundly transform

[1] Chapter 106 of the laws of 2019.

the State's regulatory landscape and impact every sector of the economy. The Public Service Commission (Commission) will play a critical role in these efforts as it continues to implement a variety of clean energy initiatives, including those related to the deployment of renewable energy resources to support the State's transition to a zero emissions electric grid, energy efficiency, building electrification, and zero emission transportation.

The Commission has already begun to implement the many objectives of the CLCPA through a number of existing proceedings. To date, the Commission has authorized the offshore wind solicitations necessary to achieve the CLCPA goal of procuring nine gigawatts (GW), funded programs to support the electrification of buildings' heating load and the transportation industry, supported both large scale and distributed clean energy project development, funded programs to reduce natural gas and electricity usage in the State, and instituted a coordinated planning process to evaluate local transmission and distribution system needs to support the State's full transition to renewable generation.[2]

[2] See, e.g., Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (Track One Order); Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) (Track Two Order); Case 15-M-0252, In the Matter of Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Gas Energy Efficiency Portfolios for Implementation Beginning January 1, 2016 (issued June 19, 2015); Case 15-E-0302, Implementation of a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (CES Modification Order); Case 20-E-0197, Implementation of Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order on Phase 1 Local Transmission and Distribution Project Proposals (issued February 11, 2021) (Phase 1 Order).

The Commission has quickly taken action related to items within its jurisdiction to help put the State on a path to meet the aggressive CLCPA targets. However, in consideration of the scope of the CLCPA and the extensive work necessary to achieve its mandates, continuous monitoring of the progress made will be crucial to ensure the State remains on track to achieve these objectives. In addition, there are existing policies that will need to be reviewed, and new policies that will need to be developed, to further the enablement of the CLCPA. This proceeding will be the forum for such policy development. By this Order, the Commission institutes this new proceeding to both track and assess the advancements made towards meeting the CLCPA mandates and provide policy guidance, as necessary, for the additional actions needed to help achieve the objectives of the CLCPA.

BACKGROUND

The CLCPA establishes specific targets designed to achieve carbon neutrality in all sectors of the economy and eliminate GHG emissions produced by energy generation. 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.[3] Among these is the directive for the Commission to establish a clean energy program under which (1) by 2030, the State’s jurisdictional load serving entities (LSEs) procure at least 70 percent of the State’s electric load from renewable energy resources, and (2) by 2040, the statewide electrical demand system is zero emissions.[4] To

[3] CLCPA §4.

[4] Id.; Public Service Law (PSL) §66-p(2).

achieve these goals, the CLCPA mandates the procurement of, at minimum, six GW of distributed photovoltaic solar generation by 2025, three GW of energy storage capacity by 2030, and nine GW of offshore wind generation by 2035.[5]

As required by the CLCPA, the renewable energy program applies to "electric generation secured by jurisdictional load serving entities." The CLCPA defines the term "jurisdictional load serving entity" as "any entity subject to the jurisdiction of the [C]omission that secures energy to serve the electrical energy requirements of end-use customers in New York [S]tate."[6] These entities include investor-owned utilities (IOUs),[7] energy service companies (ESCOs), community choice aggregation projects not served by ESCOs, jurisdictional municipal utilities and any retail customers self-supplying through the New York Independent System Operator, Inc. (NYISO).

The Commission will conduct a biannual review of the renewable energy program beginning July 1, 2024. Specifically, the CLCPA requires the Commission to issue for notice and comment a "comprehensive review" that considers "(a) progress in meeting the overall targets for deployment of renewable energy systems and zero emission sources, including factors that will or are likely to frustrate progress toward the targets; (b)

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[5] PSL §66-p(5).

[6] PSL §66-p(1).

[7] The major electric IOUs include Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R) and Rochester Gas and Electric Corporation (RG&E). The major gas IOUs include Central Hudson, Con Edison, NYSEG, National Grid, O&R, RG&E, The Brooklyn Union Gas Company (KEDNY), KeySpan Gas East Corporation (KEDLI), National Fuel Gas Distribution Corporation, St. Lawrence Gas Company, Inc. and Corning Natural Gas Corporation.

distribution of systems by size and load zone; and (c) annual funding commitments and expenditures."[8] The Commission is authorized to temporarily suspend or modify its obligations under the program should it make a determination, after a hearing, that the program interferes with its core responsibility of ensuring safe and adequate electric service, is likely to impair existing obligations and agreements or results in a significant increase in arrears or service disconnections.[9]

Of note, the CLCPA requires the Commission to design programs in a manner to provide substantial benefits for disadvantaged communities, including low to moderate income customers, at a reasonable cost while ensuring safe and reliable electric service.[10] The CLCPA defines "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, as identified pursuant to section 75-0111 of [the Environmental Conservation Law (ECL)]."[11] Specifically, to the extent practicable, the Commission must:

> (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

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[8] PSL §66-p(3).

[9] PSL §66-p(4).

[10] PSL §66-p(7).

[11] ECL §75-0111 provides for a process through which a Climate Justice Working Group will establish specific criteria for identifying disadvantaged communities. On December 13, 2021, the Climate Justice Working Group released draft criteria and the 120-day public comment period began on March 2, 2022.

and energy efficiency programs, projects or investments[12];

(2) specify a minimum percentage of energy storage projects to deliver energy benefits into NYISO zones that serve disadvantaged communities and deploy such projects in a manner that will reduce the usage of combustion-powered peaking facilities in or near such communities[13];

(3) in any proceeding commenced by the Commission with a goal of achieving 185 trillion British thermal units of end-use energy savings below the 2025 energy-use forecast, include mechanisms to ensure that, where practicable, 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 low to moderate income consumers[14]; and

(4) require the New York State Energy Research and Development Authority (NYSERDA) and the IOUs to develop and report metrics for energy savings and clean energy market penetration in the low- and moderate-income market and in disadvantaged communities and post such information on the NYSERDA's website.[15]

The CLCPA, through Section 7(2) and (3), requires all State agencies, including the Commission, to consider the impacts of their final agency actions on GHG emissions and disadvantaged communities. Pursuant to Section 7(2) of the CLCPA, all State agencies must consider whether their administrative approvals and decisions "are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits" established in ECL Article 75. CLCPA §7(3) requires all State agencies to ensure that their decisions will not "disproportionately burden disadvantaged communities"

[12] ECL §75-0117.

[13] PSL §66-p(7)(a).

[14] PSL §66-p(6).

[15] PSL §66-p(7)(c).

and to “prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”

The CLCPA established the Climate Action Council, which is required to prepare a draft Scoping Plan by January 1, 2022, and to issue a final Scoping Plan by January 1, 2023, outlining recommendations for attaining the statewide GHG emissions limits. The Scoping Plan must identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide GHG emissions limits established by the CLCPA. The Climate Action Council released its draft Scoping Plan for public comment on March 2, 2022.

In addition, the CLCPA requires the Department of Environmental Conservation (DEC) by January 1, 2022, and each year thereafter, to issue a comprehensive report on statewide GHG emissions, expressed in tons of carbon dioxide equivalents, from all GHG emission sources in the State, including the relative contribution of each type of GHG and each type of source to the statewide total.[16] After public workshops, consultation with various groups, and incorporating findings from the Climate Action Council’s Scoping Plan, DEC must promulgate rules and regulations by January 1, 2024, to ensure compliance with statewide emissions reduction limits and work with other State agencies and authorities to promulgate necessary regulations.[17] The CLCPA also requires various State agencies, including the Commission, to “promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established” by the DEC, provided that such

[16] DEC issued a 2021 Statewide GHG Emissions Report covering the years 1990 through 2019. See https://www.dec.ny.gov/energy/99223.html.

[17] ECL §75-0109.

regulations shall not limit DEC's authority to regulate and control GHG emissions pursuant to Article 75 of the ECL.[18]

In April 2020, the State enacted the Accelerated Renewable Energy Growth and Community Benefit Act (the Accelerated Renewables Act) to help guide the transition to an emissions-free electric grid by focusing on improvements to the siting and construction of the large-scale renewable energy projects necessary to achieve the CLCPA mandates.[19] The Accelerated Renewables Act contains several provisions directing the Commission to ensure the electric grid will support the State's climate goals. Specifically, it requires the Department of Public Service (DPS), in consultation with, among others, NYSERDA, major electric IOUs and the NYISO, to conduct a power grid study, defined as "a comprehensive study for the purpose of identifying distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets."[20] On January 19, 2021, DPS released an Initial Report on the New York Power Grid Study, and the Commission has since acted on several of its recommendations, including creating processes to act on two categories of local transmission and distributions projects (known as Phases 1 and 2) that facilitate compliance with CLCPA targets.[21]

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[18] CLCPA §8(1).

[19] Chapter 58 (Part JJJ) of the laws of 2020.

[20] Accelerated Renewables Act §7(2).

[21] Phase 1 Order; Case 20-E-0197, supra, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (issued September 9, 2021).

LEGAL AUTHORITY

The Commission's authority derives from the PSL, through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of . . . electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." In addition, PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying . . . electricity . . . and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such . . . electricity." Additionally, PSL §65(1) provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and, in all respects, just and reasonable." PSL §4(1) also expressly provides the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates, environmental stewardship, and the conservation of resources.

The CLCPA amended the PSL by adding PSL §66-p(2), which directs the Commission to "establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the 'targets') the statewide electrical demand system will be zero emissions." In establishing such program, PSL §66-p(2) requires the Commission to "consider and where applicable formulate the program to address impacts of the program on safe and adequate electric service in the state under reasonably foreseeable conditions. The [C]ommission may, in designing the program, modify the obligations of jurisdictional load serving entities and/or the targets upon consideration of the factors described in this subdivision." In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that "[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update."

DISCUSSION

The CLCPA's ambitious and aggressive decarbonization goals will require a significant transformation of the electric generation, gas distribution, and transmission sectors. We note that, prior to the enactment of the CLCPA, the Commission had already taken significant steps to combat climate change by encouraging the deployment of clean energy resources, energy efficiency and building electrification measures, and advanced energy storage technologies. The Reforming the Energy Vision (REV), the Clean Energy Standard (CES), the Clean Energy Fund (CEF), and New Efficiency: New York are examples of such initiatives. The Commission has taken action to build upon its existing efforts to assess and implement new strategies to meet the requirements of the statewide GHG emission limits through the accelerated deployment of clean energy and related investments. Recognizing the scale of change and significant work that will be necessary to meet these aggressive targets, the Commission will use this proceeding to assess the progress made in meeting its directives under the CLCPA and to provide policy guidance, as appropriate, on next steps needed to support the achievement of the CLCPA mandates.

In meeting the CLCPA's goals and targets, the Commission will continue to fulfill its core mission of ensuring that utilities can provide safe and adequate service at just and reasonable rates. Recognizing the Commission's responsibility to ensure safe and reliable service during the State's transition to a decarbonized electric sector, the CLCPA is clear that the Commission's evaluation under CLCPA §7(2) and (3) will be made in that context. Indeed, the Commission firmly believes that the transition to an emissions-free grid will occur only if the electric system remains reliable throughout the transition. Accordingly, the Commission remains committed to balancing the goals of the CLCPA both with the reliability and resiliency of the system and the resulting rate impacts to all customers. The Commission recognizes that utility ratepayers are currently supporting a significant portion of the clean energy investments and, therefore, it is critical that the State pursues the most cost-effective solutions to meeting the goals of the CLCPA to maintain energy affordability and, where possible, seek alternative funding mechanisms.

A. Data Collection and General CLCPA Compliance

1. GHG Emissions Inventory Report

One of the primary requirements of the CLCPA is to reduce statewide GHG emissions consistent with the limits outlined above. The CLCPA establishes specific requirements for the reporting of all GHG emission sources within the State, including certain sources located outside of the State that are associated with in-state energy consumption, and directs DEC to promulgate regulations to establish statewide GHG limits as a specified percentage of estimated 1990 emissions, expressed in carbon dioxide equivalents.[22] Specifically, the statute requires that statewide GHG emissions include both: (1) "the total annual emissions of greenhouse gases produced within the state from anthropogenic sources," and (2) "greenhouse gases produced outside of the state that are associated with [a] the generation of electricity imported into the state and [b] the extraction and transmission of fossil fuels imported into the state."[23] The CLCPA defines "carbon dioxide equivalent" as a measurement of global warming potential based on a 20-year timeframe and defines "greenhouse gas" as including a specific set of substances.[24]

DEC promulgated a regulation that lists these greenhouse gases and their global warming potential.[25] The CLCPA also directs DEC to promulgate rules and regulations by January 1, 2024, to ensure compliance with the statewide emissions

[22] ECL §75-0105 and §75-0107.

[23] ECL §75-0101(13).

[24] ECL §75-0101(2), (7).

[25] 6 NYCRR §496.5.

reduction limits and to work with other state agencies and authorities to promulgate those regulations.[26]

Pursuant to the CLCPA, DEC publishes an annual Statewide GHG Emissions Report intended to measure progress at reducing GHG emissions and to make that information publicly available. The first such report, published by DEC in December 2021, included upstream emissions from fuels, consistent with the CLCPA's requirements.[27] The Statewide GHG Emissions Report also includes a set of factors that entities may apply to calculate upstream emissions and downstream natural gas emissions.

It is critical that the Commission gather the necessary data from its regulated utilities to be able to track and routinely assess the utilities' GHG emissions in the State, including emissions associated with imported fuels, as well as to evaluate the impact and benefits of proposed projects and programs on emissions levels and disadvantaged communities. The Commission has already acted in recent rate cases to include emissions inventory and reporting requirements, often included within a broader study and required in advance of the utility's next rate filing. For example, the Commission recently required O&R to file a GHG emissions inventory in its next rate filing, unless required to do so earlier, that includes a calculation of annual GHG emissions for its gas system and an assessment of the impacts that the specific investments, capital expenditures, programs, and initiatives described in its rate filing will have

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[26] ECL §75-0109.

[27] NYS DEC 2021 Statewide GHG Emissions Report, https://www.dec.ny.gov/energy/99223.html#Report.

on the GHG emissions from its gas system.[28] The Commission also required O&R to submit future GHG emissions inventory reports on an annual basis.[29]

In the recently-decided National Grid rate case, the Commission required the utility to conduct a CLCPA Study, including a GHG emissions inventory, to analyze the scale, timing, costs, and customer bill impacts of achieving significant, quantifiable reductions in carbon emissions from the use of gas delivered in its service territory and the projects and programs needed to achieve the CLCPA's specific decarbonization goals, while prioritizing reductions of GHG emissions and co-pollutants in disadvantaged communities.[30] The Commission also included similar requirements for GHG emission inventories and CLCPA studies in other recent rate cases.[31]

These requirements, however, have not been consistent, both in terms of the required content and frequency for submission of these studies and reports. As such, the Commission finds that it must establish clear and consistent statewide guidelines for GHG emissions reporting requirements to

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[28] Cases 21-G-0073 and 21-E-0074, O&R - Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, with Additional Requirements (issued April 14, 2022) (2022 O&R Rate Order), p. 77.

[29] Id. at 68.

[30] Case 20-E-0380 and 20-G-0381, National Grid - Rates, Order Adopting Terms of Joint Proposal, Establishing Rate Plans and Reporting Requirements (issued January 20, 2022) (2022 National Grid Rate Order), p. 86.

[31] Cases 20-E-0428 and 20-G-0429, Central Hudson – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued November 18, 2021) (2021 Central Hudson Rate Order), p. 40; Cases 19-G-0309 and 19-G-0310, KEDNY and KEDLI - Rates, Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements (issued August 12, 2021) (2021 KEDNY KEDLI Rate Order), p. 177.

ensure that the State's major electric and gas IOUs (collectively, the Utilities) are on track to meet the CLCPA targets. The Commission directs the Utilities to work with DPS Staff to develop a proposal regarding the content of a GHG Emissions Inventory Report that includes an inventory of total gas system-wide emissions, following the methodology required in the CLCPA and by DEC to calculate their system emissions.[32] The goal is for the Utilities to assess the current direct and indirect GHG emissions, including upstream emissions from imported fossil fuels, local distribution emissions, and end-use (customer meter) emissions and file a report on an annual basis.[33] Establishing this annual GHG Emissions Inventory reporting process, and distinguishing it from the CLCPA studies required in past rate cases, will allow the Commission to evaluate the impact of the Utilities' planning measures and operational changes each year. Additionally, requiring all Utilities to submit on the same frequency will allow for a cumulative assessment of the Utilities' statewide GHG emissions.

The Utilities shall work with DPS Staff in developing the proposal, including detailed requirements, and the methodology used to calculate emissions for this annual GHG Emissions Inventory Report and file a proposal for public comment by December 1, 2022. Utilities with existing GHG emissions inventory requirements in presently effective rate plans shall continue to abide by those requirements until the Commission adopts statewide requirements. With the knowledge that DEC also has authority to impose emissions reporting requirements on the utility sector, the Commission will keep abreast of DEC's actions in this area to ensure that its

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[32] ECL §75-0105.

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

reporting requirements are consistent with those that may be required by DEC.[34]

Lastly, consistent with requirements imposed in recent rate cases the Commission directs all Utilities in future rate filings to include an assessment of the GHG emissions impacts of each specific investment, capital expenditure, program, and initiative included in their rate filings. In the recently decided O&R case, the Commission required O&R in its next rate filing to provide "an assessment of the impacts that O&R's specific investments, capital expenditures, programs, and initiatives described in its rate filing will have on its [GHG] emissions from its gas network, specifying the potential emissions impacts of each."[35] The Commission expects the Utilities to undertake the same analysis in all future rate case filings.

2. Requirements Related to Disadvantaged Communities

As required by the CLCPA, the Climate Justice Working Group is tasked with establishing criteria for identifying disadvantaged communities for the purposes of co-pollutant reductions, GHG emissions reductions, regulatory impact statements, and the allocation of investments pursuant to the

[34] Id.; Because DEC tracks annual GHG emissions from the electric generation sector through its annual Statewide GHG Emissions Report, there is no need for the Utilities to conduct this exercise. The emissions from this sector will naturally be reduced as more renewable energy resources come on-line due, in part, to NYSERDA's procurement of renewable energy credits (RECs) and offshore RECs (ORECs) under the Clean Energy and Offshore Wind Standards.

[35] 2022 O&R Rate Order, p. 78.

CLCPA.[36] On December 13, 2021, the Climate Justice Working Group voted to release the draft disadvantaged communities criteria, along with an interactive map and a list of disadvantaged communities statewide.[37] These criteria are currently subject to a 120-day public comment period before final criteria is established.[38]

In advance of the finalization of these criteria, the Commission has taken a number of steps to ensure benefits are realized for disadvantaged communities. These steps include, but are not limited to, authorizing $224 million in funding for clean electric transportation programs in disadvantaged

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[36] The 13-member Climate Justice Working Group is comprised of representatives from Environmental Justice communities statewide, including three members from New York City communities, three members from rural communities, and three members from urban communities in upstate New York, as well as representatives from the State Departments of Environmental Conservation, Health, Labor, and NYSERDA. Beyond the development of the disadvantaged communities criteria, this Working Group serves in an advisory role to the Climate Action Council process, providing strategic advice for incorporating the needs of disadvantaged communities in the Scoping Plan.

[37] New York State Climate Justice Working Group Draft Disadvantaged Communities Criteria and List Technical Documentation, https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria.

[38] Until the disadvantaged communities criteria is formally adopted, New York State's interim definition includes communities located within census block groups that both meet the US Housing and Urban Development (HUD) 50% Adjusted Median Income threshold and are located within the DEC Potential Environmental Justice Areas; or are located within New York State Opportunity Zones. The HUD 50% Adjusted Median Income threshold includes the top quartile of census block groups in New York, ranked by the percentage of Low-to-Moderate (LMI) Households in each census block. LMI Households are defined as households with annual incomes at or below 50% of the Area Median Income of the County or Metro area where the Census Block Group resides.

communities,[39] setting a goal for the CEF for 40 percent of benefits to serve disadvantaged communities and requiring the New York Green Bank to assess its offerings to ensure they meet the needs of, and deliver true benefits to, disadvantaged communities,[40] and creating program criteria within the recently expanded NY-Sun program to ensure that at least 40 percent of the four GW incremental increase to the distributed solar generation capacity goal will benefit those New Yorkers who generally lack access to rooftop solar, including LMI residents, and those living in regulated affordable housing and disadvantaged communities.[41]

Additionally, DPS Staff is currently developing a baseline for the respective clean energy and energy efficiency programs to determine whether such programs comply with the requirement that no less than 35 percent, with a goal of at least 40 percent, of the overall benefits of such programs, projects or investments are directed to disadvantaged communities. Staff is actively engaging with inter-agency working groups and collaboratives focused on developing best practices and streamlined input from disadvantaged communities' advocates to identify areas of improvement in program design, outreach and implementation to further advance the goals of the CLCPA. Staff will continue to evaluate the existing clean

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[39] Case 18-E-0138, Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure, Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Program (issued July 16, 2020); Clean Transportation Prize Program Implementation Plan (filed April 14, 2020).

[40] Case 14-M-0094, supra, Order Approving Clean Energy Fund Modifications (issued September 9, 2021) (CEF Modification Order).

[41] Case 21-E-0629, et al., 10 GW Solar Roadmap, Order Expanding NY-Sun Program (issued April 14, 2022), p. 41.

energy investments to ensure compliance with this requirement and will report on any programs requiring modification, including those that will require Commission action to address. While that action will be taken within the proceeding that funds the specific program at issue, overall compliance with this mandate will be tracked and reported on an annual basis within this proceeding.

B. Policy Development

As described earlier, the Commission will use this proceeding to develop and adopt policies necessary to support the achievement of the CLCPA mandates. Our expectation is that such development would be initiated with a Commission order, a notice for comments, and/or a DPS Staff whitepaper. That said, we address certain timely policy issues in this Order as follows.

1. Cost Allocation

The CLCPA cites the statewide benefits that will accrue from implementation of the clean energy and technology mandates specified under the statute.[42] The statute makes clear that the harmful impacts of climate change affect all residents of the State and, thus, the cost burdens of climate change should be distributed equally to all residents and businesses without regard to the location of particular projects. As such,

[42] See CLCPA §1(1) which states that "[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York" through, inter alia, an increase in the "severity and frequency of extreme weather events," "a decline in freshwater and saltwater fish populations," "increased average temperatures, which increase the demand for air conditioning and refrigeration among residents and businesses," and "exacerbation of air pollution"; CLCPA §3 which states that the primary purpose of the CLCPA is for "New York" to address these impacts by "reduc[ing] greenhouse emissions."

the Commission has determined that the megawatt hour load ratio share methodology is appropriate for allocating the costs of large-scale clean energy projects that directly serve the CLCPA's goal of reducing GHG emissions.

The Commission provided the most detailed explanation regarding the volumetric load ratio share allocation in the context of applying that formulation to the CES Tier 3 Zero Emission Credit program that benefits the upstate nuclear power plants:

> Applying the obligation on a volumetric basis is rational and the most appropriate basis to broadly allocate the costs given the nature of carbon emissions that are a creature of the volume of electric generation and consumption. The Commission is instituting this program *to prevent widespread damage from carbon emissions that affect everyone*. It is fair and appropriate for all consumers to participate.[43]

However, the Commission has noted in many of its recent decisions that there is a concern about the impact the increased costs of CLCPA investments will have on ratepayers and maintaining energy affordability. Since investments required to implement the CLCPA are becoming a significant driver of utility rate increases, it is critical for DPS Staff to provide the Commission and the public with specific cost-based information to understand the impact of these capital investments on ratepayers as part of our core obligation to ensure just and reasonable rates. The Commission expects Staff to continue to include detailed cost impacts of any new CLCPA investment projects and/or programs when presenting such proposal(s) to the Commission for consideration, and undertake the benefit cost analysis (BCA) for such projects required under the BCA

[43] CES Modification Order, p. 149 (emphasis added).

Framework Order.[44] As further discussed in Section H of this Order, DPS Staff shall also include a discussion of CLCPA-based cost impacts as part of its annual informational presentation.

2. Utility Owned Generation

The Commission's Vertical Market Power Policy established a presumption that utility ownership of generation has anti-competitive consequences and that vertical market power "occurs when an entity that has market power in one stage of the production process leverages that power to gain advantage in a different stage of the production process."[45] A utility can rebut this presumption through a demonstration that no opportunity exists for the exercise of market power, that reasonable means exist to mitigate the exercise of vertical market power, or that substantial benefits to ratepayers combined with mitigation measures warrant overcoming the presumption.[46] The issues of vertical market power are still relevant today and the Commission must continue to ensure that entities that have market power in one stage of the production process are not provided unchecked opportunity to leverage that power to gain an advantage in a different stage of the production process. To date, the Commission has only ruled in

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[44] See 14-M-0101, Reforming the Energy Vision, Order Establishing the Benefit Cost Analysis Framework (issued January 21, 2016)

[45] See, e.g., Cases 96-E-0900 et. al., O&R's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Statement of Policy Regarding Vertical Market Power (issued July 17, 1998), Appendix I, p. 1.

[46] Id.

favor of utility ownership of large-scale renewable projects on two occasions.[47]

In the REV Track One Order, the Commission determined utility ownership of distributed energy resources (DERs) will be the exception rather than the rule. The Commission noted that it does not generally favor utility ownership of DER assets as unrestricted utility participation in DER markets presents a risk of undermining markets more than a potential for accelerating market growth.[48] Specifically, the Commission explained that utility ownership of DERs would discourage investment from the competitive market and prove to be a distraction from the utility's main focus of operating its electric distribution system. The Commission ruled that, as a general rule, utility ownership of DERs would not be allowed unless markets have had an opportunity to provide a service and have failed to do so in a cost-effective manner, but there may be circumstances where a utility identifies a resource need for new transmission or a distribution plant that could be better met by greater penetration of DERs.[49]

The Commission established four circumstances under which utility ownership of DER would be allowed: (1) procurement of DERs has been solicited to meet a system need, and a utility

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[47] Case 07-M-0906, Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Order Authorizing Acquisition Subject to Conditions (issued September 9, 2008); Case 18-E-0765, Petition of NextEra Energy Transmission New York, Inc. for an Order Granting Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Order Granting Certificate of Public Convenience and Necessity (issued February 11, 2021).

[48] Track One Order, p. 66-67.

[49] Id. at 66-68.

has demonstrated that competitive alternatives proposed by non-utility parties are clearly inadequate or more costly than a traditional utility infrastructure alternative; (2) a project consists of energy storage integrated into distribution system architecture; (3) a project would enable low or moderate income residential customers to benefit from DERs where markets are not likely to satisfy the need; and (4) a project is being sponsored for demonstration purposes where partnerships with utilities and third parties can accelerate market understanding and the development of sustainable business models.[50]

The issue of utility ownership of renewable generation assets must be considered in the context of what can best accelerate the market and be consistent with the public interest. To help inform the Commission's assessment as to whether revisions to its prior policies are necessary, the Commission directs the Secretary to issue a notice seeking public comment regarding utility ownership of both DERs and large-scale renewables contemporaneously with issuance of this Order.

C. Gas System Transition and Alternative Fuels

The Commission notes that the CLCPA contains no mandates or guidelines directly related to emissions associated with the State’s gas distribution system or gas supplied by utilities. This is in contrast with the specific mandates included within the CLCPA related to the transition to a zero-emission electric grid by 2040, which the Commission is

[50] Id. at 70.

implementing through its modification to align the CES with the CLCPA.[51]

The Commission recognizes the need to reduce the emissions associated with gas delivery systems in order to support the achievement of the CLCPA's GHG emissions targets and, accordingly, initiated the Gas Planning Proceeding regarding gas planning procedures.[52] In that case, the Commission tasked Staff with issuing "a proposal for a modernized gas planning process that is comprehensive, suited to forward-looking system and policy needs, designed to minimize total lifetime costs, and inclusive of stakeholders."[53] Staff subsequently issued a Gas Planning Process Proposal, dated February 21, 2021,[54] which has been the subject of a stakeholder forum and two rounds of public comments. The purpose of Staff's proposal is to ensure more thoughtful, strategic, and comprehensive planning for natural gas usage and investments. It also presents a regulatory planning roadmap to enable gas utilities to maximize the use of energy efficiency, new technologies (such as electric heat pumps) and demand response programs, as well as minimize — and even potentially eliminate — new gas infrastructure investments while maintaining safe and

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[51] CES Modification Order; Case 19-E-0735, Request for Additional NY-Sun Program Funding and Extension of Program Through 2025, Order Extending and Expanding Distributed Solar Incentives (issued May 14, 2020) (NY Sun Order); Case 18-E-0130 Energy Storage Deployment Program, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) (Energy Storage Order).

[52] Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Instituting Proceeding (issued March 19, 2020).

[53] Id. at 7.

[54] Case 20-G-0131, supra, Staff Gas System Planning Process Proposal (filed February 12, 2021).

reliable service, consistent with the CLCPA. Staff's proposal is pending before the Commission for final consideration.

The Commission expects Staff to continue work in the Gas Planning Proceeding and in utility-specific rate cases, as appropriate, to address both near- and long-term measures to reduce GHG emissions from the gas delivery system. This shall include many of the measures adopted in recent rate cases including, but not limited to the following:

- Requirement for utility gas depreciation studies to examine the potential impacts of climate change policies and laws on average service lives, reserve deficiency/surplus, salvage value, cost of removal, depreciation rates, and customer bills, and assess the appropriate survivor curve to inform the utility's next base rate filing;
- Discontinuation of all utility activities associated with gas expansion, including eliminating heating oil-to-gas conversion programs, gas marketing efforts, and customer conversion rebates;
- Prioritization of leak prone pipe (LPP) removal or replacement and repair of leaks; and
- Implementation of demand reduction through targeted heat pump programs, building efficiency upgrades, district heating projects, demand response programs for firm natural gas customers, non-gas Non-Pipes Alternatives (NPA) projects and other potential initiatives.

1. <u>GHG Emissions Reduction Pathways Study</u>

As described in more detail below, achievement of the CLCPA's GHG emissions mandates will require significant reductions in the use of natural gas. The transition away from natural gas will impact existing gas utility regulatory processes related to planning, cost recovery and future business models. As the Commission considers potential paths forward to implement this transition, it is critical for the Commission to understand the investments, programs, and initiatives the Utilities will need to undertake to effectuate the reduction in natural gas usage across the State. The Commission has already acted in prior rate cases to require utilities to file studies to assess the impacts of transitioning away from the use of natural gas and it recognizes here the value of having one coordinated statewide study.[55]

The Commission directs the Utilities to develop a proposal for a GHG Emissions Reduction Pathways Study (Study Proposal) that analyzes the scale, timing, costs, risks, uncertainties (translated into sensitivity analyses around key cost and availability assumptions), and customer bill impacts of achieving significant and quantifiable reductions in GHG emissions from the use of gas delivered by the Utilities. This Study Proposal shall include three components:

- A coordinated long-term gas sector decarbonization pathway analysis through 2050.
- A coordinated near-term plan to address actions needed to achieve statewide decarbonization targets through 2030.
- Individual, long-term utility decarbonization plans to achieve each utility’s share of statewide decarbonization targets through 2050.

The analysis shall include an assessment of the Utilities’ proposed projects and programs needed to achieve the CLCPA’s goals and statewide emissions limits, potential carbon dioxide equivalent reductions per year, million British Thermal units (MMBTU) reductions in billed annual usage, and the numbers of customers heating with gas in residential, commercial, and industrial classes per year under different scenarios, including a scenario that assumes full electrification where the utility is reasonably capable of providing an alternative energy option to natural gas. The Study Proposal shall identify potential barriers to achieving the targeted GHG emission reductions and recommended solutions. The Study Proposal shall also consider how the Utilities intend to avoid disproportionately burdening

[55] 2022 O&R Rate Order, p. 78; 2021 KEDNY KEDLI Rate Order, p. 173; 2022 National Grid Rate Order, p. 49.

disadvantaged communities, consistent with the requirements of the CLCPA.

Prior to preparing the Study Proposal, the Utilities shall engage with interested stakeholders in a scoping process and subsequently provide the draft Study Proposal to the interested stakeholders for review and feedback prior to its finalization. The Study Proposal process will include a scoping meeting at which the Utilities will present one comprehensive draft scoping plan for feedback from the interested stakeholders, including the opportunity to ask questions. This component shall include intended GHG reduction targets for natural gas sector emissions for key milestone years, with consideration given to other statewide policy documents and plans and emissions that need to be reserved for other sectors. The Utilities will also provide an opportunity for interested stakeholders to review and provide feedback on the draft Study Proposal before submission. Prior to submitting the Study Proposal, the Utilities must receive approval from DPS Staff on the underlying methodology and assumptions. The Commission directs the Utilities to file the Study Proposal for public comment by March 31, 2023. The Commission also directs the Utilities in all future rate filings, to describe, in detail, the investments, programs, and initiatives necessary to achieve the objectives described in the Study Proposal.

In requiring this near-term Study Proposal, we do not intend to affect Staff's or the Commission's actions under the Gas Planning Proceeding. In fact, we note that the DPS Gas System Planning Proposal in the Gas Planning Proceeding recommends that the Commission direct New York's gas utilities to file long-term plans that consider the GHG emission impacts of new gas infrastructure and the State's reduction goals.[56] Staff shall align its work under the Gas Planning Proceeding with any recommendations for the decarbonization of the gas delivery system that may be included in the Climate Action Council's Scoping Plan once finalized. Additionally, Staff and the Utilities shall align work on the Study Proposal with the coordinated plan for the orderly downsizing of the gas system included in the Climate Action Council's draft Scoping Plan should that recommendation be incorporated within the Final Scoping Plan.[57]

2. Alternative Fuels

The Commission recognizes that there may be a need to use alternative and low-carbon fuels, such as locally produced biomethane (also known as renewable natural gas) or green hydrogen, as a tool to reduce the carbon content of gas as the State implements strategies for long-term decarbonization and transition of the gas system, to continue to meet the energy needs of hard to electrify customers, and to meet the goals of the CLCPA.[58] The Commission will continue to review proposals for the use of these alternative fuels and evaluate the costs, reliability benefits, and the environmental impacts and benefits associated with the use of these fuels.

D. Energy Efficiency, Building Electrification and Demand Response

Energy efficiency, building electrification and demand response (DR) will play key roles in the achievement of the CLCPA targets as buildings that combust natural gas and other fuels were responsible for approximately one-third of the

[56] Case 20-G-0131, supra, DPS Staff Gas System Planning Proposal, p. 26.

[57] Climate Action Council's Draft Scoping Plan, p. 271.

[58] Id. at 82, 121, A-167, A-177, and Section I, p. 24.

State's GHG emissions in 2019.[59] These types of demand-side solutions help to reduce the emission of harmful pollution through the reduction or elimination of electric, natural gas, or delivered fossil fuel consumption. Further, these programs can serve to benefit the utilities' systems by reducing or avoiding the need for additional infrastructure and reducing usage during periods of high demand. In recognition of the level of GHG emissions attributed to energy use in buildings, these ratepayer-supported programs have scaled significantly in recent years.

1. Energy Efficiency and Building Electrification

In 2016, the Commission established the CEF as a $5.3 billion, 10-year commitment to clean energy and efficiency measures, recognizing that deploying programs at scale holds the potential to address the pressing environmental and energy challenges of our time, while providing enormous economic opportunity for the State.[60] The CEF consists of four program portfolios administered by NYSERDA: Market Development, Innovation & Research, New York-Sun (NY-Sun), and the NY Green Bank. Collectively, these portfolios are intended to work in conjunction with utility-administered clean energy programs to further foster innovation in energy markets by testing new business models, attracting private capital to New York energy markets, facilitating new customer engagement and choice for clean energy services, and extracting value from DERs that improve system efficiency and reduce consumer energy costs. In

[59] Id. at 118.

[60] Case 14-M-0094, supra, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) (CEF Framework Order). The Commission, through the CEF Framework Order, consolidated various post-2015 NYSERDA clean energy activities (e.g., the New York Green Bank and NY-Sun) and ratepayer funding under the CEF.

2021, the Commission undertook a review of the CEF, which assessed the program's performance to date and took several actions to optimize the CEF portfolios in the context of today's market realities and State mandates, including the CLCPA.[61]

In December 2018, the Commission found reasonable a statewide goal of 185 trillion British thermal units (TBtu) of customer-level energy reduction by 2025 and adopted an incremental target of 31 TBtu of reduction by the State's utilities, along with a process to authorize utility-specific budgets and targets.[62] In January 2020, the Commission authorized $3.2 billion through 2025 for utility-specific energy efficiency and, for the first time, building electrification targets and budgets that, when combined with NYSERDA's targets established in the CEF Framework Order, are projected to achieve over two-thirds of the 185 TBtu statewide goal.[63] At that time, the Commission noted the importance of tracking the progress of these efforts towards meeting the ambitious targets and, therefore, provided for a formal interim review of the utility programs to begin in 2022.[64] This comprehensive review will assess all aspects of the NE:NY program, including program design and administration, innovative practices, governance and oversight mechanisms, and targets and associated budgets.

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[61] CEF Modification Order.

[62] Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Adopting Accelerate Energy Efficiency Targets (issued December 13, 2018) (2018 NE:NY Order). This Order applies to the energy efficiency programs run by the State's large IOUs, which include Central Hudson, Con Edison, National Grid, NYSEG, RG&E, KEDLI and KEDNY.

[63] Case 18-M-0084, supra, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) (2020 NE:NY Order).

[64] Id. at 59-61.

As explained in the CEF Modification Order, the Commission recognizes that NYSERDA and the utilities' efforts are intended to be complementary, not duplicative, and therefore achieve greater scale than either could accomplish unilaterally.[65] NYSERDA and the utilities should continue to explore and refine approaches to make the most efficient use of ratepayer funds, as well as eliminate confusion in the marketplace and provide streamlined access to customers. The Commission directed Staff to align the efforts of the 2022 NE:NY Interim Review with the next CEF review in 2023, so that program offerings can be considered in the context of the overall marketplace and informed by the actions of the Climate Action Council.[66]

2. Demand Response

New York has a robust set of electric DR programs operating at both the wholesale and distribution system level. Most notably at the wholesale level is the NYISO Special Case Resources (SCR) program. The SCR program is a wholesale reliability-based program that is activated during peak transmission system load conditions. Customers participating in the SCR program are compensated for their load relief at the same payment rate at which customers pay for Installed Capacity. As of the end of the 2021 summer capability period, there were 2,896 customers or end-use locations providing a total of 1,164 megawatts (MW) of load relief through the SCR Program.[67]

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[65] CEF Modification Order, p. 58.

[66] Id.

[67] NYISO 2021 Annual Report on Demand Response Programs, (https://www.nyiso.com/documents/20142/28052158/NYISO-2021-Annual-Report-on-Demand-Response-Programs-FINAL.pdf).

The Commission began implementing distribution-level DR programs in 2009,[68] beginning with programs at Con Edison,[69] and later expanding the distribution-level DR programs, collectively as Dynamic Load Management (DLM) programs, statewide in 2015.[70] These programs include: 1) the day-ahead commercial and industrial (C&I) customer-focused Commercial System Relief Program (CSRP) peak-shaving DR program; 2) the intra-day C&I customer-focused Distribution Load Relief Program (DLRP) reliability DR program; and 3) the mass market customer-focused Direct Load Control (DLC) Program,[71] which supports both peak-shaving and reliability efforts by allowing direct utility control of enrolled smart thermostat temperature setpoints. While the CSRP and DLC Programs are both available nearly statewide,[72] only Con Edison and O&R operate a DLRP in their respective service territories. The Commission further expanded statewide DLM program offerings in response to the Energy Storage Order,[73] implementing the new Term-DLM and Auto-DLM Programs with participant incentive payment rates set for a

[68] Case 09-E-0115, Demand Response Initiatives, Order Instituting Proceeding (issued February 17, 2009).

[69] Case 09-E-0115, supra, Order Adopting in Part and Modifying in Part Con Edison's Proposed Demand Response Programs (issued October 23, 2009).

[70] Case 14-E-0423, et al., Dynamic Load Management Programs, Order Adopting Dynamic Load Management Filings with Modifications (issued June 18, 2015).

[71] Mass market customers are defined as residential and small commercial customers that are not billed on a demand-basis.

[72] All electric distribution IOUs operate a CSRP that is available throughout each utility's service territory. All electric distribution IOUs, except for Central Hudson, operate a DLC Program. Central Hudson, however, does offer a similar program in specified areas of its service territory through its Targeted Demand Management Program, its existing Non-Wire Alternative program.

[73] Energy Storage Order, pp. 33-34.

specified three-year period and determined through a competitive auction.[74] In addition, recent completion of Advanced Metering Infrastructure meter installations has created an opportunity for participation in the C&I-focused DR programs for much smaller mass market customers. Such customers began participating in Con Edison's CSRP and DLRP programs during the 2021 summer capability period.[75] In total, approximately 60,000 customers enrolled in the DLM Programs statewide during 2021, with 640 MW participating in CSRP, 394 MW participating in DLRP, 12 MW participating in the Term-DLM and Auto-DLM programs, and 54 MW participating in the DLC Program.[76]

While New York's electric DR market has experienced a period of reasonably stable programs and steady growth, the State's suite of gas DR programs is in its relative infancy. Thus far, only a handful of utilities currently operate one or more gas DR programs for firm service customers, and most of such programs are in a small-scale pilot phase. Currently, Con Edison operates a modest time-limited Gas DR Pilot program,[77] NYSEG is obligated to implement a geographically-limited Gas DR

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[74] Case 18-E-0130, supra, Order Establishing Term-Dynamic Load Management and Auto-Dynamic Load Management Program Procurements and Associated Cost-Recovery (issued September 17, 2020).

[75] Case 09-E-0115, supra, Consolidated Edison Company of New York, Inc. Report on Program Performance Cost Effectiveness of Demand Response Programs – 2021 (filed November 15, 2021).

[76] DLM Program enrollment is estimated based on 2021 summer capability period results as reported in the utilities' Annual DLM Program Reports filed on November 15, 2021, in Case 14-E-0423.

[77] Case 17-G-0606, Con Edison Smart Solutions, One Commissioner Order Approving Extension of Gas Demand Response Pilot Program (issued June 23, 2021).

Program as part of its Lansing Non-Pipe Alternative project,[78] and National Grid has agreed as part of its recent Joint Proposal to implement a Gas DR Program.[79] An exception to the general trend are KEDNY and KEDLI, both of which are implementing gas DR programs of significant scale as part of their long-term plans for meeting forecast capacity.[80] However, recent difficulties in enrolling additional gas load relief demonstrates an obstacle in continuing to rapidly scale these programs.[81] Unlike the electric DR programs, which are supported and marketed to customers by a robust marketplace of aggregators, most customers participating in utility gas DR programs do so by enrolling directly through the utility.

Notwithstanding the headwinds experienced by gas DR programs to date, the Commission anticipates significant value in expanding such programs across New York, provided such programs can operate cost-effectively. DR programs in general help a utility, or other grid operator like the NYISO, manage its system and peak load in an effective manner to minimize the amount of new infrastructure required to meet system needs. The value of minimizing new investment in long-lived infrastructure is particularly salient on the gas system, as compliance with the CLCPA and achievement of other New York policy goals will require customers to become less reliant on fossil fuel

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[78] Case 17-G-0432, NYSEG Lansing NPA Project, One Commissioner Order Approving Petition for Non-Pipe Alternative Projects, with Modifications (issued June 21, 2021) (Lansing NPA Order).

[79] 2022 National Grid Rate Order, p. 47.

[80] 2021 KEDNY KEDLI Rate Order, p. 121.

[81] Case 19-G-0309, et al., supra, Supplemental Filing of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid for Approval of Incremental Demand-Side Management Programs (filed March 25, 2022), p. 13.

infrastructure. The Commission anticipates implementing a statewide proceeding in the future to investigate the potential expansion of gas DR programs statewide, and to determine if such programs can be operated on a cost-effective basis as a normal part of the utility business going forward.

E. Transportation Electrification

The wide-scale adoption of EVs is critical to meeting the CLCPA mandates as New York's transportation sector was responsible for approximately 28 percent of the State's GHG emissions in 2019.[82] In support of the State's zero-emissions vehicle (ZEV) goals, the Commission has taken action to encourage the statewide deployment of EVs through the approval of residential time-of-use rates for EV charging,[83] annual per-plug incentives to mitigate the costs of installing publicly accessible direct-current, fast-charging facilities (DCFC),[84] and a number of EV demonstration and pilot projects.[85] In addition to these direct efforts, the Commission has also approved earnings adjustment mechanisms in rate proceedings intended to

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[82] Draft Scoping Plan, p. 95.

[83] Case 18-E-0206, Tariff Filings to Effectuate Provisions of PSL §66-o, Order Rejecting Tariff Filings and Directing Tariff Revisions (issued November 15, 2018).

[84] Case 18-E-0138, EV Supply Equipment and Infrastructure, Order Providing Clarification and Modifying Direct Current Fast Charging Incentive Program (issued March 19, 2020).

[85] Case 14-M-0101, supra, Con Edison REV Demo Quarterly Report – Curbside EV Charging Q42021 (filed January 31, 2022); Con Edison REV Demo Quarterly Report – School Bus Q42021 (filed January 31, 2022); 2022-01-27 Integrated EV Quarterly Report REDACTED (14-M-0101) (filed January 27, 2022); 2021-7-30 OptimizEV Q2 Report REDACTED (14-M-0101) (filed July 30, 2021).

reward utilities for actions taken to further encourage EV penetration in their respective service territories.[86]

In furtherance of its goal to support adoption of EVs, the Commission established the EV Make-Ready Program in July 2020 to develop and deploy the minimum critical infrastructure necessary to support the EV charging market and EV adoption through utility-funded incentives.[87] The Make-Ready Order directed the electric IOUs to work with Staff to propose implementation plans for utility-specific managed charging programs, which they filed in September 2020. The programs are funded to provide for more than 50,000 public charging station plugs to support the ZEV goal to deploy 850,000 EVs across the State by 2025. Consistent with the CLCPA, $206 million of the $701 million program budget must directly benefit the LMI population in disadvantaged communities.

In addition to the incentives to help fund increased penetration of charging stations, the Make-Ready Order also directed the electric IOUs to develop and file Managed Charging Program proposals designed to incentivize customers to charge their EVs during off-peak hours when such incremental charging is unlikely to cause the need for additional infrastructure investment. The Make-Ready Order directed Staff to organize a stakeholder process to review, among other things, the Managed Charging Program proposals. The Commission anticipates that Staff will complete its review of those proposals in the near future.

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[86] 2022 National Grid Rate Order, p. 85; 2021 Central Hudson Rate Order, p. 47-48; 2022 O&R Rate Order, Attachment A, October 29, 2021 Joint Proposal, Appendix 16, pp. 10-11.

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

Further, the Secretary recently issued a Notice Soliciting Comments seeking stakeholder input to help DPS Staff develop a proposal responsive to the recently-enacted PSL §66-s.[88] PSL §66-s requires the Commission to "commence a proceeding to establish a commercial tariff utilizing alternatives to traditional demand-based rate structures, other operating cost relief mechanisms, or a combination thereof (collectively, 'solutions')," evaluate the relative costs and benefits of the proposed solutions, and issue an order approving or modifying a proposal made by DPS. The Commission anticipates that this important work will begin immediately and that the Commission will be able to fulfill its statutory responsibility to issue an order on such a proposal by the end of the year.

The Commission recognizes the essential role that public DCFC stations play in supporting the goal of rapidly increasing EV adoption. It is our expectation that, over time, EV deployment levels will be sufficient to drive EV supply equipment development without additional subsidies. Staff will continue to monitor market trends to determine whether future support will be necessary to enable the 2 to 3.4 million EVs necessary to meet the CLCPA's 2030 GHG emissions reduction goal.

F. Non-Wire Alternatives and Non-Pipe Alternatives

The Commission has supported and encouraged non-infrastructure alternatives to meet grid planning needs for nearly a decade. Among the first of such alternatives was the approval of the Indian Point Demand Management Program, a customer-side demand reduction program that incentivized customers to install demand-reducing equipment, such as energy efficiency products, building control upgrades, energy storage,

[88] Case 22-E-0236, et al., Alternatives to Traditional Demand-Based Rate Structures for Commercial Electric Vehicle Charging, Notice Soliciting Comments (issued April 21, 2022).

thermal storage, and demand response-enabling systems, during critical peak hours to diminish the impact of the expected closure of the Indian Point Nuclear Generating Facility.[89] Thereafter, the Commission approved the Brooklyn/Queens Demand Management (BQDM) Project, New York's first true non-wires alternative (NWA) project,[90] which replaced the need for an approximately $1 billion new substation with a combination of significant customer-side load relief measures and less expensive interim utility-side investments.[91] As part of the REV Track One Order, the Commission directed each of the major electric IOUs to identify one traditional capital project and attempt to develop a NWA project to meet the identified need.[92]

Following the REV Track One Order, the Commission began to implement NWAs in a more programmatic manner, integrating the development of NWA projects into the utilities' typical capital planning procedures. First, the Commission directed the electric IOUs to develop a set of suitability criteria against which each traditional capital infrastructure project would be compared to determine the suitability for such project to be delayed or eliminated through successful

[89] Case 12-E-0503, Indian Point Retirement Contingency Planning, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing (issued November 4, 2013).

[90] Con Edison and O&R also interchangeably use Non-Wires Solution (NWS) in place of the Commission's preferred NWA nomenclature for marketing purposes.

[91] Case 14-E-0302, Brooklyn/Queens Demand Management Program, Order Establishing Brooklyn/Queens Demand Management Program (issued December 12, 2014).

[92] REV Track One Order, p. 130.

implementation of a NWA project.[93] For those projects that meet all of the applicable NWA screening criteria, the utility is obligated to attempt to develop and pursue an NWA project to defer or eliminate the affected traditional project. Second, the Commission approved cost recovery mechanisms for each electric IOU that allow the utility to recover the costs of its NWA projects and related activities, modify plant in service balances to remove the revenue requirement impact of traditional infrastructure projects included in base rates which are replaced by a NWA project, and provided special accounting procedures to allow the utilities to earn a return on incurred NWA project costs.[94] The cost recovery mechanism and accounting treatment eliminate any incentive for utilities to spend money on traditional capital projects instead of other non-capital alternatives. Finally, the Commission approved a shareholder incentive mechanism at each electric IOU, designed to incentivize utilities to design and implement NWA projects for

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[93] Case 16-M-0411, Distributed System Implementation Plans, Order on Distributed System Implementation Plan Filings (issued March 9, 2017), p. 23.

[94] Case 16-E-0060, et al., Con Edison - Rates, Order Approving Electric and Gas Rate Plans (issued January 25, 2017), pp. 29-32; Case 17-E-0238, et al., National Grid – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 15, 2018), p. 57-60 (2018 NMPC Rate Order); Case 17-E-0459, et al., Central Hudson – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued June 14, 2018), pp. 73, 75 (2018 Central Hudson Rate Order); Case 18-E-0067, et al., O&R Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 14, 2019), pp. 64-67 (2019 O&R Rate Order); Case 19-E-0378, et al., NYSEG and RG&E - Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, with Modifications (issued November 19, 2020), pp. 161-163 (2020 NYSGE and RG&E Rate Order).

maximum societal benefit.[95] This shareholder incentive mechanism allows the utility to retain 30 percent of the societal net benefits of implementing a NWA project, with adjustments to provide an incentive for the utility to minimize costs to achieve deferral or elimination and control any cost overruns.

At present, each of the electric IOUs have approved NWA project cost recovery and shareholder incentive mechanisms in place. In addition to the BQDM Program, which is still ongoing, there are numerous existing NWA projects statewide at each utility. In total, there are six active or completed NWA projects, representing approximately 95 MW of load relief under management, with 11 other projects currently under development.

While electric NWA projects have been steadily advancing, gas non-pipe alternative (NPA) projects have been slower to mature as they are meaningfully more complicated. Where the Commission required a statewide effort to identify electric capital project screening criteria, as previously discussed, similar identification of screening criteria for gas capital projects has progressed predominantly through individual utility rate proceedings.[96] Similarly, the Commission has adopted both NPA cost recovery mechanisms and, where appropriate, shareholder incentive mechanisms related to NPAs

[95] Case 15-E-0229, Con Edison Targeted Demand Management Program, Order Approving Shareholder Incentives (issued January 25, 2017); 2018 NMPC Rate Order, pp. 57-60; 2018 Central Hudson Rate Order, p. 73; 2019 O&R Rate Order, pp. 64-67; 2020 NYSEG and RG&E Rate Order, pp. 161-163.

[96] 2018 Central Hudson Rate Order, pp. 68-69; 2020 Con Edison Rate Order, pp. 38-39; 2020 NYSEG and RG&E Rate Order, pp. 161-163; 2021 KEDNY KEDLI Rate Order, pp. 125-125, 175-176; 2022 National Grid Rate Order, p. 51; 2022 O&R Rate Order, pp. 107-108.

that mirror the mechanisms established for electric NWAs.[97] Despite the presence of these cost recovery and incentive mechanisms, development of NPA projects has been modest.

Where there has been significant opportunity to defer growth-related electric capital projects, many gas capital projects are more focused on maintaining reliability of the existing gas system and are therefore more difficult to defer or avoid altogether. Further, a significant proportion of the proposals submitted by gas utilities to date have been to address pipeline capacity issues which, while the Commission has supported such projects to the extent that cost-effective alternatives can be provided through utility efforts, do not fit the definition on an NPA for incentive purposes as such projects do not displace traditional utility capital expenditures.[98] Furthermore, several of the utility solicitations intended to gather market-based alternatives have not garnered sufficient response in terms of load relief provided from non-gas sources or at prices which would pass a BCA test to justify implementing an NPA project.[99]

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[97] 2018 Central Hudson Rate Order, pp. 68-69; 2020 NYSEG and RG&E Rate Order, pp. 161-163.

[98] Case 17-G-0600, supra, Order Approving with Modification the Non-Pipeline Solutions Portfolio (issued February 7, 2019), p. 35; Case 19-G-0066, Con Edison - Rates, Order Approving with Modifications the Request for Funding Approval to Pursue Additional Solutions for Load Relief (issued June 23, 2021), p. 8.

[99] Lansing NPA Order, p. 3. At the Commission's direction, NYSEG issued two Requests For Proposals (RFPs) and a Request For Information. Ultimately, the second RFP resulted in a portfolio of measures that provide just enough load relief to ease reliability constraints but not enough relief to lift the longstanding moratorium in the Lansing area as initially intended. Staff reports that issues, similar to those experienced by NYSEG, are the primary reason NPA projects do not advance past the development stage more frequently.

Notwithstanding these challenges, NPA opportunities are expected to continue growing in the coming years. Central Hudson, for example, has experienced substantial success with its program to develop small-scale NPA projects to avoid the need to replace short sections of leak-prone pipe by fully electrifying affected customer heating equipment and other appliances that would otherwise use gas and retiring the old pipe in place instead of replacing it with new infrastructure.[100] While this NPA use-case shows significant promise, it faces a significant hurdle in that such projects require that all customers on a section of leak-prone pipe voluntarily agree to fully abandon the gas system. As discussed above, the Commission anticipates that these and other issues related to the advancement of NPA projects will be considered as part of the Gas Planning Proceeding.

G. Renewable Energy and Transmission Investments

The Commission has a longstanding policy of promoting renewable energy resources to meet our responsibility to preserve environmental values and conserve natural resources.[101] Prior to the adoption of the CLCPA, the Commission had implemented programs and mechanisms designed to support the decarbonization of the State's electric system. Beginning with statewide energy efficiency programs to reduce electricity and natural gas usage through direct rebates and subsidies,[102] these programs have evolved to include the expansion of large-scale

[100] Case 17-E-0459et al., Central Hudson - Rates, CHGE NPA TMA Implementation Plan Letter 091521 (filed September 15, 2021).

[101] PSL §5(2).

[102] Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008)

renewable energy resources and advanced green technologies.[103] The REV initiative guided necessary regulatory changes to align electric utility practices and the regulatory framework with advances in technology to improve system efficiency and promote greater penetration of clean generation and energy efficiency technologies. Since its creation, REV has altered utilities' business models through landmark changes in how DERs are employed and valued and how utilities are compensated for advancing the State's climate goals.

The Commission initiated the Retail Renewable Portfolio Standard (RPS), which is administered by NYSERDA, in 2004, with a Main Tier for large resources and a Customer-Sited Tier for smaller resources, including distributed solar.[104] Following a series of modifications to the RPS program, in 2014, the Commission authorized NYSERDA to implement the NY-Sun MW Block Program for the period of 2016 through 2023, with a target of three GW of distributed solar in New York State and a total budget of $960.6 million to support that goal.

The Commission adopted the CES in 2016, which set a goal for 50 percent of the electricity consumed in the State by 2030 to be generated by renewable energy sources.[105] In 2018, the Commission added an Offshore Wind Standard to the CES, requiring LSEs to support the procurement of 2.4 GW of offshore

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[103] Case 14-M-0101, supra, Order Instituting Proceeding (April 25, 2014).

[104] Case 03-E-0188, Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

[105] Case 15-E-0302, supra, Order Adopting a Clean Energy Standard (issued August 1, 2016).

wind resources by 2030.[106] The Commission authorized NYSERDA to hold initial procurement solicitations in 2018 and 2019, for an aggregate of approximately 800 MW or more of offshore wind. In October 2019, NYSERDA successfully contracted for 1,696 MW of offshore wind,[107] and in April 2020, the Commission authorized NYSERDA to issue an additional offshore wind solicitation for 1,000 MW or more.[108] On May 14, 2020, in response to a petition filed by NYSERDA, the Commission extended the NY-Sun program through 2025 and authorized an incremental program budget of $573 million to achieve the CLCPA’s six GW target.[109]

These initiatives have since been expanded, where necessary, to support the CLCPA’s requirement of a 100 percent emissions-free power grid by 2040. For instance, in October 2020, the Commission formally adopted the CLCPA’s clean energy deployment targets, including the goal that at least 70 percent of the statewide load will be served by renewable energy resources by 2030, and the procurement of nine GW of offshore wind by 2035.[110] In the CES Modification Order, the Commission granted NYSERDA authority to procure the remaining amounts of offshore wind resources necessary to achieve that goal, with a target of between roughly 750 MW and 1,000 MW per year through

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[106] Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) (Offshore Wind Framework Order).

[107] Case 18-E-0071, supra, NYSERDA’s Launching New York’s Offshore Wind Industry: Phase 1 Report (filed October 23, 2019).

[108] Case 18-E-0071, supra, Order Authorizing Offshore Wind Solicitation in 2020 (issued April 23, 2020).

[109] Case 19-E-0735, supra, Order Extending and Expanding Distributed Solar Incentives (issued May 14, 2020) (NY-Sun Expansion Order).

[110] CES Modification Order, pp. 21-23, 45, 131.

2027. In April 2022, the Commission authorized an additional $1.474 billion for the NY-Sun program and expanded the installation target from six to ten GW of distributed solar generation projects. Going forward, the Commission and DPS will continue to ramp up efforts to support large scale clean energy investments made under CES and CEF, including NY-SUN, energy storage and onshore wind.

Achieving the mandates of the CLCPA and the Accelerated Renewables Act will require significant modifications to the electric grid, in addition to investments in renewable generation, to ensure the system of the future serves New Yorkers in a reliable and cost-effective manner. As the State enters a period of relatively rapid change and increased electrification, we recognize the importance of ensuring transmission needs on the bulk system are identified as early as possible and deploying our planning tools efficiently. The Commission established a coordinated State planning process to develop transmission plans to meet the State's CLCPA mandates and ensure the Commission and electric IOUs are equipped to respond to system needs in a timely manner.[111] Through this process, the electric IOUs and the NYISO will align their procedures, incorporating any necessary modifications to enable the full spectrum of bulk and local transmission needs to be presented to the Commission as they evolve. The electric IOUs' January 2023 filing,[112] and future CLCPA planning filings required by the Commission, will enable the Commission to assess needs from this perspective. The Commission will implement local transmission upgrades pursuant to our authority and invoke

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[111] Case 20-E-0197, supra, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (issued September 9, 2021) (Phase 2 Order).

[112] Phase 2 Order, pp. 30-32.

the NYISO's Order 1000 process where bulk solutions are necessary, with the goal of deploying the most cost-effective combination of solutions.[113]

The Commission will facilitate the development of both large scale and distributed clean energy projects in coordination with NYSERDA, the electric IOUs and the Office of Renewable Energy Siting. In addition, DPS Staff will continually evaluate existing programs to determine whether more resources are needed to support additional clean energy projects to both meet anticipated increased electric demand and maintain system reliability.

H. Annual Informational Presentation

Staff is directed to present to the Commission an annual informational item detailing the Commission's actions and DPS' activities associated with overall compliance with the CLCPA mandates. This presentation shall include, but not be limited to, the emissions associated with electric and gas usage in the State, as identified in the annual GHG Emissions Inventory Reports, progress on achieving the targets mandated within the renewable energy program (including the biannual review required by the CLCPA), the cost and benefits to ratepayers of CLCPA investments over the prior calendar year, including the purchase of RECs and ORECs by LSEs, the costs of local and bulk transmission facilities constructed for purposes of facilitating compliance with CLCPA targets, and the cost recovery associated with NE:NY and other energy efficiency programs implemented by the Utilities and NYSERDA. The presentation shall also include a review of the extent that the overall investments made to comply with the Commission's CLCPA-

[113] See Phase 1 Order; see also Phase 2 Order.

related programs over the prior calendar year benefited disadvantaged communities.

The Commission orders:

1. A proceeding is initiated to measure and track compliance with, and develop and consider proposals to implement, the provisions of the Climate Leadership and Community Protection Act as discussed in the body of this Order.

2. 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., Rochester Gas and Electric Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Liberty Utilities Corp., and Corning Natural Gas Corporation are directed to work with Department of Public Service Staff to develop a proposal for an annual Greenhouse Gas Emissions Inventory Report, including detailed requirements and the methodology used to calculate total gas system-wide emissions, and file a draft version for public comment by December 1, 2022, as discussed in the body of this Order.

3. 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., Rochester Gas and Electric Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Liberty Utilities Corp., and Corning Natural Gas Corporation are directed to include, in all future rate filings, an assessment of the impacts that the utility’s specific investments, capital

expenditures, programs and initiatives included in the rate filing will have on its greenhouse gas emissions from its gas network, specifying the potential emissions impacts of each, as discussed in the body of this Order.

4. The Commission directs the Secretary to issue a notice seeking public comment regarding utility ownership of both distributed energy resources and large-scale renewables contemporaneously with the issuance of this Order.

5. 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., Rochester Gas and Electric Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Liberty Utilities Corp., and Corning Natural Gas Corporation are directed to develop a Greenhouse Gas Emissions Reduction Pathways Study Proposal that analyzes the scale, timing, costs, risks, uncertainties and customer bill impacts of achieving significant and quantifiable reductions in carbon emissions from the use of delivered gas, as discussed in the body of this Order, which shall be filed by March 31, 2023.

6. 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., Rochester Gas and Electric Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Liberty Utilities Corp., and Corning Natural Gas Corporation are directed to describe, in all future rate filings, the investments, programs and initiatives necessary to achieve the

objectives described in the Greenhouse Gas Emissions Reduction Pathways Study.

7. Department of Public Service Staff is directed to present an annual informational item detailing overall compliance with Climate Leadership and Community Protection Act as discussed in the body of this Order.

8. 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.

9. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary