

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT AND  
RESILIENCE PANEL - REBUTTAL TESTIMONY

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1       **I. Introduction**

2       Q.     Would the members of the Climate Leadership and Community  
3             Protection Act ("CLCPA") Panel ("Panel") please state your  
4             names?

5       A.     Patrick G. McHugh, Katherine Boden, Steven Parisi, Vicki Kuo,  
6             Gurudatta Nadkarni, Christopher Ivan Kimball, Christopher  
7             Raup, and Venetia Lannon.

8       Q.     Has the Panel previously submitted testimony in this  
9             proceeding?

10      A.     (McHugh, Boden, Nadkarni, Kimball, Raup, and Lannon) Yes. We  
11             submitted initial testimony on behalf of Consolidated Edison  
12             Company of New York, Inc. ("Con Edison" or the "Company") on  
13             January 28, 2022 and update testimony on April 8, 2022.

14      Q.     Please explain any changes to the Panel.

15      A.     (Parisi) Effective June 1, 2022, I have been promoted to  
16             Senior Vice President. On July 1, 2022, I will assume  
17             responsibility for Central Operations replacing Milovan Blair  
18             who is retiring. Therefore, I am replacing him on this Panel.

19             (Kuo) Effective July 1, 2022, I have been promoted to Senior  
20             Vice President and will assume responsibility for Customer  
21             Energy Solutions, replacing Lenny Singh who is leaving the  
22             Company. Therefore, I am replacing him on this Panel.

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1 Q. Mr. Parisi and Ms. Kuo, do you adopt the testimony previously  
2 provided by your predecessors in these proceedings?

3 A. (Parisi and Kuo) Yes.

4 Q. What is the purpose of the Panel's rebuttal testimony?

5 A. To respond to parties' testimony regarding CLCPA sections 7(2)  
6 and 7(3), specific Company projects, and other matters  
7 pertaining to the CLCPA.

8 Q. Are you sponsoring any exhibits as part of this rebuttal?

9 A. No.

10 Q. How is the rest of your testimony organized?

11 A. We begin with a discussion of the principles that apply to the  
12 Commission's review of utility rate filings under CLCPA  
13 section 7(2) and discuss matters parties have raised regarding  
14 the Company's CLCPA section 7(2) compliance. Then we turn to  
15 a discussion of the CLCPA section 7(3) prohibition on  
16 disproportionately burdening disadvantaged communities,  
17 including an explanation of the criteria the Commission should  
18 use in applying section 7(3) in rate cases and an explanation  
19 of why the projects parties have challenged comply with  
20 section 7(3). Then, we discuss other matters regarding  
21 section 7(3). Finally, we discuss other CLCPA related  
22 matters.

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1     **II.    Rebuttal**

2             **A. CLCPA Section 7(2)**

3                     **1. General Principles**

4     Q.    How does CLCPA section 7(2) apply to utility rate cases?

5     A.    CLCPA section 7(2) requires the Commission to consider whether  
6            a proposed rate plan or rate settlement is "inconsistent with  
7            or will interfere with" attaining statewide greenhouse gas  
8            ("GHG") emissions limits.

9     Q.    Can the Commission approve a proposed rate plan or rate  
10           settlement if it finds that it is not consistent with or will  
11           interfere with the state's GHG emissions limits, either in  
12           whole or in part?

13    A.    Yes.  If the Commission makes such a finding, however, it must  
14           provide a detailed statement of justification as to why such  
15           limits will not be met and identify alternatives or GHG  
16           mitigation measures to be required.

17    Q.    Does the CLCPA contain any mandates or guidelines with respect  
18           to emissions associated with the state's gas distribution  
19           system or with respect to gas supplied by utilities like Con  
20           Edison?

21    A.    No, and the Commission has noted the absence of such language.

22    Q.    Where?

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1 A. In the *Niagara Mohawk*<sup>1</sup> and *O&R*<sup>2</sup> rate orders, the CLCPA Order,<sup>3</sup>  
2 and the Gas Planning Order.<sup>4</sup>

3 Q. Some parties in this proceeding oppose projects necessary for  
4 the continued safe and reliable operation of the Company's gas  
5 system on the grounds that any investment that supports the  
6 continued use of the gas system violates the CLCPA. Does the  
7 CLCPA prohibit such investments?

8 A. No, and the Commission has repeatedly rejected the claim that  
9 it does.

10 Q. Please explain.

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<sup>1</sup> Case 20-E-0380, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric Service, et al.*, Order Adopting Terms of Joint Proposal, Establishing Rate Plans and Reporting Requirements (Jan. 20, 2022) ("*Niagara Mohawk*").

<sup>2</sup> Case 21-E-0074, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, et al.*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, with Additional Requirements (April 14, 2022) ("*O&R*").

<sup>3</sup> 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* (CLCPA Proceeding), Order on Implementation of the Climate Leadership and Community Protection Act (May 12, 2022) ("CLCPA Order").

<sup>4</sup> Case 20-G-0131, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*; Case 12-G-0297, *Proceeding on Motion of the Commission to Examine Policies Regarding the Expansion of Natural Gas Service*, Order Adopting Gas System Planning Process (May 12, 2022) ("*Gas Planning Order*").

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1 A. The Commission has consistently explained that the CLCPA does  
2 not override the Commission's statutory obligation to ensure  
3 safe and reliable service at just and reasonable rates, and  
4 that the Commission must conduct its CLCPA analysis in that  
5 context. Consequently, the Commission has approved rate  
6 settlements that fund gas safety and reliability projects, as  
7 the Company has proposed here.

8 Q. Are gas system investments inconsistent with the Climate  
9 Action Council's draft scoping plan?

10 A. No. Like the Commission, the draft scoping recognizes that the  
11 "transition from oil and gas will take time and, during that  
12 time, the state will continue to rely on oil and gas  
13 infrastructure to deliver safe and reliable energy."<sup>5</sup>

14 Q. As a general matter, how has the Commission applied CLCPA  
15 section 7(2) in rate cases?

16 A. We are not attorneys, but our attorneys have advised us that  
17 to date the Commission has examined whether a joint proposal  
18 is directionally consistent with the CLCPA. For example, in

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<sup>5</sup> <https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan.pdf> p. 269.

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1           *Central Hudson*<sup>6</sup> (pp. 43-44) the Commission approved the joint  
2           proposal because it was a "significant and necessary step in  
3           reaching the CLCPA and other climate related requirements,"  
4           and in both *Niagara Mohawk* (p. 83) and *O&R* (p. 76), the  
5           Commission approved the joint proposals because each was "an  
6           important step in the ongoing process of achieving the CLCPA's  
7           greenhouse gas limits, one that will be built upon in future  
8           rate cases and other Commission proceedings." In *National*  
9           *Grid* (pp. 71-82),<sup>7</sup> the Commission approved the joint proposal  
10          because it was consistent with the CLCPA's emission mandates,  
11          justified based on the need to ensure the reliability of the  
12          gas system, and otherwise appropriately mitigated any GHG  
13          impacts.

14    Q.    Do you believe that the Company's proposals are directionally  
15          consistent with the CLCPA?

16    A.    Yes.

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<sup>6</sup> Case 20-E-0428 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, et al.*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued November 18, 2021) ("*Central Hudson*").

<sup>7</sup> Case 19-G-0309, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service, et al.*, Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements (issued August 12, 2021) ("*National Grid*").

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1                   **2. Emissions Calculation**

2   Q.    In prior rate cases where the Commission has applied CLCPA  
3        section 7(2), did the utilities provide estimated emissions  
4        calculations?

5   A.    Yes.

6   Q.    Did Con Edison provide estimated emissions calculations in  
7        these proceedings?

8   A.    Yes. We presented those calculations in our initial testimony  
9        and updated them in our update testimony.

10   Q.    Were your calculations consistent with other utility  
11        calculations that the Commission has reviewed under CLCPA  
12        section 7(2)?

13   A.    Yes. As other utilities have done, we calculated estimated  
14        emissions associated with the Company's electric and gas sales  
15        forecasts.

16   Q.    Did the Commission adopt the joint proposals in those other  
17        rate cases?

18   A.    Yes, as discussed above, the Commission adopted the joint  
19        proposals in *Central Hudson, O&R, Niagara Mohawk, and National*  
20        *Grid*.

21   Q.    Did other utility emissions calculations or your emissions  
22        calculations include upstream and indirect emissions?



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1 A. No.

2 Q. What did the Commission say regarding utility emissions  
3 inventories in the CLCPA Order?

4 A. The CLCPA Order (pp. 12-16) required utilities, including Con  
5 Edison, to work with Staff to develop a proposal for a  
6 statewide GHG Emissions Inventory Report that includes an  
7 inventory of total gas system-wide emissions, following the  
8 methodology required in the CLCPA and by the New York State  
9 Department of Environmental Conservation. The Commission  
10 explained (p. 15) that the goal is for utilities to assess  
11 current direct and indirect GHG emissions, "including upstream  
12 emissions from imported fossil fuels, local distribution  
13 emissions, and end-use (customer meter) emissions" and to file  
14 an annual report.

15 Q. What deadline did the Commission set regarding this  
16 requirement?

17 A. The Commission required utilities to file their proposal for a  
18 statewide GHG Emissions Inventory Report for public comment by  
19 December 1, 2022. Thus, a proposed framework for measuring  
20 upstream GHG emissions associated with the gas system will be  
21 available for Commission review when it reviews Con Edison's  
22 rate filing. This shows that the Commission is in the process

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1 of developing a framework for analyzing gas emissions, which  
2 does not prevent the Commission from making a finding, based  
3 on the record in this case, that our rate plan is  
4 directionally consistent with the CLCPA.

5 Q. In its direct testimony (pp. 6-7) the Sane Energy Project  
6 ("Sane") argues that the Company's emissions calculations in  
7 this rate case are incomplete because "they do not include the  
8 1990 baseline emissions for upstream emissions and consumption  
9 emissions of the gas delivered by the Company." How do you  
10 respond?

11 A. We disagree with the claim that our calculations are  
12 incomplete. As we have explained, in applying CLCPA section  
13 7(2) in utility rate cases, the Commission has not required  
14 utilities to inventory upstream and indirect emissions.  
15 Rather, the Commission has adopted joint proposals supported  
16 by estimated emissions calculations like those that Con Edison  
17 performed in these cases, which is to say, tied to electric  
18 and gas sales forecasts. That is the standard that applies  
19 here. As we noted above, the CLCPA Order directs utilities,  
20 including Con Edison, to work with Staff in a generic  
21 proceeding to develop a proposal to perform an emissions  
22 inventory that includes upstream and indirect emissions. That

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1 proposal is to be submitted to the Commission for public  
2 comment by December 1, 2022. Our attorneys have advised us  
3 that nothing in the CLCPA Order provides a basis for departing  
4 from precedent and changing the current rate case standard for  
5 calculating emissions before completion of the process that  
6 the Commission established in the CLCPA Order. We also note  
7 that, as a practical matter, we do not believe we should be  
8 calculating upstream and indirect emissions in the absence of  
9 Commission guidance.

10 **3. Sufficiency of the Company's Filing**

11 Q. Does the Staff CLCPA Panel agree that the Company's gas system  
12 proposals are comparable to those that the Commission has  
13 previously found compliant with CLCPA section 7(2)?

14 A. Yes, and the Staff CLCPA Panel (p. 32) acknowledges that Con  
15 Edison has already agreed to take steps other utilities have  
16 recently agreed to take in their rate settlements. Staff  
17 recommends, however, that the Company: (1) develop a program  
18 to quantify methane leaks caused by excavator damage, include  
19 the emissions in its emissions inventory, and require  
20 excavators to pay for the lost gas (pp. 21; 35); (2)  
21 discontinue natural gas marketing (pp. 32; 36); and (3) make a

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1           commitment to target a reduction in overall gas sales volumes  
2           (pp. 36-37).

3   Q.    What is your response to Staff's recommendations?

4   A.    It is unclear whether Staff is asserting that its  
5           recommendations are necessary for CLCPA section 7(2)  
6           compliance or is offering them as suggestions. To the extent  
7           Staff is claiming that Con Edison must adopt the  
8           recommendations to comply with CLCPA section 7(2), our  
9           attorneys advise us that this is not required. As Staff  
10          acknowledges, the Company's gas proposals are comparable to  
11          those that the Commission has previously held sufficient to  
12          demonstrate a joint proposal's consistency with state  
13          emissions goals. Moreover, we note that we have made  
14          proposals, e.g., elimination of the 100-foot rule, that go  
15          beyond what other gas utilities are implementing as part of  
16          their current gas rate plans, and we believe overall our gas  
17          and electric proposals are directionally consistent with the  
18          CLCPA. In addition, in O&R (pp. 75-76), the Commission  
19          rejected requests to find the utility's proposals inadequate  
20          because they allegedly fell short of what other utilities had  
21          done.

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1 That said, to the extent Staff's recommendations are  
2 suggestions to facilitate the State's compliance with the  
3 CLCPA, the Company is open to considering them conceptually as  
4 part of settlement negotiations. We note, however, that the  
5 Company has already discontinued marketing its natural gas  
6 service.

7 **B. CLCPA Section 7(3) Disproportionate Burden Review**

8 **1. General Principles**

9 Q. How does CLCPA section 7(3) apply to utility rate cases?

10 A. CLCPA section 7(3) requires the Commission to consider whether  
11 a proposed rate plan or rate settlement will  
12 "disproportionately burden" a disadvantaged community and  
13 prohibits approval if it does.

14 Q. How does the CLCPA define the term "disadvantaged community"?

15 A. The CLCPA defines disadvantaged communities as "communities  
16 that bear burdens of negative public health effects,  
17 environmental pollution, impacts of climate change, and  
18 possess certain socioeconomic criteria, or comprise high-  
19 concentrations of low- and moderate- income households, as  
20 identified by the [Climate Justice Working Group]."

21 Q. Has the Climate Justice Working Group completed the process of  
22 identifying specific disadvantaged communities?

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1 A. No. The Climate Justice Working Group has published draft  
2 criteria for public comment.

3 Q. How has the Commission applied the requirement to avoid  
4 disproportionately burdening disadvantaged communities?

5 A. Thus far, the Commission has evaluated whether a rate  
6 settlement overall imposes a disproportionate burden on  
7 disadvantaged communities. For example, in *Niagara Mohawk*  
8 (pp. 90-91), the Commission found no disproportionate burden  
9 because "many" of the utility's projects were expected to have  
10 "generally" beneficial effects on emissions in local  
11 communities and because "most" of the utility's construction  
12 activities would occur in utility-owned facilities or utility-  
13 controlled rights of way or easements. In carrying out this  
14 holistic analysis, the Commission has focused on the benefits  
15 disadvantaged communities receive from safe and reliable  
16 service at just and reasonable rates (*National Grid, Niagara*  
17 *Mohawk, and O&R*), the benefits disadvantaged communities  
18 receive from projects that reduce emissions (*Niagara Mohawk*),  
19 or the extent that projects or project construction occurs on  
20 property or rights of way owned or controlled by the utility  
21 (*National Grid and Niagara Mohawk*).

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1 Q. Do you maintain that Con Edison's rate filing provides overall  
2 benefits for disadvantaged communities?

3 A. Yes. Our initial testimony, and the initial testimony of the  
4 EIOP, GIOSP, and CES panels, identify proposed capital  
5 projects and programs that would provide safe and reliable  
6 service and achieve significant emissions reductions or  
7 facilitate the clean energy transition in ways that benefit  
8 disadvantaged communities. In rebuttal, the EIOP and GIOSP  
9 panels have continued to advocate for programs that provide  
10 safe and reliable service and facilitate the clean energy  
11 transition.

12 Q. Is the Company required to provide an evaluation of the  
13 potential burdens on disadvantaged communities for individual  
14 capital projects identified during this rate proceeding?

15 A. No. This has not been required in any other post-CLCPA rate  
16 proceeding, and our attorneys have advised us that such a  
17 requirement would directly contradict the longstanding (and  
18 correct) view of the Commission that its evaluation of an  
19 individual project's environmental impacts (*i.e.*, burdens)  
20 have no role in Commission rate-making actions because their  
21 relation to rates are too attenuated from the actual project  
22 construction and financing to be considered "actions" under

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1 the state Environmental Quality Review Act ("SEQRA"). Indeed,  
2 the Commission has never made any SEQRA related finding for a  
3 rate case decision. For the same reason, it would be  
4 premature and inappropriate for the Commission to require the  
5 Company to submit project specific burden assessments under  
6 section 7(3). At a minimum, our attorneys have advised us that  
7 it is inappropriate at this time given that the state has not  
8 yet adopted final criteria for identifying disadvantaged  
9 communities. We note, however, that we have reviewed our  
10 projects, do not believe there are any disproportionate  
11 burdens, and are not aware of any allegations with respect to  
12 disproportionate burdens except for the projects that we  
13 specifically discuss later in this testimony.

14 **2. Applicable Criteria**

15 Q. Does every project impose a burden for the purpose of CLCPA  
16 section 7(3)?

17 A. No. We are not attorneys, and the interpretation of the CLCPA is  
18 ultimately a legal decision and not a factual matter to be  
19 resolved through testimony. Nevertheless, we provide some initial  
20 views here for an issue that should be resolved through legal  
21 briefing. Projects (or temporary disruptions associated with  
22 projects) required to maintain existing utility facilities in a



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1 safe and reliable condition should be deemed not to be a "burden"  
2 for the purposes of section 7(3). First, any project that  
3 involves repairs or replacements in-kind to an existing facility  
4 without any increase in emissions should be deemed to benefit  
5 rather than burden disadvantaged communities and should be  
6 excluded. Such projects are necessary to maintain safe and  
7 reliable service and do not impose any unique or disproportionate  
8 burden on a disadvantaged community. Second, any upgrade or  
9 repair that occurs solely within or on an existing facility, on  
10 utility property, or within an easement or right of way under the  
11 utility's control should be excluded. Both *National Grid* and  
12 *Niagara Mohawk* support that exclusion. Third, any upgrade that  
13 replaces parts (including technology) that are obsolete or  
14 difficult to maintain should be excluded. Fourth, any project or  
15 program that applies to the Company's entire service territory  
16 (or significant parts thereof) should be excluded because it is  
17 generally applicable. Utility facilities, especially in a  
18 densely populated area like New York City, are located in  
19 disadvantaged and non-disadvantaged communities alike. Programs  
20 or investments that apply equally to facilities in all  
21 communities (even if program schedules or requirements focus on  
22 particular locations at particular times) do not impose a unique  
23 burden on disadvantaged communities. Finally, normal incidents

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1 of utility work that affect all communities in a service  
2 territory from time to time, such as traffic or temporary  
3 inconveniences caused by construction, should not be considered  
4 disproportionate burdens on any community. Such temporary  
5 conditions are not unique to disadvantaged communities but result  
6 from the practical realities of operating and maintaining public  
7 utilities in densely populated areas.

8 Q. What types of benefits and justifications would be sufficient  
9 to overcome a burden?

10 A. Certain actions should generally not be considered a burden,  
11 such as projects developed to: (1) comply with state, federal,  
12 or other applicable law; and (2) provide or maintain safe and  
13 reliable service at just and reasonable rates. These  
14 categories of actions are *per se* adequate justifications  
15 because they are required to comply with the Public Service  
16 Law and other applicable law. Further, certain actions that  
17 yield system benefits would outweigh any perceived burden,  
18 such as: (1) facilitating electrification; (2) upgrading or  
19 expanding the system to accommodate or facilitate clean  
20 energy; (3) upgrading a facility to reduce emissions, enable  
21 switching to a cleaner fuel, enable new technology, or  
22 increase efficiency; (4) connecting clean energy to customers;

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1 and (5) hardening the system against the effects of more  
2 frequent and severe weather. These categories of actions  
3 should be considered significant benefits because both the  
4 Commission and the Public Service Law acknowledge them as  
5 public goods. *National Grid, Niagara Mohawk, Central Hudson,*  
6 *and O&R* generally support this list. Thus, a project that  
7 expands or adds new infrastructure to maintain reliability or  
8 to enable clean energy would be sufficient to overcome any  
9 burden it might impose on a disadvantaged community.

10 **3. Specific Projects**

11 Q. Some parties allege that specific projects proposed by the  
12 Company disproportionately burden disadvantaged communities.  
13 Do any of the Company's proposed projects disproportionately  
14 burden disadvantaged communities?

15 A. No, and as we explain here, the specific projects at issue  
16 provide benefits to disadvantaged communities.

17 **i. Main Replacement Program**

18 Q. Let's turn to the specific projects and programs that have been  
19 challenged. Some parties assert that the Company's Main  
20 Replacement Program conflicts with the CLCPA's emissions goals  
21 and is therefore inconsistent with section 7(2) because it will  
22 support continued use of the natural gas system. As a threshold

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1 question, will the Main Replacement Program reduce methane  
2 emissions?

3 A. Yes, we explained this in our initial testimony.

4 Q. Has any party presented contrary evidence?

5 A. No, but Sane incorrectly argues that our estimated emissions  
6 reductions are overstated.

7 Q. Please explain.

8 A. Sane downplays the value of our estimated emissions reductions by  
9 asserting that they should be offset by the "full lifecycle GHG  
10 emissions of the gas to be delivered by these replaced mains."  
11 But that type of analysis misses the mark because the gas that  
12 flows through the replaced mains would flow regardless of whether  
13 the Company replaced the mains. The Company has a duty to serve  
14 its customers safely and reliably and to meet their supply needs.  
15 In evaluating emissions reductions attributable to the Main  
16 Replacement Program, the upstream and downstream emissions  
17 related to the gas that flows through the replaced mains are  
18 fixed variables that do not change in relation to the Main  
19 Replacement Program (though they may change because of other  
20 factors, such as increased or decreased customer demand). Thus,  
21 the appropriate comparison for evaluating the emissions  
22 reductions attributable to the Main Replacement Program is

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1 emissions before and after replacements under the Program, all  
2 else being equal.

3 Q. Are parties correct that the Main Replacement Program is  
4 inconsistent with the CLCPA?

5 A. No. The Commission has repeatedly held that main replacement  
6 programs are consistent with the CLCPA. In *Central Hudson* (p.  
7 51), the Commission explained that, in addition to creating a  
8 safety risk, leak-prone main "potentially releases methane, so  
9 replacing such pipe is consistent with mitigating [the] climate  
10 impacts of the gas system and with the requirements of the  
11 CLCPA." The Commission went on (p. 51) in that case to reject a  
12 proposal to shift money for leak-prone main replacement to  
13 "urgent climate-related changes." In *National Grid* (p. 75), the  
14 Commission described the main removal/replacement program as one  
15 of the measures "designed to reduce fugitive methane emissions,  
16 which is otherwise consistent with the CLCPA." And in the CLCPA  
17 Order (p. 25), the Commission identified main removal/replacement  
18 as examples of "measures to reduce GHG emissions from the gas  
19 delivery system" and stated it expected to continue to see them  
20 in utility rate cases. Moreover, in each rate case where the  
21 Commission has applied CLCPA section 7(2) - *National Grid*,  
22 *Central Hudson*, *Niagara Mohawk*, and *O&R* - it has cited the  
23 utility's main removal/replacement program as a reason for

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1 finding that the joint proposal was consistent with the CLCPA's  
2 emission requirements, not as an obstacle to them.

3 Q. So, are parties' arguments contesting the Main Replacement  
4 Program on CLCPA grounds viable?

5 A. No. Based on the orders we just discussed, main replacement  
6 programs are consistent with the CLCPA.

7 Q. Did the Commission recognize the environmental benefits of  
8 replacing leak-prone main before the CLCPA?

9 A. Yes. The Commission has recognized the environmental benefits of  
10 replacing leak-prone main since at least 2015, when it explained  
11 that the "increasing awareness of environmental concerns  
12 associated with methane emission has contributed to an increased  
13 focus on the potential environmental benefits associated with  
14 accelerated LPP removal and replacement."<sup>8</sup>

15 Q. The City Policy Panel (p. 16) concedes that the Commission has  
16 approved main replacement programs as consistent with the CLCPA  
17 but suggests that the result might change now that the Climate  
18 Action Council has released its draft scoping plan. Do you  
19 agree?

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<sup>8</sup> Case 15-G-0151E, *Proceeding on Motion of the Comm'n to Consider Implementation of A Recovery Mechanism to Support the Accelerated Replacement of Infrastructure on the Nat. Gas Sys.*, Order Instituting Proceeding for a Recovery Mechanism to Accelerate the Replacement of Leak Prone Pipe (Apr. 17, 2015).

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1 A. No. First, *Niagara Mohawk, O&R*, and the CLCPA Order were issued  
2 after the draft scoping plan, so the City's speculation that the  
3 draft scoping plan will cause the Commission to change course is  
4 without merit. Second, the draft scoping plan itself  
5 specifically endorses main replacement programs as a way to  
6 reduce GHG emissions, so there is no basis for the City to  
7 suggest that Con Edison's Main Replacement Program is  
8 inconsistent with the draft scoping plan. Third, in addition to  
9 reducing emissions, the main replacement program is necessary for  
10 the safe and reliable operation of the gas system, and the  
11 Commission has repeatedly emphasized that the CLCPA does not  
12 trump the obligation to provide safe and reliable service,  
13 explaining in *Niagara Mohawk* (p. 80) that "failure to maintain  
14 safe and adequate electric and gas systems throughout the state  
15 would undermine the intent of the CLCPA."

16 Q. Please elaborate on your statement that the draft scoping plan  
17 endorses main replacement programs.

18 A. The draft scoping plan (p. 265) acknowledges the Commission's  
19 "existing policy" of requiring utilities to remove leak-prone  
20 pipes from service and states that "much of the leak prone pipe  
21 replacement is necessary for safety reasons, and will continue to  
22 produce real reductions in emissions, while additional  
23 replacements may be necessary for further emission reductions."

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1           The draft scoping plan (p. 271) then recommends that the  
2           Commission's Gas Planning Proceeding "require utilities to  
3           identify leak-prone pipe for replacement, quantify leakage,  
4           consider Non-Pipe Alternatives, and maintain safe and reliable  
5           service."

6   Q.    Is Con Edison proposing to continue to identify leak-prone pipe  
7           for replacement, quantify leakage, consider Non-Pipe  
8           Alternatives, and maintain safe and reliable service?

9   A.    Yes. Currently, the Company quantifies leaks through a leak  
10          classification grading process. Additionally, leakage  
11          quantification is factored into the Environmental Protection  
12          Agency's Subpart W annual report.

13   Q.    The City Policy Panel states that main replacement programs  
14          should be planned as part of a comprehensive plan to transition  
15          away from using natural gas and states its belief that Con  
16          Edison's plan is insufficient. How do you respond?

17   A.    We disagree with that Panel's unsupported belief and note that it  
18          appears connected to its mistaken view that the Main Replacement  
19          Program conflicts with the CLCPA. This belief also ignores the  
20          Company's gas proposals in this proceeding, which includes  
21          proposals for non-pipe alternatives to main replacement where its  
22          cost-effective to do so. Moreover, this rate case is not the



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1 proper forum to examine what it will take to completely  
2 transition away from the gas system.

3 Q. Why isn't this rate case the right forum?

4 A. The Commission has designated the CLCPA Proceeding as the proper  
5 forum for examining pathways to transition away from the gas  
6 system. In doing so, the Commission expressed a preference for a  
7 coordinated statewide effort as opposed to its prior practice of  
8 requiring utilities to consider this issue as part of their rate  
9 settlements.

10 Q. Please explain.

11 A. In the CLCPA Order (p. 26), the Commission directed the state's  
12 utilities to develop a proposal for a GHG Emissions Reduction  
13 Pathways Study that "analyzes the scale, timing, costs, risks,  
14 uncertainties (translated into sensitivity analyses around key  
15 cost and availability assumptions) and customer bill impacts of  
16 achieving significant and quantifiable reductions in GHG  
17 emissions from the use of gas delivered by the Utilities." The  
18 Commission further required that the proposal include three  
19 components: (1) a coordinated long-term gas sector  
20 decarbonization pathway analysis through 2050; (2) a coordinated  
21 near-term plan to address actions needed to achieve statewide  
22 decarbonization targets through 2030; and (3) individual, long-

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1 term utility decarbonization plans to achieve each utility's  
2 share of statewide decarbonization targets through 2050.

3 Q. Did the Commission say anything about utility projects and  
4 programs?

5 A. Yes. The Commission stated (p. 26) that the analysis must  
6 "include an assessment of the Utilities' proposed projects and  
7 programs needed to achieve the CLCPA's goals and statewide  
8 emissions limits, potential carbon dioxide equivalent reductions  
9 per year, million British Thermal units (MMBTU) reductions in  
10 billed annual usage, and the numbers of customers heating with  
11 gas in residential, commercial, and industrial classes per year  
12 under different scenarios, including a scenario that assumes full  
13 electrification where the utility is reasonably capable of  
14 providing an alternative energy option to natural gas." The  
15 Commission further stated (pp. 26-27) that the required study  
16 proposal the utilities file must "identify potential barriers to  
17 achieving the targeted GHG emission reductions and recommended  
18 solutions" as well as "consider how the Utilities intend to avoid  
19 disproportionately burdening disadvantaged communities. . . ."  
20 Thus, it is clear that this rate case is not the right proceeding  
21 to address these issues.

22 Q. Does the Main Replacement Program disproportionately burden  
23 disadvantaged communities?

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1 A. No. First, the Main Replacement Program is a service territory-  
2 wide program that affects all communities the Company serves.  
3 Second, the Main Replacement Program does not impose a burden  
4 under section 7(3). On the contrary, it provides a benefit by  
5 reducing fugitive emissions and reducing the risk of a gas system  
6 incident. It is therefore necessary for safe and reliable  
7 service. Thus, in *Niagara Mohawk*, the Commission cited the  
8 utility's commitment to prioritize main replacement in  
9 disadvantaged communities as evidence against a disproportionate  
10 burden. Assertions that the Main Replacement Program  
11 disproportionately burden disadvantaged communities appear to be  
12 based on the incorrect premise that continuation of the gas  
13 system imposes a *per se* burden on communities, including  
14 disadvantaged communities. As we have explained, however, both  
15 the Commission and the draft scoping plan recognize that the gas  
16 system needs to remain safe and reliable during the clean energy  
17 transition.

18 **ii. Astoria LNG**

19 Q. Let's turn to the Astoria liquefied natural gas ("LNG") facility.  
20 Witnesses for Sane argue that the Company's proposed investments  
21 in the facility are inconsistent with section 7(2) because they  
22 extend the facility's life and are inconsistent with section 7(3)  
23 because the facility contributes to pollution in nearby

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1           disadvantaged communities. Before addressing these arguments,  
2           please explain the purpose of the Astoria LNG facility and  
3           describe the Company's proposed investments.

4    A.    The purpose of the Astoria LNG facility is to maintain gas  
5           reliability on the coldest days of the year. Con Edison cannot  
6           serve its firm customers during design peak day conditions  
7           without it, meaning it is critical to human health and safety.  
8           The Company is proposing five programs to maintain safe and  
9           reliable operations at the facility: (1) the Instrumentation  
10          Upgrade Program; (2) the Nitrogen Refrigeration Cycle Replacement  
11          Program; (3) an Electrical Equipment Upgrades and Relocation  
12          Program; (4) an Equipment Integrity Projects Program; and (5) a  
13          Reliability Remediation Program. For more information about the  
14          LNG facility and about these programs, see the GIOSP Panel's  
15          direct testimony and associated white papers.

16   Q.    Are the Company's proposed programs needed for safe and reliable  
17          operations?

18   A.    Yes. Please see the GIOSP Panel's direct testimony.

19   Q.    Do Sane's witnesses disagree that these programs are needed for  
20          safe and reliable operations?

21   A.    No. Their concern is that these programs will extend the LNG  
22          facility's life; Sane does not address the value of safe and  
23          reliable operations of the LNG facility.

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1 Q. Do these programs pass review under section 7(2)?

2 A. Yes. First, the Nitrogen Refrigeration Cycle Replacement Program

3 will reduce facility emissions. As explained more fully by the

4 GIOSP Panel in its direct testimony and associated white papers,

5 the new equipment will allow for more efficient filling of the

6 LNG tank, providing environmental benefits and cost savings.

7 Thus, the programs will result in a net emissions reduction.

8 Second, these programs are needed for the continued provision of

9 safe and reliable gas service on the coldest days of the year.

10 As discussed earlier, the Commission has repeatedly found that

11 the CLCPA does not override the obligation to provide safe and

12 reliable service, and it must continue to fulfill its core

13 mission of ensuring safe and reliable service at just and

14 reasonable rates during the transition to a decarbonized future.

15 Q. Even with respect to an LNG facility?

16 A. Yes. In *National Grid* (p. 74), the Commission cited the long-term

17 gas outages that occurred in Texas in winter 2021 and the

18 resulting deaths and social disruption as "an example of what can

19 go wrong if gas supplies are suddenly halted during the coldest

20 days of the year." The Commission then explained (p. 74) that

21 "[u]ntil technologies advance to a point where natural gas is no

22 longer needed for heat and hot water, the Commission must ensure

23 the reliability of gas delivery systems throughout the State."

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1 Through this lens, the Commission found (p. 74) that the joint  
2 proposal in that case, which included adding two new vaporizers  
3 to the utility's LNG facility, complied with section 7(2) "in  
4 that it is consistent with the CLCPA's greenhouse gas emission  
5 mandates, is justified based on the need to ensure the  
6 reliability of the Companies' gas delivery systems, and otherwise  
7 appropriately mitigates any greenhouse gas impacts."

8 Q. So, the Commission approved an LNG project in *National Grid* as  
9 consistent with the CLCPA?

10 A. Yes. The joint proposal contemplated the utility adding two new  
11 LNG vaporizers, which would allow for more LNG to be vaporized on  
12 cold winter days. In approving the project, the Commission noted  
13 that the utility was not proposing to expand the storage tanks.  
14 Similarly, the Company's proposed LNG projects will not expand  
15 the capacity of the Company's storage tank.

16 Q. Sane argues that in considering emissions related to the proposed  
17 LNG programs, the Commission should consider the upstream and  
18 downstream emissions associated with the LNG facility. Do you  
19 agree?

20 A. No, for similar reasons as those we gave with respect to Sane's  
21 similar argument regarding the Main Replacement Program. We note  
22 further that even if the Commission did consider those emissions,  
23 it would not change the outcome.

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1 Q. What do you mean?

2 A. Sane wrongly assumes that a potential inconsistency with  
3 statewide emissions limits means that the Commission must reject  
4 a project. As we have explained, however, section 7(2) permits  
5 the Commission to approve such a project if it gives a detailed  
6 justification for why the project will be inconsistent with the  
7 limits and identifies alternatives or mitigation measures. Thus,  
8 in *National Grid* (p. 74), the Commission held that while "certain  
9 capital projects authorized under the Joint Proposal may be  
10 considered inconsistent with the CLCPA's greenhouse gas emissions  
11 limits, those projects would be justified based on the need to  
12 ensure safe and reliable service and otherwise mitigated based  
13 on, among other things, the extensive energy efficiency and  
14 demand response programs required under the proposal . . ."  
15 Consequently, even if Con Edison's LNG programs could  
16 hypothetically be considered inconsistent with state emissions  
17 limits, they would be justified by the need for safe and reliable  
18 service and mitigated by the Company's extensive clean energy  
19 programs and gas system emissions reduction proposals.

20 Q. Do Con Edison's proposed LNG programs disproportionately burden  
21 disadvantaged communities?

22 A. No. First, the work done under the programs will be done within  
23 an existing utility facility, which the Commission has found

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1 relevant in evaluating a project's burden. Second, because they  
2 involve repairs and upgrades to a pre-existing facility, there is  
3 no increased burden on nearby communities. The proposed  
4 investments thus do not create any adverse impacts, and therefore  
5 cannot disproportionately burden disadvantaged communities.  
6 Third, as in *National Grid*, the Company is not proposing to  
7 expand the capacity of the Astoria LNG facility. Fourth, the  
8 proposed investments are needed for safe and reliable service,  
9 which is a benefit for disadvantaged communities and all  
10 communities. In *National Grid* (p. 81), the Commission explained  
11 that assuring safe and reliable gas service for disadvantaged  
12 communities was a "priority" that factored into its section 7(3)  
13 analysis:

14 Our finding here that the Joint Proposal will allow the  
15 Companies to continue providing safe and reliable  
16 service is consistent with the finding that the Joint  
17 Proposal also does not disproportionately burden  
18 disadvantaged communities. While the Joint Proposal  
19 contains numerous demand-side requirements intended to  
20 obviate the need for adding infrastructure to address  
21 projected peak gas demand, in the end such  
22 infrastructure may need to be built to ensure that gas  
23 is available for heat and hot water through the winter



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1 seasons covered under the rate plan. Assuring this  
2 outcome must be a priority for all communities impacted  
3 by the Joint Proposal, particularly low-income New  
4 Yorkers that may not be able to afford the energy  
5 efficiency products and heat pumps incentivized by the  
6 Joint Proposal.

7  
8 The Commission acknowledged further (p. 82) that "natural gas is  
9 currently the most affordable way to heat a residential home" and  
10 declared that until more homes are converted to other options,  
11 "ensuring access to reliable natural gas for home heating will  
12 provide the most benefit to low-and moderate-income communities."  
13 Since *National Grid*, the Commission has repeatedly confirmed,  
14 most recently in the CLCPA Order, that the Commission's  
15 evaluation under CLCPA section 7(3) will be made in the context  
16 of the Commission's responsibility to ensure safe and reliable  
17 service. In that same order, the Commission explained that it  
18 remains committed to balancing the goals of the CLCPA both with  
19 the reliability and resilience of the system and the resulting  
20 rate impacts to all customers. Far from burdening disadvantaged  
21 communities, the Company's proposed LNG investments are designed  
22 to benefit neighboring communities by maintaining safe and  
23 reliable service at just and reasonable rates.

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1                                   **iii. Federally Mandated Projects**

2   Q.   Let's turn to three gas projects, the: (1) Westchester/Bronx  
3       Border to White Plains Project; (2) the Bronx River Tunnel to  
4       Bronx/Westchester Border Project; and (3) the Queens Transmission  
5       Upgrade Project. Sane argues that these projects are  
6       inconsistent with section 7(2) because they extend the life of  
7       gas infrastructure and are inconsistent with section 7(3) because  
8       they contribute to pollution in nearby disadvantaged communities.  
9       Before addressing these arguments, please describe the projects.

10   A.   As discussed in the direct and rebuttal testimony of the  
11       Company's GIOSP Panel, these are regulatorily required  
12       transmission main replacement projects. All the Company's  
13       proposed transmission replacement projects include the  
14       replacement of pre-code transmission main, required to be  
15       replaced due to the lack of traceable, verifiable, and complete  
16       pressure test records. The Company will replace these  
17       transmission mains with brand new, lower risk, non-transmission  
18       mains.

19   Q.   Why is the Company undertaking the projects?

20   A.   The projects are required to comply with federal safety  
21       regulations, as explained in the GIOSP Panel's direct testimony  
22       and associated white papers.

23   Q.   Do the projects pass review under section 7(2)?

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1 A. Yes. For the reasons we have discussed, the projects pass  
2 section 7(2) review because they are federally required safety  
3 projects and do not increase emissions.

4 Q. Do the projects impose a disproportionate burden on disadvantaged  
5 communities?

6 A. No. For the reasons we have discussed, the projects benefit all  
7 nearby communities, including disadvantaged communities, because  
8 they are federally required safety projects and the projects are  
9 located throughout the Company's gas service territory.

10 **iv. Newtown Creek Metering Station**

11 Q. Let's turn to the Newtown Creek Metering Station Project. Sane  
12 argues that this project is inconsistent with section 7(2)  
13 because it extends the life of gas infrastructure and is  
14 inconsistent with section 7(3) because it contributes to  
15 pollution in nearby disadvantaged communities. Before addressing  
16 these arguments, please describe the project.

17 A. The project will consist of upgrades at the station including  
18 replacement of the orifice metering with ultrasonic metering and  
19 low flow metering along with the associated piping, valves, and  
20 auxiliary equipment in the meter room, replacement of obsolete  
21 electrical, instrumentation, and communication systems, as well  
22 as facility updates for storm hardening, security, and other code  
23 compliance requirements. A flow control valve or valves will also

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1 be installed to regulate station flow. For more information,  
2 please see the GIOSP Panel's direct testimony and associated  
3 white papers.

4 Q. Why is the Company undertaking the project?

5 A. The equipment is obsolete and is required to be replaced to  
6 provide proper metering and satisfy current code requirements and  
7 Con Edison standards. In addition, flow control enhancements will  
8 improve reliability since none currently exists. For more  
9 information, please see the GIOSP Panel's direct testimony and  
10 associated white papers.

11 Q. Does the project pass review under section 7(2)?

12 A. Yes. For the reasons we have discussed, the project passes  
13 section 7(2) review because it is necessary for safe and reliable  
14 operation of the gas system. In particular, the ability to  
15 control flow to National Grid would allow Con Edison to protect  
16 the Con Edison portion of the gas transmission system from poor  
17 pressure conditions and maintain flow to the maximum levels, in  
18 accordance with the New York Facilities agreement.

19 Q. Does the project impose a disproportionate burden on  
20 disadvantaged communities?

21 A. No. For the reasons we have discussed, the project benefits  
22 nearby disadvantaged communities because it will allow the  
23 Company to continue providing safe and reliable service.

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1           Moreover, the work involves the repair and/or upgrade of  
2           obsolete, existing equipment located on utility-owned property.

3                           **v. Algonquin Cortlandt Gate Station**

4   Q.    Let's turn to the Algonquin Cortlandt Gate Station Project. Sane  
5           argues that this project is inconsistent with section 7(2)  
6           because it extends the life of gas infrastructure and is  
7           inconsistent with section 7(3) because it contributes to  
8           pollution in nearby disadvantaged communities. Before addressing  
9           these arguments, please describe the project.

10   A.   The project consists of upgrades to replace regulating and  
11           metering equipment that is obsolete. For more information, please  
12           see the GIOSP Panel's direct testimony and associated white  
13           papers.

14   Q.    Why is the Company undertaking the project?

15   A.    The facility needs upgrades to replace regulating and metering  
16           equipment that is obsolete. Without the project, the station  
17           capacity would continue to operate outside the current design  
18           basis on high load days, presenting a potential reliability  
19           issue. In addition, the project is required for the station to  
20           serve as back up that can support the High-Pressure System in the  
21           event of the loss of the Yorktown Gate Station. For more  
22           information, please see the GIOSP Panel's direct testimony and  
23           associated white papers.

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1 Q. Does the project pass review under section 7(2)?

2 A. Yes. For the reasons we have discussed, the project passes  
3 section 7(2) review because it is necessary for safe and reliable  
4 operation of the gas system. In particular, the refurbishment  
5 will allow the station to operate within the design capabilities.  
6 The refurbished station will also provide the ability to back up  
7 the Yorktown Gate Station.

8 Q. Does the project impose a disproportionate burden on  
9 disadvantaged communities?

10 A. No. For the reasons we have discussed, the project benefits  
11 nearby disadvantaged communities because it will allow the  
12 Company to continue providing safe and reliable service.  
13 Moreover, the work involves the repair and/or upgrade of  
14 obsolete, existing equipment located on utility-owned property.

15 **vi. East River Power Plant Programs**

16 Q. Let's turn to the East River Power Plant programs. Witnesses  
17 for Sane argue that these programs are inconsistent with  
18 section 7(2), presumably because the programs support the East  
19 River Power Plant which is a source of emissions. They also  
20 argue that the programs are inconsistent with section 7(3)  
21 because the East River plant contributes to pollution in  
22 nearby disadvantaged communities. Before addressing these

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1 arguments, please describe the East River Power Plant and the  
2 proposed programs.

3 A. The East River Power Plant is used to produce steam for the  
4 Company's steam system. The plant produces electricity as a  
5 byproduct.

6 Q. Sane and its witnesses challenge the Company's proposed: (1)  
7 East River Balance of Plant Equipment Projects; (2) East River  
8 Civil & Structural Projects; (3) East River Instrumentation &  
9 Control Replacement Projects; (4) East River Major Equipment  
10 Replacement Projects; (5) East River Power Distribution  
11 Replacement Projects; and (6) East River Environmental  
12 Program, which converts its backup fuel from No 4 oil to  
13 cleaner No 2 oil.

14 Q. Why is the Company undertaking these programs?

15 A. Each of these programs is described in the initial testimony  
16 of the EIOP Panel and associated white papers, but they are  
17 all needed for safe and reliable operations, except for the  
18 fuel conversion program, which reduces emissions and is needed  
19 to comply with New York City law.

20 Q. Do the programs pass review under section 7(2)?

21 A. Yes. For the reasons we have discussed, the project programs  
22 pass section 7(2) review because they are necessary for safe

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1 and reliable operation of the East River facility, which  
2 provides steam for heating, air conditioning, and process  
3 uses. In addition, converting to No. 2 fuel oil reduces  
4 emissions.

5 Q. Do the programs impose a disproportionate burden on  
6 disadvantaged communities?

7 A. No. For the reasons we have discussed, the programs benefit  
8 nearby disadvantaged communities by maintaining safe and  
9 reliable service. As discussed in the Company's EIOP direct  
10 and rebuttal testimony, the Company divides Electric  
11 Production projects into four categories (1) Replacement, (2)  
12 Risk Reduction, (3) Environmental, and (4) Safety and  
13 Security. The Company had five programs under the Replacement  
14 category and one under the Environmental category. The five  
15 programs under the Replacement category do not  
16 disproportionately burden disadvantaged communities for  
17 several reasons. First, the work done under the programs will  
18 be done within an existing utility facility, which the  
19 Commission has found relevant in evaluating a project's  
20 burden. Second, because the work involves repairs and  
21 upgrades to a pre-existing facility, there is no increased  
22 burden on nearby communities. The proposed investments thus



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1 do not create any adverse impacts, and therefore cannot  
2 disproportionately burden disadvantaged communities. Third,  
3 the proposed investments are needed for safe and reliable  
4 service, which is a benefit for disadvantaged communities and  
5 all communities.

6 The project that falls within the Environmental category, the  
7 East River Environmental Project, also does not  
8 disproportionately burden disadvantaged communities for  
9 several reasons. As discussed in the Company's EIOP direct  
10 and rebuttal testimony, this project involves the conversion  
11 of the East River backup fuel from No. 4 fuel oil to No. 2  
12 fuel oil, i.e., ultra-low sulfur diesel. New York City  
13 requires all boilers used to generate electricity and/or steam  
14 in an electric, steam, or combined electric and steam  
15 generation facility to stop using No. 4 fuel oil no later than  
16 December 31, 2024. Therefore, this project is required to  
17 comply with New York City fuel regulations. Further, in  
18 addition to the reasons that the Replacement programs do not  
19 disproportionately burden disadvantaged communities discussed  
20 above, the conversion to No. 2 fuel oil from No. 4 fuel oil  
21 reduces potential emissions.

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1                                   **vii. Certified Natural Gas and Renewable Natural Gas**

2 Q.    Some parties challenge the Company's proposed certified and  
3        renewable natural gas programs as inconsistent with reducing  
4        emissions. How do you respond?

5 A.    We disagree and refer to the Company's GIOSP rebuttal  
6        testimony for the Company's response.

7                                   **C. Other Matters Related to Section 7(3)**

8                                   **1. Section 7(3) and Rate Increases**

9 Q.    Let's turn to section 7(3) and rates. Some parties argue that  
10        the requirement to avoid disproportionately burdening  
11        disadvantaged communities should be interpreted to apply to  
12        rate increases. For example, the City Policy Panel argues  
13        that to the extent rate increases cause members of  
14        disadvantaged communities to become energy cost burdened, they  
15        arguably will be disproportionately burdened. Sane and WeAct  
16        make similar arguments regarding the six percent energy burden  
17        used by the Commission in its energy affordability  
18        proceedings. Does section 7(3)'s disproportionate burden  
19        analysis apply to rates?

20 A.    No. While the interpretation of the CLCPA is ultimately a  
21        legal decision and not a factual matter to be resolved through  
22        testimony, our attorneys have advised us that "burden" in

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1 CLCPA section 7(3) means environmental burden, not a financial  
2 burden. They have further advised us that the Commission has  
3 never applied section 7(3) to financial burden and that even  
4 the City concedes that doing so would be a "broad application"  
5 of the law.

6 Q. What standard governs rates?

7 A. Counsel advises us that the standard that governs rates is the  
8 Public Service Law requirement that rates be just and  
9 reasonable. Counsel further advises us that in determining  
10 whether a rate is just and reasonable, the Commission is not  
11 limited to a pre-set percentage but has discretion to consider  
12 all relevant circumstances.

13 Q. What has the Commission said about the relationship between  
14 rates and the CLCPA?

15 A. Our attorneys have advised us that the Commission has been  
16 clear that the CLCPA does not override the Commission's Public  
17 Service Law obligation to ensure just and reasonable rates.  
18 In *National Grid* (p. 80), the Commission explained that it is  
19 "statutorily responsible under Public Service Law §§65 and 66  
20 for assuring safe and adequate service at just and reasonable  
21 rates" and "is therefore required to balance reliability,  
22 public safety, and reasonable rates [sic] interests with

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1 emission reductions and clean energy objectives." The  
2 Commission further explained (p. 80) that "[t]he CLCPA does  
3 not override the Commission's responsibility to ensure  
4 reliability, public safety and reasonable rates in favor of  
5 emissions reductions . . ." Similarly, in *O&R* (p. 73), the  
6 Commission held that it "can and should serve the statutory  
7 purposes of both the CLCPA to reduce greenhouse gas emissions  
8 and PSL §65(1) to ensure that *O&R* can provide safe and  
9 adequate service at just and reasonable rates." And in the  
10 CLCPA Order (p. 20), the Commission specifically recognized  
11 that "there is a concern about the impact the increased costs  
12 of CLCPA investments will have on ratepayers and maintaining  
13 energy affordability" and explained that in utility rate cases  
14 "it is critical for DPS Staff to provide the Commission and  
15 the public with specific cost-based information to understand  
16 the impact of these [CLCPA] capital investments on ratepayers  
17 as part of our core obligation to ensure just and reasonable  
18 rates." Thus, counsel advises us that the City's claim is  
19 without merit.

20 Q. Has the Company taken steps to assist its most vulnerable  
21 customers?

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1 A. Yes. The Company recently increased its low-income discount  
2 for customers participating in its Energy Affordability  
3 Program, which automatically adjusts with rate increases, with  
4 a target of achieving average utility energy costs of six  
5 percent of total expenditures for participants in that  
6 program. And, as the CES Panel explained in its initial  
7 testimony, the Company already has, and in this case has  
8 proposed more, clean energy programs for low-income customers.

9 **2. Requirement to Prioritize Emissions Reductions in**  
10 **Disadvantaged Communities**

11 Q. Does CLCPA section 7(3) impose any other obligations on the  
12 Commission?

13 A. Yes. It requires the Commission to "prioritize reductions of  
14 greenhouse gas emissions and co-pollutants in disadvantaged  
15 communities."

16 Q. Has the Commission ever applied this requirement in a rate  
17 order applying CLCPA section 7(3)?

18 A. No.

19 Q. What does the Staff CLCPA Panel say about that requirement?

20 A. Staff's testimony says nothing explicit other than noting it.  
21 Staff asserts, however, that the Company's filing is "not  
22 entirely" consistent with joint proposals approved under CLCPA  
23 section 7(3) because a Company discovery response states that

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1 Con Edison does not currently prioritize disadvantaged  
2 communities when selecting segments of leak-prone pipe for  
3 removal or replacement. Staff compares that response with the  
4 utility's agreement in *Niagara Mohawk* to undertake reasonable  
5 efforts to prioritize projects to replace leak prone pipe with  
6 non-pipe alternatives in low income and environmental justice  
7 communities.

8 Q. Does the Commission's obligation to "prioritize reductions of  
9 greenhouse gas emissions and co-pollutants in disadvantaged  
10 communities" impose an obligation on utilities in rate cases?

11 A. No, we are advised by counsel that the law places that  
12 obligation on the Commission. And, as we said, the Commission  
13 has never discussed, much less applied, that requirement in a  
14 rate order applying CLCPA section 7(3).

15 Q. Putting aside whether the requirement applies to utility rate  
16 cases, do Con Edison's rate filings prioritize emissions  
17 reductions in disadvantaged communities?

18 A. Yes. Staff's testimony overlooks the Company's capital  
19 projects that facilitate electrification in disadvantaged  
20 communities and its clean energy programs for disadvantaged  
21 communities. We note, however, that as part of settlement  
22 negotiations the Company is willing to discuss undertaking

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1 reasonable efforts to prioritize leak-prone pipe removal or  
2 replacement with non-pipe alternatives in disadvantaged  
3 communities, although the Company notes that it believes that  
4 its risk-based approach is the appropriate one.

5 **3. CLCPA Section 7(3) and Alleged Disparities**

6 Q. WeAct argues that health and other disparities that exist in  
7 disadvantaged communities today require Con Edison to invest  
8 in programs using an "equity framework" (p. 57) which appears  
9 to mean investing more in disadvantaged communities than in  
10 other communities to remedy perceived past wrongs, presumably  
11 based on section 7(3). Do you agree?

12 A. No. We are advised by counsel that section 7(3) is limited to  
13 preventing disadvantaged communities from being  
14 disproportionately burdened by certain government actions  
15 taken after enactment of the law. We note, moreover, that the  
16 Company invests in its system based on system needs, which are  
17 evaluated through objective metrics.

18 Q. New York City suggests that disadvantaged communities  
19 experience more electric system reliability problems than  
20 other communities and states that the Company should  
21 prioritize investments in disadvantaged communities and that

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1 the Commission should require reports on such investments.

2 How do you respond?

3 A. First, we disagree with the City's suggestion that  
4 disadvantaged communities experience a different level of  
5 service. As we said, the Company invests in its system based  
6 on objective metrics, like the Network Reliability Index.  
7 Moreover, New York City's population density means that many  
8 of its networks serve a mix of disadvantaged communities and  
9 non-disadvantaged communities. We also note that, to the  
10 extent that Manhattan experiences different levels of  
11 reliability compared to other parts of its electric service  
12 territory, the Company was legally required to underground its  
13 Manhattan system. And while the Company has proposed a  
14 selective undergrounding program in this rate case (that  
15 includes consideration of disadvantaged communities), no one  
16 has suggested that the Company underground its entire system.  
17 Second, the Company's proposed investments go through the rate  
18 case process, which is open and transparent, and are vetted by  
19 the Department of Public Service and other parties, including  
20 the City. When a settlement is reached and approved by the  
21 Commission, it represents a consensus view of what levels of  
22 investment are appropriate. After that, the Company publicly



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1 files updates on its capital investments, along with numerous  
2 other reports concerning the system's reliability. There is no  
3 incremental benefit to additional reporting. Third, there is  
4 no support in section 7(3) for such prioritization or  
5 reporting.

6 **D. Other Matters**

7 Q. WeAct presents a list of proposed spending items, commitments,  
8 and hiring practices that it argues the Company must adopt to  
9 comply with the CLCPA. WeAct bases its argument on CLCPA  
10 section 75-0117, which requires state agencies to work with  
11 the Environmental Justice Working Group and the Climate Action  
12 Council to design programs with the goal that, to the extent  
13 practicable, disadvantaged communities receive 40 percent of  
14 the overall benefits of spending in a number of areas,  
15 including clean energy and energy efficiency programs,  
16 provided that disadvantaged communities receive at least 35  
17 percent of the overall benefits of spending on clean energy  
18 and energy efficiency programs. How do you respond?

19 A. We are advised by counsel that WeAct misreads the law. First,  
20 the law applies to statewide programs initiated by state  
21 agencies, not utility rate cases. This is clear from the  
22 requirement in the law that agencies consult with the

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1 Environmental Justice Working Group and the Climate Action  
2 Council, neither of which are parties to utility rate cases.  
3 And while consultation with these entities makes sense when an  
4 agency is planning its programs, it does not fit well into the  
5 procedural rules that govern utility rate cases, which require  
6 that decisions be based on the record developed in the  
7 proceeding. Second, the Commission has never understood this  
8 part of the law as applying to utility rate cases and has  
9 never applied it as such. Instead, in the CLCPA Order (pp.  
10 18-19), the Commission explained that it was applying the law  
11 by having the Department of Public Service conduct a generic  
12 review of state clean energy programs:

13 Additionally, DPS Staff is currently developing a  
14 baseline for the respective clean energy and energy  
15 efficiency programs to determine whether such programs  
16 comply with the requirement that no less than 35 percent,  
17 with a goal of at least 40 percent, of the overall  
18 benefits of such programs, projects or investments are  
19 directed to disadvantaged communities. Staff is actively  
20 engaging with inter-agency working groups and  
21 collaboratives focused on developing best practices and  
22 streamlined input from disadvantaged communities'

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1 advocates to identify areas of improvement in program  
2 design, outreach and implementation to further advance  
3 the goals of the CLCPA. Staff will continue to evaluate  
4 the existing clean energy investments to ensure  
5 compliance with this requirement and will report on any  
6 programs requiring modification, including those that  
7 will require Commission action to address.

8 Third, WeAct's list includes matters, such as hiring  
9 practices, that are outside the scope of this case. We note  
10 that on June 16, 2022, the Commission initiated a proceeding  
11 in Case No. 22-M-0314 to examine utilities' diversity, equity,  
12 and inclusion efforts.<sup>9</sup> In addition, while the statute  
13 mentions several areas, not all apply to each agency.

14 Q. Does Con Edison support the CLCPA's goal of including  
15 disadvantaged communities in the clean energy transition?

16 A. Yes. As we noted in our initial testimony and as the CES  
17 Panel noted in its initial and rebuttal testimony, the Company  
18 has projects and programs specifically designed to benefit  
19 disadvantaged communities. Moreover, given the nature of the  
20 Company's system and New York City's high population density,

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<sup>9</sup> Case No. 22-M-0314, *Proceeding to Review Utilities' Diversity, Equity, and Inclusion Practices*, Order Instituting Proceeding (June 16, 2022).

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1 the Company's proposed investments provide significant  
2 reliability, safety, and environmental benefits to  
3 disadvantaged communities.

4 Q. The City and NYECC question the Company's preparation for the  
5 clean energy transition, with the City calling Con Edison's  
6 gas plan "business as usual." How do you respond?

7 A. We disagree and would refer those parties to our initial  
8 testimony, which discusses how the Company is preparing for  
9 the future and how the Company's proposals in this case fit  
10 into those plans, including meeting needs driven by  
11 electrification. We would also refer them to our Long Range  
12 Strategic Plans, which are available on the Con Edison web  
13 site and were provided as discovery in this case. They  
14 envision actions that align our utility businesses with the  
15 CLCPA goal of net zero greenhouse gas emissions by 2050.  
16 Furthermore, that the Commission has established a generic  
17 proceeding to work through many issues related to the  
18 transition away from natural gas. We note that the City's  
19 comment appears to be based on its opposition to the Main  
20 Replacement Program, which is out-of-step with settled  
21 Commission precedent and with the draft scoping plan's  
22 supportive view on the value of leak-prone pipe replacement

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1 programs. Finally, we note that the City also ignores our  
2 first-in-the-State proposal to waive applicability of the 100-  
3 foot rule contained in the Commission's regulations. That was  
4 a significant proposal and not a business as usual request.

5 Q. Does this conclude your rebuttal testimony?

6 A. Yes.