AGA
American Gas Association

VIA OVERNIGHT COMMERCIAL DELIVERY & EMAIL TO:
scopingplan@nyserda.ny.gov

Climate Action Council
Draft Scoping Plan Comments
NYSERDA
17 Columbia Circle
Albany, NY 12203

June 29, 2022

Re: New York State Climate Action Council
Draft Scoping Plan
Release Date: December 30, 2021

Dear Council Members:

I write on behalf of the American Gas Association ("AGA") to provide feedback regarding the New York State Climate Action Council's (the "Council") Draft Scoping Plan ("Draft Scoping Plan") released December 30, 2021, providing guidance to state agencies to address requirements in the New York State Climate Leadership and Community Protection Act ("CLCPA").[1]

As discussed below, while AGA appreciates the rationale and goals behind the Council's Draft Scoping Plan, we believe that the current proposal should be modified in accordance with and to address well-established concepts surrounding the utility regulatory model and to avoid inadvertently violating those concepts or breaching longstanding obligations. AGA therefore respectfully requests that the Council revise the Draft Scoping Plan to incorporate and account for the comments below.

[1] Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. did not participate in the drafting of these comments.

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AGA represents more than 200 energy companies that deliver clean natural gas throughout the United States. AGA's mission is to facilitate, on its members' behalf, the promotion of safe, reliable, and efficient delivery of natural gas to homes and businesses across the nation. AGA's members include U.S. energy utilities, transmission and marketing companies, exploration and production companies, products and services companies, international energy companies and affiliates, and industry associates.

AGA and its members have a substantial interest in maintaining the safety and reliability of natural gas infrastructure, and in ensuring predictable and consistent laws and court rulings that affect that infrastructure. The gas they move heats millions of American homes, and generates over 30 percent of the nation's electricity.[2] Nearly 187 million Americans and 5.5 million businesses use natural gas.[3] Natural gas is abundant, clean, safe, and cost-effective, and reliable infrastructure will be needed for the foreseeable future.[4] AGA and its members have a substantial interest in preserving customer choice and the ability of natural gas utilities to provide clean and efficient natural gas, and alternative fuels like renewable natural gas, to consumers across the United States.

Additionally, AGA has an interest in ensuring laws and regulations affecting the unique public utility framework of regulatory oversight and private investment are consistent with state/public utility reciprocal legal commitments and constitutional principles. Though new regulatory frameworks may develop in response to public policy and innovation, they must be tailored to address these commitments and principles.

These comments should be of assistance to the Council because they provide information about the utility regulatory model, regardless of service (e.g., gas, electric, water), and are submitted in the interest of ensuring that Council's

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2 *See* U.S. Energy Info. Admin., *What is U.S. electricity generation by energy source?*, https://www.eia.gov/tools/faqs/faq.php?id=427&t=3 (last visited March 21, 2022).

3 *See* AGA, *2022 Playbook*, https://playbook.aga.org/ (last visited March 21, 2022).

4 *See* U.S. Energy Info. Admin., *Annual Energy Outlook 2020*, https://www.eia.gov/outlooks/aeo/ (last visited March 21, 2022).

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recommendations are made in light of a full record as to existing regulatory structures and doctrines.

The CLCPA, the Climate Action Council, and the American Gas Association Are Aligned on the Need to Address Climate Change

The centerpiece of the CLCPA is its requirement that New York's greenhouse gas emissions must be cut to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050. N.Y. Envtl. Conserv. Law §§ 75-0101 to -0119. The CLCPA provides little detail on how those goals will be achieved, but the Department of Environmental Conservation shall "promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits." *Id.* § 75-0109.

The Climate Action Council's mission is to outline recommendations for attaining statewide greenhouse gas emissions. *Id.* § 75-0103. These recommendations shall inform the rulemaking by the DEC, NYSERDA, the Public Service Commission (PSC), and other State authorities, to ensure compliance the CLCPA. (Draft Scoping Plan, p. 17, (December 30, 2021)).

The CLCPA and final Scoping Plan will also affect the decisions that a utility must make, especially regarding capital expenditures. The Council's findings and recommendations will provide public utilities some guidance regarding the implementation of the CLCPA.

The AGA has been a leader in the conversation on reducing greenhouse gases and addressing climate change for over a decade. AGA has a bold vision, with ambitious emissions reduction goals to demonstrate what is possible when government and communities harness America's abundant resources, vast delivery infrastructure and deep well of talent. We can, and therefore we must, strive for an energy future where affordability, reliability and safety go hand-in-hand with emissions reductions and a cleaner environment. Public utilities, including gas

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utilities and gas infrastructure, have crucial and enduring roles when building pathways to achieve a decarbonized future, including net-zero.[5]

These industry commitments and principles for policy action are reflected in AGA's Climate Change Position Statement[6] and are borne out through AGA's recently published study, *Net-Zero Emissions Opportunities for Gas Utilities*, a comprehensive analysis detailing how America's natural gas utilities will be essential to meeting our emissions reduction goals, including achieving net-zero.[7]

The American Gas Association and its members are committed to reducing emissions through the smart and efficient use of our nation's abundant gas resources and our extensive energy delivery network. By integrating natural gas solutions into long-term resource planning, natural gas utilities can help states and localities achieve emission reduction goals and position themselves toward a cleaner energy future while not jeopardizing safe and reliable energy delivery to the millions of customers who rely on natural gas for life-sustaining energy. Through the expanded development of advanced technologies and fuels, a steep decline in emissions can be realized in a more cost-effective manner, that also preserves consumer choice.

The Final Scoping Plan Should Leverage the Public Utility Regulatory Model

Public utilities have never been in the business of merely distributing and selling energy. From their inception, they have served multiple social, economic and environmental purposes. These include the need to reliably provide for the basic

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5 This point is underscored by the Center on Global Energy Policy at Columbia University SIPA report, "Investing in the US Natural Gas Pipeline System to Support Net-Zero Targets," which states that "[w]hile it may seem counterintuitive, investing more in the domestic natural gas pipeline network could help the US reach net-zero emission goals more quickly and cheaply," and recommends that "the natural gas grid should be viewed as a way to enable increasingly low-carbon molecules to be transported." Columbia University Center on Global Energy Policy, *Investing In The US Natural Gas Pipeline System To Support Net-Zero Target*s, (April 2021), https://www.energypolicy.columbia.edu/research/report/investing-us-natural-gas-pipeline-system-support-net-zero-targets.

6 Available at: https://www.aga.org/policy/environment/.

7 *See* ICF & American Gas Association, *Net-Zero Emissions Opportunities for Gas Utilities*, (Feb. 2022), https://www.aga.org/research/reports/net-zero-emissions-opportunities-for-gas-utilities/.

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human and economic needs of the community, warmth in winter, hot water for health and sanitation, and energy to power municipalities and businesses so they too may provide similar services. A clean energy economy may be achieved through the public utility regulatory model which can be adapted to establish a more dynamic energy infrastructure without loss of the safe, reliability and cost-efficient attributes the public and customers have long relied upon. A clean energy economy is not necessarily at cross-purposes with the public utility regulatory model and, indeed, may be achieved through it.

Public utilities, by design, have a unique and interdependent relationship with the state and municipal jurisdictions they serve, and by which they are closely regulated. In this relationship, both parties are bound together by the terms of original franchise grants, ongoing regulatory supervision, and periodic rate cases (whereby rates are established by law, balancing the burden on ratepayers with the need to provide for a dependable rate of return to the utility investors).

The original purpose of government regulation of public utilities was to ensure for the public the essential services offered by utilities at reasonable regulated prices. The foundational institutional mission for most public utilities is to provide safe, reliable, affordable, clean energy to all customers. Regulation was critical to achieving those goals because it is well recognized that utility customers are best served when utility services are furnished under limited competition.

In brief, it is a unique public-private business model designed to address a public need. It operates under a franchise and via a regulated rate of return negotiated by the utility and/or determined and set in a rate case by the government or regulatory authority. The franchise and the rate case, including a rate of return, reflect the agreement or bargain between the utility and the regulatory authority. These agreements reflect an equitable division of responsibilities and the anticipated attendant risks.[8]

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[8] Despite being regulated natural monopolies, public utilities shoulder significant risk. Natural to any business is the need to manage operations so that its actual costs are not greater than gross operating revenue, in this case capped by regulators. At the same time, other risks are not anticipated, e.g., unfunded government mandates, advances in technology, market

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Distribution of natural gas by a utility is a positive benefit to the public as well as an important right for consumers. For well over 100 years, natural gas utilities have provided reliable energy to customers. As the Council finalizes its Scoping Plan, it should consider what impacts it may have on the reliability and resilience of the natural gas distribution system currently provide and the public utility regulatory model.

State regulators' broad and potent regulatory powers focus on achievement of the specific regulatory goals. Regulatory decisions by the state are subject to review under this regulatory framework, *inter alia*, the doctrine of the regulatory compact.

The Public Utility Regulatory Framework: Reciprocal Obligations, *Hope* Standard, and the Regulatory Compact

AGA believes that it is essential for the Council's final Scoping Plan to reflect accurately the nature and scope of state regulation of natural gas distribution, including the purpose of utility regulation, its goals and its scope. The Council should be fully informed as to how gas distribution is regulated, and how it is not regulated.[9] The need for such context is particularly strong in absence of this factor being addressed in the Draft Scoping Plan nor at Council meetings held since it was published.

The Council should also consider the interests of the utility and customer interests to access to natural gas (including renewable natural gas, hydrogen, or other gasses transported by local utilities) as an energy source for consumers within the service territory of a natural gas utility, with harm resulting to both consumers denied the opportunity to use natural gas as a fuel, and to the utility and its other remaining customers who could face long-term costs and consequences from any proposed limits of new natural gas service.

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driven changes to the economy or changes in how society uses or distributes a particular utility service.

[9] The discussion below relates to the principal paradigm in the United States, government regulation of investor-owned utilities. Municipally-owned utilities, or other publicly-owned utilities, are subject to different rules and frameworks.

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Natural gas distribution is regulated by state regulatory agencies, like the PSC and New York Department of Public Service ("DPS"), under state public utility statutes. Current public utility regulation evolved from earlier state regulation of common carriers and similar entities, particularly railroads,[10] and earlier still, from common law regulatory concepts.[11] Courts have long rejected challenges to such regulations of private businesses on the grounds, in effect, that "when private property is devoted to a public use, it is subject to public regulation."[12] This general principle also informed the early 20th century growth of state regulation[13] as to a range of what we now consider to be public utilities – electric, natural gas, water, telephone and telegraph companies. Indeed, the early 20th century also represented a time during which earlier regulatory structures at the municipal level were replaced with state-wide regulatory rules and administration.[14]

Broadly speaking, the goal of the state utility regulators is to ensure proper oversight as to four principal obligations of public utilities such as gas distribution companies: 1) service to all who apply for service; 2) provision of safe, adequate service; 3) a just and reasonable price; and 4) provision of service without undue discrimination.[15] Indeed, in New York, the PSC's statutory obligation is to ensure

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10 *See e.g., 1 Energy Law and Transactions* Section 2.03; *see also* Miller, *Railroads and the Granger Laws* (1971). Prior to railroads, ferries, coaches and certain other activities were subject to common law regulation.

11 *See e.g., The Concept of a Business Affected with a Public Interest* 7-69, Hall (1940). The Supreme Court, in ruling on railroad case in 1915, quoted in its support "the common law of old." *Pennsylvania R.R. Co. v. Puritan Coal Co*., 237 U.S. 121, 133 (1915).

12 *Munn v. Illinois*, 94 U.S. 113, 125 (1877) ("*Munn*"); *see also Olcott v. The Supervisors*, 83 U.S. (16 Wall.) 678, 697, 21 L. Ed. 382 (1873) ("Though the ownership is private the use is public … . The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used ….").

13 *See e.g*., "Regime Change and Corruption A History of Public Utility Regulation" by Werner Troesken, in *Corruption and Reform: Lessons from America's Economic History*, ed. Edward L. Glaeser and Claudia Goldin (2006) ("*Troesken*").

14 *Id*.

15 1 Energy Law and Transactions Section 2.01. Viewed from a more modern, economic perspective, utility regulation, as to both rates and service, is justified as a means of restraining the potential negative effects of monopoly power in a naturally monopolistic market, which utilities are, both as a result of their "natural monopoly" nature and their possession of certificates that limit the entry of rivals. *See e.g*., Schmalensee, *The Control of Natural*

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that '[e]very gas corporation, every electric corporation and every municipality . . . furnish[es] and provide[s] such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.' . . . [T]his statutory obligation long pre-dates enactment of the CLCPA and remains the [PSC's] core responsibility." [16] In order to ensure that these goals are met, public utility regulators have a number of key tools.

One key mechanism to ensure these goals are met stems from state commissions' authority to control entry into the public utility role and associated obligations.[17] This power has broadly been implemented by giving public service regulators the right to issue certificates of public convenience and necessity ("certificates"), or similar authorities, by which they would grant a license, subject to revocation, to serve the public in a defined area and service type, subject to the right to install and operate facilities to provide the service, under conditions in the public interest.[18] By controlling the grants of certificate authority, the state regulatory authorities also can determine, and indeed are typically obligated to determine, whether the applicant utility is capable of providing the proposed service as required by the statute, guarding against entry by unqualified utility providers.[19]

In addition to the certificates, state regulators also have direct oversight over the rates and terms of service provided by gas utilities, all of which are submitted to the regulators for approval in the form of tariffs filed by the gas utilities. Although utilities file the rates, typically, approval of the state regulators is required for the

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Monopolies (1979); Bonbright, *Principles of Public Utility Rates* (1961). In this view, now broadly shared, to combat the natural monopolistic tendencies of regulated utilities, regulation acts as a substitute for competition. *See e.g.*, Demsetz, "Why Regulate Utilities?" 11 *Journal of Law & Economics* 55 (1968).

16 *See* Case 20-G-0381 at 80, citing N.Y. Pub. Serv. Law § 65.

17 *See e.g.*, Alfred E. Kahn, *"The Economics of Regulation: Principles and Institutions 3"* (1988) (describing the four principal components that distinguish public utilities from other sectors of the economy: control of entry, price-fixing, prescription of quality and conditions of service, and an obligation to serve all applicants under reasonable conditions); *See also* Shelley Welton, "*Public Energy*" 92 N.Y.U.L. Rev. 267 (2017).

18 *See e.g.*, Jones, "*Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*," 79 Columbia L. Rev. 426 (1979).

19 *See* Michael J. Thompson, Joseph S. Koury, and Ryan J. Collins, 2 Energy Law and Transactions § 50.04.

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rates to become effective. The goal of the regulators is to ensure that the rates are "just and reasonable," which in turn results in rates that do not burden ratepayers with unnecessary costs, but also are sufficient to provide the utility with a fair return on its investment, as measured by the ability to attract capital.[20]

This standard was expounded upon in the historic United States Supreme Court decision, *Federal Power Commission v. Hope Natural Gas Co.*[21] In interpreting the *Hope* standard for rate reasonableness, the D.C. Circuit has noted that, "[s]o long as the public interest, *i.e.*, that of investors and consumers – is safeguarded, it seems that the Commission may formulate its own standards."[22]

In order to ensure that the rate and service goals are being met, state commissions are typically granted related authority beyond the direct oversight of tariff filings. Included in such authority is the oversight of utility accounting practices, to ensure accurate, verifiable and uniform cost and expense information are available for review and enforcement by the regulator and, in many instances, other parties that have been granted statutory authority to review and dispute said information.[23] Complementing this authority, typically state regulators have the authority to conduct audits of the utilities' records.[24]

These accounting and auditing rights provided to state regulators help ensure a number of core regulatory concerns, including ensuring that the costs and revenues undergirding the rates are accurate and reasonable, as well as ensuring financial integrity in the utilities, to ensure both continued adequate service and accurate signals for investor confidence.

Similarly, state regulators typically also have authority to oversee, or approve, financing by utilities, as well as asset and share sales and acquisitions, as well as

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20 *See e.g.*, *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) ("*Hope*").

21 *Id.*

22 *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950).

23 *See* NARUC 1987 Annual Report on Utility and Carrier Regulation 457-458 (1988) ("*NARUC 1987 Report*"). Many such state and federal grants of accounting oversight stemmed from experiences with abuses by utilities and their parent companies in the 1920s and 1930s, and have become essential elements in state regulation.

24 *NARUC 1987 Report* at 468.

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mergers.[25] Further, state regulators may even have authority to oversee, review, and approve or reject changes to the corporate structure of parent entities owning utility assets within the parent's corporate umbrella.[26] State regulators also have a range of authority with respect to approval and oversight of stock issuances or purchases, lease agreements, dividend issuances, and even the debt-equity structure of the utilities.[27]

These broad authorities granted to state regulators – direct authority to approve the charges for service, authority to grant or deny entry and to oversee accounting and financing/acquisition/sales by the utilities – are far-ranging in scope. Yet, all are in direct furtherance of the central goals of the regulators, to ensure reasonable rates, service to those who seek it, and continued safe and adequate service to the public at a fair rate of return to the utility.

Moreover, the obligations imposed by the public utility statutes and regulatory commissions, when fulfilled by the public utility via investment in the necessary assets to meet such obligations, merge to create a further regulatory concept: the "regulatory compact."

The regulatory compact, implied or express, is widely accepted as resulting from a 'bargain' struck between the utilities and the state, under which in return for the obligations imposed on the utility, the utility is entitled to a fair rate of return – a principal that is echoed by controlling Supreme Court rulings on the Constitutional limits to state regulation. The Council's recommendations must incorporate the local utility's right to a fair return. Failing to do so may be to the detriment of not just the local utility, but the customers still being served by the utility.

The "regulatory compact," broadly defined, is a term describing the mechanism in which utilities are vested with an enforceable right to recover its costs incurred in fulfilling its obligations as a public utility, even when the regulator may not wish

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25 *NARUC 1987 Report* at 493-497.

26 *See PPL Elec. Util's Corp. v. Pa. Publ. Util. Comm'n,* Docket No. 624 C.D. 2019, 2020 Pa. Commw. Unpub. LEXIS 521, *32-33 (Pa. Cmwlth. Oct. 27, 2020) (Internal citations omitted).

27 1 Energy Law and Transactions Section 205[3].

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to allow such recovery.[28] That concept is broadly accepted as a guiding principle in public utility regulation. In *Gypsum*,[29] in addressing disputes over how to treat certain affiliated contracts of a utility, the Supreme Court of Indiana framed its analysis in the "bedrock principle behind utility regulation," "the so-called 'regulatory compact,' which arises out of a 'bargain' struck between the utilities and the state." The court explained the "quid pro quo" nature of the compact, as well as the basis of fair rate of return regulation in the compact.[30] Many other courts have adopted this concept in their assessment of utility cases.[31] Service by gas utilities is thus subject to a broader implied contract, under which the gas utility has rights arising from its performance of its side of the regulatory compact, and both state and municipal authorities' actions must be viewed in light of those utility rights. Both state and municipal authorities are limited in their authority to take steps that would violate the regulatory compact.

State Authorities Have Broad, But Not Unrestrained Regulatory Authority as to Public Utilities.

The distribution of natural gas by a utility is considered to be a positive benefit to the public, such that it is imbued with the public interest sufficiently to support regulation, and further that the legislature concluded that the obligation to provide

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[28] Jim Rossi, "*The Common Law 'Duty To Serve' and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,*" 51 V. and L. Rev. 1233 (1988).

[29] *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 797 (Ind. 2000) ("Gypsum").

[30] *Id.*

[31] *See e.g., US W. Communs., Inc. v. Utils. & Transp. Comm'n*, 949 P.2d 1337, 1361 (Wash. 1997) ("In a rate case the public is entitled to prompt, expeditious, and efficient service. Quid pro quo, the company is entitled to rates which are fair, just, reasonable and sufficient to allow it to render such services."); *Delmarva Power & Light Co. v. PSC*, 803 A.2d 460, 462-64 (Md. 2002) (citing the regulatory contract as the background or framework of its analysis of the state commission's restructuring and partial deregulation of electric and natural gas utilities in Maryland); *Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737 (Pa. Cmwlth. 1998) (the regulatory commission could condition a proposed abandonment on a contribution, consistent with the utility's bargain to obtain monopoly rights in exchange for regulation under the state's utility code); *Office of Pub. Util. Counsel v. PUC of Tex.*, 104 S.W.3d 225, 227-28 (Tex. Ct. App. 2003).

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it, and safeguards against abuses in the pricing and provision of natural gas distribution, show that access to natural gas is an important right for consumers, protected by the structure of the public utility laws and the obligations imposed on the utility.

Although the state regulators have broad and potent powers to ensure that the goals of regulation are met – reasonable prices, broad access, safe and reliable supplies, not unduly discriminatory services, fair rate of return to the utility – those powers are focused on achievement of specific regulatory goals. State regulatory authorities' role is not to micro-manage the operations of the regulated utility, or to determine that its fundamental purpose of supplying natural gas in accordance with regulatory requirements is no longer in the public interest, but to ensure that the result of the utility's tariff, organization and actions are to meet the above-noted regulatory goals.

Any regulatory decision by the Council or state regulator is subject to review under, *inter alia*, the doctrine of the regulatory compact. A state or municipal action that has a substantial impact on the ability of a gas utility to perform its obligations or earn a return, may be considered a violation of the regulatory compact and constitutional principles protecting property and due process and thus invalid.

The Supreme Court has also provided guidance limiting state actions potentially violative of property rights and due process. This is perhaps best explained by Justice Kennedy, who identified three inquiries that indicate whether a given law is unconstitutionally arbitrary. They are: (1) whether the statute destroys "reasonable certainty and security, which are the very objects of property ownership"; (2) the degree of retroactive effect; and (3) whether the legislation imposes an "actual, measurable cost" that results from the activity at issue.[32]

Any guidance provided by the Council, as applied to natural gas utilities' rights and responsibilities under the regulatory compact, should address the regulatory compact, as well as all three prongs of Justice Kennedy's inquiry. Indeed, as explained in more detail above in the prior section, the regulatory compact exists

[32] *Eastern Enterprises v. Apfel*, 524 U.S. 498, 539-550 (1998) (Kennedy, J., concurring in the judgment and dissenting in part).

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for the purpose of providing "reasonable certainty and security" to both the utility and the state. The Council should not undercut natural gas utilities' reasonable certainty and security to earn a reasonable rate of return going forward.

The utility legal and regulatory framework reflects a balance of the interests of private enterprise (the local utilities) and public welfare. State and local governmental authorities are required to allow utilities to earn a return on their investments "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital."[33] In return, the utility makes highly concentrated investments in assets that are fixed and immobile. The interests of both the consumer and the investor must be balanced.[34]

Additional and related public harms would proceed from the failure to address the regulatory model in the final Scoping Plan. Credit and investor capital vital to maintaining utility services flows to utilities because of regulatory certainty and anticipated demand. The former is within the sole control of the regulator. The latter is within the sole control of the market. Uncertainty on either end, diminishes the value of the investment. Any resulting regulatory uncertainty may inevitably impede and discourage investments in utilities, threatening all consumers and businesses that rely on those utilities for safe, cost-effective and reliable access to electricity, natural gas, and water.

Both the goal and scope of state utility regulators as to local gas distribution by utilities is not all-encompassing, but rather is focused on the principal goals of utility regulation, which relate to reasonable rates, comprehensive access to gas service, safe and secure gas supply, and not unduly discriminatory service.[35]

Conclusion

New York's natural gas distribution companies have proudly provided safe, reliable, and affordable energy to customers in New York for more than 100 years. Gas utilities are legally obligated to serve gas customers in their service territories

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33 *See Hope.*, 320 U.S. at 603.
34 *Id.*
35 *See* pp. 7 -14, *supra*.

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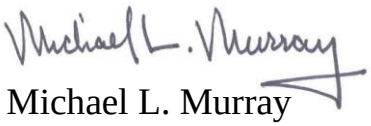
in New York,[36] and utilities have invested billions of dollars in assets to create robust gas distributions systems in furtherance of that obligation. This level of investment was only possible through a regulatory framework reflecting the collective input of legislators, regulators, utilities, customers, and other stakeholders. A predictable and supportive regulatory regime is essential to ensuring the necessary investment in the energy networks needed to serve future generations.

The natural gas utilities and the public utility model will play a key role, working closely with regulators and other stakeholders to improve the environment and develop a clean energy economy. Including measurable greenhouse gas emission reductions, balancing variable renewable generation and helping vulnerable populations better manage energy bills. This will require innovation, new technologies and energy infrastructure modernization investments. Fortunately, the successful model for our progress thus far has been the public utility model which sets a clear path for continued success.

AGA appreciates the Council's overall objective behind the proposed Draft Scoping Plan. We ask that the Council take into consideration that public utilities have a unique business model, which greatly affects how they may be regulated. Pursuant to longstanding principles of public utility regulation in the United States, the state and public companies have reciprocal rights and obligations that must be considered. AGA's comments in this correspondence are designed to bring the Council's Draft Scoping Plan into alignment with those bedrock principles.

We thank the Council for considering our perspective on these important issues.

Sincerely,



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[36] N.Y. Pub. Serv. Law § 31.

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