

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

**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.**

Case 19-G-0309

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REPLY BRIEF OF SANE ENERGY PROJECT

April 21, 2020

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I. Introduction

Sane Energy Project (“Sane”) submits this reply brief to address arguments made by National Grid (“the Companies”), Department of Public Service (“Staff”) and the City of New York (“City”).

In their Initial Brief the Companies recognize that they need to support rapidly evolving energy policy saying “This pace of change is exemplified by the events that took place during these rate proceedings – (i) New York’s adoption of the Climate Leadership and Community Protection Act of 2019 (“CLCPA”), the most progressive decarbonization legislation in the United States, (ii) unexpected delays in the construction and operation of new upstream pipeline capacity, (iii) the settlement of issues arising from a moratorium on new gas services, and (iv) the New York State Public Service Commission’s (the “Commission”) aggressive new energy efficiency targets – all of which will impact the Companies’ cost of providing services to gas customers in New York...In the near term, no event will have a greater impact on the Companies customers than the coronavirus (“COVID-19”) global pandemic rapidly spreading across the country. New York State has declared a state of emergency in response to COVID-19.”¹

Broadly, Sane agrees that these four events along with the coronavirus (“COVID-19”) global pandemic have had an impact on this proceeding and should be critical factors that the Public Service Commission (“the Commission”) takes into consideration.

Sane agrees that the passing of the Climate Leadership and Community Protection Act (“CLCPA”) was an important event and as we argued in our Initial Brief, any order in this rate case should be in compliance with it.

As outlined in our Initial Brief, Sane also argues that replacing Leak Prone Pipe (LPP) is not enough to meet the greenhouse gas emission reduction goals of the CLCPA and we disagree with the positions on LPP by both Staff and the City.

Sane also agrees, as the Companies identified, “delays in the construction and operation of new upstream pipeline capacity” and “settlement of issues arising from a moratorium on new gas services” were important events that happened during this proceeding and should have significant impact on the future of the Companies’ gas operations. However we disagree with the Companies that the delays were “unexpected”. We also do not support the investments the Companies are making in gas infrastructure as short-term “solutions” to capacity shortage claims made in this case and believe they have failed to get proper public input in consent on these investments.

Sane also agrees with the Companies that COVID-19 will have a great impact on gas service. However, we believe the impacts of COVID-19 require us to take even greater measures to

¹ [KEDNY and KEDLI Initial Brief - Final V2](#) Page 2

reduce fracked gas pollution in order to protect public health and meet the requirements of the CLCPA to reduce environmental pollution in disadvantaged communities.

II. CLCPA impact on proceeding

In initial briefs, numerous parties brought up the significant passage of the CLCPA. The Companies said it was “the most progressive decarbonization legislation in the United States”.² We agree that the CLCPA is groundbreaking legislation when it comes to reducing greenhouse gas emissions, but it is more than that. It is the product of a multi-year long, statewide, grassroots campaign that was led by environmental justice advocates fighting to protect their communities from climate change and fossil fuel pollution.

The Companies and other parties recognize the CLPCA was an important change that will impact future service but there is disagreement between parties on what impact the CLPCA should have in this rate case. When determining how the CLCPA should be applied to this case we should keep in mind the circumstances that led New Yorkers to fight for the passage of the CLCPA in the first place, a very narrowing window of time to dramatically reduce greenhouse gas emissions and decades of environmental justice communities bearing the brunt of fossil fuel pollution.

We support EDF’s position that any rate order must be consistent with CLPCA requirements and that section 7 of the CLCPA applies to this case.³

We do not support the Utility Intervention Unit’s (“UIU”) position “that any proposed changes to utility rate design and revenue allocation resulting from goals and activities pursuant to the CLCPA must be determined in a statewide generic proceeding.”⁴

Staff and the Companies have taken a similar position to UIU, arguing that the impacts of the CLCPA must be determined statewide and have urged the Commission to reject EDF’s position that “utilities should be responsible for developing economy-wide GHG inventories”.⁵

The City of New York argued that “The Commission also must ensure that important climate change policies are pursued,⁶” citing both the CLCPA and NYC law.

As outlined in our Initial Brief and throughout the proceeding, Sane argues that by failing to look at upstream methane emissions, greenhouse gases emitted when the product is combusted, and using outdated and grossly underestimated warming potential for methane, the Companies have presented an inaccurate picture of the climate impact of the gas they deliver throughout the

² [KEDNY and KEDLI Initial Brief - Final V2](#) Page 2

³ [EDF Post-Hearing Brief](#) Page

⁴ [UIU Initial Brief](#) Page 34

⁵ [KEDNY and KEDLI Initial Brief - Final V2](#) Page 221

⁶ [Letter in lieu of Initial Brief](#) Page 2

record and consequently the impacts of the investments in infrastructure they are seeking approval of.

While we agree the Climate Action Council and other statewide proceedings will no doubt refine methods for calculating greenhouse gas inventories, we can not ignore the basic realities of climate science and the limited timeframe left to take action. We cannot kick the moral and legal obligation to dramatically reduce methane emissions down the road any further.

In order to be in compliance with the CLCPA the Companies must reduce gas demand and begin retiring fossil fuel infrastructure. Sane recommends the Commission reject the Companies' request to invest hundreds of millions of ratepayer dollars in replacing, expanding and building new fracked infrastructure.

III. Response to Staff and The City's position on Leak Prone Pipe

In our Initial Brief and throughout the proceeding, Sane argued that massive investments to replace LPP will fail to meet the necessary greenhouse gas emission reduction goals required by the CLPCA and recommended by leading climate scientists through the Intergovernmental Panel on Climate Change ("IPCC").

Throughout the case the City and Staff have recognized the importance of City and State climate law with the City saying, "In order to ensure that the goals of the aforementioned City and State laws and policies are achieved, the Commission must require that the Companies pursue immediate and aggressive increases in energy efficiency and demand response programs as an alternative to traditional infrastructure investments."⁷

Yet when it comes to LPP, which is a traditional fracked gas infrastructure, the City fails to listen to their own recommendation and take into account the full climate impacts of the gas delivered by the Companies distribution system as is required by City and State law.

Both the City and Staff do not support the Companies' proposal to accelerate the depreciation of their LPP assets to 20 years and recommend a 30 year amortization period. However, the City and Staff disagree on incentive mechanisms for replacing LPP, with the City recommending that LPP within the 100 and 500 year FEMA floodplain be prioritized.

The City and Staff's debate on how much priority LPP in the floodplain should receive and how much the Companies end up profiting off replacing LPP completely misses the mark. The product being delivered by the LPP, even once replaced with less leaky pipes, is exacerbating climate change and will cause the floods the City is worried about. Fixing the leaks within the pipeline system is not enough.

⁷ [Letter in lieu of Initial Brief](#) Page 2

IV. Failure of proceeding to get proper public input

In their Initial Brief the Companies highlight “unexpected delays in the construction and operation of new upstream pipeline capacity”⁸ and “the settlement of issues arising from a moratorium on new gas services” as significant events that have impacted this proceeding.

We disagree that the delays in construction of the Williams Northeast Supply Enhancement Project (NESE) were “unexpected”. As documented in the tens of thousands of comments submitted against NESE to the New York State Department of Environmental Conservation (DEC), the Companies’ ratepayers have long been in opposition to the project. And before the DEC’s temporary denial of NESE in May 2019 the DEC had previously denied a water quality permit for NESE based on harm construction of the pipeline would cause to New York Harbor in 2018.

By continuing to expect and make investments based on the NESE pipeline being built and gas capacity increasing, the Companies have ignored the record established through public comments as well as legal proceedings through the DEC.

Additionally, in December, the Companies filed Second Supplemental Testimony of the Gas Infrastructure and Gas Operations Panel in response to settlement issues arising from a moratorium on new gas services. In that testimony the Companies argue they need to speed up construction of the Metropolitan Reliability Infrastructure (MRI) by a year, add portable trucking capabilities to their Greenpoint Liquefied Natural Gas (LNG), expand the Riverhead and Glenwood Compressed Natural Gas (CNG) facilities and add two new CNG facilities.

Public hearings on this rate case were held back in July and August, months before a settlement was reached to end the moratorium and during the public hearings for case 19-G-0678 National Grid only presented proposals laid out in their Long-Term Capacity report giving the public no ability to comment on the short-term “solutions” proposed in this proceeding.

The independent monitor in case 19-G-0768 noted in their Second Quarterly Report,⁹ the Companies’ top choice for one of their new CNG facilities is their Greenpoint location. As Sane outlined in our Initial Brief and thousands of public comments testify to in the record, the community and all local elected officials oppose the MRI pipeline and expansion of the Companies Greenpoint facility.

By failing to have new public hearings on the Companies short-term “solutions” to their widely condemned moratorium the Companies are failing to get proper community input in this proceeding.

⁸ [KEDNY and KEDLI Initial Brief - Final V2](#) Page 2

⁹ [Monitor's Second Quarterly Report](#) April 17, 2020 Page 12

VI. Impacts of COVID-19

In their Initial Brief the Companies state “During a period of great change in the energy industry, and in the face of uncertainty in the wider economy, the Commission’s support is vital to enable the Companies to deliver the critical investments that will pave the way for the transition to New York’s energy future. These investments include projects to modernize the gas networks such as critical reliability projects that will support new customer connections in the Companies’ service territories, the upgrade of the Companies’ outdated customer information system, the implementation of new digital information technology solutions such as the Gas Business Enablement (“GBE”) program, and innovative projects that will enable non-traditional supply options such as renewable natural gas and hydrogen to play an appropriate role in delivering New York’s energy needs.”¹⁰

However the positions the Companies have taken through the proceeding to continue to invest hundreds of ratepayer dollars replacing, expanding and building new fracked infrastructure will pave the way for more health problems and stranded assets .

Given that the Companies business model is reliant on delivering gas, and charging rate-payers to expand infrastructure, the moral and legal decision for the Commission is to mandate that the Companies do not invest rate-payer dollars into “modernizing gas networks” when the only path forward is to begin to retire the Companies gas networks, and move forward with any customers with only non-infrastructure alternatives and energy efficiency.

As Sane argued in our Initial Brief and throughout the proceeding, there are significant risks of radioactive elements from the Marcellus Shale still being present in the product the Companies deliver and also for radioactivity to build up within gas infrastructure. Facilitating future gas development, when it has been proven by physicians and scientists globally to cause respiratory and other bodily systems illnesses, is an irresponsible proposal in light of a pandemic that is attacking the human respiratory systems, and the state of New York sees a continuous spike in cases, and in deaths by complications caused by COVID-19.

Additionally, as the Companies point out in their Initial Brief, the COVID-19 crisis will impact the financial futures of its customers. Investing their rate-payer dollars into new and expanded fossil fuel infrastructure with a decades-long lifespan, sets up the customers to pay out for assets that will be mandated to be decommissioned to abide by our climate law, yet, leave customers to pay for these assets long after their life-span while the Companies receive a guaranteed Return on Equity.

Finally, regarding the Companies statement in their Initial Brief that they “have suspended non-essential work activities out of concern for public and employee safety”, Sane would like to highlight that the Companies continued to send their workers to construct Phase 4 of the MRI pipeline in Brooklyn after Governor Cuomo mandated a stay-at-home Executive Order, except

¹⁰ [KEDNY and KEDLI Initial Brief - Final V2](#) Page 3

for essential businesses. The local customers and elected representatives were forced to draft a letter to President John Bruckner, with a copy to Governor Cuomo, Commissioner Rhodes and Secretary Phillips, signed by over 200 elected officials, organizations and National Grid customers asking for them to halt construction in light of other city utility construction workers contracting the virus, and ask that the Companies honor public health, our state Executive Order and allow workers to remain home, safe with their families to prevent further spread in the epicenter of the pandemic. The Companies' response was to erect a sign at the site saying "essential infrastructure project - safe work zone" and continue to send workers to the site in trenches and on the street close proximity, without personal protective equipment, such as masks. It was only after elected officials spoke out at the telephone meetings of the Long Term Solutions hearings, and customers went to the press with the letter, did the Companies decide to halt construction.