

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission)
To Investigate Denials of Service Requests by)
National Grid USA, The Brooklyn Union Gas) **Case 19-G-0678**
Company d/b/a National Grid NY and KeySpan Gas)
East Corporation d/b/a National Grid)

**COMMENTS OF
ENVIRONMENTAL DEFENSE FUND**

Dated: May 1, 2020

Environmental Defense Fund (“EDF”) hereby submits comments on National Grid’s¹ Long-Term Capacity Report (“Report”), pursuant to the New York Public Service Commission’s (“Commission”) Notice inviting public comment and the subsequent notice extending the comment period.² EDF respectfully requests that National Grid and the Commission consider these comments to improve the Report’s analysis of gas demand and supply and to inform the overall long-term supply planning process for gas utilities going forward.

I. Interests of EDF

EDF is a membership organization whose mission is to preserve the natural systems on which all life depends. Guided by science and economics, EDF seeks practical solutions to resolve environmental problems, and uses the power of markets to speed the transition to clean

¹ The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid are collectively referred to as “National Grid” or “Companies.”

² New York Public Service Commission (“NY PSC”), Notice of National Grid’s Long-Term Capacity Report and Public Process, Case 19-G-0678, *Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid* (Feb. 25, 2020); NY PSC, Notice Extending Comment Period, Case 19-G-0678 (Apr. 17, 2020).

energy resources. Consistent with its organizational purpose, EDF is engaged in activities to facilitate cost-effective and efficient energy market designs that encourage investment to modernize the energy grid so that it can support the ongoing deployment of renewable energy resources and energy efficiency. EDF works collaboratively with market participants sharing these goals. Before this Commission, EDF has highlighted the importance of harmonizing the Commission’s natural gas policies with the state’s ambitious climate goals,³ demonstrated the current deficiencies in gas supply planning,⁴ and set forth proposed solutions to improve the gas supply planning process.⁵

II. Background

A. New York Climate Policy

The Climate Leadership and Community Protection Act (“CLCPA”) was signed into law by Governor Cuomo on July 18, 2019 and took effect January 1, 2020.⁶ The CLCPA mandates that the State of New York adopt measures to reduce statewide greenhouse gas (“GHG”) emissions by 40% by 2030 and 85 percent by 2050 (from 1990 levels), with an additional goal of achieving net zero emissions across all sectors of the economy by 2050 (the remaining 15

³ Testimony and Attachments of Simi Rose George on behalf of the Environmental Defense Fund, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric and Gas Service*, NY PSC Cases 17-E-0238 and 17-G-0239 (Aug. 25, 2017).

⁴ Supplemental Comment of EDF, *In the Matter of Staff Investigation into a Moratorium on New Natural Gas Services in The Consolidated Edison Company of New York, Inc., Service Territory*, NY PSC Case 19-G-0080 (July 22, 2019).

⁵ Direct Testimony of Gregory Lander on Behalf of Environmental Defense Fund at 10-19, *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 and KeySpan Gas East Corp. d/b/a National Grid for Gas Service*, NY PSC Cases 19-G-0309 & 19-G-0310 (Aug. 30, 2019); Direct Testimony of Gregory Lander on Behalf of Environmental Defense Fund at pages 34-36, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company for Gas Service*, NY PSC Case No. 19-G-0066 (May 24, 2019).

⁶ New York State Climate Leadership and Community Protection Act (“CLCPA”), 2019 N.Y. Laws 106, available at <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.

percent can come from carbon offsets).⁷ Specifically, the CLCPA recognizes the importance of addressing emissions of the greenhouse gas methane, which causes 84 times as much global warming as the equivalent amount of carbon dioxide over a twenty-year horizon.⁸ The Act ensures that methane will be accounted for in an emissions reporting system to be developed by the Department of Environmental Conservation (“DEC”).⁹ In recent filings before the Commission, National Grid acknowledged that the adoption of the CLCPA is a “significant change” underscoring “the importance of innovative proposals” due to the “prospects of continued gas supply constraints.”¹⁰

Additionally, New York City Local Law 97, enacted in 2019, requires a minimum of “a forty percent reduction in citywide [greenhouse gas] emissions by calendar year 2030, and an eighty percent reduction in citywide [greenhouse gas] emissions by calendar year 2050,” relative to a 2005 baseline.¹¹

B. DPS Staff and National Grid Settlement

On November 26, 2019, the Commission approved a settlement between National Grid and Department of Public Service (“DPS”) Staff resolving claims against the Companies relating to their moratorium on new gas service.¹² The settlement included a commitment from National Grid to develop a Long-Term Capacity Report, which it published on February 24, 2020.¹³ The

⁷ CLCPA § 1(4); *id.* § 2 (N.Y. Env'tl. Conservation Law (“ECL”) § 75-0107(1)).

⁸ CLCPA § 2 (N.Y. ECL § 75-0101(7)); Direct Testimony of Joseph von Fischer on behalf of EDF at 5-6, Transcript Vol. 9 at 5584-85, NY PSC Cases 19-G-0309 & 19-G-0310 (Aug. 30, 2019).

⁹ *See* CLCPA § 2 (N.Y. ECL §§ 75-0101(2), 75-0109(3)(b)).

¹⁰ Rebuttal Testimony of the Future of Heat Panel for KEDNY/KEDLI at 2-3, Transcript Vol. 1 at 157-58, NY PSC Cases 19-G-0309 & 19-G-0310 (Sept. 18, 2019).

¹¹ 2019 N.Y.C. Local Law No. 97 § 3, codified at N.Y.C. Admin. Code §§ 24-803; N.Y.C. Admin. Code §§ 24-802.

¹² NY PSC, *Order Adopting and Approving Settlement*, Case 19-G-0678 (Nov. 26, 2019).

¹³ National Grid, *Natural Gas Long-Term Capacity Report for Downstate NY* (Feb. 2020), available at <https://ngridlongtermsolutions.com/> (“Long-Term Capacity Report”); National Grid, Press Release: National Grid Issues Long-Term Natural Gas Capacity Report (Feb. 24, 2020).

Report purports to provide a forecast for natural gas demand in downstate New York through 2035, a summary of National Grid’s current supply capacity and operating characteristics, and a description of the “different options available for expanding capacity and/or further reducing demand to meet customer needs.”¹⁴

III. Comments

A. Conventional Gas Planning Will Not Be Sufficient to Achieve the Objectives of the CLCPA

EDF appreciates the effort invested by National Grid in preparing an assessment of the options available for the Companies to satisfy long-term demand in downstate New York. As EDF has previously recommended, the Report represents a step forward in the type of analysis that should occur in a multi-party public forum (with appropriate confidentiality protections if needed), rather than solely in conversations between the Companies and DPS.¹⁵

This incremental progress, however, does not resolve the broader need to harmonize the state’s ambitious climate goals with its natural gas policies, planning, and programs. The Commission recently recognized this need in its March 19, 2020 order, setting in motion a process to develop a more transparent and comprehensive planning framework.¹⁶ The Commission found that “conventional gas planning and operational practices . . . have not kept pace with recent developments and demands on energy systems,” and specifically observed that planning must be conducted consistent with the objectives of the CLCPA.¹⁷

¹⁴ Long-Term Capacity Report at 6.

¹⁵ See, e.g., Statement of EDF in Opposition to Joint Proposal in Case 19-G-0066 at 10, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company for Gas Service* (Nov. 4, 2019); Comment of EDF and New Jersey Conservation Foundation, *In the Matter of the Exploration of Gas Capacity and Related Issues*, NJ BPU Docket No. GO19070846 (Oct. 22, 2019); Comment of EDF at 9-12, *In the Matter of Staff Investigation into a Moratorium on New Natural Gas Services in The Consolidated Edison Company of New York, Inc., Service Territory*, NY PSC Case 19-G-0080 (Feb. 28, 2019).

¹⁶ NY PSC, Order Instituting Proceeding at 2, 4, 6-7, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*, Case 20-G-0131 (Mar. 19, 2020).

¹⁷ *Id.* at 2, 4, 6-7.

Conventional gas planning practices will not be sufficient to achieve the objectives of the CLCPA. Merely focusing on a utility’s long-term capacity needs—while important—does not provide the type of holistic assessment that will be required under New York’s ambitious climate laws. The Public Service Law provides the Commission with significant authority on the issue of long-range planning:

The commission shall encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.¹⁸

Consistent with this broad authority, the Commission should consider all tools available to retail gas utilities to reduce GHG emissions across their systems and achieve CLCPA compliance. For example, Washington Gas Light Company’s recently filed Climate Business Plan¹⁹ before the District of Columbia Public Service Commission identifies three building blocks to decarbonization: end use, transmission and distribution, and sourcing and supply.²⁰ This type of broad, system-wide thinking is critical to maximize emissions reductions. Simply considering planning obligations through the narrow lens of long-term capacity loses sight of additional tools available to gas utilities, such as:

- Avoiding methane emissions from the upstream extraction of natural gas by relying on third party certification of wells/producing regions with the highest level of sustainable practices;²¹ and

¹⁸ N.Y. Public Service Law § 5(2).

¹⁹ Provided in Attachment A to these Comments.

²⁰ Washington Gas & AltaGas, Natural Gas and its Contribution to a Low Carbon Future: Climate Business Plan for Washington, D.C. (“Climate Business Plan”), DC PSC Case 1142, *In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.* (Mar. 2020).

²¹ *See id.* at 20 (explaining that several third-party companies apply certification criteria to specific wells and production regions, and that “exercising [a utility’s] buying power to drive emissions reduction in the natural gas value chain is an effective, sustainable strategy to help reduce GHG emissions”); Global Methane Solutions Project, <https://www.globalmethanesolutions.org/> (last visited Apr. 28, 2020).

- Employing advanced leak detection and data analysis, which could be used to more accurately quantify GHG emissions from distribution systems and aid in reporting obligations under the CLCPA.²²

As the Commission considers how to structure its planning framework in a new era of rigorous climate commitments, this broader Climate Business Plan provides an illustrative template that can be expanded upon and improved for the needs of New York.

B. The Report Thoroughly Details Supply Options, But Does Not Adequately Assess Their Climate Impacts

The Long-Term Capacity Report contains a comparison of the costs and impacts of different supply options but does not provide an adequate assessment of the emissions associated with those options—and thus does not appear to fully consider the GHG emissions reduction mandates of New York’s CLCPA and New York City’s Local Law 97. National Grid should conduct a comprehensive assessment of the GHG emissions impact of each supply option—if it has not done so already²³—and present that information in a manner to allow for comparison of options.

The Report describes its consideration of “Climate Impact” as encompassing “the GHG emissions resulting from the solution, air quality impacts (which often go hand in hand with GHG emissions), and the potential of the solution to support decarbonization of the entire energy

²² Direct Testimony of James Fine on Behalf of Environmental Defense Fund at 15-16, NY PSC Cases 19-G-0309 & 19-G-0310 (Feb. 6, 2020); Direct Testimony of Joseph von Fischer on Behalf of Environmental Defense Fund at 29, NY PSC Cases 19-G-0309 & 19-G-0310 (Aug. 30, 2019).

²³ To its credit, National Grid acknowledges the need to assess the climate impacts of the Iroquois Enhancement by Compression Project and “is supporting M.J. Bradley & Associates to perform a study on greenhouse gas impacts with and without the ExC project.” Long-Term Capacity Report at 72. This type of analysis will be needed to assess Iroquois’ assertion that “[c]onstruction of the ExC Project is consistent with the aggressive emissions reduction goals established by [the CLCPA] by providing an affordable pathway for customers seeking to convert from more carbon-intensive liquid fossil fuels to lower carbon natural gas.” Abbreviated Application of Iroquois Transmission System, L.P. for a Certificate of Public Convenience and Necessity, FERC Docket No. CP20-48 at 30 (Jan. 31, 2020).

system.”²⁴ But the descriptions of individual supply options do not describe the associated GHG emissions and do not quantify any contribution to the emissions reduction goals of the Companies, State, or City.²⁵ EDF believes that more detailed analysis will be necessary, and should be shared in a multi-party public forum overseen by the Commission (with confidentiality protections as needed), to allow for long-term supply planning that includes accounting for New York’s ambitious climate goals.

In the Report, National Grid states that its “intention is not to make a specific recommendation on the ‘best’ solution, but rather to provide the facts on each option and combination of options that could comprehensively resolve a supply vs. demand gap that starts by the winter of 2021/22 and continues to grow until at least 2032/33.”²⁶ But the Companies’ long-term planning must take into consideration the mandate established by the CLCPA to reduce GHG emissions in New York. Even if the Report does not recommend a specific solution, it should present sufficient information about the climate impacts of each supply option to allow for comparison and analysis.

Finally, in the context of the need for a tool to best compare different supply options, EDF reiterates the need for a benefit-cost analysis (“BCA”) framework that is well-suited to the consideration of non-pipeline alternatives.²⁷ An optimal BCA framework should reflect the current understanding of the acute harm caused by methane in the near-term, over a 20-year time horizon, rather than exclusively relying on a 100-year global warming potential. A BCA framework should also account for benefits and costs of upstream impacts. New York’s BCA

²⁴ Long-Term Capacity Report at 50.

²⁵ *See, e.g., id.* at 64 (describing the “Climate Impact” of a Peak LNG Facility as “similar to the other LNG options and 10-15% higher than standard natural gas,” without providing more specific quantification).

²⁶ Long-Term Capacity Report at 6.

²⁷ *See* Comment of EDF, NY PSC Case 17-G-0606, *Petition of Consolidated Edison Company of New York, Inc. for Approval of the Smart Solutions for Natural Gas Customers Program* at 10-15 (Jan. 7, 2019).

framework adopted in the Reforming the Energy Vision proceeding²⁸ has been leading-edge in certain respects, but significant modifications are needed to bring it into alignment with the State’s climate policies. Without the ability to consider methane impacts on a 20-year time horizon and throughout the value chain, and to compare gas and electric solutions to one another in a fair and rigorous manner, no BCA framework will be able to identify portfolios of solutions that maximize societal benefits over the horizon that is of interest to New York.

C. In Considering Refinements to its Gas Supply Planning Process, the Commission Should Employ a Systematic Approach to Evaluating All Available Gas Supply and Demand Relief Options

One of the infrastructure options detailed in the Report is the Iroquois Enhancement by Compression Project, which involves the “construction of additional compression facilities to increase capacity” on the Iroquois pipeline.²⁹ National Grid and Con Edison are planning to split evenly the additional 125 MDth/day of supply, which for National Grid will be delivered to the easternmost city-gate delivery point where the Company anticipates need for additional gas.³⁰ This supply option is identified in the National Grid-DPS Staff settlement agreement as a “previously-unknown . . . source of peaking supply on the Iroquois [pipeline] available for the winter of 2019-2020 and potentially in winters beyond.”³¹

This supply development is indicative of the need for a more robust and transparent process to evaluate interstate transmission projects. To be sure, this option represents a more targeted project as compared to Con Edison’s “originally planned” pipeline:

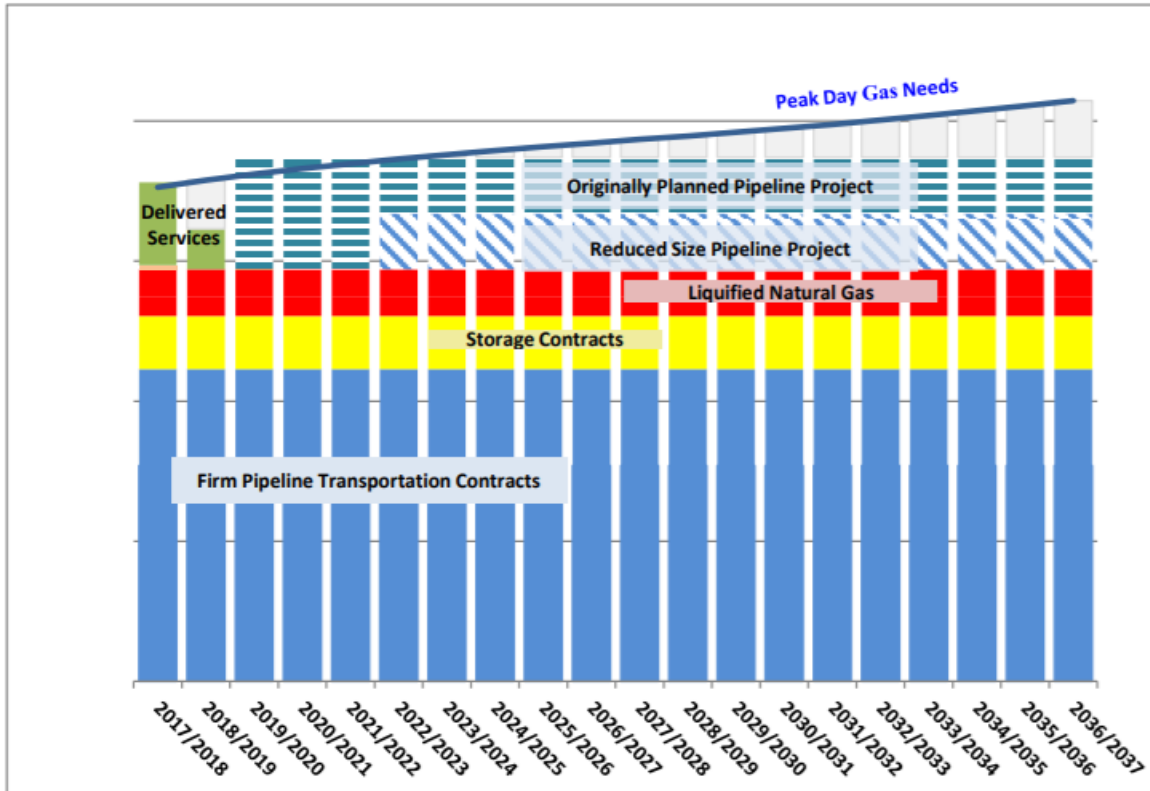
²⁸ NY PSC, Order Establishing Benefit Cost Analysis Framework, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Case 14-M-0101 (Jan. 21, 2016).

²⁹ Long-Term Capacity Report at 71.

³⁰ *Id.*

³¹ NY PSC, Order Adopting and Approving Settlement, Exhibit A at 1, Case 19-G-0678 (Nov. 26, 2019).

Figure 4. Potential Impacts of Future Pipeline Projects on Meeting Customer Needs



Source: Consolidated Edison’s September 29, 2017 Smart Solutions Petition, Case No. 17-G-0606 at page 30.

EDF repeatedly asked Con Edison to disclose basic details regarding the “originally planned” project, including the identity of the pipeline developer, the total capacity of the project, and the total cost of the project.³² All that was made clear was that “[t]he previously pursued projects were traditional in nature, in that they were large volume, included new pipeline (including crossing bodies of water), and a number of new citygate stations.”³³ Ultimately Con Edison abandoned these pursuits in favor of signing up for service on a smaller, more modest

³² See, e.g., Comment of EDF at 7, Case No. 17-G-0606 (Jan. 22, 2018).

³³ Consolidated Edison Gas Infrastructure, Operations and Supply Panel Rebuttal Testimony at 41, Case No. 19-G-0066 (Nov. 13, 2019).

project that could be shared with National Grid. This type of opaque and meandering process needs to be corrected going forward.

To address these deficiencies, the Commission should consider employing a more systemized approach to comparing alternatives that could either provide natural gas supply or demand relief. EDF's suggested framework builds upon Con Edison's December 21, 2017 Request for Proposals submitted in the Smart Solutions proceeding (Case No. 19-G-0606) and borrows from other state processes used to discipline affiliate transactions.³⁴ In brief, the retail gas utility would issue a Request for Proposals ("RFP"), seeking a broad array of innovative solutions that could either provide natural gas supply or demand relief. This competitive-type process would not only protect against affiliate abuse but would also incentivize Capacity Service Providers³⁵ to develop solutions that are narrowly tailored (in terms of size and cost) to

³⁴ See *Application of Pacific Gas and Electric Company for Authorization to Enter into Long-Term Natural Gas Transportation Arrangements with Ruby Pipeline, for Cost Recovery in PG&E's Gas and Electric Rates and Nonbypassable Surcharges, and for Approval of Affiliate Transaction*, California Public Utilities Commission ("CPUC"), Decision 08-11-032, November 6, 2008 Order at 85-93, 118-122 (citing CPUC D.04-09-022; CPUC D.06-12-029, Appendix A-3, Rule III.B.1; CPUC D.04-12-048) (explaining that the CPUC's rules require utilities to use an open and transparent solicitation process when involving affiliates and have a neutral independent evaluator review solicitations that involve affiliates); Direct Testimony of Greg Lander, Missouri Public Service Commission Case No. GR-2017-0215, GR-2017-0216 at Schedule EDF-06 (September 8, 2017) (proposing modifications to the gas supply and transportation standards of conduct).

³⁵ A Capacity Service Provider is an entity that provides, for a price, one or more Capacity Service(s). Capacity Service is defined as one or more asset(s), service(s), product(s) or any combination of same that enables the ultimate need (as defined below) to be met. Examples of Capacity Service Providers would include: (1) a pipeline that provides firm transportation service to the Retail Gas Utility or end market served by the Retail Gas Utility; (2) an entity that sells CNG, RNG and/or LNG delivered into the Retail Gas Utility and/or into a pipeline able to effectuate firm incremental delivery to the Retail Gas Utility or end market served by the Retail Gas Utility; (3) an entity that provides a firm, bundled capacity and commodity service to the Retail Gas Utility or end market served by the Retail Gas Utility; (4) demand response providers; and (5) Energy Efficiency providers.

the ultimate need³⁶ while minimizing adverse impacts on communities and the environment.³⁷

As a result of this robust and competitive process, the retail gas utility would have several options to choose from and its selection process would be transparent and apparent to the Commission and interested stakeholders. Below, EDF provides a framework³⁸ for how this could work in practice:

1. [Retail Gas Utility] will use a competitive bidding process in which requests for proposals (RFPs) are submitted by [Retail Gas Utility] to a list of eligible Capacity Service Providers to provide either natural gas-supply or natural gas-demand relief. For any exceptions to the competitive bid and award process, [Retail Gas Utility] will have a documented process for the approval and award process, including (a) justification requirements, (b) authorization process, (c) contemporaneous documentation requirements (for internal Company information and external communications), and (d) effective monitoring and controls. [Retail Gas Utility] will maintain internal controls such that no information regarding the content or subject of communications by and between non-affiliate potential bidders and [Retail Gas Utility] personnel with access to such information shall be communicated or made accessible to personnel of [Retail Gas Utility] affiliate(s).
2. The RFP process shall be open to all Capacity Service Providers who wish to bid and shall be publicly posted on the [Retail Gas Utility's] website and filed with the Commission. The intent is to gain the broadest practical participation by eligible Capacity Service Providers in submitting competitive bids. Once such a process is reasonably developed, appropriately implemented and effectively monitored and controlled, the results of that process are intended to establish the most innovative solutions to provide natural gas-supply or natural gas-demand relief, considering cost as well as impacts on communities and the environment. [Retail Gas Utility] shall provide the Commission with a report, including an explanation of

³⁶ The ultimate need must be defined clearly and substantiated by the Retail Gas Utility. Conceptually, it could be considered as comfort (i.e., warmth or cooling), light, and/or power (i.e., the ability to cause a machine to run) at defined level(s) at, over, or across defined intervals of time. Examples would include having warm air at 6:00 AM; having light at 9:00 PM; being able to turn on your computer at any time; being able to take a hot shower at any time between 6:00 AM and 9:00 AM. Note that each "need" is stated independent of the means of meeting that "need." Once identified as a "need" deserving and able to be met that "need" becomes a "demand."

³⁷ For instance, a pipeline could distinguish its proposal by incorporating additional features that would provide environmental benefit such as methane reduction measures. *See, e.g.*, Iroquois Spring 2020 Report, https://www.iroquois.com/site/assets/files/1057/spring_2020_safety_issue_web.pdf ("As part of the ExC Project, Iroquois plans to reduce methane and overall emissions at project sites through the installation of low Nitrous Oxide (NOx) turbine units that will reduce NOx emissions by 40% over standard turbine units, as well as adding oxidation catalysts on the newly installed turbines, thereby reducing Carbon Monoxide (CO) emissions by approximately 90%. In addition, Iroquois is proposing to install methane recovery systems at each project site to capture released natural gas from station operations.")

³⁸ EDF offers this framework as a straw proposal at this time and reserves the right to further refine this framework going forward.

any credit, performance or other criteria that [Retail Gas Utility] takes into consideration in developing the RFP.

3. No affiliate of [Retail Gas Utility] shall be awarded a capacity service contract where such contract would result from an exception to the competitive bid and award process. In the event a capacity service contract is awarded to an affiliate of [Retail Gas Utility] as a result of the RFP or other competitive bidding process, the affiliate shall be held to the same performance requirements as non-affiliated Capacity Service Providers.
4. In the event a capacity service contract is awarded, [Retail Gas Utility] shall maintain the following contemporaneous documentation: (a) any diversity, credit, or reliability-related capacity limitations placed on the maximum capacity [Retail Gas Utility] will purchase from an individual Capacity Service Provider (if applicable); (b) an explanation of the diversity, credit and/or reliability-related reasons for imposing such limitations (if applicable); (c) a description of the process used to evaluate bids, and negotiate final prices and terms; (d) a complete summary of all bids received and all prices accepted, together with copies of all underlying documents, contracts and communications; (e) a summary and explanation of Capacity Service Providers disqualified for credit, performance or other criteria, and (g) a copy of the policy or procedure employed by [Retail Gas Utility] for awarding contracts in instances where an affiliate and an unaffiliated Capacity Service Provider have offered identical pricing terms. For phone calls or texts, [Retail Gas Utility] shall maintain contemporaneous logs documenting the discussions and decisions.
5. In the event a capacity service contract is awarded to an affiliate of [Retail Gas Utility] for a capacity path between a supply receipt area and a delivery area along or through which other bids were received from non-affiliates of [Retail Gas Utility], the [Retail Gas Utility] shall maintain contemporaneous documentation showing that the affiliate's bid price was equal to or lower than the bids received from non-affiliated suppliers, and that any upward or downward adjustment(s) in the final contract price were justified by changes in the market.
6. In the event a capacity service contract is proposed to be awarded to an affiliate of [Retail Gas Utility] for a capacity path between a supply receipt area and a delivery area along or through which no other bids were received, [Retail Gas Utility] shall re-issue an RFP to the broadest practical set of eligible Capacity Service Providers in order to obtain competitive capacity service bids for the capacity service contract proposed to be awarded to an affiliate of [Retail Gas Utility].
7. In the event a capacity service contract is awarded to an affiliate of [Retail Gas Utility] for a capacity path between a supply receipt area and a delivery area along or through which [Retail Gas Utility] also received bids for and/or awarded capacity service contract(s) to non-affiliated Capacity Service Providers, the [Retail Gas Utility] shall maintain contemporaneous documentation showing that the price established under the contract awarded the affiliate was within or lower than the range of prices established under contracts awarded to entities other than the affiliate.

8. If the affiliate's bid price or contract price does not meet the criteria in paragraphs 5, 6 or 7, [Retail Gas Utility] may not award the capacity service contract to the affiliate, unless the [Retail Gas Utility] can demonstrate and contemporaneously document that a more favorable bid was rejected for legitimate reasons relating to the rejected bidder or bidders' creditworthiness, performance history (or lack thereof), or other consideration bearing on the fitness and reliability of the bidder to provide the requested service.
9. In the interests of optimizing the competitive benefits of the RFP process, the RFP will explicitly inform potential bidders that [Retail Gas Utility] permits Capacity Service Providers to propose alternative ways of satisfying the ultimate need, including but not limited to basic quantity, reliability, receipt, delivery and pricing terms of the RFP in addition to those specifically contemplated by the RFP. The RFP may also utilize ranges for such quantity, reliability, receipt, delivery, pricing and/or other terms.

This type of proposed framework has numerous benefits. It will bring enhanced clarity and transparency to available supply and demand alternatives, spur innovative solutions to facilitate the objectives of the CLCPA, and assist the Commission, Staff, utilities, and interested stakeholders in making informed decisions in shaping the future energy system. As noted above, other jurisdictions employ a similar framework, and this type of before-the-fact review of any interstate capacity contracts would also assist the Federal Energy Regulatory Commission in its decision-making at the federal level.³⁹

III. Conclusion

EDF appreciates the opportunity to comment on National Grid's Long-Term Capacity Report and looks forward to continuing to engage with the Companies, DPS Staff, and the Commission to develop robust long-term planning mechanisms for gas utilities.

While the Commission considers changes to its long-term gas supply planning, in the meantime, the Companies' next rate case should build upon the suggestions articulated in this

³⁹ See Preliminary Determination on Non-Environmental Issues, *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 at P 37 (Sept. 4, 2009) (finding the proposed Ruby pipeline and transportation contract "consistent with Commission policy" in part because the California Public Utilities Commission "directed PG&E to replace expiring contracts on GTN in order to diversify PG&E's gas supply, and, after evaluating several options, the CPUC approved PG&E's acquisition of capacity on Ruby's proposed pipeline").

comment. As explained in greater detail in the testimony of EDF witness Gregory Lander,⁴⁰ the information submitted in the Companies' Long-Term Capacity Report should inform the Companies' request for rate recovery in the next rate case, accompanied by a full demonstration of need, robust consideration of alternatives, and consistency with climate goals. This will help identify potential issues well in advance of experiencing demand/supply mismatches, manage and contain fixed cost commitments made by the Companies, protect ratepayers from unreasonable financial risk, and improve understanding of available supply alternatives.⁴¹

Dated: May 1, 2020

Respectfully submitted,

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⁴⁰ Testimony of Gregory Lander for Environmental Defense Fund at 14-18, Transcript Vol. 9 at 5629-33, NY PSC Cases 19-G-0309, 19-G-0310 (Aug. 30, 2019).

⁴¹ See EDF Lander Testimony at 19, Transcript Vol. 9 at 5634.