STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 16-G-0058 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service.

CASE 16-G-0059 - 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 14-G-0091 - In the Matter of the Acts and Practices of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid Regarding Billing of Each Company's SC No. 2 Customers from March 2008 to March 2014.

CASE 14-G-0503 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between KeySpan Gas East Corp. d/b/a National Grid and Ratepayers.

CASE 13-G-0498 - Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between KeySpan Gas East Corp. d/b/a National Grid and Ratepayers.

CASE 12-G-0544 - In the Matter of the Commission's Examination of The Brooklyn Union Gas Company d/b/a National Grid NY's Earnings Computation Provisions and Other Continuing Elements of the Applicable Rate Plan.

CASE 11-G-0601 – Petition for Approval, Pursuant to Public Service Law Section 113(2) of a Proposed Allocation of Certain Tax Refunds between KeySpan Gas East Corp. d/b/a National Grid and Ratepayers.

ORDER ADOPTING TERMS OF JOINT PROPOSAL AND ESTABLISHING GAS RATE PLANS

Issued and Effective: December 16, 2016

TABLE OF CONTENTS

Page

INTRODUCTION... 2
BACKGROUND... 4
Rate Filings 5
Other Pending Cases 6
PROCEDURAL HISTORY..................................... 7
Rate Cases 7
Tax Refund Cases 9
JP Filing and Ensuing Schedule 9
PUBLIC NOTICE AND COMMENTS............................. 10
Public Notices 10
Public Statement Hearing Comments on Rate Filings 10
Written Comments and Opinion Line Comments 13
KEDLI 13
KEDNY 14
ANALYSIS OF JOINT PROPOSAL............................. 15
Rate Plan Term and Annual Revenue Increases 20
Equity Ratio, Return on Equity (ROE) and Earnings Sharing ... 25
Revenue Allocation 35
Depreciation Expense 38
Productivity Adjustment 39
Rate Design and Declining Block Rate 40
Non-Firm Services Rate Design and Other Issues 47
New York Facilities System LAUF 50
SC No. 2 Refunds 52
Capital Investment Levels 56
LPP Risk Ranking Algorithm 58
CISBOT and Pipe Lining 59
LPP Productivity Incentive 61
Gas Safety and Reliability Surcharge 62
Methane Leak Pilot Programs 64
Roadwork and Traffic Violations 65
Pension and OPEBs 68
Low Income Discount Program 71
Site Investigation and Remediation (SIR) Expense 76
Discussion 84

Property and Special Franchise Tax Refunds 87
New Reconciliations, Deferrals and True-ups 89
City/State Construction Expenditures 93
KEDNY Variable Rate and Long Term Debt True-Up 95
New Hire True-Up 97
PSC Complaint Rate 98
Customer Satisfaction 99
Telephone Answer Response within 30 Seconds 99
Adjusted Customer Bills 100
Reporting 101
Tripling and Quadrupling Provisions 102
Service Guarantee 103
Termination and Uncollectible Incentive 103
Discussion 104
Additional Customer Issues 110
Base and Slope Variable Information 110
Customer Migration Policy 110
KEDNY's Record Retention Policy 111
KEDNY's Use of D/B/A on Customer Bills 112
LPP Removal Metric 113
Leak Management 114
Damage Prevention 115
Emergency Response 116
Gas Safety Regulations Performance Metric 117
Discussion 118
Calendar Years 2013 and 2014 Metric Results 119
KEDLI Geothermal Pilot Program 121
Installation of AMR Meters in New York City 122
ESCO Issues 123
Power Generation Issues 125
Reforming the Energy Vision (REV) Demonstration Projects ... 130
Flood Zone Packages 130
Commercial DR 131
Micro CHP 132
AUDIT COMPLIANCE 137

CONCLUSION.. 139
The Commission Orders:.................................... 140

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on December 15, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-G-0058 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service.

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ORDER ADOPTING TERMS OF JOINT PROPOSAL
AND ESTABLISHING GAS RATE PLANS

(Issued and Effective December 16, 2016)

BY THE COMMISSION:

INTRODUCTION

This case involves a Joint Proposal (or JP) proposing a three-year rate plan for the Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corp. d/b/a National Grid (KEDLI) (collectively, the Companies) for gas service for the period January 1, 2017 through December 31, 2019. The case is made difficult by the significant revenue requirement increases involved, with levelized overall annual revenue increases of on average 9.3% for KEDNY and 5.1% for KEDLI. Those revenue increases have resulted, in large part, from the protracted period since base rates were last increased for the Companies. Base rates have not been increased for KEDNY in over a decade and for KEDLI since 2008. While customers have benefitted from relatively flat rates during that time, rate shock is an obvious concern at this time. Nevertheless, for the reasons stated below, we conclude that the Joint Proposal mitigates to the extent practicable the rate impact on the Companies' customers resulting from the sizeable revenue increases and strikes an appropriate balance between the interests of ratepayers and the long-term viability of the Companies. Moreover, those increases are necessary to fund numerous programs and capital investments necessary to ensure the provision of safe and adequate gas service in Brooklyn, Queens, Staten Island and Long Island.

Accordingly, this order adopts the terms of the Joint Proposal filed in the above-referenced cases on September 7, 2016. It also resolves the disposition of certain property tax refunds and refunds to non-residential gas customers who were incorrectly charged due to misclassification. Lastly, the order addresses the Companies' compliance with previous management and operations audit recommendations and directives.

The Joint Proposal is executed on behalf of KEDNY and KEDLI, trial staff of the Department of Public Service (Staff), City of New York (NYC); Environmental Defense Fund (EDF); Consumer Power Advocates (CPA); Direct Energy Services, LLC (Direct Energy)[1]; Great Eastern Energy (Great Eastern)[2]; Estates NY Real Estate Services LLC (Estates NY)[3]; and Spring Creek Towers (Spring Creek). Public Utility Law Project of New York, Inc. (PULP), Utility Rate Analysis Consultants Corp. (URAC), Potomac Economics, Ltd. (Potomac) in its capacity as New York

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1 The testimony was submitted on behalf of Direct Energy and its affiliated ESCOs doing business in New York State.

2 Great Eastern is an Energy Service Company (ESCO) providing service to customers in the KEDLI and KEDNY service territories.

3 Estates NY states that it owns or manages a very large real estate portfolio in the metropolitan New York region.

Independent System Operator Market Monitoring Unit and the Town of Brookhaven (Brookhaven) are opposing the Joint Proposal.[4]

BACKGROUND

KEDNY provides gas service to about 1.2 million customers in Brooklyn, Queens, and Staten Island; KEDLI provides natural gas service to approximately 567,000 customers in Nassau and Suffolk Counties on Long Island. The last base rate increases requested by KEDNY and KEDLI, prior to the instant cases, were filed in 2006.[5] The Commission thereafter adopted 5-year rate plans (commencing calendar year 2008), pursuant to which KEDNY received no annual base rate increases over the term of the rate plan and KEDLI received a base rate increase in the first year only.[6] In 2013, the Commission extended KEDNY's existing rate plan with certain modifications through December 31, 2014.[7]

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[4] In addition to the signatories to and opponents of the JP, the other parties to the rate cases are the Long Island Power Authority (LIPA); New York State Department of State, Division of Consumer Protection's Utility Intervention Unit (UIU); New York Oil Heating Association, Inc.; Oil Heat Institute of Long Island, Inc.; Small Customer Marketer Coalition; and, Transport Workers Union, Local 101. The JP notes that although LIPA and UIU have indicated that they will not sign the JP, they do not oppose it.

[5] Cases 06-G-1185 and 06-G-1186, KEDNY and KEDLI – Gas Rates, (filed October 3, 2006).

[6] Cases 06-G-1185 and 06-G-1186, KEDNY and KEDLI – Gas Rates, Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued December 21, 2007).

[7] Case 12-G-0544, The Brooklyn Union Gas Company d/b/a National Grid NY - Earnings Computation and Continuing Rate Plan Provisions, Order Adopting Terms of a Joint Proposal (issued June 13, 2013).

Rate Filings

On January 29, 2016, KEDNY and KEDLI filed tariff leaves designed to increase the Companies' base rates.[8] KEDNY proposed to increase its base rates by approximately $290 million, but its proposal represented a net increase of $245 million because it included shifting approximately $45.3 million of site investigation and remediation (SIR) costs into base rates and reducing SIR surcharge recovery by a corresponding level.[9] KEDNY's proposal, if adopted, would have increased its delivery base rates by about 21.5%; however, because some of the delivery rate increase would be due to the shift of SIR cost recovery from a surcharge to base rates, the overall delivery revenue increase would be a smaller percentage, approximately 18.1%.

Like KEDNY, KEDLI proposed to shift on-going SIR cost recovery from a surcharge mechanism into base rates, with base rates recovering all of KEDLI's forecasted rate year SIR costs as well as an amount representing a one-tenth amortization of the projected deferred SIR cost balance as of December 31, 2016.[10] Consequently, its proposal to increase its base rates by approximately $175 million represents a net revenue increase of $142 million. KEDLI's proposal, if adopted, would have

[8] The Companies' proposals incorporated recommendations to phase in the increases over three years to mitigate the impact of the increases. Ex. 156, p. 11 and Ex. 143, pp. 10-11.

[9] Ex. 143, p. 9 and Ex. 231, p. 3. This shift represents a move into base rates to recover KEDNY's forecasted current year SIR costs. The Company initially proposed to recover through the SIR recovery surcharge an amount representing a one-tenth amortization of the projected deferred SIR cost balance as of December 31, 2016.

[10] Ex. 75, pp. 14-15.

increased its delivery base rates by about 18.6%; however, because some of the delivery rate increase would be due to the shift of SIR cost recovery from a surcharge to base rates, the overall delivery revenue increase would be a smaller percentage, approximately 15.7%.

Other Pending Cases

The JP includes proposed resolutions of other cases pending before the Commission.

i) Case 14-G-0091 was instituted by the Commission to address the problem that KEDNY and KEDLI Service Class (SC) No. 2 customers were billed at the heating rate of SC No. 2 in certain billing cycles but would have qualified for the non-heating rate.[11]

ii) Pursuant to section 89.3 of the Commission's Rules and Regulations (16 NYCRR) and Public Service Law (PSL) § 113(2), KEDLI filed petitions seeking Commission approval to allocate proceeds from various tax refund challenges in accordance with KEDLI's recommendations.[12] Case 14-G-0503 concerns a refund of property tax proceeds on three parcels that comprise the Hicksville service center. The other cases relate to *ad valorem* taxes for garbage collection and disposal services

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[11] Ex. 473, p. 2.

[12] Case 14-G-0503, Notice of Tax Refund and Proposed Method of Disposition of KeySpan Gas East Corporation d/b/a National Grid (filed November 20, 2014); Case 13-G-0498, Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between KeySpan Gas East Corp. d/b/a National Grid and Ratepayers (filed November 4, 2013)($20.6 million judgment); and Case 11-G-0601, Petition for Approval, Pursuant to Public Service Law Section 113(2) of a Proposed Allocation of Certain Tax Refunds (filed November 7, 2011)($2.5 million refund).

charged to special franchise and utility property in the Towns of Oyster Bay (13-G-0498) and North Hempstead (11-G-0601).

PROCEDURAL HISTORY

Rate Cases

In accordance with the adopted schedule, the Companies filed testimony and exhibit updates on April 4, 2016, which decreased KEDNY's net revenue increase by approximately $250,000 and reduced KEDLI's proposed net revenue increase by approximately $65,000. Testimony and exhibits in response to the KEDNY and/or KEDLI rate filings were filed by Staff, NYC, UIU, LIPA, Estates NY, EDF, CPA and Spring Creek jointly, Great Eastern, Direct Energy, PULP and URAC.

Staff was the only party to offer alternative revenue requirement recommendations to the Companies' proposals. In response to the Companies' filings, Staff recommended an increase to KEDNY's base rates of approximately $263 million, but its recommendation actually represented a net increase of approximately $199.2 million because, similar to KEDNY, it included shifting approximately $45.3 million of SIR costs into base rates and reducing SIR surcharge recovery by a corresponding level. In addition, Staff recommended base rates be increased by another $18.5 million for the amortization of the projected SIR deferral balance, rather than this amount being recovered through the SIR Recovery Surcharge as the Company had proposed.[13] Staff recommended an increase to KEDLI's base rates of approximately $116 million, but its recommendation actually represented a net revenue increase of approximately $76.1 million becauseit included shifting approximately $24.5 million of SIR costs into base rates and reducing SIR surcharge

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[13] Ex. 300, p. 8 and Ex. 302, Sch. 2 and Sch. 6, p. 1.

recovery by a corresponding level, along with a further reduction to the SIR surcharge recovery of $15.5 million. In addition, Staff recommended base rates be increased by another $14.2 million for the amortization of the projected SIR deferral balance, rather than this amount being recovered through the SIR Recovery Surcharge as the Company had proposed.[14]

Rebuttal filings were made by the Companies, NYC, LIPA, UIU, PULP and Great Eastern. KEDNY increased its proposed base revenue increase to approximately $331 million and KEDLI maintained its proposed base revenue increase of approximately $175 million.[15]

On May 31, 2016, KEDNY and KEDLI filed a Notice of Impending Negotiations. We were advised by Administrative Law Judge Van Ort that the notice complied with our rules and regulations (16 NYCRR 3.9(2)). Negotiations commenced on June 14, 2016 and continued on several dates thereafter, both in person and by telephone. The evidentiary hearing date initially scheduled to commence on June 27 was postponed multiple times based on the parties' continuing negotiations and periodic status reports indicating that negotiations were productive.[16] To allow for the continuing settlement negotiations the Companies agreed, conditionally, to postpone the effective date

[14] Ex. 300, p. 7 and Ex. 301, Sch. 2 and Sch. 6, p. 1.

[15] Ex. 156, p. 4 and Ex. 156, pp. 4-5.

[16] Cases 16-G-0058 and 16-G-0059, Ruling Confirming Postponement of Litigation Schedule (issued June 21, 2016) and Ruling on Schedule (issued July 25, 2016).

of the proposed tariff amendments in Cases 16-G-0058 and 16-G-0059, from January 1, 2017 through February 28, 2017.[17]

Tax Refund Cases

Staff commenced its investigation and conducted discovery in each of the refund cases. There were no requests for party status filed in any of the refund cases. On June 28, 2016, KEDLI filed a notice pursuant to 16 NYCRR §3.9(a) advising the Commission of impending settlement discussions in the three tax refund cases. The notice indicated that the settlement negotiations would be conducted in conjunction with the settlement discussions in the KEDNY and KEDLI rate cases.[18]

JP Filing and Ensuing Schedule

On September 7, 2016, KEDNY and KEDLI filed the Joint Proposal with the Commission. Pursuant to the schedule adopted thereafter,[19] the Companies, Staff, NYC, EDF, CPA, Estates NY, Great Eastern and Spring Creek filed statements in support of the Joint Proposal. Statements opposing the JP were submitted by PULP, URAC, Brookhaven and Potomac Economics. UIU submitted a brief indicating that it neither supports nor opposes the JP.[20]

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17 In letters filed with the Commission's Secretary on June 17, 2016 and July 21, 2016, the Companies requested that the suspension period be extended to February 1, 2017 and March 1, 2017, respectively, conditioned on the Companies being made whole for any lost revenues in the event that new rates go into effect after January 1, 2017.

18 In a July 5, 2016 memorandum, Judge Phillips advised Chair Zibelman and the Commissioners that the notice complied with 16 NYCRR §3.9(a).

19 Cases 16-G-0058 et al., Ruling on Schedule for Consideration of Joint Proposal (issued September 13, 2016).

20 UIU's brief is solely directed to the recovery mechanism for SIR costs.

An evidentiary hearing on the Joint Proposal was held in New York City on October 26, 2016.[21] There were a total of 540 exhibits admitted into the record. The first 506 exhibits comprise the pre-filed testimony and exhibits of parties, and the Joint Proposal.

The Companies and Staff sponsored panels at the hearing in support of the JP. The panels responded to questions from the ALJs regarding Joint Proposal provisions. The parties were afforded an opportunity to cross-examine the witnesses and none of them chose to cross-examine witnesses.

PUBLIC NOTICE AND COMMENTS

Public Notices

Pursuant to the State Administrative Procedure Act (SAPA) § 202(1), notices for the above-referenced cases were published in the State Register on the following dates: Cases 16-G-0058 and 16-G-0059, April 27, 2016; Case 11-G-0601, December 28, 2011; Case 13-G-0498, January 22, 2014; Case 14-G-0503, January 28, 2015; and Case 14-G-0091, January 28, 2015. The public comments received on the KEDNY and KEDLI rate filings are discussed immediately below. There were no public comments received in any of the other cases.

Public Statement Hearing Comments on Rate Filings

Six public statement hearings were held on the KEDNY and KEDLI rate filings, three for KEDNY and three for KEDLI. A total of 19 individuals provided comments at the KEDLI hearings held in Mineola on July 26, 2016 and in Riverhead and Hauppauge on July 27, 2016. Twelve individuals provided comments at the KEDNY hearings held in Brooklyn on August 10, 2016 in afternoon

[21] Cases 16-G-0058 et al., Notice of Evidentiary Hearing (issued September 27, 2016).

and evening sessions and in Long Island City on August 11, 2016. More than half of the speakers at the KEDNY and KEDLI hearings commented on behalf of the American Association of Retired Persons (AARP) or PULP in opposition to the proposed rate increases. Other KEDLI hearing speakers commented on behalf of the Molloy College Sustainability Institute (MCSI),[22] Brookhaven, Suffolk County Legislature, local businesses and a residential subdivision. A few individuals spoke on their own behalf. KEDNY hearing speakers included representatives of the Queens Chamber of Commerce (QCC); New York City Council, District 36 (NYCC District 36); Greater Jamaica Development Corporation (GJDC)[23]; Downtown Brooklyn Partnership (DBP)[24] and a local business.

The AARP and PULP comments were consistent between KEDLI and KEDNY. They noted primarily that, in comparison to other utility customers, senior citizens and low-income customers devote a much larger portion of their income to housing costs, including utility expenses. The comments further stated that the amount of the rate increases sought by KEDLI and KEDNY, if approved, could threaten the affordability of gas service for these customers. Brookhaven's Supervisor and Suffolk County Legislator Anker echoed the concerns over the impact of increased rates on KEDLI's low income customers.

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[22] MCSI promotes goals to reduce greenhouse gas emissions on Long Island through such efforts as replacement of leak prone pipes, installation of insulation and heating system upgrades.

[23] GJDC is a community based organization that plans and promotes development to revitalize the Jamaica region.

[24] DBP is a not-for-profit group that facilitates development of public spaces and streetscapes to promote Brooklyn and attract businesses.

AARP and PULP also suggested that the practice used in shutting off service for customers who could not pay their gas bills is inappropriate, and claimed that there is under enrollment of customers in the low income programs and inadequate customer access to securing deferred payment agreements. NYCC District 36 shared the concerns over low income customers' under enrollment.

Several speakers acknowledged the need for KEDLI and KEDNY to replace aging pipes to maintain safe and reliable service and reduce greenhouse gases. They also advocated for funding energy efficiency programs at a higher level. PULP questioned the extent to which ratepayers are being asked to pay for site investigation and remediation costs, arguing company shareholders should shoulder the burden for a significant portion of those costs.

Addressing KEDLI specifically, Brookhaven's Supervisor stated, inter alia, that 1) replacing infrastructure should not be paid for in increased rates, but rather out of profits, a bond issuance or a capital reserve fund; 2) KEDLI should not be permitted to receive a performance incentive if the company fails another performance metric; and 3) the Commission should not allow a net rate increase to low income customers, factoring in the proposed increase to the discount rate for these customers, when there are other alternatives available, such as a phasing in of rate increases over several years.

Suffolk County Legislator Anker raised concerns over debt financing of projects and questioned whether KEDLI should continue incurring debt for gas expansion. Several speakers acknowledged that some rate increase may be needed for gas expansion and to fund energy efficiency; and one individual indicated that the Commission should consider adopting new energy efficiency programs to replace expiring New York State Energy and Research Development Authority (NYSERDA) programs.

Several individuals voiced their support of a rate increase for KEDNY. Madeline Chocolate, QCC, DBP, and GJDC, in particular, noted that continued investment in infrastructure is needed to ensure safe and reliable service and for economic development and revitalization in the KEDNY service territory. GJDC stated that Jamaica is undergoing revitalization and thousands of new units of affordable housing are being constructed, and safe and reliable energy delivery to southeast Queens is critical to sustaining that revitalization. DBP added that the Brooklyn population is continuing to increase and infrastructure investments are necessary to keep pace with the increasing population.

Written Comments and Opinion Line Comments

KEDLI

In addition to the public statement hearing comments, there were also about 2,000 written comments filed with the Commission's Secretary and approximately 3,000 telephone comments received on the Commission's opinion line about the KEDLI case. The vast majority of the written and opinion line comments received were from individual customers expressing opposition to the proposed rate increase, arguing that Long Island taxpayers are already overburdened with utility fees, taxes and other service fees and cannot afford the proposed massive increase in their gas utility bills.[25] They also noted concerns over the potential for surcharges to increase outside of a rate case and stated that there should be no increase to the minimum monthly charge for residential customers.

[25] For the most part, the comments in opposition to the rate increase followed scripts distributed by AARP.

A number of individuals and organizations expressed support for the proposed rate increase, pointing out that KEDLI's infrastructure has served Long Island for over 100 years and investments are needed to modernize the gas system, support expansion of gas service and maintain safe and reliable service.[26] Other benefits cited by comments include proposed programs designed to advance public safety, customer service, consumer education, technology applications and economic development.

In its September 21, 2016 comments, Brookhaven recommended that KEDLI bear a greater proportion of the infrastructure costs and that it reconfigure the fixed and variable monthly charges for residential customers to direct a greater percentage to the variable volumetric charge, assertedly to be more equitable and encourage conservation. Finally, it noted that KEDLI should increase its efforts to recover SIR cleanup costs from responsible third parties rather than charging these costs to customers.

KEDNY

There were over 1,400 written comments filed with the Commission's Secretary and about 200 comments received on the opinion line for the KEDNY rate case. The vast majority of the written and opinion line comments received followed the same format and content as those submitted in the KEDLI case, noting that customers are already overburdened with utility fees, taxes and other service fees and cannot afford the proposed massive increase in their gas utility bills; expressing concerns over the potential for surcharges to increase outside of a rate case;

[26] These comments were received from the United Way of Long Island (United Way), Village of Island Park (Island Park) and Village of Farmingdale (Farmingdale).

and advocating for no increase to the minimum monthly charge for residential customers.

The Brooklyn Chamber of Commerce, Staten Island Chamber of Commerce, NYU Tandon School of Engineering, Heart Share Human Services of New York and Staten Island Economic Development Corporation submitted letters supporting a gas rate increase for KEDNY.[27] Collectively, they asserted that modernization of the gas infrastructure is needed to ensure safe and reliable service for existing and future customers and to support gas expansion projects, and a rate increase would also advance various programs in public safety, and customer service.

Several individuals questioned the need for ratepayers to cover on-going SIR expenses, arguing that the costs should be borne by the company’s shareholders.

ANALYSIS OF JOINT PROPOSAL

The Public Service Law (PSL) delineates the Commission's broad supervisory jurisdiction over the furnishing of gas service to customers and over those persons and entities operating gas systems in New York State.[28] Commission regulation is designed to ensure that the services provided to customers and the public will be safe and adequate and that the charges for those services are just and reasonable.[29] Setting just and reasonable rates involves a balancing of the customers' interests with those of the utility's investors.[30] We may

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[27] The format and content of these letters are similar to letters submitted by United Way, Island Park and Farmingdale in the KEDLI rate case.

[28] Public Service Law §§ 2(10)(11), 4(1), 5(1)(b), 65 and 66.

[29] Public Service Law § 65 (1).

[30] Abrams v. Public Serv. Commn., 67 N.Y.2d 205, 212 (1986).

consider such factors and assign the weight to those factors as is deemed appropriate in setting utility rates, and our decision will not be set aside unless it was made without any rational basis or reasonable support in the record.[31]

In evaluating the terms of a joint proposal submitted for our consideration, we must determine if the joint proposal, considered as a whole, produces a result that is in the public interest. Our Settlement Guidelines delineate factors employed in conducting that analysis.[32] They include consideration of whether the terms of the joint proposal are consistent with the environmental, social and economic policies of the Commission and the State; produced results within the range of outcomes that might result if the issues in the case were fully litigated; appropriately balance the interests of the utility's ratepayers, its investors and the long-term viability of the utility; and provide a rational basis for our ultimate decision. Consideration is also given to whether the record is complete and the extent to which the settlement is contested.

The parties were provided a fair and adequate opportunity to conduct discovery and submit testimony and exhibits in response to KEDNY's and KEDLI's testimony and exhibits. Eleven parties in addition to Staff filed testimony in response to the Companies' cases, with the majority of the testimony filings being accompanied by supporting exhibits. Consistent with our rules of procedure, the parties were also provided notification of planned settlement negotiations and an

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[31] Id.

[32] Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992) (Settlement Guidelines), p. 30.

opportunity to fully participate in those negotiations.[33] Subsequent to the filing of the Joint Proposal, entered into by the Companies and eight other parties of varying interests, the parties were permitted to submit initial and reply statements in support of or opposition to the JP. At the evidentiary hearing the judges admitted into the record as exhibits, inter alia, the pre-filed testimony and exhibits of the parties, along with affidavits of sponsoring witnesses; the Joint Proposal; statements in support of or opposition to the JP; and questions propounded by the ALJs and the responses thereto.[34] In total, there were over 530 exhibits admitted into the hearing record. We find that the record compiled in these cases is complete and provides an adequate basis for our decision herein. The record demonstrates that the parties have conducted a thorough examination and analysis of the Companies' historic and planned capital and operating expenditure levels and that the provisions of the JP address the legitimate concerns and interests of the parties and the Companies in addition to those of the Companies' customers.

The rate plans we are adopting for KEDNY and KEDLI incorporate a multitude of provisions designed to maintain and

[33] 16 NYCRR § 3.9.

[34] The judges also reserved exhibit numbers for some testimony affidavits to be filed and admitted three JP appendices with minor corrections.

improve customer service,[35] further the Commission’s goals to improve system efficiency and reliability and produce environmental benefits from reduced fossil fuel emissions,[36] provide KEDLI and KEDNY with sufficient funds to cover their respective operating expenses and capital costs and mitigate the financial impact of the needed revenue increases on customers. We note, for example, that there is increased funding for programs that will enhance the provision of safe and reliable service and result in environmental benefits from replacement of leak prone pipe.[37] Although the levelized increases are still significant, they are in part a reflection of the fact that base rates have not been increased for KEDNY in over a decade and for KEDLI since 2008.[38] In an effort to mitigate the potential bill impacts and rate shock that KEDNY’s and KEDLI’s first rate year

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[35] Ex. 506, Sec. IV.3.7 and Sec. V.3.7 (paperless billing credit), Sec. IV.3.12 and Sec. V.3.12 (website posting of typical bill information), Sec. IV.7 and Sec. V.7 (customer service quality programs), Sec. IV.9.3 and Sec. V.9.3 (economic development grants), Sec. V.9.4 (rebates to new residential gas customer in planned main replacement areas), Sec. IV.9.3 (rebate program for customer conversions to gas) and Sec. VI.5 (permitting transfers of calls to other National Grid call centers and in-state third-party vendors during peak periods).

[36] Ex. 506, Sec. IV.8 and Sec. V.8 (gas safety performance metrics), Sec. V.9.2 (EmPower Energy Efficiency program for KEDLI’s low income customers)

[37] Ex. 506, Sec. IV.8.1.1 and V.8.1.1 (leak prone pipe removal, network improvements and system modernization)

[38] Case 12-G-0544, The Brooklyn Union Gas Company d/b/a National Grid NY, Order Adopting Terms of a Joint Proposal (issued June 13, 2013) and Case 06-G-1186, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island – Gas Rates, Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued December 21, 2007).

revenue increases will have on customers, the increases will be levelized over the three rate years. And, to further mitigate the effect of revenue increases on KEDNY's and KEDLI's most vulnerable customers the annual funding levels for the Companies low income programs will be substantially increased over the current programs' funding levels, with KEDNY's first year program increasing approximately 155% and KEDLI's increasing about 64%.[39]

We generally summarize and discuss below several provisions of the Joint Proposal. The discussion of these provisions is not an exhaustive discourse on each issue. We have considered all of the terms and recommendations set forth in the Joint Proposal, the record assembled in these cases and the parties' arguments in support of or opposition to our adoption of the provisions of JP.

Rate Drivers

The primary rate drivers cited by KEDNY and KEDLI in support of their rate filings are growth in rate base, resulting largely from substantial increases in net plant, and operations and maintenance (O&M) expense increases.[40] These costs are driven, in part, by large capital investment increases since base rates were last set.[41] KEDLI noted in its pre-filed

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[39] As discussed in more detail in the Low Income Discount Program section of this order, KEDNY's program will increase from the current funding level of $9.8 million to $25 million in Rate Year 1; and, KEDLI's program will increase from the current funding level of $3.3 million to $5.4 million in Rate Year 1. There will be additional program funding levels in Rate Years 2 and 3.

[40] Ex. 1, p. 21.

[41] Case 12-G-0544, supra and Case 06-G-1186, supra.

testimony that its capital investment increased from about $138.4 million in calendar year 2011 to approximately $254.9 million in 2015.[42] KEDNY noted in pre-filed testimony that its capital investment increased from about $186.5 million in calendar year 2011 to approximately $487.4 million in 2015.[43] Staff says that the average of the capital increases for KEDLI and KEDNY over these years equals 22.3% and 40.6%, respectively.[44]

KEDLI further stated that its O&M expenses increased from 2005 to September 30, 2015, escalating from about $141.7 million to approximately $216.3 million.[45] KEDNY indicated that over that same period its O&M expenses increased from about $334.9 million to approximately $412.1 million.[46]

The rates for the Companies in Rate Year 2 and Rate Year 3 are similarly primarily driven by the additional capital expenditures, as well as inflation on O&M expenses agreed to by the JP signatories.

Rate Plan Term and Annual Revenue Increases

The Joint Proposal embodies a three-year rate plan for KEDNY and KEDLI running from January 1, 2017 through December 31, 2019, with annual revenue increases levelized on a percentage basis over the three years to mitigate the bill

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42 Ex. 55, p. 12.

43 Id.

44 Ex. 308, p. 21.

45 Ex. 156, p. 25. The historic test year covers the twelve months ending September 30, 2015.

46 Ex. 143, p. 26.

impact on customers. Rate Years 1, 2 and 3 comprise the three successive calendar years beginning January 1, 2017.[47]

The unlevelized annual base revenue increases recommended for KEDNY are approximately $272.1 million in Rate Year 1, $41.0 million in Rate Year 2 and $48.9 million in Rate Year 3. Levelization of the base revenue increases would result in recommended average annual overall revenue increases of 10.9%.[48] After netting the SIR surcharge, which is being rolled into base revenues, the proposed levelization over the term of the rate plan results in average overall annual revenue increases for KEDNY of 9.3%.[49]

The recommended unlevelized overall annual base revenue increases for KEDLI are approximately $112.0 million in Rate Year 1; $19.6 million in Rate Year 2 and $27.0 million in Rate Year 3. Levelization of the base revenue increases would result in average annual overall revenue increases of approximately 6.7%.[50] After netting the surcharge, which is being rolled into base revenues, the proposed levelization over the term of the rate plan results in average overall annual revenue increases for KEDLI of 5.1%.

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[47] Ex. 506, Secs. III, IV.2 and V.2.

[48] The revenue increase for KEDNY in the first rate year, absent levelization, would be 21.0% as a percent of total revenues(Ex. 506, App. 1, Schedule 3, p.1). The unlevelized increases in Rate Year 2 and Rate Year 3 would be 3.5% and 4.0%, respectively (Ex. 525, ALJ-1).

[49] Ex. 506, App. 1, Sch. 3, p. 1.

[50] The revenue increase for KEDLI in the first rate year, without levelization, would be 12.7% as a percent of total revenues (Ex. 506, App.2, Schedule 3, p.1). The unlevelized increases in Rate Year 2 and Rate Year 3 would be 2.6% and 3.5%, respectively (Ex. 525, ALJ-1).

All parties acknowledge that the incremental revenue increases recommended in the JP for KEDNY and KEDLI are substantial. Staff, however, is the only party to offer alternative revenue requirements for KEDNY and KEDLI. Staff points out that the Joint Proposal's recommended base revenue increase for KEDNY is only about $9.1 million higher than its litigated position ($272.1 million versus $263.0 million). It explains that much of the increase over the litigation position is attributable to Staff's acceptance of corrections and additional adjustments from the Companies' rebuttal testimony and recognition of the additional benefits that would flow from adoption of the three year rate plan.[51] Staff also says that the nearly $4 million decrease in Staff's litigated position (from approximately $116.6 million) to the JP's stipulated $112.0 million incremental revenue requirement for KEDLI is, as in the KEDNY case, due to Staff's acceptance of corrections in KEDLI's rebuttal testimony and its recognition of the benefits that would flow from the three year rate plan.[52]

The Companies, NYC and Staff explain that the increases are, in part, due to the fact that KEDNY and KEDLI

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[51] According to Staff, the approximate $9.1 million difference is the result of adjustments in five main areas: Operating Revenues ($9.3 million decrease); O&M expenses ($18.7 million increase); depreciation expense ($8.9 million decrease); ROE increase from 8.6% to 9.0% ($8.0 million increase); and rate base ($0.6 million increase). Staff Statement in Support, pp. 12-13.

[52] Staff indicates that the decrease in the JP's revenue requirement from Staff's litigation position is attributable to adjustments in five main areas: O&M expenses ($3.4 million increase); depreciation expense ($12.0 million decrease); property taxes (an increase of $4.5 million); the pre-tax ROR (a decrease of $0.7 million); and rate base (an increase of $1.2 million).

have not had delivery rate increases in several years and their costs have significantly increased since then. The Companies note, specifically, that KEDNY and KEDLI last filed for base rate increases in 2006, which resulted in KEDNY's receiving no base rate increase and KEDLI's receiving a base rate increase limited to the first year (2008) of its rate plan.[53] They state further that in the decade prior to the 2006 merger case KEDNY and KEDLI customers only experienced base rate decreases and that, except for the 2008 KEDLI increase, the Companies' customers have had two decades of decreasing or stable base delivery rates.[54]

Several parties observe that a number of Commission supported programs have been implemented by the Companies in recent years to enhance the safety and reliability of their gas distribution systems, which benefit their customers. NYC notes, for example, that the Companies have been significantly ramping up capital expenditures to meet tightening safety and reliability targets and to remove and replace old, leak-prone pipe (LPP).[55] Staff explains that the enhanced LPP removal program has resulted in higher levels of net plant, thereby causing upward pressure on rates.[56] Therefore, these parties

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[53] Cases 06-G-1185 *et.al*, Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued December 21, 2007) and Case 06-M-0878, National Grid PLC and KeySpan Corporation - Stock Acquisition and other Regulatory Authorizations, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued September 17, 2007).

[54] Id.

[55] NYC Statement in Support, p. 4.

[56] Staff Statement in Support, pp. 11-12.

assert, while the revenue requirement increases are substantial, they are needed to ensure safe, reliable, and resilient gas delivery systems and reflect the Companies' costs to provide safe and adequate service to customers.

PULP and Brookhaven are the only parties opposing the Joint Proposal to specifically address the magnitude of the increases. Brookhaven states generally that the three year phase in of the rate increase is an improvement over the one year rate increase in KEDLI's original proposal and that the JP allocates too great a portion of costs which should be borne by the company to the customer.[57] PULP says that the customers' bill increases resulting from the proposed revenue increases for the Companies could not come at a worse time for the Companies' customers.[58] It claims that the data shows almost half of KEDNY's customers and a large number of KEDLI's customers cannot afford their utility bills.[59]

We find the annual revenue increases recommended for KEDNY and KEDLI to be reasonable for the Companies to maintain safe and reliable service and earn a reasonable return of their investments. The significant increases recommended in the JP directly reflect the protracted period since base rates were last increased, the cost increases and higher rate base that the Companies have experienced in the intervening period and future upgrades to their aging gas distribution systems. As Staff points out, inflation alone has increased by 14.6% since 2008 when KEDLI's base rates were last reset.[60] The rate plans for KEDNY and KEDLI identify new programs and expansion of existing

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[57] Brookhaven Statement in Opposition, p. 3.

[58] PULP Statement in Opposition, p. 4.

[59] Ex. 441, pp. 6, 10-26 and Ex. 457, pp. 6, 10-23.

[60] Staff Statement in Support, p. 12.

programs (*e.g.* KEDNY's Cast Iron Joint Sealing Robot (CISBOT), the Companies' Cured-In-Place (CIP) pipe lining and expansion of LPP replacement) that will improve not only service but also pipeline safety and will reduce the adverse environmental impact of methane leaks. We further find that the Joint Proposal's levelization of the revenue increases and SIR costs, coupled with the stipulated rate design's equal percentage allocation of the increases to each customer class and implementation of file matching to identify additional eligible participants for KEDNY's and KEDLI's Residential Reduced Low Income Discount Programs, has mitigated as equitably as practicable the impact of the increases on all customer classes.[61]

The Joint Proposal's three-year rate plans for KEDLI and KEDNY will provide their customers with long-term delivery rate certainty, while providing the Companies with sufficient revenues to cover the costs of planned infrastructure projects, ensure that their gas systems operate in a safe and reliable manner and ensure the financial stability of each company. We also find that the JP's recommended levelization of the annual revenue increases will moderate the impact of the resulting customer rate increases to the maximum extent practicable. Recognizing these additional SIR costs in base rates is not expected to result in customer bill impacts because there will be a corresponding reduction in the SIR Recovery Surcharge.[62]

Equity Ratio, Return on Equity (ROE) and Earnings Sharing

The revenue requirements set forth in the Joint Proposal are based on a hypothetical capital structure with 48%

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[61] Ex. 506, Secs. IV.3.2, IV.3.3, V.3.2 and V.3.3.

[62] Ex. 525, ALJ-6.

common equity and a 9.0% return on equity (ROE) for each of the three years of the KEDNY and KEDLI rate plans.[63] Pursuant to the JP's earnings sharing mechanism (ESM), there would be a 50 basis point dead-band before sharing of any excess earnings. Excess earnings above 9.5% to 10.0% would be shared equally between ratepayers and the Company; ratepayers would receive 75% of any excess earnings over 10.0% to 10.5% and 90% of any excess earnings over 10.5% ROE.[64] Should KEDNY and/or KEDLI not file for new rates to take effect on or before July 1, 2020, 100% of any earnings over 9.0% would be deferred for ratepayers' benefit beginning on January 1, 2020.[65]

In their filing, the Companies had offered a 48% equity ratio for ratemaking purposes, including over a three-year rate plan, despite asserting that their forecasted stand-alone equity ratios for KEDNY and KEDLI are over 50%.[66] Staff also supported a 48% equity ratio in its direct case, given that both Companies are sufficiently ring-fenced and that the 48% equity ratio (along with its ROE recommendation) is sufficient to ensure that the Companies' credit metrics will remain investment-grade.[67]

The Joint Proposal's 9.0% ROE stands in sharp contrast to the Companies' proposed 9.94% ROE for a one-year plan and

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63 Ex. 506, Sec. IV.2.1 and Sec. V.2.1.

64 Ex. 506, Sec. IV.4.3 and Sec. V.4.3.

65 Ex. 506, Sec. VI. 17.2. In the event the Companies do have pending rate petitions on January 1, 2020, the tiered ESM would continue until changed by Commission Order (id., Sec. VII.5).

66 Ex. 12, p. 90; Ex. 33, p. 15 and Ex. 35, p. 4.

67 Ex. 379.

10.44% for a three-year rate plan.[68] The Companies, Staff and NYC assert that the JP's ROE represents a fair compromise between the Companies' proposal and the 8.6% level recommended by Staff in direct testimony, and is well within the range of results that might be obtained in a fully litigated case.[69] They also point out that the JP's 9.0% ROE is consistent with ROE levels recently adopted by the Commission in several multi-year rate plans for similar gas and/or electric utilities.[70] The Companies note that, although the Commission's methodology for establishing ROE results in returns that are among the lowest in the country for gas and electric utilities, they are willing to accept this result in light of the overall settlement reached by the parties. Staff further states, in support of the JP's ROE, that it reflects allowances for the Companies' acceptance of provisions that would tend to increase KEDNY's and KEDLI's potential financial risk exposure, such as the Gas Safety

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[68] Ex. 33, p. 15 and Ex. 35, p. 4.

[69] Companies' Statement in Support, pp. 8, 13.

[70] The Companies and Staff collectively cite as support Case 15-G-0382, St. Lawrence Gas Company, Inc. -- Rates, Order Establishing Multi-Year Rate Plan (issued July 15, 2016) (adopting 9.0% ROE in three-year rate plan); Cases 15-E-0283, et al., New York State Electric & Gas Corp. - Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued June 15, 2016) (adopting 9.0% ROE in three-year rate plan); Cases 14-E-0493, et al., Orange and Rockland Utilities, Inc. – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric Rate Plan (issued October 16, 2015) (9.0% ROE for two-year electric plan and 9.0% ROE for three-year gas plan) and Cases 14-E-0318 and 14-G-0319, Central Hudson Gas & Electric Corporation – Electric and Gas Rates, Order Approving Rate Plan (issued June 17, 2015) (9% ROE for three-year rate plans).

Performance Mechanism, as well as the increased financial risk inherent in rates that are set for more than one year.[71]

PULP contends that the JP's shift from the Companies' and Staff's initial proposals to the 9.0% ROE is unsupported by any expert testimony or other factual evidence in the record. Relying on New York Telephone Co. v. PSC[72] PULP argues that the Commission can only select a specific ROE level testified to by an expert witness and not an intermediate level agreed to by the parties as a compromise.[73] PULP asserts that the likely outcome of litigation would be adoption of Staff's initial litigated position, given "the Commission's preference for the formulaic approach to the cost of common equity" presented by Staff's expert witness.[74] PULP concedes that the Commission "has been inclined" to approve ROEs in a joint proposal that are above Staff's initial recommendations due to what PULP says "some believe" to be the added business and financial risk to which the utility is exposed by agreeing to "stay out" for a multi-year period.[75] However, PULP says, given all of the unique ratemaking mechanisms articulated by Staff's expert witness that mitigate against financial risk to utilities, the Commission cannot be assured that the 9.0% ROE proposed in the JP fairly balances the interests of ratepayers, investors and the long-term soundness of the utility without any expert testimony

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[71] Staff Statement in Support, p. 30.

[72] 64 A.D.2d. 232 (3rd Dept., 1978).

[73] PULP Statement in Opposition, pp. 13-18.

[74] PULP Statement in Opposition, p. 17, quoting direct testimony of Staff witness Qadir, p. 49, lines 5-10.

[75] PULP Statement in Opposition, p. 17.

supporting a 9.0% ROE as the correct equity return.[76] PULP argues that the Commission's "tradition of allowing excessive returns" in settled cases does not render such returns just and reasonable or lawful.[77]

In response to PULP's claims, Staff states that the JP's ROE factors in the benefits to customers and the risks to the Companies of the Joint Proposal versus the potential outcome of a fully litigated case.[78] Moreover, Staff and the Companies assert that PULP misconstrues the applicable case law, particularly New York Telephone Co. v. PSC. The Companies argue that the Commission is not bound to entertain or ignore any particular factor in discharging its primary responsibility to determine that rates are just and reasonable; the question is whether there is a rational basis for the Commission's finding that the rates are just and reasonable.[79] The Companies and Staff concur in the position that a rational basis exists here for the Commission to accept the JP's ROE recommendation, and note that it falls within the returns testified to by the expert witnesses in the proceedings.

Regarding the JP's ESM, KEDNY and KEDLI assert that, in recent cases involving multi-year rate plans, the Commission adopted sharing mechanisms, like this one, that provided for a dead-band of 50 or more basis points above the ROE upon which

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[76] Id., pp 17-18.

[77] Id., p. 15.

[78] Staff Reply Statement, pp. 11-14.

[79] Companies' Reply Statement, p. 6.

rates are set before earnings sharing begins.[80] They state that the earnings sharing provisions in this JP offer potential benefits to customers that are equal to or better than the ESM provisions approved in multi-year rate plans of other similarly situated utilities. PULP argues, in opposition, that the ESM is overly generous to the Companies, is not supported by the record and negatively impacts ratepayers who could obtain more savings if the ESM threshold and the ROE were set lower.[81] PULP contends that the ESM and other provisions of the Joint Proposal are not in the public interest, and the Commission should either reject the JP or modify it based on evidence adduced at the evidentiary hearing.[82] Staff states that the reason to include a dead band is to provide an incentive for companies to find cost savings in their operations, which will be captured in future rate cases.

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[80] Companies' Reply Statement, p. 8, citing Case 15-G-0382, St. Lawrence Gas Company, Inc. -- Rates, Order Establishing Multi-Year Rate Plan (issued July 15, 2016), p. 25 (approving a joint proposal that established rates reflecting a 9.0% allowed ROE, with earnings sharing beginning when the actual ROE exceeded 9.5%); Cases 15-E-0283, et al., New York State Electric & Gas Corp. - Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued June 15, 2016) at 13-14 (approving a joint proposal that established rates reflecting a 9.0% allowed ROE, with escalating earnings sharing beginning in Year One when actual ROE exceeded 9.5%; in Year Two, when actual ROE exceeded 9.65%; and in Year Three, when actual ROE exceeded 9.75%); and Case 14-G-0494, Orange and Rockland Utilities, Inc. –Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric Rate Plan (issued October 16, 2015) at 12-13 (approving a joint proposal that established rates reflecting a 9.0% allowed ROE, and, for gas service, with earnings sharing beginning when the actual ROE exceeded 9.6%).

[81] PULP Statement in Opposition, p. 23.

[82] Id., pp. 24-25.

Staff also points out that a rate order which PULP cited approvingly actually included higher dead bands than is found in the Joint Proposal.[83]

Joint Proposal Sections IV.2.1 and V.2.1 illustrate the complete capital structures for KEDNY and KEDLI, including the equity ratio and ROE applicable in each of the rate years. The 48% equity level would produce lower overall revenue requirements than would the equity levels that KEDNY and KEDLI forecasted based on their actual balances. It is within our discretion to adopt a capital structure containing lower hypothetical equity levels for rate setting purposes, as the signatory parties recommend herein, to ensure the reasonableness of rates. The record reflects support for the 48% equity ratio given the business and financial risks of the Companies.[84] We concur with Staff's assessment that the Companies' stand-alone equity ratios are the appropriate focus given the sufficient ring-fencing that is in place. In addition, we concur that the equity ratio should be constrained to 48%, since this equity level should maintain an "A" bond rating for the Companies.[85] We generally support rate levels designed to maintain an investment grade bond rating where practicable. This equity level for KEDNY would continue the level that was set in its last case.[86] We, accordingly, find the Joint Proposal's proposed capital structure containing the 48% equity ratio for the terms of the KEDNY and KEDLI rate plans to be reasonable.

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83 Staff Reply Statement, pp. 17-18.

84 Ex. 377, pp. 22-23.

85 Id.

86 Case 12-M-0544, supra, Order Adopting Terms of a Joint Proposal.

We further find the Joint Proposal's 9.0% average ROE over the three-year term of the rate plans for KEDNY and KEDLI to be reasonable, based upon our expertise and professional judgment. This ROE level adheres closely to the Commission's practices and policies in rate setting, in that it relies on the sound financial models supported by expert testimony that the Commission has consistently endorsed in its rate-setting orders. This methodology includes: (1) the application of Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) analyses to a representative proxy group of utility companies; (2) utilization of a two-stage DCF computation with inputs derived from Value Line; (3) basing the CAPM result on an average of the outcome from standard and zero-beta models with a risk-free rate based on Treasury bonds, market risk premium provided by Merrill Lynch's Quantitative Profiles, and betas taken from Value Line; and (4) a 2/3 – 1/3 weighting of the DCF and CAPM results, respectively.[87] We reaffirmed this methodology in 2014, noting that the consistency of our approach "provides a predictable and transparent guide to the companies, to investors, and to the ratings agencies."[88] Consequently, the result here is consistent with what we might expect to be the likely outcome of litigation.

One notable difference from a litigated result here is that the parties have jointly proposed a multi-year rate plan. Staff and the Companies correctly point out that we have consistently approved joint proposals recommending multi-year

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[87] Case 10-E-0362, Orange & Rockland Utilities, Inc. – Electric Rates, Order Establishing Rates for Electric Service (June 17, 2011), p. 64.

[88] Case 13-W-0295, United Water New York Inc. -- Water Rates, Order Establishing Rates (June 26, 2014), p. 57 and generally pp. 51-57.

rate plans based on ROEs that exceed the return that would be derived from strict application of our formula, in light of the increased risk to utilities and the increased benefits to customers inherent in multi-year rate plans and the various trade-offs embodied in a comprehensive settlement. Thus the ROE is appropriately adjusted for the risk to the Companies, to meet their need to attract capital within the context of a longer term rate plan. These factors have been fully articulated by Staff and the Companies in their statements in support of the Joint Proposal here, which more than adequately provide a record basis and compelling rationale for our approval of the allowed ROE embodied in the Joint Proposal.[89]

PULP misinterprets the opinion in New York Telephone Co. v. PSC in arguing to the contrary. That was a traditional case to determine rates for New York Telephone Company that was fully litigated and contested by all parties and did not involve any settlement or joint proposal. In the evidentiary hearing before an administrative law judge, various expert witnesses had proposed five different approaches to arrive at common equity returns ranging from 11.3% to 12.5%.[90] In its final order, the Commission relied on only one of the approaches to set the return on equity at 11.5%.[91] New York Telephone invoked the procedure of CPLR Article 78 to challenge the Commission's order

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89 We note further that, because the ROE calculation in Staff's litigation position already took into account all of the attributes of New York ratemaking that mitigate risk to utilities, no further explication or calculation is necessary to account for them in evaluating the Joint Proposal's recommendation here.

90 64 A.D.2d at 239-240.

91 Id. at 239-241.

in State court. In its opinion upholding the Commission’s ROE calculation, the Appellate Division conceded that some of New York Telephone's challenges to the Commission's calculation "cannot be rejected as wholly lacking in merit."[92] Nevertheless, the court wrote, since the result reached by the Commission "falls within the range of expert testimony, it cannot be said that the alleged errors have resulted in a determination unsupported by the record or without rational basis."[93] There is nothing in the language of this opinion to support PULP's tortured reading that the court's holding depended upon the coincidence that one of the expert witnesses had testified to the precise figure of 11.5% within the general range of equity returns recommended by the various expert witnesses.[94]

We further find that the Joint Proposal’s ESM will provide critical protection to ratepayers over the terms of the multi-year rate plans. In addition to providing KEDNY and KEDLI with an incentive to control costs and improve their financial performance, the mechanism will provide customers a reasonable share of the benefits if the Companies’ efforts yield

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92 64 A.D.2d at 240.

93 Id.

94 Moreover, we do not agree with PULP that the New York Telephone case "provides binding precedent of the appropriate analysis for determining the reasonableness of rates, and in approving terms of a joint proposal" or even that we are constrained by the range recommended in testimony when we determine allowed ROEs in rate setting. On the contrary, as PULP concedes elsewhere in its Statement in Opposition, it is the total effect of the rate order that determines the reasonableness of the rates that are set. PULP Statement in Opposition, p. 14, citing Federal Power Comm’n v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944). See also Abrams v. PSC, 67 N.Y.2d 205, 215 & 218 (1986).

significantly improved earnings that trigger sharing thresholds. The ESM's 50 basis point "dead band" between the 9% authorized return and the 9.5% level of return, above which sharing begins, is typical of multi-year rate plans that we have adopted. We find the ESM provision of the Joint Proposal to be reasonable.

Revenue Allocation

Pursuant to JP Sections IV.3.2 and V.3.2, the revenue increases in each of the rate years would be allocated to all firm service classes on an equal percentage basis to current delivery revenues, with limited exceptions.[95] An equal percentage of the KEDNY and KEDLI annual increases will be assigned to each of the specific Companies' rate blocks. Revenue increases for Rate Years 2 and 3 will be similarly allocated.

The Companies proposed to allocate the revenue requirement increases for both Companies to firm and non-firm classes, with SC 1, 2 and 3 customers receiving uniform increases of 31.5% for KEDNY customers and 26.7% for KEDLI customers.[96] Other rate classes producing above average returns at present rates would receive somewhat smaller increases under the Companies' proposal.[97] KEDNY and KEDLI indicated that adopting their allocation recommendation would move the service classes closer to the system average rate of return.[98]

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[95] The exemptions are for the firm distributed generation service classes, which currently have no customers taking service.

[96] Ex. 169, p. 24 and Ex. 185, p. 24.

[97] Ex. 169, p. 24 and Ex. 185, p. 24.

[98] Ex. 169, p. 25 and Ex. 185, p. 25.

Staff, NYC, and UIU submitted testimony with alternative revenue allocation recommendations.[99] In pre-filed testimony, Staff argued that given the magnitude of the recommended revenue increases, it would be inappropriate to correct any Embedded Cost of Service (ECOS) study imbalances at this time and recommended that all firm classes receive the same percentage increase.[100]

NYC has a number of temperature controlled (TC) customer accounts with KEDNY. In its pre-filed testimony, NYC argued that the Companies' proposed revenue allocation and rate design for the TC classes failed to establish cost-based rates for these classes and their revenue allocation would result in excessive rates and revenue for KEDNY's TC classes.[101] It, therefore, recommended that the Commission reject the Companies' proposed revenue allocation and rate design for KEDNY's TC customers, maintaining the current level of delivery revenues for these customers and, that KEDNY's revenue increase be shared equally on a percentage basis between the SC 1, SC 2 and SC 3 classes, with no increase allocated to the remaining service classes.[102] With respect to KEDLI, NYC stated that it was not recommending any changes to the Company's proposed revenue allocation or rate design for TC customers.[103]

UIU argued in its testimony that there is no need to drastically adjust the revenue reallocation, going forward, based on the Companies' ECOS study.[104] It mentioned that if the

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[99] Ex. 332; Ex. 394; Ex. 433 and Ex. 438.

[100] Ex. 332, p. 45.

[101] Ex. 392, pp. 3-6.

[102] Id., p. 15.

[103] Id., p. 4.

[104] Ex. 433, p. 7.

magnitude of the overall rate changes approved by the Commission are small, it might be feasible to modify the allocation of revenues to the various classes somewhat to move them into closer alignment with the ECOS results without placing an undue burden on any one group of customers. According to UIU, the Companies' ECOS methodology places an excessive burden on residential and small commercial customers.[105] UIU offered revenue allocation recommendations based on the results of its own ECOS studies.[106] Its revenue allocation recommendation for KEDNY would assign a lower percentage of KEDNY's revenue increase to the SC 1A (residential non-heating) customers and allocate to each of the remaining customer classes percentages that approximate or exceed KEDNY's total proposed increase.[107] UIU's revenue allocation recommendation for KEDLI would assign to the residential service classes a percentage of the increase approximately equivalent to KEDLI's total proposed increase.[108]

In its statement supporting the Joint Proposal, Staff states that the Joint Proposal's revenue allocation is consistent with its litigated position and will minimize the bill impacts on all customers.[109] It reiterates that, given the magnitude of the rate increases recommended in the JP, any revenue allocation imbalances should not be remedied as part of the rate plans adopted for KEDNY and KEDLI.[110]

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105 Id.

106 Id.

107 Ex. 440, Sch. 1, p. 4.

108 Ex. 439, Sch. 1, p. 5.

109 Ex. 508, p. 21.

110 Id.

NYC points out, in its statement supporting the JP, that considering the competing proposals for revenue allocation, the JP's equal percentage allocation is a fair compromise that would fall within the range of litigated results.[111] Allocating the sizeable increases to all firm classes, it states, is consistent with the Commission's policy to mitigate rate shock to customer classes.

We agree that given the sizeable revenue increases for KEDNY and KEDLI, the equal percentage allocation of the revenue increases to all firm service classifications would be appropriate to minimize rate shock to the extent practicable. We are not convinced from our review of the record that there are any gross imbalances in the existing revenue allocation that would warrant making drastic changes to the revenue allocation in the Joint Proposal. We, therefore, adopt the revenue allocation as proposed in the JP.

Depreciation Expense

Under the Joint Proposal, the depreciation expense in Rate Year 1 would be \$90.6 million for KEDNY and \$66.9 million for KEDLI, representing a downward adjustment of \$27.2 million from the \$117.8 million depreciation expense proposed by KEDNY and a downward adjustment of \$26.9 million from the \$93.8 million depreciation expense proposed by KEDLI.[112] Agreeing with some but not all of the Companies' proposed adjustments to accrual rates, Staff recommended in testimony reductions to the Companies' proposed depreciation expenses of approximately \$18.7

[111] Ex. 509, p. 11.

[112] Ex. 506, App. 1, Sch. 1, pp. 1, 7 and App. 2, Sch. 1, pp. 1, 7.

million for KEDNY and $15.1 million for KEDLI.[113] NYC made two alternative proposals for reductions to the Companies' depreciation expenses, recommending reductions of $34.3 million or $51.5 million for KEDNY and $26.7 million or $37.1 million for KEDLI.[114]

Staff explains that the downward adjustments in the Joint Proposal are greater than Staff's original recommendations in testimony because they include some of the more aggressive adjustments proposed in testimony by NYC.[115] We agree with Staff that the Joint Proposal reflects a reasonable level of depreciation expenses for the Companies that represents a compromise between the parties' litigation positions.

Productivity Adjustment

The Joint Proposal would set a two percent productivity adjustment to direct labor costs in Rate Year 1 and a 1.5 percent productivity adjustment in Rate Years 2 and 3.[116] Those adjustment percentages are greater than the one percent adjustment proposed by the Companies in testimony.[117] Staff, which had recommended a two percent adjustment, notes that the productivity adjustments in the Joint Proposal are intended to capture unspecified gains in productivity and decreases in O&M expense expected to result from the increased capital

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113 Ex. 308, pp. 91-92 and Ex. 313.

114 Ex. 415, p. 30.

115 Staff Statement in Support, p. 19.

116 Ex. 506, App. 1, Sch. 1, pp. 6, 18, 30 and App. 2, Sch. 1, pp. 6, 18, 30.

117 Ex. 279, p. 25; Ex. 289, p. 23; Ex. 300, p. 44.

expenditures and other improvements to the Companies' gas systems provided for in the Joint Proposal.[118]

While we generally have imputed a one percent adjustment, the higher percentages here are unopposed and not without precedent.[119] Moreover, as Staff notes, they are appropriate given the accelerated capital investment under the Joint Proposal. The productivity adjustments represent an important benefit in helping to reduce the rate increase that would otherwise result.

Rate Design and Declining Block Rate

Joint Proposal Sections IV.3.3 and V.3.3 outline the rate design applicable over the three year terms of the KEDNY and KEDLI rate plans. These sections memorialize the signatory parties' agreement to allocate the annual revenue increases to the service classes such that there would be equal percentage increases assigned to the blocks within each class. As discussed in more detail in a separate section of this order, the JP also modifies the rate design applicable to temperature control and interruptible customers. Lastly, the Joint Proposal provides for no increases to the minimum monthly charge for residential heating customers, with the exception of residential

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[118] Staff Statement in Support, p. 17.

[119] Case 08-E-0539, Consolidated Edison Company of New York-Rates, Order Setting Electric Rates (issued April 24, 2009), pp. 36-38; Case 95-G-1034, Central Hudson-Rates, Order Concerning Revenue Requirement and Rate Design (issued October 3, 1996), pp. 4-5; Case 93-E-1123, Long Island Lighting Company-Rates, Order Adopting Rec. Dec. with Modifications (issued July 6, 1995), pp. 27-29.

non-heating or SC 1A customers.[120] The minimum monthly charges would increase for the SC 1A customers by less than $1.00.[121]

In pre-filed testimony, the Companies and Staff proposed freezing minimum charges for all customer classes except the residential non-heating customers.[122] KEDNY and KEDLI also proposed setting the tail block rate closer to the demand rate. Staff supported allocating an equal percentage increase to the volumetric blocks in each service class.[123] UIU recommended freezing the minimum charges for all customers, recovering revenue increases exclusively through volumetric rates and, reducing the "steep" gradient of tail-block declining rates.[124] UIU also recommended that the Commission consider lowering the fixed monthly charges if it decides on a lower revenue requirement than the Companies requested.[125] Brookhaven agrees that a larger percentage of costs should be recovered in the volumetric rate as opposed to the monthly minimum charge.[126]

PULP argues that the rate design in the JP for KEDNY is regressive and impairs the ability of low income customers to afford their gas service.[127] According to PULP, over the last

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120 Ex. 169, pp. 27-31, Ex. 185, pp. 27-31 and Ex. 332, p. 46.

121 KEDNY's minimum charge would increase from $13.74 to $14.70 and KEDLI's would increase from $17.66 to $18.53. Ex. 506, App. 3, Sch. 5.1 and App. 4, Sch. 5.1.

122 Ex. 169, pp. 27-31, Ex. 185, pp. 27-31 and Ex. 332, p. 46.

123 Ex. 332, p. 46.

124 Ex. 433, p. 58.

125 Id. These arguments were not preserved in UIU's statement commenting on the Joint Proposal.

126 Brookhaven Statement in Opposition, p. 2.

127 PULP Statement in Opposition, pp. 21-22 and Reply Statement, p. 15.

decade the Company's fixed charge for basic services, the monthly minimum charge, has risen 164%, which hurts low income customers by forcing them to pay a steep charge for basic services before paying a rate that varies based on usage. It says that the JP would steepen the existing declining block rates, charging higher volume energy customers a lower delivery rate while charging low usage customers a higher delivery rate. Rate designs based on high fixed basic service charges and flat and declining block rates for delivery service create affordability problems for low income customers, PULP says, and act as a disincentive to conservation and energy efficiency initiatives.[128] PULP claims, in essence, that eliminating the declining block rate structure would reduce the low income customers' bills. It further states that adopting a rate design with lower fixed costs and higher variable or volumetric costs could not only benefit the low income-low usage customers without harming the Company's bottom line, but would advance the REV goals of promoting conservation and reducing greenhouse gas emissions. It also says that setting the rate design with lower fixed costs and higher variable charges would be consistent with the Commission's Low-Income Affordability program.[129] Lowering the basic service charges and the rate charged for lower blocks of energy and raising the price of delivery for higher blocks of energy would also provide low income and lower usage customers with rate relief and protect low income customers against a decline in employment, PULP claims, as a result of the reduced gas bills charged to small commercial customers.[130] It posits

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[128] Ex. 441, p. 44.

[129] PULP Statement in Opposition, P. 21.

[130] Id.

that customer bills that are more reflective of the amount of gas consumed could lead consumers at all levels to conserve more energy, and the reduction in bills for low income, low usage customers will decrease the need for long-term low income assistance programs.[131] Investors will see no loss in utility revenues, PULP says, since revenues would simply be redistributed across different energy blocks.

The Companies argue that PULP's criticisms of the Joint Proposal overlook the fact that PULP's rate design recommendations are inconsistent with Commission policy favoring a transition to cost-based rates.[132] They state that PULP's inclining block rate proposals for KEDNY and KEDLI are inconsistent with cost causation because they force large customers to subsidize low usage customers. The Companies note that PULP has not demonstrated the inclining block rate would accurately reflect the economies of scale it claimed.[133] KEDNY and KEDLI further state that PULP has provided no evidence to support its claim that its rate design proposals would benefit low income customers; and it ignores the fact that the needs of low income customers are addressed in Joint Proposal provisions that considerably expand the Companies' low income programs.[134] Thus, KEDNY and KEDLI conclude that PULP's rate design proposal provides no basis to modify or reject the JP.

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131 PULP Statement in Opposition, p. 22.

132 Companies' Reply Statement, pp. 12-13.

133 The Companies point out that in Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Instituting Proceeding at 59 (issued April 25, 2014), the Commission expressed its concern that inclining block rates may not accurately reflect the economies of scale of the product being used.

134 Id.

Staff acknowledges that inclining blocks may incent some customers to reduce their usage.[135] However, it maintains that PULP's proposal to modify the Joint Proposal's rate design would be inappropriate in this particular instance given the significant revenue increases recommended for KEDNY and KEDLI. Staff also expressed concerns that low income, high usage heating customers could be harmed by inclining block rates, and argued that a shift to the inclining block rate structure should not be adopted absent a detailed analysis of the impacts of change on customers.[136] It explains that, because low income heating customers tend to live in older housing stock or rent their residences and may not be able to control the energy efficiency of their homes or heating equipment, they would not be able to react to the price signal of inclining block rates.[137] These customers, Staff says, may simply be forced to pay higher inclining block rates.

According to Staff, the proposed revenue requirement increases, coupled with a rate design that lowers minimum charges and employs inclining blocks, would aggravate the adverse impact of the incremental revenue requirements increase for many customers, since the inclining blocks would result in even higher rate increases to certain customers. It says, contrary to PULP's claims, that the signatory parties did not ignore these rate design issues; rather, in light of the substantial revenue requirement increases for KEDNY and KEDLI, these parties elected not to modify the current rate design

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[135] Staff Reply Statement, pp. 16-17.

[136] Id.

[137] Id.

structures of the Companies' service classes as PULP recommended.

We find that the Joint Proposal's rate design recommendation to freeze the minimum monthly charge for each firm service class, except the residential non-heating service class, allocate an equal percentage increase to each of the rate blocks and retain the existing declining block rate structure is appropriate given the sizeable revenue increases for KEDNY and KEDLI and the programs in the JP that protect low income customers. Crafting an equitable rate design involves a careful balancing of the impacts of rate changes on all customer classes. We recognize that the large revenue increases justified herein for the Companies will have an obvious impact on customer bills.

As discussed elsewhere in the order, the Joint Proposal incorporates provisions that will ameliorate the impact of the revenue increases on low income customers. For example, there will be substantial increases in KEDNY's low income program – more than doubling the existing program funding level to $25 million in the first rate year and increasing it to $31.4 million in Rate Years 2 and 3.[138] There will also be a file matching program performed in conjunction with the NYC Human Resources Administration to identify additional customers that might be eligible for KEDNY's Reduced Rate Low Income Discount Program.[139] KEDLI will implement an energy efficiency program for those low income customers in its Residential Reduced Rate

[138] Ex. 506, Sec. IV.9.1.3.

[139] Ex. 506, Sec. IV.9.1.

Low Income Program to replace the expiring EmPower New York Program.[140]

We agree with Staff that there is insufficient information in the record to justify shifting from a declining block structure to an inclining one and that more detailed analysis would be needed of the impacts on the Companies' customers as well as potential benefits that might be achieved as result of such change before altering the JP's rate design structure. Although it is clearly our goal to encourage conservation, we do not want to adopt a rate design that may result in unintended consequences or create a disproportionate harm to certain customer classes. Inclining block rates may result in a decline in gas use, we are concerned that adopting this change could result in other unintended negative impacts that supplant any gains achieved. PULP's analysis and information does not warrant elimination of KEDNY's declining block structure at this time.[141] As PULP points out, comparing the block rates for heating customers is difficult due to changes in the number of blocks and intervals since the KEDNY 2006 rate case.[142] And, we do not find the other evidence offered by PULP, standing alone, to justify modifying the JP's rate design structure. We, therefore, conclude that, in light of the revenue increases justified herein and the provisions of the Joint Proposal that mitigate the impacts on low income customers, the Joint Proposal's recommendation designing rates such that there would be equal percentage increases assigned to the blocks within each service class is reasonable and should be

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140 Ex. 506, Sec. V.9.2. The need for a successor program was also raised at the KEDLI public statement hearings.

141 Ex. 457, pp. 43-45.

142 Id.

adopted. We are also requiring KEDNY to perform a study of the potential impacts of modifying its rate design to eliminate or modify the declining block structure.

Non-Firm Services Rate Design and Other Issues

Temperature controlled (TC) service customers receive gas from the Companies until the earlier of when the temperature drops below a certain preset level or when the provision of service would produce a reliability problem for firm service customers, at which time the TC customers must switch to their alternative fuel. Interruptible (IT) service customers receive gas until such time as the provision of service to them would create a reliability problem for firm service customers, at which time interruptible customers must switch to their alternative fuel. Under the Companies' existing rate design, usage rates for both TC and IT customers have been based partly on the value of service compared to the price of customers' alternative fuels rather than based on the cost of service. TC customers are subject to a floor price equal to the incremental cost of gas as set at the beginning of each month, a supply reservation charge, and a minimum charge for service. TC and IT customers' rates are capped at the otherwise applicable firm service classification rates.

Joint Proposal Sections IV.3.4 and V.3.4 would modify the Companies' existing rate design for TC and IT Service Classes to include volumetric delivery set at the otherwise applicable rate class tail block rates, which are the lowest rates within the class. TC customers will be subject to a demand charge. TC and IT customers will be assessed a billing charge and a Merchant Function Charge (MFC), which Staff and NYC originally opposed but now recognize to be a reasonable compromise that, given the overall fixed-price non-firm rate design, results in rates that are just and reasonable.[143]

Sections IV.3.4 and V.3.4 adopt the rate design proposed by the Companies,[144] rather than continuing the market-based rate design as recommended by UIU and Staff in testimony.[145] Staff asserts, however, that the resulting rates would equate to approximately a 20% discount for TC customers and a 30% discount for IT customers off of the otherwise applicable firm service rates measured on a total bill basis,[146] which is approximately equal to the discount levels from firm rates that Staff recommended for setting a cap on market based rates charged to non-firm customers in order to account for the additional cost these customers incur to maintain an alternative fuel source.[147] With respect to TC customers, Staff explained that, due to the price of oil, those customers essentially were being charged the higher rates applicable to firm service customers and that the discounts now envisioned for TC customers should address their concerns in that regard and more appropriately reflect the value of the non-firm service for which they pay.[148]

The Joint Proposal would eliminate the Companies' current revenue imputation and 90% customer/10% shareholder

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[143] Staff Statement in Support, p. 23; NYC Statement in Support, p. 12.

[144] Ex. 169, p. 67; Ex. 185, p. 69; Ex. 429, p. 16.

[145] Ex. 332, pp. 33-35; Ex. 433, pp. 9-10.

[146] Staff Statement in Support, p. 22.

[147] Ex. 332, pp. 35-36.

[148] Staff Statement in Support, p. 22; Tr. 53-54; Ex. 332, p. 34.

sharing mechanism, as the Companies proposed in testimony.[149] Staff notes, however, that the revenue requirements for the Companies have been reduced to reflect the increased revenue from TC and IT customers and would be subject to a 100% true-up, ensuring that customers are protected from the uncertainties related to the actual revenues generated during the rate years.[150]

Under section VI.10.1 of the Joint Proposal no new TC customers would be added during the term of these rate plans, but all existing TC customers could remain in the service class or switch to other dual-fuel service or firm service where possible. The Companies and Staff proposed the moratorium on new TC customers,[151] which NYC opposed in testimony.[152] Staff explained that TC customers should be encouraged to switch to firm service given the deterioration of the fuel oil distribution system, which is particularly acute in the New York City and Long Island areas, and the resulting difficulty TC customers have had in replenishing their fuel oil during the winter.[153] The Companies note that the Joint Proposal also provides for a reduction to the annual usage thresholds for IT service, which will make that non-firm service option available to more new customers.

Under section VI.10.7 of the Joint Proposal, a collaborative would be commenced to address such IT/TC issues as the structure of services, rates and alternative fuel documentation requirements, and will report to the Commission

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149 Ex. 169, pp. 67-68; Ex. 185, pp. 69-70.

150 Staff Statement in Support, p. 22.

151 Ex. 169, p. 65; Ex. 185, p. 67; Ex. 353, p. 34.

152 Ex. 429, p. 21.

153 Ex. 353, pp. 34-35.

with recommendations and/or positions of the parties for Commission decision. The Companies maintain that the proposed collaborative reflects the parties' recognition that the structure and pricing of the Companies' non-firm service offerings need to be reexamined in light of current demand and market dynamics. The Companies further state that the collaborative has the potential to significantly change how non-firm services are designed and priced going forward, which, the Companies maintain, also weighs against adding new TC customers at this time. Staff urges approval of the collaborative so the collaborative can provide guidance for the future of non-firm services in the downstate area.

None of the parties objects to Joint Proposal provisions regarding non-firm customers. The proposed non-firm rate design will help ensure that non-firm customers pay rates that are lower than otherwise applicable firm rates and more reflective of the value of the service they receive, which we conclude is reasonable and in the public interest. The proposed moratorium on new TC customers also is reasonable pending the results of the collaborative regarding the Companies' future non-firm service offerings.

New York Facilities System LAUF

The New York Facilities System (NYFS) is a high pressure transmission system serving KEDNY, KEDLI and Con Edison by which these three local distribution companies (LDCs) deliver natural gas to any of the LDCs' 13 transfer metering stations and 10 city gate stations. KEDNY, KEDLI and Con Edison currently have an agreement that allocates operation and maintenance (O&M) costs and carrying costs among the three companies. The costs, however, do not separately identify costs associated with lost and unaccounted for (LAUF) gas on this system. Staff explains that these costs are currently included in KEDNY and KEDLI's revenue requirements and recovered from customers at forecast levels, which may vary from actual costs.[154]

Sections IV.3.6.2 and V.3.6.2 of the Joint Proposal memorialize the Companies' acknowledgement that a positive lost and unaccounted (LAUF) gas factor is reasonable for gas transported through the NYFS and their agreement to use commercially reasonable efforts to negotiate an agreement with Con Edison on an appropriate LAUF gas factor to be applied to all volumes transported through the NYFS. The JP notes that if a new contract is reached with Con Edison, the Companies may petition the Commission for a true-up mechanism of the NYFS costs, which would include LAUF costs.[155] The goal of this provision is to specifically identify and assess to KEDNY, KEDLI and Con Edison, the ultimate recipients of gas through the NYFS, a LAUF contribution based upon a set LAUF factor.

Staff initially recommended that KEDNY and KEDLI be charged a 0.5% LAUF gas factor for gas transported through the NYFS, based on a Staff White Paper recommendation that all customers contribute to system line losses on a throughput basis.[156] According to Staff, this level would be consistent with the level of contributions from customers taking service directly from the high pressure gas transmission system, such as generators.[157]

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[154] Staff Statement in Support, p. 76.

[155] Ex. 506, Section VI.21.

[156] Ex. 332, pp. 57-58 and Ex. 347, pp. 426-468 (NYS Department of Public Service – Staff White Paper on Lost and Unaccounted for (LAUF) Gas).

[157] Ex. 347.

In rebuttal, the Companies stated that setting a 0.5% LAUF for NYFS would be inappropriate for the transmission system because these facilities are not susceptible to leaks, theft of service, billing issues or other factors that generally contribute to LAUF on the distribution system.[158] KEDNY and KEDLI also explained that changes to the treatment of LAUF on the NYFS must be incorporated in the newly negotiated NYFS agreement, and indicated that they will work with Con Edison to determine whether a LAUF factor is appropriate in the NYFS agreement.[159] Staff notes that KEDNY, KEDLI and Con Edison are negotiating a new agreement; and, says it would be appropriate to wait until the agreement is reached before modifying the ratemaking treatment.

We agree that permitting the Companies to petition for a true-up of NYFS LAUF costs in the event that the agreement reached with Con Edison includes a LAUF factor is reasonable under the circumstances. It will permit us to thoroughly review the planned NYFS LAUF cost allocation methodology to ensure that these costs are equitably shared between the three LDCs.

SC No. 2 Refunds

Section IV.3.9 of the Joint Proposal would require KEDNY to provide a one-time credit of $6 million to SC No. 2 customers whose accounts started before April 1, 2014 and who were classified as heating customers during any point between April 1, 2008 and March 31, 2014. The credit would be allocated to such customers based on their total eligible usage, and would resolve all issues in Case 14-G-0091.

[158] Ex. 277, p. 38.

[159] Ex. 277, p. 39.

In Case 14-G-0091, the Commission required KEDNY and KEDLI to file a plan to identify SC No. 2 non-residential gas customers that were misclassified as heating customers for the period March 2008 through March 2014 and to refund the resulting overpayments to such customers.[160] If prohibitive costs would be incurred by actual review of billing records, the Companies were required to identify such costs and develop a reasonable alternative plan to pay refunds to customers.

Unlike KEDLI, which was able to identify and issue refunds to all its affected customers,[161] KEDNY stated by letter and in pre-filed testimony that it did not have computerized billing records for all relevant years, that it only had billing records on microfiche for March 2008 through March 1, 2012, and that the manual review of those microfiche records to identify affected customers and calculate refunds would require thousands of labor hours and cost approximately $9 million.[162] In testimony, KEDLI stated that, based upon its available computerized billing data and the actual refunds calculated for affected KEDLI customers, it estimated that its affected customers would be due refunds in the total amount of $2.7 million.[163]

Instead of having KEDNY conduct a costly manual review to accurately provide refunds to impacted customers, which would cost shareholders approximately $9.4 million plus the $2.7

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[160] Order Regarding Payment of Refunds (issued October 27, 2014)

[161] Staff Reply Statement, p. 21, n. 54; KEDLI Letter filed with the Commission on April 15, 2016.

[162] KEDNY Letter filed with the Secretary of the Commission on December 26, 2014; Ex. 277, p. 34.

[163] Id. at 35.

million in refunds, or a total of $12.1 million, Staff recommended in testimony that KEDNY provide a one-time credit of $9.3 million to all its SC No. 2 heating customers, on a volumetric basis.[164] Staff arrived at the amount of the credit by assuming 70% of the avoided labor costs plus the likely credit amount of $2.7 million.[165]

URAC argues that KEDNY's payment of refunds should continue to be addressed in Case 14-G-0091, in an "open forum," rather than in the context of "closed door" negotiations that resulted in the Joint Proposal. URAC also disagrees with the amount of the credit. Without identifying the basis on which it arrives at such numbers, URAC claims that the refund should be approximately $12 million, based upon its assumption that the refunds will be approximately $9 million and that accrued interest would be approximately $3 million. URAC asserts that refund payments should be made only to those SC No. 2 customers actually overcharged as heating customers, instead of to all SC No. 2 heating customers during the applicable period whether or not they were misclassified as such. URAC argues that reducing the refund amount from $12 million to $6 million is not in consumers' interests. [166]

Staff responds that URAC's $12 million figure is based on a miscalculation and does not consider the prohibitive administrative costs that KEDNY would incur if required to review billing records available only on microfiche in order to identify the individual customers owed a refund. Staff notes that the one-time $6 million credit provided for in the Joint

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[164] Ex. 332, p. 67.

[165] Id.

[166] URAC Statement in Opposition, at pp. 4-5

Proposal reflects a compromise between the litigation positions of Staff and KEDNY, and that while such a credit is less accurate than targeted refunds, it overcomes the complex issue of determining individual refunds, the cost of which would result in lesser refunds overall.

With one modification discussed below, we determine that the one-time $6 million credit provided for in the Joint Proposal is fair, reasonable and in the public interest. Initially, URAC fails to show how the settlement process would be different if conducted separately under Case 14-G-0091 rather than as part of this proceeding. As stated earlier, on March 18, 2014, a notice seeking comments was issued in Case 14-G-0091. URAC submitted comments pursuant to that notice. On September 20, 2016, a notice seeking comments on the Joint Proposal was issued. That notice specifically included Case 14-G-0091 and stated that the parties commenced settlement negotiations to resolve Case 14-G-0091 and other cases in addition to the KEDNY and KEDLI rate filings.[167] URAC appeared at a procedural conference in these cases and, on March 11, 2016, was granted party status.[168] URAC filed a Statement in Opposition, making the arguments discussed above. Thus, URAC fails to establish any procedural unfairness by our resolution of Case No. 14-G-0091 here.

Nor does URAC show any record basis for its conclusion that the refund amount should be $9 million with $3 million in interest, or a total of $12 million. Moreover, the $6 million credit reflects a compromise between the parties and falls within the range of reasonable results likely to arise from

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167 Notice Seeking Comments on Joint Proposal, pp. 1-2.

168 Case No. 15-G-0058 and 15-G-0059, Ruling on Party Status and Schedule, p. 1.

litigation inasmuch as KEDNY maintained in testimony that the refund should be $2.7 million and Staff recommended in testimony that a percentage of avoided costs should be added to that settlement amount to bring the total amount of Staff's proposed credit to $9.3 million. As Staff notes, the provision of the Joint Proposal provides immediate relief to KEDNY customers in a greater amount than would be available if KEDNY were required to manually review all relevant billing records to provide a targeted refund.

However, we direct that a targeted refund be available to the extent an individual SC No. 2 customer can submit bills proving overcharges in an amount greater than the refund under the one-time credit. The modification is fair in that it requires proof to be provided by individuals seeking a targeted refund rather than requiring KEDNY to undergo the costly process of identifying all SC No. 2 customers entitled to a refund and the amount of each individual refund. With that modification, we conclude that the one-time $6 million credit provided for in the Joint Proposal should be adopted.

Capital Investment Levels

Joint Proposal Section IV.5.1 sets forth capital investment levels for KEDNY of $603 million in Rate Year 1, $654 million in Rate Year 2, and $650 million in Rate Year 3.[169] Section V.5.1 of the Joint Proposal sets forth capital investment levels for KEDLI of $322 million in Rate Year 1, $377 million in Rate Year 2, and $396 million in Rate Year 3.[170] The capital investment levels in the Joint Proposal represent

[169] KEDNY's forecast level of capital investment by program is attached as App. 1, Sch. 5 to the Joint Proposal.

[170] KEDLI's forecast level of capital investment by program is attached as App. 2, Sch. 5 to the Joint Proposal.

significant increases from the Companies' total investment in capital programs in the historic test year of $469 million for KEDNY and $273 million for KEDLI.

The capital investment amounts are lower than the $621 million for KEDNY and the $337 million for KEDLI proposed in testimony by the Companies for 2017,[171] and higher than Staff's recommendations of $581 million for KEDNY and $275 million for KEDLI for 2017.[172] Concerned that KEDLI did not have sufficient resources to effectively and efficiently perform all capital work proposed, NYC testified that KEDLI's proposed capital budget should be reduced or that a mechanism should be adopted to ensure that unspent capital dollars included in the revenue requirement are returned to customers.

Recognizing that the Joint Proposal contains capital investment levels exceeding its recommendations in testimony, Staff explains that its understanding of the Companies' proposals and needs has evolved. By way of example, Staff points out that its initial recommendations were made before Staff discovered that the Companies incorrectly reported their Main Replacement Program–Leak Prone Pipe unit cost for 2013 and did not include the costs associated with Super Storm Sandy. Staff states that certain increases to capital investment levels resulted from the updating of these unit costs and the increase to the Companies' target mileage for removal of leak prone pipe. Staff concludes that the capital level expenditures in the Joint Proposal "are reasonable considering the large capital investments needed to update and modernize the downstate New

[171] Ex. 212 and Ex. 215.

[172] Ex. 311, pp. 2, 4.

York gas networks while maintaining a safe and adequate service to all customers."[173]

The capital investment levels in the Joint Proposal are unopposed and are reasonable given the scope of the programs they are intended to support. As the Companies maintained in testimony and as NYC now recognizes,[174] the capital investment levels will enable the Companies to implement various new programs to enhance the safety and reliability of their gas systems. They also will enable the Companies to increase their efforts with respect to programs now in place to help ensure that the Companies repair and improve their gas systems in an effort to provide a safe, reliable and cost-efficient service to customers while reducing negative impacts to the environment. The capital investment levels thus are consistent with our policies and in the public interest.

LPP Risk Ranking Algorithm

The Companies prioritize leak prone pipe replacements by using a risk-ranking algorithm to calculate a relative risk score for each segment of leak prone pipe.[175] Segments of leak prone pipe are ranked for removal so that pipe presenting the greatest risk to the public is removed before lower risk pipe.[176] Under sections IV.5.2 and V.5.2 of the Joint Proposal, the Companies would continue using their risk-based prioritization algorithms to identify and rank segments of leak prone pipe to be removed from service. To address concerns raised by NYC,[177]

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173 Staff Statement in Support, p. 32.

174 NYC Statement in Support, pp. 14-15.

175 Ex. 48, pp. 20-21; Ex. 55, p. 21.

176 Ex. 315, p. 14.

177 Ex. 402, pp. 19-21; Ex. 399, p. 21 and Ex. 428, pp. 1-2.

the Companies would also apply their risk ranking algorithms so that, beginning with leak prone pipe replacements performed in Rate Year 2, where leak prone pipe segments have equal risk rankings, priority will be given to removing leak prone pipe in designated flood zones. Finally, to address concerns raised by EDF,[178] the Companies would consider methane emission flow rate data as a factor in prioritizing leak prone pipe segments for removal.

The provisions of the Joint Proposal regarding the Companies' leak prone pipe risk ranking algorithm are not in dispute. Use of the risk ranking algorithm will benefit ratepayers and the general public by prioritizing the Companies' efforts to remove leak prone pipe segments that present a higher risk to public safety and the environment.

CISBOT and Pipe Lining

Joint Proposal Section IV.5.3 would include in KEDNY's capital investment levels programs to deploy the Cast Iron Joint Sealing Robot (CISBOT)[179] to seal joints on cast iron mains and use cured-in-place (CIP) pipe lining[180] to recondition large diameter cast iron and steel mains. Section V.5.3 of the Joint

178 Ex. 494, pp. 6-7.

179 As CISBOT moves through the inside of a main, it makes repairs to the cast iron joints by injecting a sealant to eliminate existing leaks, prevent future leaks and reduce emissions. Unlike traditional construction methods, CISBOT allows for the sealing of more than 80 joints on a pipeline segment from one excavation without taking the main out of service.

180 An adhesive resin in the CIP pipe liner bonds with the inside wall of the pipe, forming a new layer that is impervious to gas. CIP pipe lining involves less excavation than traditional pipe replacement and minimizes disruptions to the public while maintaining the safety of the mains until they can be replaced.

Proposal would include in KEDLI's capital investment levels a program to use CIP pipe lining to recondition large diameter cast iron and steel mains. As Staff recommended in testimony, because the CISBOT and CIP technologies are new, any LPP segments treated in those programs would remain in the Companies' respective LPP inventories so they would continue to be monitored for replacement and to determine how effective the programs are in extending the useful life of the mains.

KEDNY proposed to use CISBOT to recondition two miles of large diameter cast iron mains per year and to use CIP pipe lining on 2.5 miles of main in Rate Year One and four miles per year thereafter.[181] KEDNY forecasts capital expenditures for its CISBOT and CIP pipe lining programs of $14.34 million in calendar year (CY) 2017, $19.28 million in CY 2018, and $19.68 million in CY 2019.[182] KEDLI proposed to use CIP pipe lining on one mile of main annually and forecasts capital expenditures for its CIP pipe lining program of $2.87 million in CY 2017, $3.57 million in CY 2018, and $3.6 million in CY 2019.[183] According to the Companies, CISBOT can repair a cast iron joint for less than one-third the cost of a traditional joint repair and CIP joint lining can be used to recondition one mile of pipe at half the cost of replacing it.[184] The Companies also proposed productivity pilots be implemented for KEDNY and KEDLI which would allow each company to retain 20 percent of the amount that

181 Ex. 48, p. 31.

182 Ex. 506, App. 1, Sch. 5.

183 Ex. 506, App. 2, Sch. 5.

184 Ex. 55, p. 35

actual CIP and/or CISBOT costs (to meet the annual mileage targets) are less than the Companies' rate allowances.[185]

Staff supported the Companies' proposed CISBOT and CIP lining programs.[186] However, it did not agree with the Companies' proposals to include the CISBOT/CIP pipe lining programs in a productivity pilot under which the Companies would retain 20% of any budget underrun on their CISBOT/CIP Lining programs as a positive revenue adjustment and return 80% to customers.[187] Staff noted that these programs are relatively new and had only modest amounts spent on them in the past.[188] Staff argued, therefore, that there is insufficient program experience from which to develop an incentive mechanisms. The productivity pilot is not included in the Joint Proposal.

The terms of the Joint Proposal are unopposed. The CISBOT and CIP pipe lining programs are innovative and cost-effective methods that, if successful, will allow the Companies to extend the useful life of their facilities while improving public safety, providing environmental benefits in the form of reduced gas emissions, and minimizing service disruptions. At this time, the limited use of these new technologies to determine their effectiveness is reasonable and should be adopted.

LPP Productivity Incentive

Sections IV.5.4 and V.5.4 of the Joint Proposal would allow the Companies to accrue a positive revenue adjustment if they achieve unit cost savings for LPP replacements in a Rate

185 Ex. 48, p. 33 and Ex. 55, p. 33

186 Ex. 315, pp. 77-78

187 Ex. 308, pp. 102-103.

188 Id.

Year as compared to the unit costs reflected in their rates. The productivity incentive contains six tiers reflecting increasing unit cost savings and providing for concomitantly increasing positive revenue adjustments of from zero to 10 basis points. The unit cost savings the Companies must achieve to earn a positive revenue adjustment would exceed the amount of the positive revenue adjustment. The Companies' eligibility for the LPP productivity incentive is conditioned upon their meeting the minimum removal targets set forth in the LPP removal metric. Any positive incentive earned in a Rate Year would be collected through the Gas Safety and Reliability Surcharge in the following year. The LPP Productivity Incentive is in the public interest and should be adopted. It rewards good cost controls and would allow customers to avoid paying the rate of return on the cost savings for the life of the assets.

Gas Safety and Reliability Surcharge

Sections IV.5.5 and V.5.5 of the Joint Proposal would establish a Gas Safety and Reliability Surcharge (GSRS) allowing the Companies to recover (1) a return on investment, depreciation expense, and O&M expense for disconnects and reconnects of service lines with respect to incremental LPP replacements above the levels funded in base rates; (2) the cost to repair up to 250 incremental system leaks a year in excess of their applicable leak reduction targets; and (3) any positive revenue adjustments earned for LPP productivity, LPP removals and leak repairs. For each mile of LPP removed above the levels funded in base rates, the GSRS would allow the Companies to recover the associated revenue requirement calculated as the lesser of the Companies' average capital and O&M replacement cost per mile of LPP in the Rate Year, or 102% of the capital and O&M unit cost allowances for LPP replacement in the Rate Year.

The GSRS would be a per therm surcharge that would appear on a GSRS Statement to be filed with us annually on March 15th. The surcharge would be calculated by allocating the revenue requirement associated with LPP investment and leak repair costs and any positive revenue adjustments for LPP productivity, LPP removals, or leak repairs to each firm service class by forecast delivery schedules established in the Joint Proposal, then developing a per therm rate per service class. The GSRS would be collected in the delivery rate adjustment (DRA), and would be reconciled annually and included in the DRA from firm sales and firm transportation customers beginning April 1st of the following Rate Year.

The Joint Proposal adopts the GSRS proposed by the Companies in testimony,[189] as modified pursuant to Staff's recommendations that the O&M expense associated with replacement of LPP be limited to the expense associated with disconnects and reconnects of service lines, and that revenue first be allocated to be collected in the surcharge to the service classes based on each service class's delivery revenues and that a specific rate for each service class then be developed.[190] Staff explains that the provision allowing the Companies to recover up to 2% more than their historic average costs allows for flexibility as the Companies perform more LPP and leak repair work.[191]

No party objects to the addition of the GSRS or to any of its terms. We agree with Staff that the GSRS allows the

[189] Ex. 169, pp. 59-60 and Ex. 185, pp. 62-63.

[190] Ex. 332, pp. 71-73.

[191] Staff Statement in Support, p. 34.

Companies to recover reasonable costs while furthering our policy goals to improve public safety and the environment through the removal of LPP and the reduction of gas leaks.

Methane Leak Pilot Programs

Pursuant to Sections IV.5.8 and V.5.7 of the Joint Proposal, KEDNY and KEDLI will collaborate with EDF to implement methane leak pilot programs during the terms of the Companies' rate plans. The primary purpose of these programs will be to gather and analyze leak flow data in an effort to prioritize system investments and leak repairs. The JP provides for the results of the pilots to be reported in the next rate case filing for each of the Companies.

EDF states that these programs are aimed at enhancing the efficiency and overall effectiveness of the Companies' ongoing leak abatement and pipe replacement efforts.[192] It points out that the programs will be implemented at no cost to ratepayers. It states that the goals of these and the other methane pilot programs are to demonstrate new, cost-effective methods to achieve significant reductions in methane emissions by operating the KEDNY and KEDLI pipe replacement programs more efficiently, which would not only save ratepayers money but would also significantly reduce greenhouse gas emissions and advance the State of New York's greenhouse gas emission reduction goals.[193] These programs, along with others agreed to as part of the JP, will produce significant benefits to ratepayers, EDF asserts, "by reducing greater volumes of leaked gas per dollar spent on leak abatement and pipe replacement

[192] EDF Statement in Support, p. 6.

[193] EDF Statement in Support, p. 8.

efforts, and additionally, will serve to maximize environmental benefits by lowering greenhouse gas emissions."[194]

It is unique for proposed pilot programs to be predicated on goals that provide benefits to the utilities, their ratepayers, and the environment and to come at no cost to ratepayers. We commend the parties in agreeing on these programs and encourage them to begin collaborating immediately in an effort to implement the programs for KEDNY and KEDLI as soon as possible. We look forward to the results of these programs.

Roadwork and Traffic Violations

Joint Proposal Section IV.5.9 requires KEDNY to file with the Secretary a report within 90 days after the close of each rate year describing its efforts to reduce notice of violations ("NOV") related to street openings and traffic violations. These NOVs and resulting fines to KEDNY are related to street opening and traffic violations incurred while performing work in New York City. The NOVs are issued when KEDNY fails to follow the permit conditions established by the NYC Department of Transportation (NYC DOT), works outside the permit hour restrictions or permitted area, or fails to restore the area to the NYC DOT's standards. The JP delineates specific actions that KEDNY is expected to take, at a minimum, in an effort to reduce these expenses. Staff points out that the

[194] Id. The other programs referenced by EDF are KEDNY's and KEDLI's enhanced LPP removal programs, whereby the Companies use a risk ranking algorithm to prioritize portions of LPP for replacement, and the Companies' consideration of methane emission flow rate data in addition to risk assessments in prioritizing their LPP replacement programs.

Joint Proposal's revenue requirement for KEDNY only includes 50% of the rate year NOV charges that KEDNY is forecasted to incur.[195]

In pre-filed testimony, Staff recommended that the fines incurred by KEDNY for such violations be removed from the revenue requirement because, according to Staff, these are controllable costs that should not be charged to ratepayers.[196] Staff noted that KEDNY incurred historic year charges of $1.058 million for the violations and fines. Staff adjusted the historic year charges for inflation and reduced the rate year revenue requirement by $1.098 million.

In rebuttal testimony, KEDNY characterized these types of costs as costs reasonably incurred in the ordinary course of business, which should be recoverable from customers. KEDNY explained that it must regularly excavate in city streets and sidewalks and, although it takes precautions to avoid fines and NOVs when practical, obtaining the requisite permits in a timely fashion is not always possible given the nature of many of the projects.[197] KEDNY points out that it could take measures, such as repeated demobilizations and remobilizations, to mitigate the charges. However, it says that those measures would be more costly than the amounts incurred in fines and violations.

In response to ALJ questioning, KEDNY noted that the permit applications, which are submitted electronically, identify the areas to be excavated and any work restrictions and conditions.[198] KEDNY asserted that although it works with the

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195 Staff Statement in Support, pp. 36-37.

196 Ex. 300, pp. 26-28.

197 Ex. 279, pp. 14-16.

198 Ex. 538.

NYC DOT to amend street opening permits when possible, getting permit modifications from NYC DOT is not possible during off hours.[199] Moreover, it said that many of the NOVs are the result of unanticipated field conditions (*e.g.*, subsurface facilities, parking conditions, heavy traffic) that necessitate work beyond the scope of the permit, which may require work in a larger area or for a longer period than contemplated at the time the permit was issued.[200] KEDNY acknowledged that the NOVs may also be the result of it performing work that does not strictly conform to permit conditions in an effort to complete the job or expedite construction to accommodate local parking, traffic flow on critical roadways or local business needs. Lastly, KEDNY indicated the efforts to coordinate permit modifications have been impacted by the steady increase in the annual number of permits needed to perform construction activities.[201]

It is important for KEDNY to obtain the requisite permits to perform street work. The permits serve important functions for both the City and the public. Street work to install or access existing utility infrastructure can disrupt the free flow of vehicle and pedestrian traffic in the City, as well as the operation of businesses. Applying for and obtaining the permits gives the City notice of intended street work and allows it to take any steps necessary to mitigate potential adverse impacts. Obtaining the permits also offers the potential to coordinate planned utility work with other street

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[199] Id.

[200] Id.

[201] KEDNY indicates that it applied for about 20,000 street opening permits in NYC in 2014 (including KEDLI's territory in the Rockaways), approximately 35,000 in 2015 and plans to apply for more than 40,000 permits in 2016.

work to be performed, thereby further minimizing the disruption to vehicle and pedestrian traffic, and businesses.

It is imperative that KEDNY take reasonable steps to avoid incurring the NOVs and fines to the extent practicable and to seek recovery from employees responsible for the traffic infractions incurred while driving KEDNY's vehicles. The signatories to the Joint Proposal recommend a resolution of the NOV and traffic violation issues that will allow Staff to monitor the Company's efforts to reduce these costs, and it provides KEDNY with a significant incentive, in limiting revenue recovery to 50% of the expense, to minimize these costs. The reporting process is similar to the one which we adopted previously for Con Edison.[202]

We find the Joint Proposal's resolution of this issue to be reasonable.

Pension and OPEBs

Under sections IV.6.1.1 and V.6.1.1 of the Joint Proposal, the Companies would continue to defer and reconcile their actual pension and other post-employment benefit (OPEB) expenses to the levels allowed in rates, in accordance with our Policy Statement requiring full true-up of both pension and OPEB costs.[203] Under section IV.6.1.1, KEDNY would be allowed pension expense levels of $39.8 million in Rate Year 1, $30.6 million in Rate Year 2, and $21 million in Rate Year 3, and OPEB expenses of $15.5 million in Rate Year 1, $13.9 million in Rate Year 2

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202 Case 09-E-0428, Consolidated Edison Company of New York, Inc. – Rates, Order Establishing Three-Year Electric Rate Plan (issued March 26, 2010).

203 Case 91-M-0890, Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions (issued September 7, 1993) ("Pension and OPEB Policy Statement").

and $12 million in Rate Year 3. Under section V.6.1.1, KEDLI would be allowed pension expense levels of $18.5 million in Rate Year 1, $14.9 million in Rate Year 2, and $10.8 million in Rate Year 3, and OPEB expenses of $10.6 million in Rate Year 1, $9.5 million in Rate Year 2, and $9.3 million in Rate Year 3. Carrying charges would not be calculated on pension or OPEB deferral balances. There is no opposition to the Pension and OPEB expense levels set forth in the Joint Proposal.

For purposes of determining the Companies' respective internal reserves and applicable carrying costs, the Joint Proposal also would authorize each Company to combine the funding of its pensions and OPEBs, and to offset, for example, any deficiencies in OPEBs funding with any excess pension funding. The Companies would accrue and defer carrying charges on the net unfunded pension and OPEBs amounts, until the net unfunded amount is funded. The Companies requested the accounting change for determining their internal reserves and carrying costs based on an analysis of their respective pension and OPEB internal reserves for the periods in which they have been subject to the Pension and OPEB Policy Statement, which showed that their pension trusts were overfunded and their OPEB trusts were underfunded during those periods.[204] Staff agreed with the Companies' request, noting that we have previously authorized the Niagara Mohawk Power Corporation, an affiliate of the Companies, to net pension and OPEBs funding when calculating carrying charges.[205] Staff testified that the forecasted effect of such treatment would be to reduce the combined pension/OPEB carrying charge liability from $19 million to $9.8 million for

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[204] Ex. 143, p. 131 and Ex. 156, p. 129.

[205] Ex. 300, p. 36.

KEDNY and from $76.8 million to $47.6 million for KEDLI. There is no opposition to the proposed accounting change, which we determine is a reasonable change that will benefit ratepayers.

In testimony, the Companies also proposed to create regulatory assets of approximately $1 million for KEDNY and $47 million for KEDLI, resulting from certain curtailment and/or settlement gains/losses due to the expiration of the Management Services Agreement between KeySpan Electric Services, LLC and the Long Island Power Authority.[206] Staff explained that the recording of these regulatory assets would prevent KEDNY and KEDLI from absorbing otherwise recoverable pension and OPEB losses.[207] Staff stated that, due to the complexity of Companies' proposal, it was still auditing and reviewing the proposed pension and OPEB deferral and could not yet reach any judgment as to the propriety of the proposal.

Section VI.2 of the JP would allow the Companies' proposal to create the regulatory assets to be addressed during the term of the Companies' rate plans without the need for the Companies to first file a formal petition with the Commission. Within three months of the effective date of the Joint Proposal, Staff would hold a meeting with the Companies to discuss the information needed to complete its review of the Companies' proposal. At the evidentiary hearing, Staff explained that any issues not resolved informally would be presented to us for decision. No party opposes this provision, which will allow Staff the opportunity to fully assess the propriety of the Companies' proposal.

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206 Ex. 143, pp. 132-137; Ex. 156, pp. 130-135.

207 Ex. 300, p. 38.

Low Income Discount Program

The Companies currently operate two low-income discount programs: the Residential Reduced Rate Program and the On Track Program. Customers who received a Home Energy Assistance Program (HEAP) grant within the last 14 months are automatically enrolled in the Companies' Residential Reduced Rate Program. Recipients of other public assistance programs[208] are manually enrolled after they are identified through such methods as referrals from customer advocates or social service agencies or customer calls to the Companies' call centers. The Residential Reduced Rate Program provides a monthly bill discount to qualifying residential heating and non-heating customers, and a one-time reconnection fee waiver for KEDNY customers whose service was disconnected for non-payment. KEDLI does not charge reconnection fees to its low-income customers. The On-Track Program is an arrearage forgiveness/finance management program available to single and two family residential gas heating customers with arrears greater than $400.

Under sections IV.6.1.2 and V.6.1.2 of the Joint Proposal, the Companies' On-Track Programs would be discontinued, but current participants would be allowed to finish the programs. In testimony, the Companies had proposed to discontinue the On-Track Programs due to high costs, low enrollment and low success rates.[209] Although New York City

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[208] These programs include Temporary Assistance for Needy Families, Safety Net Assistance, Supplemental Security Income, Medicaid, Food Stamps, Veteran's Disability Pension, Veteran's Surviving Spouse Pension, and Child Health Plus (Ex. 127, p.67).

[209] Ex. 127, pp. 65-66 and Ex. 326, pp. 38-39.

originally opposed discontinuation of the On-Track Programs,[210] it no longer does so given that current customers would be allowed to complete the program, which, as the City states, is in the public interest and within the range of reasonable outcomes resulting from litigation.

After the parties testified regarding proposed changes to the Companies' Residential Reduced Rate Program, we issued an order adopting low income program modifications and directing utility filings in Case 14-M-0565.[211] In adopting a goal of reducing the household energy burden to 6% or less of household income for all low income customers, we recognized that achievement of such a goal would require a phased approach to implementing program changes. We also established a funding limit so that the total budget for each utility may not exceed 2% of the total gas revenues for sales to end-use customers. We required all utilities to open their low income discount programs to all households that currently receive HEAP, directed utilities with broader income eligibility criteria to continue such criteria pending development of a statewide file match system to identify and automatically enroll additional low income customers, and permitted manual enrollment to continue where practicable. We adopted a fixed discount approach as a default methodology for setting low income discounts, with tiered fixed discounts based on the amount of the customer's HEAP grant. Finally, we directed the utilities to file proposed low income program implementation plans.

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[210] Ex. 413, p. 15.

[211] Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016) ("Low Income Order").

Staff asserts that sections IV.6.1.2 and V.6.1.2 of the Joint Proposal would modify the Companies' current low income programs to adhere to our Low Income Order. Section IV.6.1.2 would increase KEDNY's rate allowance for low-income discount programs from $9.8 million to $25 million in Rate Year 1, $31.9 million in Rate Year 2, and $31.9 million in Rate Year 3. Section V.6.1.2 would increase KEDLI's rate allowance from $3.3 million to $5.4 million in Rate Year 1, $6.7 million in Rate Year 2, and $6.7 million in Rate Year 3. If necessary, the Companies would adjust the energy burden target and benefit levels for all Rate Years to align the rate allowance to the 2 percent budget cap provided in the Low Income Order. The Companies would continue to fully reconcile their low income discount program costs with the amounts reflected in rates, with amounts in excess of the rate allowance to be deferred for future recovery from customers and any under-expenditures to be deferred for future use in a low income program. KEDNY also would discontinue charging reconnection fees to its low income customers.

In Rate Year 1, the Companies would provide eligible heating customers with a low income discount equivalent to the Tier 1 discount contained in the Low Income Order – i.e., a monthly discount for heating customers of $19 for KEDNY and $41 for KEDLI and a monthly discount for non-heating customers of $3.00 for KEDNY and $8.81 for KEDLI. Beginning in Rate Year 2, the Companies would conform the low income discount benefits to the requirements of the Low Income Order and the Implementation Plans the Companies filed in Case 14-M-0565,[212] as may be modified by the Commission.

[212] KEDNY Implementation Plan (filed September 16, 2016) and KEDLI Implementation Plan (filed September 16, 2016).

As permitted under the Low Income Order, the Companies would continue their existing processes for identifying eligible participants in their residential reduced rate low income discount programs. In addition, KEDNY would undertake a file match process with NYC's Human Resources Administration (HRA) to identify and enroll additional eligible low income customers, using commercially reasonable efforts to complete the initial HRA file match process in the fall of 2016 and, if unable to do so by that time, by no later than the spring of 2017. KEDLI would undertake a file match process with HRA by January 1, 2018 to identify additional eligible low income customers in the Rockaways portion of its service territory only if we issue a decision in Case 14-M-0565 authorizing KEDLI to defer the costs to implement the file match. The Companies would reimburse HRA for up to a collective amount of $100,000 in costs annually to perform the file match for both KEDNY and KEDLI.

Although NYC generally supports the low income discount programs in the Joint Proposal, it objects to the extent the Joint Proposal makes KEDLI's obligation to undertake its file match with HRA contingent upon the Commission's approval of KEDLI's request in Case 14-M-0565 to defer the costs to implement the requirements of the Low Income Order, including the costs to implement the HRA file match. NYC points out that, in authorizing KEDNY to pursue a file match with HRA similar to that now in use by Con Edison, the Commission relied on the fact that KEDNY serves a geographically concentrated service territory and a customer population similar to Con Edison's. Arguing that the same can be said of the Rockaways portion of KEDLI's service territory and customer population, NYC maintains that no rational basis exists for excluding the Rockaways from the HRA file match at this time. NYC therefore requests that the Commission require KEDLI to implement a file match for the Rockaways portion of its service territory no later than January 1, 2018 and defer any related costs.

NYC also requests the Commission to clarify that the full heating discount allowed under the Low Income Order will apply to new, eligible heating customers that are identified after implementation of the Low Income Order, regardless of whether they actually receive HEAP benefits. Noting that it has raised that issue in a petition for rehearing and clarification filed in Case 14-M-0565,[213] NYC nevertheless requests the Commission to resolve the issue here, despite NYC's stated confidence that the Commission will resolve the issue in Case 14-M-0565 prior to the start of Rate Year 2, which, NYC recognizes, would render the issue moot with respect to the Joint Proposal.

We will not address in this proceeding KEDLI's request to defer its costs in implementing the HRA file match and NYC's request for clarification regarding application of the full heating discount to all newly-identified eligible low income heating customers. Those issues are being presented and will be resolved in Case 14-M-0565 in connection with the Low Income Order that gave rise to them and with the benefit of the record developed and the arguments presented in that proceeding.

We conclude that the Joint Proposal provisions for low income customers are fair and reasonable. They include substantial increases in annual funding levels over existing levels. Indeed, beginning in Rate Year 2 the Companies are

[213] Case 14-M-0565, Commission Proceeding to Examine Energy Affordability Programs for Low Income Utility Customers, Petition for Rehearing and Clarification of the City of New York, pp. 12-14 (filed June 20, 2016).

required to conform their residential reduced rate low income discount program and benefit levels to the requirements of the Low Income Order, as it may be modified through further proceedings in Case 14-M-0565. Moreover, the Joint Proposal appropriately continues the processes the Companies currently use for eligibility determinations, while at the same time providing for the phasing in of an HRA file match process. Under the terms of the Joint Proposal, the Companies' budgets for low income discount programs will be significantly increased, helping to ensure that more eligible customers are included in the programs.

Site Investigation and Remediation (SIR) Expense

The Companies' proposals for recovery of SIR costs were among the most contentious issues in the KEDNY and KEDLI rate cases, primarily due to the substantial level of SIR costs and their impact on customer bills. These expenses include the costs to assess, monitor, clean up and restore those environmentally contaminated sites for which the Companies were determined to be wholly or partially responsible pursuant to the federal Superfund law[214] and consent orders entered into with the New York State Department of Environmental Conservation (DEC). The sites targeted for clean-up are, for the most part, manufactured gas plant (MGP) sites that are or were owned or operated by the Companies or predecessor companies.

KEDNY and KEDLI are each responsible for more than two dozen MGP sites.[215] The Companies are currently engaged in SIR clean-up efforts and will be continuing to do so over the three years of the rate plan and beyond. In general, both KEDNY and

[214] Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.

[215] Ex. 62, p. 5 and Ex. 75, p. 5.

KEDLI have been recovering the bulk of their SIR costs through SIR Recovery Surcharges, with a substantially smaller portion of SIR costs included in base rates. A surcharge has been used to account for the variability in SIR expenditures, which depend on the commencement or phase of a particular project, and the difficulty in forecasting costs ahead of time, due to the inability to determine the extent of contamination and thus the scope of a cleanup effort until work is underway.[216] KEDNY currently recovers approximately $6.0 million of SIR costs in base rates and about $62.5 million annually through the SIR Recovery Surcharge.[217] KEDLI currently recovers approximately $3.1 million of SIR costs in base rates and $40 million through the SIR Recovery Surcharge.[218] Notwithstanding these collections, each company has built up a significant level of deferred SIR costs from past periods that have not been recovered from ratepayers.

Sections IV.6.1.4 and V.6.1.4 of the Joint Proposal address recovery of KEDNY's and KEDLI's SIR costs over the three

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216 Two significant examples are Gowanus Canal and Newtown Creek, contaminated waterways in Brooklyn designated as Superfund sites for which KEDNY is one of the potentially responsible parties. KEDNY indicates that, because remediation and investigation activities at these sites are in their early stages, it is particularly difficult to accurately forecast expenses that may be attributable to clean-up of those sites during the three years of the rate plan (Ex. 62, pp. 3-6). Consequently, under the Joint Proposal, all SIR costs attributable to those two sites are excluded from the base rate forecast for SIR recovery. Instead, all of those costs will be reconciled through KEDNY's SIR Recovery Surcharge described below (Ex. 506, Sec. IV.6.1.4).

217 Ex. 62, p. 10.

218 Ex. 75, p. 9.

rate years. Under the JP, SIR cost recovery is accomplished primarily through base rates, with some limited potential for a SIR Recovery Surcharge on different terms for each company as described below. The JP provides for base rate recovery of deferral balances as well as forecast costs. The KEDNY and KEDLI JP provisions mirror each other with respect to the method for calculating the forecast rate allowance, which would be determined by adding 1/10th of the forecasted SIR deferral balance as of December 31, 2016 -- the 1/10th equating to $18.52 million for KEDNY and $14.17 million for KEDLI -- to each company's rate year SIR cost forecasts.[219] The signatory parties stipulated to rate year SIR forecasts of $53.87 million, $45.65 million and $46.8 million in Rate Years 1, 2 and 3, respectively, for KEDNY, and $13.4 million, $7.4 million and $4.6 million over those same years for KEDLI.[220] Consequently, the total amount that KEDNY would recover in base rates under the terms of the JP would be $72.3 million in Rate Year 1, $64.2 million in Rate Year 2 and $65.3 million in Rate Year 3.[221] The total amount that KEDLI would recover under the terms of the JP would be $27.6 million in Rate Year 1, $21.6 million in Rate Year 2 and $18.8 million in Rate Year 3.[222]

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[219] The Companies' witness noted in pre-filed testimony that SIR deferral balances for KEDNY and KEDLI, as of September 30, 2015, the end of the historic test year, were $229.3 million and $173.8 million (Ex. 62, p. 23 and Ex. 75, p. 14).

[220] Forecasted SIR costs associated with the Gowanus Canal and Newtown Creek sites are not included in the base rate allowance.

[221] Tr. 44.

[222] Ex. 506, Sec. V.6.1.4.

The JP further provides for actual SIR expenses for KEDNY and KEDLI in each year to be reconciled to the company's respective rate year forecast allowance, with any under- or over-expenditures deferred for or recovered from ratepayers.[223] Both Companies would also continue to charge to the SIR account the costs (*e.g.,* attorney, expert, and consultant fees), to pursue recovery of any funds from insurance carriers and/or PRPs and to credit to SIR accounts 100% of any such funds received and after-tax gains resulting from disposing of properties upon which SIR activities have occurred.[224]

The Joint Proposal's provisions relating to a SIR Recovery Surcharge differ between KEDNY and KEDLI. Under the Joint Proposal, KEDNY can recover, via a SIR Recovery Surcharge, actual SIR costs incurred, beginning in Rate Year 2, that exceed the rate allowance by $25 million. The surcharge would be capped, however, at 2% of the prior year's aggregate revenues. For KEDLI, the JP allows it to file a petition requesting that the Commission approve recovery of incremental costs through KEDLI's SIR Recovery Surcharge in the event the Company incurs

[223] Ex. 506, App. 6, Schedule 4 and App. 7. Schedule 4 provide examples of annual reconciliations. One exception is KEDNY's recovery of over or under expenditures related to the Citizens SIR location. Ex. 506, Sec. IV.6.1.4. The Citizens SIR site is a former MGP site located in Brooklyn. In 1998, the Commission issued an order adopting the terms of an agreement between the parties that provided for the Company to absorb or retain 10% of the variation around a set target for SIR clean-up expenses. Case 97-M-0567, Long Island Lighting Company and The Brooklyn Union Gas Company - Transfer Ownership to an Unregulated Holding Company and Other Related Approvals, Opinion No. 98-9 (issued April 14, 1998).

[224] Ex. 506, Sec. IV.6.1.4 (c) and Sec. V.6.1.4 (b).

unanticipated expenses relating to SIR costs incremental to the forecast rate allowance.[225]

The litigated positions of the parties, other than PULP, have been resolved by the terms of the Joint Proposal and, therefore, are not discussed herein except to the extent that they relate to outstanding issues raised by PULP.[226] PULP maintains the argument it presented in pre-filed testimony, that the Commission should require the Companies' shareholders to absorb a portion of the SIR costs.[227] According to PULP, the shareholders benefitted from manufactured gas production and existing ratepayers do not benefit from remediating the sites.[228] Requiring shareholders to cover a portion of the SIR costs, PULP says, would incentivize them, through their management, to mitigate the SIR costs to the greatest extent possible while fulfilling the utility's responsibility to the public in these environmentally sensitive matters.[229] Placing the entire SIR cleanup burden on ratepayers, PULP argues, is also inconsistent with Commission policy as evidenced by the Commission's order issued in Case 11-M-0034.[230] According to PULP, the JP fails to

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[225] Ex. 506, Sec. V, 6.1.4(b).

[226] Staff supported recovery of the forecasted SIR costs along with 1/10 of the deferred SIR balance in base rates, but recommended discontinuation of the SIR Recovery surcharge. Ex. 318, p. 12.

[227] Ex. 441, p. 9.

[228] Id.

[229] Id.

[230] Commission Proceeding to Review and Evaluate the Treatment of the State's Regulated Utilities' Site Investigation and Remediation (SIR) Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012) ("SIR Order").

fairly consider the consumers' interests because it allocates all of the SIR costs to ratepayers, placing a huge burden on their bills – approaching $800 million.[231] And, it claims the potential 2% additional surcharge for KEDNY insulates it from the transparency and accountability of a major rate case.[232] Sharply increasing ratepayers' bill surcharges for the Companies' environmental cleanup is one indicia of unaffordability that PULP claims it found.[233] Moreover, it says the allocation of these costs solely to ratepayers is inconsistent with Commission policy as indicated in recent Con Edison rate cases, where the Commission adopted terms of a joint proposal and allocated 50% of Con Edison's over earnings toward paying for SIR costs.[234]

PULP further asserts that the Joint Proposal's allocation of the entire SIR costs for KEDNY and KEDLI to ratepayers sends a perverse market signal to utilities that disincentivizes them from making prudent investment choices to avoid potential superfund sites, such as when buying an existing utility with significant toxic sites, as was the case when National Grid purchased KeySpan (f/k/a Brooklyn Union Gas).[235] PULP argues that not including the SIR costs for the Gowanus Canal and Newtown Creek sites in the JP's base rate allowance because of cost uncertainty, while allowing KEDNY to reconcile

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[231] PULP Statement in Opposition, p. 7.

[232] Id.

[233] Ex. 441, p. 7 and Ex. 457, p. 7.

[234] Cases 13-E-0030 et al., Consolidated Edison Company of New York, Inc. – Rates, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal (issued February 21, 2014), p. 26.

[235] PULP Statement in Opposition, p. 7.

these costs in the Rate Plan without proper supporting rationale or explanation, is a compelling reason for the Commission to require shareholders to bear a portion of the SIR costs, and that sharing these unknown costs with shareholders would fairly incentivize the Companies to manage the costs. [236]

Staff acknowledges that the Commission may determine that sharing of SIR costs between the utility and its ratepayers is appropriate in a specific rate case, but notes that such circumstances are where the utility's performance or other specific factors warrant different treatment.[237] Staff argues that, in evaluating the treatment of the State's regulated utilities' SIR costs, the Commission has found that the risk of a negative market reaction to a generic requirement of shareholder responsibility for SIR costs could diminish any economic benefit to ratepayers.[238] Such impacts, it argues, could result in increased costs of capital, which would then lead to increased rates.[239] It further states that PULP has not demonstrated any particular circumstances -- such as a failure to follow best practices or irregularities in the Companies' bidding processes -- that would warrant requiring shareholders to bear 20% of future SIR costs, as PULP proposes. Also, says Staff, PULP did not consider potential detrimental impacts of

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236 PULP Reply Statement, p. 12.

237 Staff Statement in Support, pp. 41-42.

238 Case 11-M-0034, supra, Order Concerning Costs for Site Investigation and Remediation, pp. 14-29.

239 PULP states that Staff has not demonstrated that the Companies' credit rating would be impaired by the Commission requiring shareholders to shoulder a portion of the SIR costs. PULP Reply Statement, p. 12.

its proposal on the Companies' financial condition, ability to raise capital and credit ratings.[240]

The Companies maintain that the SIR provisions of the Joint Proposal are consistent with the Commission's policy and provide for a reasonable balancing of the interests of current and future customers.[241] They point out, with respect to KEDNY, that the SIR costs in rates do not reflect any forecasted costs associated for the Gowanus Canal and Newtown Creek sites since those costs are uncertain. They argue that the JP's use of a surcharge capped at 2% of KEDNY's prior year aggregate revenues to recover SIR costs that are difficult to forecast is consistent with Commission precedent and is otherwise in the public interest. They conclude that the use of the surcharge – if needed – will ensure that future customers will not bear a disproportionate share of costs for SIR activities at Gowanus Canal and Newtown Creek, and that current customers' exposure to additional SIR costs will be capped at a reasonable level.

PULP not only disputes the claim that future customers would be protected from bearing a disproportionate portion of costs but argues that it is irrelevant as to whether the Companies' shareholders should bear any SIR costs at this time.[242] It asserts that costs will inevitably be paid over a longer timeframe with more interest. NYC observes that, by folding SIR costs into base delivery rates and spreading the costs over several years, the Signatory Parties were able to

[240] Staff Statement in Support, pp. 41-42. In response, PULP said that it does not bear the burden of proof. PULP Reply Statement, p. 12.

[241] Companies' Statement in Support, pp. 18-19.

[242] PULP Reply Statement, p. 12.

materially lower the overall delivery rate impact for KEDNY and for KEDLI.[243] According to NYC, PULP's arguments fail to recognize this and other important features of the JP. Lastly, UIU points out that the Joint Proposal is a package that reflects compromises on a variety of issues and, therefore, declines to oppose the JP's provision with no SIR cost sharing.[244] It recommends, however, that given the Companies' high SIR costs, the Commission should consider measures to offset the impact of the SIR costs on ratepayers in future rate plans.[245]

Discussion

Regulated utilities are generally entitled to recover their prudently incurred costs, including a return on their investment.[246] The Commission may employ the prudent investment test or other formulae or combinations of formulae in determining whether to allow recovery of costs incurred if the end result is a just balancing of consumer and investor interests.[247] We note that the Commission has had a long-standing policy of generally allowing recovery of utility expenditures that were demonstrated to have been prudently incurred.[248] As explained in the SIR Order, the utilities are required by law to incur the SIR expenses and they should

[243] NYC Reply Statement, p. 4.

[244] UIU Statement on the Joint Proposal, p. 3.

[245] Id.

[246] Federal Power Commn. v Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

[247] Matter of Abrams v Public Serv. Commn., 67 NY2d 205, 215 (1986)

[248] Abrams, 67 N.Y.2d at 214-215.

therefore be treated as normal costs of doing business in today's society.[249] The Commission's consistent application of the general principle allowing recovery of prudent costs is a factor in satisfying investor expectations and in maintaining a predictable regulatory environment.[250] We will hold the utilities fully accountable, however, for minimizing their exposure for SIR costs.

In the SIR Order, we required utilities to pursue best practices, file annual reports on their SIR programs and to provide detailed sworn testimony in their rate filings regarding SIR remediation efforts and cost controls. In this case, the Companies complied with this requirement[251] and Staff reviewed and concurred that the Companies were pursuing all appropriate cost control efforts.[252]

The SIR Order explained that cost sharing could be required in specific company and rate case circumstances. The order noted, for example, that sharing might be required in specific cases for utilities that appear to need an incentive to constrain SIR costs.[253] In the event that a utility's cost controls are indicated to be inadequate, sharing of remediation costs should be considered in future rate reviews as a tool to redress such problems.[254] The SIR Order also expressed the Commission's expectation that, in the context of negotiations of

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249 Case 11-M-0034, supra, Order Concerning Costs for Site Investigation and Remediation, p. 12.

250 Id.

251 Exs. 62, 63, 75 and 76.

252 Ex. 318.

253 Id.

254 Id., pp. 21-22.

rate plans that would include earnings sharing mechanisms, Staff and other parties would explore opportunities to allocate some proportion of excess earnings to SIR costs.[255]

We are not inclined to modify the Joint Proposal to direct the Companies to absorb a percentage of SIR costs over and above the 10% SIR costs that KEDNY is currently covering and will continue to do so related to the Coney Island and Citizens site. There is no evidence in the record that would lead us to conclude that KEDNY or KEDLI needs an additional incentive, in the form of SIR cost allocation to the Companies' shareholders, to mitigate SIR costs to the extent possible while fulfilling their responsibility to the public on these environmentally sensitive matters. DEC has primary control over the scope and timing of MGP site clean-up and KEDNY and KEDLI have been complying with their obligations to remediate the contaminated sites that they are responsible for. The uncontroverted evidence is that KEDNY and KEDLI have taken appropriate actions to reduce SIR MGP cost responsibility by seeking and receiving settlements with insurers. KEDNY has received $16.5 million and KEDLI has received $21.5 million, and they are continuing to litigate with other insurers.[256] Moreover, the Companies have identified other potentially responsible parties (PRPs) in an effort to get the PRPs to contribute to cleanup costs and thereby mitigate the SIR costs attributable to KEDNY and KEDLI and being paid by ratepayers.[257]

[255] Id.

[256] Ex. 62, pp. 6-9; Ex. 75, pp. 6-9; Exs. 63 through 74 and Exs. 76 through 84.

[257] Ex. 63 and Ex. 76.

Staff notes that the possibility of allocating a portion of excess earnings to SIR costs was considered during the course of negotiations.[258] The Companies also point out, however, that a number of tradeoffs or concessions were incorporated into the Joint Proposal that might not have been accepted if the JP’s earning sharing mechanism included an SIR cost sharing provision.[259] We find the parties’ actions to be consistent with the SIR Order.

We believe that the revenue increase levelization provision of the JP, coupled with the provisions in this order designed to alleviate the impact of the revenue increases on low-income customers, mitigate the overall rate impact of the revenue increase and SIR costs on ratepayers to the extent practicable. Thus, we conclude that the JP’s SIR provisions for KEDNY and KEDLI effects a reasonable balancing of the interests of ratepayers and the Companies.

Property and Special Franchise Tax Refunds

KEDLI has filed three petitions seeking Commission approval to allocate proceeds from various tax refund challenges in accordance with KEDLI’s recommendations. In Case 14-G-0503,

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[258] Tr. 49-51.

[259] Ex. 525, ALJ-27. The tradeoffs cited are the 2 percent productivity adjustment in Rate Year 1 and a 1.5 percent productivity adjustment in Rate Years 2 and 3; changing the property tax reconciliation to an 85/15 percent sharing mechanism between customers and the Companies; an adjustment to the Companies’ Service Company rent expense; and the provision that modifies the earnings sharing mechanism if the Companies fail to file for new rates to be effective on or before July 1, 2020, such that 100 percent of any excess earnings would be deferred for customers’ benefit and the property tax reconciliations become downward only.

KEDLI seeks approval to use for the benefit of its customers the entire $6,439,552.84 of refunds of property taxes assessed on three parcels that had comprised KeySpan Corporate Services, LLC's Hicksville, New York service center.[260] In Case 13-G-0498, KEDLI seeks approval of its proposal to distribute to customers 75% and to retain 25% of a $20,575,799.93 judgment reflecting a refund of *ad valorem* taxes for garbage collection and disposal services charged to special franchise and utility property in the Town of Oyster Bay.[261] In Case 11-G-0601, KEDLI seeks approval to distribute a $2,486,923.80 judgment reflecting a refund of such *ad valorem* taxes charged to special franchise and utility property in the Town of Oyster Bay.[262] In that case, KEDLI proposes to retain at least $227,765 as reimbursement for its incremental costs to achieve the refund and to retain 25% of the remaining refund and return 75% to its customers.

Under section V.6.1.5 of the Joint Proposal, Case 14-G-0503 would be resolved by KEDLI's crediting to customers 100% of the refund received minus its costs to achieve the refund, plus associated carrying costs. With respect to Cases 13-G-0498 and 11-G-0601, KEDLI would credit customers 90% of the amounts collected minus its costs to achieve the refunds, plus carrying costs. The Joint Proposal also provides that KEDLI would credit

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[260] Case 14-G-0503, Notice of Tax Refund and Proposed Method of Disposition of KeySpan Gas East Corporation d/b/a National Grid (filed November 20, 2014).

[261] Case 13-G-0498, Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between KeySpan Gas East Corp. d/b/a National Grid and Ratepayers (filed November 4, 2013).

[262] Case 11-G-0601, Petition for Approval, Pursuant to Public Service Law Section 113(2) of a Proposed Allocation of Certain Tax Refunds (filed November 7, 2011).

its customers on the same basis if it collects any additional refunds associated with these tax cases.

KEDLI has provided the following proposed distribution of the tax refunds, current as of October 25, 2016:

Case Number	Refund Amount(s) Collected	Costs to Achieve	Customer Share	Company Share
11-G-0601	$2,486,923	$227,765	$2,033,242	$225,916
13-G-0498	$21,400,000 and $465,867	$200,000	$19,499,280	$2,166,587
14-G-0503	$995,342	$7,977	$987,365	$0

KEDLI states that it also will allocate approximately $1.1 million of carrying charges that have accrued on these refunds in proportion to the amount of the refund collected.

No party has objected to section V.6.1.5 of the Joint Proposal. As KEDLI maintains, resolution of the three proceedings not only avoids the need for further litigation, but also provides substantial rate offsets for customers. The proposed percentage allocation of refund amounts is within or greater than the allocation range we have often approved, and promotes our objective of ensuring that utilities take reasonable steps to reduce their tax burdens. Therefore, we conclude that adoption of the terms of the Joint Proposal produces a just and reasonable result that is in the public interest.

New Reconciliations, Deferrals and True-ups

Joint Proposal Section IV, 6.2 outlines a number of new reconciliations, deferrals, and true-ups that are recommended by the signatories to the JP. These are in addition to the existing and continuing deferrals that are discussed in

Sections IV. 6.1 and V. 6.1 of the JP, as well as its Appendices 6 (Schedule 1) and 7 (Schedule 1).

The net utility plant and depreciation mechanism is a one-way reconciliation provision that provides for annual reconciliations of the average net utility plant and depreciation expense revenue requirement to the target average net utility plant and depreciation expense. The revenue requirement impact of any cumulative underspending is being deferred for customers' benefit.[263] According to Staff, this mechanism is consistent with its litigation position and its goal to protect customers from paying rates that would be too high if KEDNY or KEDLI under-spent its capital budget or if there were significant delays in projects being completed and placed in service.[264]

The JP provides for automatic uploads to the Environmental Protection Agency Energy Star Portfolio Manager (EPA Portfolio Manager) to be implemented by the Companies, after consultation with NYC, beginning in Rate Year 2. Pursuant to this JP provision, the Companies would be allowed to recover aggregate costs, up to $750,000, for an automated process that uploads energy consumption data to the EPA Portfolio Manager. The EPA Portfolio Manager is a software tool for measuring and tracking energy and water consumption and greenhouse gas emissions. NYC advocated for this JP provision, at least in part, because the City enacted a local law (Local Law No. 84)

[263] Ex. 506, Secs. IV.6.2.1 and V.6.2.1. The KEDNY targets are approximately $420.7 million, $75.1 million and $538.6 million in Rate Years 1, 2 and 3, respectively; the KEDLI levels in those years are $345.4 million, $374.9 million and $405.0 million.

[264] Staff Statement in Support, p. 44; Ex. 308, pp. 105-108.

that requires owners of large buildings to annually measure their energy and water consumption and report it to the City.[265] NYC says that the consumption information provided allows the City to pursue increasingly aggressive programs and policies to drive down energy and water consumption, as well as utility cost expenditures, and the automated process will improve the flow of information.[266] It also notes that none of the parties has expressed any opposition to this proposal.

The room set meter pilot is a program KEDNY is expected to develop to test the feasibility of converting residential, non-heating customers from room set meters to a building meter. In pre-filed testimony, Staff expressed support for converting customers to the building meters to achieve future O&M savings (*e.g.* inactive account usage reductions, call center costs, metering costs and potentially leak testing costs).[267] KEDNY explained in rebuttal that there is a need for thorough analysis in collaboration with jurisdictional building authorities and building owners to determine the feasibility of room set meter removal and the best location of new meters.[268] The JP signatories thereafter agreed upon a plan by which KEDNY would convert from 1 to 5 buildings to building meters, with KEDNY permitted to defer the prudently incurred incremental costs to develop the program. It will also provide annual reports on the status of the program.

The variable pay terms of the Joint Proposal for KEDNY and KEDLI (Sections IV. 6.2.5 and V.6.2.4, respectively) are

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265 Ex. 411, pp. 8-9.

266 NYC Statement in Support, pp. 15-16.

267 Staff Statement in Support, pp. 38-39; Ex. 332, p. 75.

268 Ex. 261, p. 25.

based on a proposal by the Companies to annually reconcile and defer, with carrying costs for ratepayer benefit, variable compensation amounts that are in rates but are not paid to employees. No reconciliation will be made if the variable pay is greater than the rate allowances for KEDNY and KEDLI.[269] The Companies' witness noted in pre-filed testimony that variable pay provides incentives to employees to achieve or exceed certain operating performance goals regarding customer service, safety, and reliability metrics that the Commission has approved for KEDNY and KEDLI.[270] Staff, the only other party to address this issue, evaluated the Companies' total compensation study (including variable pay) in accordance with the criteria adopted by the Commission in a prior Orange and Rockland case and found the total compensation fairly consistent with, although slightly less than, that paid by a peer group of companies.[271]

The JP is proposing customer rebate programs for the Companies with an annual rate allowance for each company of $200,000.[272] Although both programs are to be subject to a downward only reconciliation for underspending, the Companies would be permitted to petition for deferral of expenditures in excess of the rate allowance. The programs differ significantly, however. KEDLI's rebate program is designed to attract, and is

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[269] The recommended rate allowances for KEDNY are $7.46 M, $7.66 million and $7.88 million for Rate Year 1, 2 and 3. For KEDLI the recommended annual allowances in the rate years are $4.25 million, $4.39 million and $4.52 million.

[270] Ex. 92, p. 26.

[271] Ex. 332, pp. 3-12, citing Case 10-E-0362, Orange & Rockland Utilities, Inc. – Rates, Order Establishing Rates for Electric Service (issued June 17, 2011) and Order on Rehearing (issued November 21, 2011).

[272] Ex. 506, Secs. IV.6.2.6, IV.9.3, V.6.2.5 and V.9.4.

limited to residential customers. This is because KEDLI has a significantly higher number of residential customers than KEDNY who are located near a gas main but are not connected to the system.[273] It would provide a $1,000 rebate to new customers who agree to connect to the distribution system along planned main replacement routes. KEDNY rebate program rebates are intended to support CHP projects, gas air conditioning projects and/or conversions to natural gas that are conditioned on the customer providing a contribution in aid of construction (CIAC). Residential, commercial and industrial customers would be eligible to participate in the KEDNY program.[274]

The third party payment center processing fees reconciliation program is new and only applicable to KEDNY.[275] Under this program, KEDNY customers who utilize an authorized third party payment center, such as Western Union, will not be assessed a transaction fee. Each year the $410,000 amount allowed in rates would be reconciled against the actual costs and any under- or over-recovery would be deferred for future refund to or recovery from customers as indicated JP Appendix 6, Schedule 10.

City/State Construction Expenditures

The Companies explained in testimony that City/State construction work is performed to accommodate municipal construction activity that could impact the integrity of their natural gas facilities, and includes the relocation of gas facilities and the replacement of certain cast iron gas mains.[276]

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273 Ex. 525, ALJ-16.

274 Id.

275 Ex. 506, Sec. IV.6.2.7.

276 Ex. 48, pp. 58-59 and Ex. 59, pp. 58-60.

Based upon then-current five-year City/State construction plans, the Companies estimated that main replacements associated with those projects would increase significantly during the terms of these rate plans. The Joint Proposal sets forth projected levels of City/State construction expenditures, net of reimbursements, for KEDNY of $196.49 million in Rate Year 1, $193.51 million in Rate Year 2, and $190.92 million in Rate Year 3,[277] and for KEDLI of $9.39 million in Rate Year 1, $9.70 million in Rate Year 2, and $9.90 million in Rate Year 3.[278]

Sections IV.6.2.2 and V.6.2.2 of the Joint Proposal include a new City/State construction deferral mechanism for recovery of costs in excess of the forecasted amounts for each Rate Year. The deferral mechanism provides for a 90% customer/10% Companies reconciliation on capital investments (excluding O&M expenses) from the forecasted levels, net of reimbursements. The Companies would be required to submit a filing demonstrating that the costs incurred in excess of the rate allowances were reasonable and beyond the Companies' control. Disagreements as to the filing are to be referred to us for decision. The City/State reconciliation would work in conjunction with the Net Utility Plant and Depreciation Expense Mechanism.

The Companies maintained that a deferral mechanism was necessary because of the difficultly they had in accurately predicting the level of City/State construction during a rate year and the existence of a significant risk that the actual work required to support City/State construction activities would be more that the amounts assumed in their capital plans.

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277 Ex. 506, Sec. IV.6.2.2.

278 Id., Sec. V.6.2.2.

Although Staff originally opposed use of a deferral mechanism, its opposition was largely based on its position that such a mechanism was unnecessary in the context of the one-year rate plan filed by the Companies. For a one-year period, Staff asserted, the Companies had staff dedicated to dealing with City/State construction work and should be reasonably able to forecast and manage work planned in the rate year. However, Staff recognizes that the deferral mechanism is reasonable in the context of the three-year rate plan set forth in the Joint Proposal because City/State construction is more difficult to forecast than other expenses over that longer time horizon and is beyond the Companies' direct control.

The City/State deferral provisions in the Joint Proposal are unopposed and are reasonable. They allow the Companies to recover costs in excess of their forecasted rate year amounts only upon a showing that such costs were reasonable and beyond the Companies' control. That limitation, coupled with the 90%/10% sharing, will help ensure that the Companies appropriately manage costs and seek to recover only costs that could not be reasonably forecasted.

KEDNY Variable Rate and Long Term Debt True-Up

The Joint Proposal adds a reconciliation provision that would allow KEDNY to true-up the interest costs associated with $230 million of outstanding debt related to NYSERDA variable rate bonds against the approximate $2.8 million rate allowance.[279] Interest rates on the bonds are periodically reset using a process (Dutch Auction) that sets a default rate based on a percentage of the then existing London Interbank Offer Rate

[279] Ex. 506, Sec. IV.6.2.8. Appendix 6, p. 1, of Ex. 506 provides an illustration of the reconciliation for each rate year.

(LIBOR) if the auctions fail. Staff asserts that it and KEDNY proposed a true-up mechanism for the variable rate debt because of the uncertainty of future LIBOR rates and the prospect that the auctions will become successful during the term of the rate plan.[280] As a result of the mechanism, KEDNY and ratepayers will only pay for the costs actually incurred in financing the debt.

The Joint Proposal's long term debt true-up mechanism would allow KEDNY to true up the interest costs associated with the planned $530 million issuance of new debt in Rate Year 1.[281] This provision mirrors Staff's pre-filed testimony recommendation that the cost of debt calculation for determining the revenue requirement for the first rate year assumes that forecast issuances of new long term debt be equally split between 10-year and 30-year bonds.[282] The JP further states that, if actual bond issuances during Rate Year One are split differently, the resulting interest disparity caused by the unequal split will be deferred for refund to, or recovery from, KEDNY's customers as indicated in Joint Proposal, Appendix 6, Schedule 12. Moreover, the JP provides that KEDNY will assume any ensuing risk in the event that interest rates deviate from the forecast because the forecasted interest rate is not trued up to the actual rate at issuance.[283] Staff contends that splitting the issuances will result in reduced interest costs and savings to ratepayers, since short term interest is generally lower than long term rates.

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[280] Staff Statement in Support, p. 47.

[281] Ex. 506, Sec. IV.6.2.9.

[282] Ex. 377, pp. 12-13. KEDNY, in contrast, initially forecasted a rate allowance predicated on a 30 year bond issuance.

[283] Staff Statement in Support, p. 48.

New Hire True-Up

Sections IV.6.2.10 and V.6.2.6 of the Joint Proposal include a new one-way true-up provision regarding the hiring of new full time employees. Until the Companies hire the full time equivalents (FTEs) included in their revenue requirements (270 FTEs for KEDNY and 134 FTEs for KEDLI),[284] they would reconcile monthly the actual number of FTEs hired to the number included in their revenue requirements. If the Companies have hired fewer than the number of FTEs included in their revenue requirements, they would defer the revenue impact of the difference for refund to customers. However, there would be no reconciliation if the Companies' hires exceeded the level of FTEs included in rates. Staff states that this new true-up provision alleviates the concerns it had in recommending in testimony a slightly smaller number of FTEs for each Company. The provision is reasonable and protects customers from the full revenue impact of hiring new FTEs if the Companies hire fewer than the forecasted number of FTEs or take longer to hire them.

Customer Service Quality Programs

Sections IV.7 and V.7 of the Joint Proposal essentially would continue the current structure of the Companies' customer service quality programs, as recommended by Staff, UIU and NYC[285] in opposition to the Companies' proposals to modify their programs.[286] Those sections also would continue

[284] These numbers include twenty four FTEs that are to be shared between KEDNY and KEDLI and are included in each Company's number of FTEs. Adjusting for that duplication, the total number of full time employees to be hired would be 380.

[285] Ex. 326, pp. 21, 33.

[286] Id., pp. 42-44; Ex. 326, pp. 13-15, 18-19; Ex. 431, pp. 5-11; Ex. 392, pp. 32-34.

the total pre-tax potential negative revenue adjustments as to KEDNY in the amount of $11.7 million and as to KEDLI in the amount of $9.9 million.[287] The percentage allocation of the total potential negative adjustment across performance metrics would be the same for both Companies, with 40% to be allocated to the PSC Complaint Rate metric, 40% to the Customer Satisfaction Survey metric, 10% to the Telephone Answer Response within 30 Seconds metric, and 10% to the Adjusted Customer Bills Metric. The percentage allocation is unchanged as to KEDNY but is updated as to KEDLI to reflect its addition of the metric for telephone answer response within 30 seconds.

PSC Complaint Rate

Sections IV.7.1 and V.7.1 of the Joint Proposal would continue the PSC Complaint Rate metric, which subjects the Companies to a negative revenue adjustment if yearly complaints exceed an average of 1.1 complaints per 100,000 customers. Only "charged" complaints would be included in the PSC Complaint rate metric. A complaint would be considered charged when a customer, after having contacted the Company to express dissatisfaction with an action, practice or conduct and providing the Company with a reasonable opportunity to address the matter, contacts the Commission to express dissatisfaction with such action, practice or conduct. KEDNY would be subject to a negative revenue adjustment of $4.68 million for exceeding 1.1 complaints per 100,000 customers, and KEDLI would be subject to a negative revenue adjustment of $3.96 million for exceeding that complaint rate. Although it is slightly higher than the complaint rate proposed by KEDNY and New York City,[288] the

[287] Ex. 127, p. 54.

[288] Ex. 392, p. 39.

complaint rate in the Joint Proposal follows Staff's recommendations that the complaint rate remain at the same level for both Companies and that KEDNY's request for a new call center escalation analyst be disallowed.[289]

Customer Satisfaction

Under sections IV.7.2 and V.7.2 of the Joint Proposal, customer satisfaction would be measured monthly based on satisfaction ratings resulting from a random survey of residential customers who have contacted each Company, with the satisfaction level measured based on the number of customers rating the Companies between "6" and "10" on a 10-point satisfaction scale. The Joint proposal would continue the customer satisfaction metric of 84.8 percent for KEDNY and 83.4 percent for KEDLI. The Joint Proposal also would require the Companies to convene a meeting with Staff and interested parties by April 1, 2017, to align their survey methodologies with the telephone survey methodology used by Niagara Mohawk Power Corporation, d/b/a National Grid, and to file a report with us on the results of the meeting by August 30, 2017, for further action as may be necessary. Sections IV.7.2 and V.7.2 follow the Companies' proposals and Staff's recommendations,[290] although they contain customer satisfaction metrics slightly lower than the 88% for KEDNY and 85% for KEDLI that NYC had proposed in testimony.

Telephone Answer Response within 30 Seconds

The metric for telephone answer response within 30 seconds measures the proportion of customer service calls answered by the Companies within 30 seconds, expressed as a

[289] Ex. 326, pp. 22, 51-52.

[290] Ex. 326, pp. 22-23.

percentage of the total calls answered. Sections IV.7.3 and V.7.3 of the Joint Proposal would increase KEDNY's target from 59% to 60.6% and establish a 62.2% target for KEDLI, with the metric to be measured monthly and the annual rate to be computed as the average of the 12 monthly scores. KEDNY would be at risk to a negative revenue adjustment of $1.17 million, and KEDLI would be at risk to a negative revenue adjustment of $990,000.

Although KEDNY had proposed to increase its target to 62.2%, it made that proposal on condition that it be allowed to increase call center staffing and to balance its call load by redistributing calls across all of its call centers.[291] UIU and the City of New York proposed that both Companies be subject to a 62.2% metric, with the City of New York recommending that metric be adopted without the Companies' proposals to increase call center staffing and to load balance calls.[292] The Joint Proposal adopts Staff's recommended targets and reduction to the call center staffing levels that KEDNY requested.

Adjusted Customer Bills

The Adjusted Customer Bills metric measures the proportion of customer bills that require later adjustments due to errors by the Companies. Sections IV.7.4 and V.7.4 of the Joint Proposal maintain the current performance targets under which the Companies would be subject to no negative revenue adjustments if their adjusted customer bills are 1.69% or fewer than their total customer bills. Depending on the amount by which the number of customer bills exceeds the 1.69% metric, KEDNY would be subject to negative revenue adjustments of $585,000, $877,500 and $1.17 million, and KEDLI would be subject

[291] Ex. 127, pp. 44-45.

[292] Ex. 431, p. 11 and Ex. 392, p. 35.

to negative revenue adjustments of $495,000, $742,500 and $990,000.

Relying on preliminary discussions of a data audit working group in Cases 13-M-0314 and 15-M-0566,[293] the Companies had proposed that certain bills be excluded from the metric calculation as not constituting adjusted bills. Based upon those exclusions, the Companies proposed a reduction of the targets from 1.69% to 0.58% for KEDNY and from 1.69% to 1.24% for KEDLI. Staff recommended that the targets remain at 1.69% for both Companies because the results of the metrics audit had not been finalized, making the Companies' proposed changes premature. UIU and NYC recommended adoption of the more stringent targets proposed by the Companies, with NYC's proposal not including the Companies' proposed exclusions. The Joint Proposal adopts Staff's recommendation.

Reporting

Under sections IV.7.5 and V.7.5 of the Joint Proposal, the Companies would submit an annual performance report to the Secretary to the Commission within three months after the conclusion of each full calendar year. The annual performance report would include a description of the service quality measures, the method for calculating performance, the results for the period, supporting calculations of annual results in spreadsheet format, and a narrative overall assessment of customer service performance during the calendar year. The Companies also would be required to submit quarterly performance

[293] 13-M-0314, Consolidated Edison Company of New York, Inc. et al. – Electric, Gas and Customer Service Audit; 15-M-0566, Matter of Revisions to Customer Service Performance Indicators Applicable to Gas and Electric Corporations, Order Releasing Report and Providing Guidance on Response (issued April 20, 2016).

reports within thirty days of the conclusion of the first, second and third quarter of each calendar year, and the Companies would be able to petition the Commission for relief from any negative revenue adjustment associated with their inability to meet performance targets when they believe such inability was attributable to causes outside their control and that could not be avoided with due care. No party proposed this report in testimony prior to the Joint Proposal.

Tripling and Quadrupling Provisions

The Companies currently are subject to potential tripling and quadrupling of applicable negative revenue adjustment amounts for failing to meet customer service quality metrics.[294] Stating that they have generally demonstrated consistently good performance on service quality metrics, the Companies proposed that the tripling and quadrupling provisions are no longer necessary to safeguard against an unacceptable drop in customer service quality due to the merger in 2007.[295] Pointing out that KEDLI missed one performance target in 2013 and two performance targets in 2014, Staff recommended that the tripling and quadrupling provisions be maintained.[296] KEDLI countered that it missed those customer performance targets due to reasons unrelated to the 2007 merger, such as issues arising from Super Storm Sandy and the extreme cold weather caused by the Polar Vortex.

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294 Case 06-M-0878, National Grid PLC and KeySpan Corporation – Stock Acquisition, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued September 17, 2007) ("Merger Order"), pp. 143-144.

295 Ex. 127, pp. 54-55.

296 Ex. 326, p. 32.

The Joint Proposal would eliminate the tripling provision for both KEDNY and KEDLI and the quadrupling provision for KEDNY. It would also eliminate the quadrupling provision as to KEDLI if KEDLI achieves its customer satisfaction metric for CY 2016.

Service Guarantee

Under the Joint Proposal, the Companies would continue their current service guarantee policy of compensating customers for a missed appointment. For each missed appointment, the Companies would provide a $30 credit to residential customers and a $60 credit to non-residential customers.

Termination and Uncollectible Incentive

Section IV.7.8 of the Joint Proposal would establish a positive revenue adjustment for KEDNY in the amount of $1.26 million during each Rate Year its residential service terminations are at or below 34,638 and its uncollectibles are at or below $12.5 million, and in the amount of $0.540 million if one of those levels is met, provided the other level stays below the normalized seven-year average. As for KEDLI, section V.7.8 of the Joint Proposal would establish a two-tier positive revenue adjustment of $0.840 million or $0.360 million, with the metric to operate in the same manner as KEDNY's metric. However, because adequate data to formulate targets for KEDLI will not be available until approximately March 2017,[297] the Joint Proposal would require KEDLI to meet with Staff and other

297 Staff explains that that "the transition at LIPA for its service provider from National Grid to PSEG means that historic termination levels are artificially low" and that "[a]dequate data should be available in March 2017 (Staff Statement in Support, p. 54).

interested parties by March 15, 2017, to set the targets that will be applicable for Rate Years 1, 2 and 3.

The Joint Proposal essentially adopts Staff's recommendations regarding service termination and uncollectibles targets and the maximum amount of the positive revenue incentives, which are slightly less than the $1.4 million proposed by KEDNY and $1.04 million proposed by KEDLI.[298] Although initially recommended by Staff, the Joint Proposal does not contain any negative revenue adjustments.[299]

Discussion

With two exceptions discussed below, no party has objected to any of the Customer Service Quality Program provisions. By continuing the total amount at risk of $11.7 million for KEDNY and $9.9 million for KEDLI, the Customer Service Quality Program provisions provide a strong incentive to help ensure that the Companies provide satisfactory customer service. We have routinely endorsed such programs as a means of aligning customer and shareholder interests to achieve desirable outcomes in customer service. Overall, the customer service provisions strike a reasonable balance between the positions taken by normally adverse parties by continuing programs and metrics already in place.

In addition, the provision removing the tripling of negative revenue adjustments with respect to KEDLI appropriately recognizes that, although KEDLI missed the customer satisfaction metric in 2013 and the customer satisfaction and PSC complaint rate metric in 2014, it otherwise met all its customer satisfaction performance metrics since the merger, including in

298 Ex. 127, pp. 37-38.

299 Ex. 326, pp. 44-45.

2015. The removal of the quadrupling of negative revenue adjustments as to KEDLI is appropriately conditioned on KEDLI's satisfactory performance on its Customer Satisfaction survey for CY 2016, which, in conjunction with its satisfactory performance on that metric for CY 2015, will help ensure KEDLI's ability to continue to provide satisfactory levels of customer service.

URAC takes issue with the provision eliminating the tripling and quadrupling of negative revenue adjustments currently applicable to KEDNY. According to URAC, KEDNY's own statistics reveal that it has not improved its customer service performance. URAC relies on statistics regarding KEDNY's Quick Resolution Process, under which customer complaints received by the Commission are referred to the affected company for resolution.[300] Complaints resolved at that point are referred to as Quick Resolutions (QRs). If the affected company and the customer cannot resolve the issue and it is sent back to the Commission, the complaint is categorized as a Standard Resolution (SR) and considered as a charged complaint for purposes of KEDNY's PSC Complaint Rate performance metric. URAC notes that, for its historic test year, KEDNY had a percentage of SRs to QRs of 6.3%, and that the percentages were 5.5% in 2014 and 5.7% through November 2015. URAC therefor urges that the negative revenue tripling and quadrupling provisions remain in place as to KEDNY.

Staff counters that while URAC's figures address the percentage of SRs to QRs, that percentage does not reflect the PSC Complaint Rate metric or how KEDNY's performance on that metric is evaluated. Pointing out that KEDNY's PSC Complaint Rate performance is based on the number of SRs per 100,000

[300] Ex. 127, pp. 39-40.

customers, Staff asserts that KEDNY's PSC Complaint Rate performance for the last several years has been well below the 1.1 threshold triggering application of the negative revenue adjustment.[301]

We agree with Staff that the negative revenue adjustment tripling and quadrupling provisions, which we put in place in 2007 in our Merger Order, are no longer needed with respect to KEDNY. Contrary to URAC's position, KEDNY's performance on the PSC Complaint Rate metric has been consistently satisfactory. Moreover, KEDNY has met all of its customer service quality performance metrics since 2008. The removal of the tripling and quadrupling provisions therefore is reasonable.

PULP opposes the provision of the Joint Proposal regarding the positive incentive for the Companies to reduce both service terminations and uncollectibles. PULP argues that a positive incentive is not needed in this Joint Proposal to encourage innovation with respect to the reduction of service terminations because Central Hudson Gas & Electric Corporation, which is subject to a positive incentive similar to the one here,[302] has already figured out how to reduce the number of service terminations, as reflected in a Central Hudson report on its service termination reduction efforts. PULP maintains that a positive revenue adjustment should not be available for

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[301] Staff notes that KEDNY's complaint rates were 0.72 in 2015, 0.59 in 2014, 0.68 in 2013, 0.45 in 2012, and 0.54 in 2011 (Staff Reply Statement, p. 23).

[302] Cases 14-E-0318 and 14-G-0319, Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service and Gas Service, Order Approving Rate Plan for Central Hudson Gas & Electric Corporation (issued June 17, 2015).

promoting the Companies' copying of previously achieved innovations.

PULP further opposes the positive incentive mechanism on the ground that, contrary to Staff's recommendation and PULP's position in testimony, the Joint Proposal does not also contain negative incentives for the Companies' failure to meet service termination and uncollectible targets. In addition, as it did in testimony, PULP asserts that a positive incentive should not be allowed for the reduction of service terminations of residential customer accounts until it is clear that the Companies comply with HEFPA before such service terminations occur. In support of that argument, PULP maintains that the Companies' Collection Activity Reports show a decline in the number of deferred payment agreements (DPAs) made and in the percentage of customers in arrears covered by DPAs. PULP also urges that terminations within the meaning of Joint Proposal not be limited to "actual residential terminations completed," but also include "the number of termination letters issued" in an effort to discourage the Companies from issuing termination letters with greater frequency as a way to intimidate customers.

The Companies and Staff assert that the existence and apparent success of Central Hudson's service termination reduction plan does not establish that the Companies could reduce terminations in their territories by adopting the same practices, or that Companies would not have to innovate to successfully apply those practices or develop other practices to successfully reduce service terminations in their territories.[303] They also maintain that the positive revenue adjustment incentive appropriately encourages the Companies to give greater

[303] Companies' Reply Statement, p. 10 and Staff Reply Statement, p. 14.

focus to the service termination issues and to study and implement their peers' best practices.

Turning to PULP's assertion that a positive-only incentive is inappropriate and that a negative revenue assessment should also be included, Staff states its belief that a positive-only incentive is sufficient to incent the Companies to innovate and focus on the goal of decreasing service terminations and uncollectibles.[304] The Companies argue that no need exists for the addition of a negative revenue assessment inasmuch as the record shows that service terminations already are a last resort in the collections process and that their service termination levels are below the average level for New York utilities.[305]

As for PULP's HEFPA-related arguments, the Companies argue that the decline in the number of DPAs provides no basis to conclude that the Companies are violating HEFPA, especially given the testimony that, compared to other large New York utilities, they have terminated fewer residential customers as a percentage of customers with accounts in arrears over the past five years.[306] The Companies and Staff also point out that PULP has not provided any evidence that KEDNY and KEDLI have failed to comply with HEFPA.

304 Staff Reply Statement, p. 15.

305 Companies' Reply Statement, p. 11.

306 Id., p. 11, citing Ex. 127, p. 36.

We have approved the use of a positive-only revenue adjustment to reduce service terminations and uncollectibles,[307] and we agree with the Companies and Staff that the use of a positive revenue adjustment here is appropriate to encourage the Companies not only to consider adoption of a plan similar to that used by Central Hudson, but also to experiment with and develop their own strategies and plans to lessen their reliance on service terminations. The positive-only revenue adjustment will offer the Companies the financial incentive to work with residential customers to avoid terminations for non-payment and reduce residential bad debt. Use of a positive-only incentive also is supported by the fact that service terminations are a last resort in the collections process and by testimony in the record concerning the relatively low percentage of the Companies' service terminations.

Moreover, absent evidence of past HEFPA violations, we do not believe PULP's proposal requiring creation of an independent working group to audit the Companies' compliance with HEFPA is necessary. The Companies are required to comply with HEFPA and a consumer complaint process is in place to identify apparent HEFPA violations. The Companies also are subject to a service quality measurement and to potential negative revenue adjustments based on complaints, including those related to HEFPA compliance. Under these circumstances, we see no reason to adopt PULP's proposal. Absent any evidence

[307] See Cases 15-G-0382 and 13-G-0076, Rates, Charges, Rules and Regulations of St. Lawrence Gas Company, Inc. for Gas Service, Order Establishing Multi-Year Rate Plan (issued July 15, 2016), pp. 30-33; Cases 14-E-0318 and 14-G-0319, Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service and Gas Service, Order Approving Rate Plan for Central Hudson Gas & Electric Corporation (issued June 7, 2015), pp. 59-60.

that the Companies are inappropriately issuing termination letters, we also do not agree with PULP's position that the Joint Proposal should place unspecified parameters on the number of termination letters issued.

Additional Customer Issues

Base and Slope Variable Information

URAC argues that the Joint Proposal should require the Companies to include base and slope variable information in the Weather Normalization Adjustment on customers' bills.[308] Under sections IV.3.8 and V.3.8 of the Joint Proposal, the Companies would post information on their websites that will provide customers information as to how the Weather Normalization factor is calculated. Staff points out that the posted information will include the class base load factor, degree day factor, margin and actual and normal degree days, and that customers may contact the Companies' call centers for additional information, including information concerning the base and slope factors. In testimony, the Companies explained that base and slope factors are customer specific and are recalculated with each bill, making it unfeasible to post them online or in customer bills, and that such factors are available upon the customer's request.[309] Under these circumstances, we will not require the Companies to include base and slope factors in their bills rather than providing that information to specific customers upon request.

Customer Migration Policy

URAC also proposes that a uniform customer migration policy be implemented for SC 2 and SC 6 customers. URAC states

[308] URAC Statement in Opposition, p. 7.

[309] Ex. 277, p. 44.

that KEDNY migrates SC 2 customers between different rate schedules on an annual basis pursuant to each customer's usage, while KEDNY does not have a process for migrating customers under SC 6 with respect to Commercial and Governmental Property and Multi-Family buildings.[310] URAC also alleges that KEDNY's practice of using customer usage for migration to different rate schedules is indiscriminately applied among many of KEDNY's service classes, but always in favor of the utility.

As Staff maintains, URAC's allegations of indiscriminate application of migration between rate schedules lacks record support and, in any event, appear to relate to individual consumer complaints, which should be resolved in the consumer complaint process. Because many SC 6 customers are large and sophisticated commercial customers, we agree with Staff's explanation that such customers would be able to determine their own need to migrate between schedules rather than having to rely on KEDNY to make that determination for them. We also note that the section VI.20 of the Joint Proposal would provide for the Companies to work on new SC 2 classifications, which would provide them with information to better address segmentation of SC 2 customers.

KEDNY's Record Retention Policy

Claiming that KEDNY's one-year record retention policy for customer service applications is insufficient for dealing with rate assignment issues raised by customers beyond the retention period, URAC argues that KEDNY should be required to maintain service applications for one year after the life of an account.[311] However, as Staff points out, KEDNY's record

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[310] Id., p. 8.

[311] Id., p. 6.

retention policy properly adheres to the requirements of 16 NYCRR 733.15, under which all utilities must keep service applications for one year.

KEDNY's Use of D/B/A on Customer Bills

URAC also asserts that KEDNY's identification as National Grid on customer bills creates confusion because KEDNY's tariff is under the name The Brooklyn Union Gas Company, and that KEDNY should be required to correct this situation by changing its bill format and consumer correspondence to clarify that it is governed by The Brooklyn Union Gas Company tariff. URAC has not established that widespread consumer confusion exists. Nor are we convinced that the unknown costs necessitated by its proposed solution should be imposed on ratepayers in place of other measures that could be explored in an effort to address any possible confusion. Indeed, Staff states that a modification to our Electronic Tariff System is pending to include a notification that National Grid has regional affiliates, including KEDNY, and identify the appropriate tariffs by service territory.[312]

Gas Safety Performance Metrics

The Joint Proposal would continue or add to the Companies' gas safety performance metrics (GSPMs), with increased safety targets and potential negative revenue adjustments that would place the Companies each at risk for a total of 150 pre-tax basis points in negative revenue adjustments per calendar year.[313] The GSPMs cover the following major areas of safety concern: leak prone pipe (LPP) removal,

[312] Staff Reply Statement, p. 20.

[313] One basis point is equal to approximately $237,000 in revenues for KEDNY and $185,000 in revenues for KEDLI (Ex. 506, p. 20 n. 11 and p. 74 n. 19).

leak management, damage prevention, emergency response, and gas safety regulations compliance. The GSPMs would continue on a year-to-year basis unless discontinued or modified by the Commission.

LPP Removal Metric

Under sections IV.8.1.1 and V.8.1.1 of the Joint Proposal, the rate of LPP removal would be increased for both Companies. KEDNY would be subject to minimum LPP removal targets of 50 miles in Calendar Year (CY) 2017, 55 miles in CY 2018, or a cumulative three-year total of 180 miles by the end of CY 2019. KEDLI would be subject to minimum LPP removal targets of 105 miles in CY 2017, 125 miles in CY 2018, or a cumulative three-year total of 405 miles by the end of CY 2019. The removal targets in the Joint Proposal represent a compromise between the slightly lower levels generally proposed by the Companies and the slightly higher levels generally proposed by Staff.[314] As recommended by Staff, the Companies would replace LPP services in conjunction with the removal of LPP mains.

As the Companies and Staff had agreed in testimony, the Joint Proposal would subject each Company to a negative revenue adjustment of 8 basis points for its failure to meet minimum LPP removal targets. After Rate Year 3, the negative revenue adjustment would be incurred for failure to replace 65 miles per year for KEDNY and 155 miles of per year for KEDLI. Sections IV.8.1.2 and V.8.1.2 of the Joint Proposal would add a new positive revenue adjustment, which adopts Staff's recommendation that each Company would be subject to a positive revenue adjustment of 2 basis points for each mile of LPP

[314] Ex. 315, pp. 19-20.

removed above stated incentive thresholds, capped at 10 basis points per year and recovered through the GSRS.[315]

Leak Management

Sections IV.8.2 and V.8.2 of the Joint Proposal would subject each Company to a negative revenue adjustment of 8 basis points for failing to limit its backlog to no more than 25 workable leaks by the end of the calendar year, and to a negative revenue adjustment of 4 basis points for failing to reduce its backlog of total leaks by 150 leaks per year for KEDNY and by 750 leaks per year for KEDLI. The total leak baseline would be set at 3,700 for KEDNY and 10,750 for KEDLI.[316] The Joint Proposal also would provide a new positive revenue adjustment to the Companies of one basis point for each 50 leaks eliminated from their lists of highest emitting Type 3 leaks, provided the Companies achieve both annual backlog reduction targets. Each Company would be required to submit annual reports to the Secretary, detailing all leaks in its year-end backlog by type, the leaks that were eliminated during the year and the total cost of leak repairs.

The Companies had requested in testimony that they each be allowed to maintain a backlog of no more than 30 workable leaks by the end of the calendar year; that KEDNY reduce its backlog of total leaks by an average of 100 leaks per year; that KEDLI reduce its backlog of total leaks by an average of 500 leaks per year; and that the Companies' annual leak

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315 Id., p. 21.

316 Total leak targets include Type 1, 2, 2A and 3 leaks as defined by 16 NYCRR 255.811, 255.813, 255.815 and 255.817, respectively. Workable leak targets exclude Type 3 leaks because they are considered non-hazardous and reasonably expected to stay that way (Ex. 315, pp. 24-25).

targets be adjusted based on the number of frost degree days in a given year.[317] The Joint Proposal essentially adopts Staff's more stringent recommendations.[318]

Damage Prevention

Sections IV.8.3 and V.8.3 of the Joint Proposal would put each Company at risk for a total of 18 basis points in negative revenue adjustments for failure to meet damage targets: four for the overall number of damage incidents, ten for damages resulting from mismarking of pipe locations by Company personnel, and four for damage resulting from excavation work done directly by the Companies or their contractors. The Joint Proposal adopts the following damage prevention performance targets:

Damage Prevention Measure	**CY17**	**CY18**	**CY19**	**CY20**
Overall Damages per 1,000 one-call tickets[319]	KEDNY-1.93 KEDLI-2.78	KEDNY-1.87 KEDLI-2.48	KEDNY-1.87 KEDLI-1.87	KEDNY-1.71 KEDLI-1.71
Damages due to Mismarks per 1,000 one-call tickets	KEDNY-0.45 KEDLI-0.69	KEDNY-0.42 KEDLI-0.60	KEDNY-0.42 KEDLI-0.42	KEDNY-0.37 KEDLI-0.37
Damages due to Company and Contractors per	KEDNY-0.10 KEDLI-0.15	KEDNY-0.09 KEDLI-0.13	KEDNY-0.09 KEDLI-0.09	KEDNY-0.08 KEDLI-0.08

317 Ex. 96, pp. 45-50.

318 Ex. 315, pp. 27-29.

319 Pursuant to 16 NYCRR Part 753, excavators are required to provide notice of their intent to perform excavation work by calling a one-call notification system, which provides notice of that information to member utilities that may be affected by the excavation work. A notice received by a utility is referred to as a one-call ticket (Ex. 315, pp. 30-31).

1,000 one-call tickets				

The Joint Proposal also would require the Companies to continue to collect damage data and compute damage performance in accordance with the Gas Safety Performance Measures Report.[320]

The Joint Proposal adopts the damage prevention performance targets requested by the Companies, which, for the most part, are more stringent than the Companies' current performance targets but less stringent than those recommended by Staff in testimony.[321] The Joint Proposal adopts Staff's recommendation that each Company be subject to a total of 18 basis points for failure to meet damage prevention performance targets. The Joint Proposal does not include a positive revenue adjustment for improvement of greater than 10% in a given year, which the Companies requested and Staff opposed.

Emergency Response

Consistent with the testimony by the Companies and Staff regarding the emergency response metric, which is concerned with the time taken by the Company to respond to gas leak and odor calls, sections IV.8.4 and V.8.4 of the Joint Proposal would continue to have the Companies maintain the statewide standards of responding to 75% of leak and odor calls within 30 minutes, 90% within 45 minutes, and 95% within 60 minutes. Failure to meet those targets would continue to

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320 The report, prepared by Staff, summarizes data from performance measures that have been developed collaboratively with the gas utilities since 2003, and makes recommendations for further improvements in safety-related processes. See Case 13-G-0213, 2012 Gas Safety Performance Measures Report (filed June 18, 2013).

321 Ex. 96, p. 52 and Ex. 315, p. 36.

subject each Company to total negative revenue adjustments of 12 basis points in each calendar year, with six points at risk with respect to the 75% target, four basis points at risk with respect to the 90% target, and two basis points at risk with respect to the 95% target. Also consistent with the Companies' testimony and Staff's recommendation, instances of 20 or more odor calls in a two-hour period resulting from a mass area odor issue not caused by the Companies can be excluded upon consent of Staff.

Gas Safety Regulations Performance Metric

Sections IV.8.5 and V.8.5 of the Joint Proposal would subject each Company to negative revenue adjustments of up to a maximum of 100 basis points per Rate Year for violations of certain gas safety regulations identified by Staff during field and records audits. The applicable regulations are specified in Appendix 9 to the Joint Proposal. The number of points assessed would depend on both the number of noncompliance occurrences identified and whether a particular violation is classified in Appendix 9 as "high risk." The number of occurrences within each regulation listed in Appendix 9 would be capped at ten per calendar year, but the Companies would be required to provide Staff with a compliance improvement plan and meet with Staff to develop a mutually agreeable mitigation plan. The Joint Proposal also would establish processes by which the Companies can cure violations involving document deficiencies and appeal Staff's audit results to the Commission. Any noncompliance event that encompasses more than one code section would count as one occurrence for purposes of calculating a negative revenue adjustment. Any negative revenue adjustments assessed under this metric would be deferred for future use to fund gas safety and compliance improvements.

The Gas Safety Regulations Performance Metric in the Joint Proposal essentially follows the recommendation made by Staff in testimony.[322] It does not adopt the Companies' proposal that they be subjected to negative revenue adjustments of 80 basis points in CY 2017, 75 basis points in CY 2018, and 70 basis points in CY 2018, rather than to the 100 pre-tax basis points currently applicable to KEDNY.[323] Nor does it adopt the Companies' proposals to exempt from negative revenue adjustments their self-reported compliance deficiencies and to add a positive revenue incentive of up to ten basis points for delivering safety improvements to be identified at the beginning of each year.

Discussion

No party has objected to any of the provisions included in the Gas Safety Performance Metrics, which are similar to those adopted in the most recent rate extension plan for KEDNY and for other gas utilities in this State.[324] The increased rate of LPP removal is consistent with Commission policy to complete replacement of LPP in approximately 20

322 Ex. 315, pp. 50-51.

323 Ex. 96, p. 62. KEDLI was not previously subject to a gas safety regulations performance metric.

324 Case 12-G-0544, KEDNY-Rate Plan Extension, Order Adopting Terms of a Joint Proposal (issued June 13, 2013); Cases 14-E-0493 and 14-G-0494, Orange and Rockland Utilities, Inc. - Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued October 16, 2015); Cases 15-E-0283, et al., NYSEG and RG&E-Electric and Gas Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (Issued June 15, 2016).

years.[325] The provisions regarding leak repairs will ensure that leak backlog targets stay at acceptable levels and will encourage the Companies to further reduce gas leaks, both of which are in the public interest. The minimum performance levels applicable to the Companies for damage prevention generally are increased, and statewide standards apply to the Companies' emergency responses to leak and odor calls. The gas safety performance metrics will foster compliance with our public safety regulations. While certain provisions of the GSPMs reflect a compromise between the litigation positions of the Companies and Staff, the provisions overall appear reasonable and provide a strong incentive for the Companies to maintain or improve performance in all areas covered.

Calendar Years 2013 and 2014 Metric Results

Starting with CY 2013, KEDNY has been subject to negative revenue adjustments based on the number of violations of certain high-risk and other risk gas safety regulations, as identified by Staff during field and records audits. In CY 2013, KEDNY had 473 violations, consisting of 180 high-risk violations and 293 other risk violations, subjecting it to the maximum negative revenue adjustment applicable to that year of 15 basis points, or $2.7 million. In CY 2014, KEDNY had 154 violations, consisting of 89 high-risk violations and 65 other risk violations, subjecting it to the maximum negative revenue adjustment applicable to that year of 30 basis points, or $5.4 million.[326]

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325 Case 15-G-0151, Order Instituting Proceeding for a Recovery Mechanism to Accelerate the Replacement of Leak Prone Pipe, (issued and effective April 17, 2015), pp. 6-7.

326 Staff Statement in Support, p. 57 and Case 12-G-0544, KEDNY's Verified Petition, pp. 2-4.

In July 2016, KEDNY filed a verified petition seeking, among other things, to modify the gas safety performance metric prospectively starting with CY 2015 to provide that the number of instances of non-compliance with each high-risk and other risk regulation subject to a negative revenue adjustment be capped at 10, a provision that is contained in the current Joint Proposal, as discussed above. KEDNY also proposed that it incur negative revenue adjustments of $1 million for CY 2013 and $2.1 million for CY 2014, that it have the opportunity to reduce the remainder of the negative revenue adjustments for CY 2013 and CY 2014 if it achieves certain performance targets in Staff's CY 2016 audits, and that it be allowed to reinvest any assessed negative revenue adjustments in gas safety and compliance programs. KEDNY argued that its performance under the gas safety regulations performance metric was negatively impacted by a number of instances where it was cited for multiple violations of the same regulation even though the violations arose out of a single compliance issue. KEDNY also stated that it has commenced a series of measures to improve compliance with gas safety regulations, including a Compliance Analysts Program to monitor and document its own compliance and internal work procedures and the hiring of a nationally recognized pipeline safety expert to conduct an independent assessment of its gas operations to identify any compliance gaps and help develop remediation plans.

Under section V.8.6 of the Joint Proposal, KEDNY would initially incur a negative revenue adjustment of $2 million for CY 2013 and $4.9 million for CY 2014, or a total of $6.9 million. The remaining $1.2 million would be adjusted based on KEDNY's performance in Staff's Field and Records Audits of CY 2016, as determined by the number of high-risk violations identified, with a reduction of the full $1.2 million if the audit results establish zero to 19 violations, partial reductions in decreasing amounts for up to 49 violations, and no deduction for 50 or more violations.[327]

None of the parties objects to this provision of the Joint Proposal. As Staff notes, CY 2013 and CY 2014 were the first years that KEDNY was subject to the gas safety violations metric at issue, which has been refined since that time, as reflected by the terms of the metric in the current Joint proposal. KEDNY significantly reduced the number of high risk violations from 2013 to 2014, and it is still subject to negative revenue adjustments for those years in the total amount of $6.9 million. Moreover, KEDNY would be entitled to a reduction of the negative revenue adjustment only if it demonstrates further significant improvement in its performance on the gas safety performance metric in 2016. Going forward, KEDNY would be subject to negative revenue adjustments of up to 100 basis points under the gas safety performance metric. Under these circumstances, the Joint Proposal provision regarding KEDNY's payment of $6.9 million, with the potential to reduce up to $1.2 million in negative revenue adjustments for CY 2013 and CY 2014 only if it meets certain safety targets, is reasonably designed to promote compliance with our gas safety regulation performance metrics and should be adopted.

KEDLI Geothermal Pilot Program

Section V.9.9 of the Joint Proposal would require KEDLI to implement a pilot program to demonstrate geothermal

[327] The Joint Proposal notes that the "Staff Field and Record Audits of CY 2015 are currently in progress and are independent of this provision" (Ex. 506, Sec. 8.6, p. 55 n.16).

heating and cooling as an alternative to either new or existing firm or interruptible gas service. KEDLI would coordinate with local water utilities and Long Island Power Authority/PSEG Long Island, as appropriate, in developing the pilot program. KEDLI's rates would include $0.35 million in Rate Year One and $0.05 million in Rate Year Two and in Rate Year Three for this program. Section V.9.9 addresses Staff's recommendation that the Companies should be required to explore the use of geothermal technologies to improve sustainability and overall system efficiency by displacing peak gas consumption rather than by addressing those needs through the addition of pipeline capacity.[328] As Staff explained at the evidentiary hearing, the pilot program is limited to KEDLI because it has the real estate available to devote to such a program.

None of the parties oppose this provision of the Joint Proposal. The geothermal pilot program is an appropriate step to further State policy goals in encouraging the use of clean, renewable energy while increasing cost-effectiveness and affordability.

Installation of AMR Meters in New York City

Section VI.4 of the Joint Proposal would require KEDNY to install advanced metering information (AMI) adaptable automatic meter reading (AMR) meters on all NYC accounts that currently do not have AMR meters by March 31, 2017. To the extent the anticipated conversion of meters is delayed beyond March 31, 2017 due to causes outside of KEDNY's control that could not be avoided with the exercise of due care, KEDNY would notify the parties and the date would be extended as necessary.

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[328] Ex. 299, pp. 37-38 and Tr. 77-78.

KEDNY is installing AMRs for all its customers and is expediting installation on NYC accounts to address NYC's concern with the number of estimated bills it was receiving from KEDNY.[329] The costs for installing AMRs are included in KEDNY's capital plan and are reflected in base rates. Section VI.4 is not opposed by any party and is reasonable. As NYC notes, the provision should result in noticeable reductions to the number of estimated and adjusted billings to the City.[330]

ESCO Issues

Adopting the recommendations made by Staff in pre-filed testimony,[331] section VI.8.1 of the Joint Proposal would require the Companies to modify the provisions of their tariffs governing the under delivery of gas by energy services companies (ESCOs) to provide that under deliveries in excess of two percent of the required delivery volume will incur a penalty charge of $25 per Dekatherm (Dth) when no operational flow order (OFO) is in effect and $50 per Dth when an OFO is in effect. The charges would be identified as penalties in the Companies' tariffs and Gas Transportation Operations (GTOP) manuals. To the extent that ESCOs and/or transportation customers subject to daily balancing and daily imbalances are cashed out at a daily gas purchase price, any surcharges or discounts applied to such daily price will be identified as penalties in the Companies' tariffs and GTOP manuals. The proposed penalty amounts reflect an increase from the current charges of $10 per Dth when an OFO is not in effect and $25 when an OFO is in effect.

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[329] Ex. 392, pp. 5-6.

[330] NYC's Statement in Support, p. 15.

[331] Ex. 353, pp. 47-49.

Staff testified that the penalty amounts are designed to provide a sufficient incentive to protect system integrity and address the concerns raised by under-deliveries, which can place an unnecessary burden on the distribution system.[332] This provision of the Joint Proposal is unopposed. The proposed changes will help to ensure supply reliability in the Companies' service territories and should be adopted.

The Joint Proposal also addresses managed storage services, which the Companies provide to ESCOs on behalf of transportation customers. Under section VI.8.2 of the Joint Proposal, the Companies would modify the allocation of revenues and credits arising from asset management agreements (AMAs) concerning the Companies' upstream contract storage services so that ESCOs would receive an allocation in an amount equivalent to the ESCO customers' proportionate responsibility for the storage costs. This provision addresses an issue raised by Great Eastern, which testified that credits arising from certain AMAs should be shared equitably with ESCOs.[333] According to Staff, this provision will "ensure that neither full requirement sales customers nor transportation customers possess an unfair cost advantage."[334]

Section VI.8.3 of the Joint Proposal would provide for a collaborative to address ESCO issues raised in these proceedings but not resolved by the Joint Proposal. The collaborative would discuss the development of a process improvement plan for the Companies to address ESCO complaints and would address several issues related to the ESCOs' "equal

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332 Id.

333 Ex. 474, pp. 14-15.

334 Staff Statement in Support, p. 67.

access" to assets, including issues associated with the release of upstream pipeline capacity to ESCOs when their customer loads change and with the release to ESCOs of additional upstream storage and associated firm transportation capacity. A written report of the results of the collaborative would be filed with us by June 1, 2017. If an agreement is not reached, the report will provide the positions of the parties and the areas of dispute for our resolution.

Power Generation Issues

Section VI.9.1 of the Joint Proposal would modify the balancing provisions of the power generation transportation service classifications in the Companies' tariffs to make clear that any (1) surcharges to the daily price applied to a sale of gas to a customer as a result of an under-delivery of gas, or (2) discounts applied to the price credited to a customer for a sale of gas to the Companies as a result of an over-delivery of gas, will be considered penalties as such term is used in the NYISO tariff with respect to the unauthorized use of gas.

The Companies' power generation transportation service classifications require the Companies to balance customer accounts at the end of each day by comparing the customer's natural gas deliveries for the day with the customer's actual usage. Where the gas delivered is more than 2% less than the quantity of gas used, the customer purchases the excess gas used at a surcharge applied to the daily gas purchase price. Where the gas delivered is greater than 2% more than the quantity of gas used, the Companies repurchase the excess gas delivered at rates that are discounted from the daily gas purchase price. The surcharges and discounts increase as the imbalance between the amounts of gas delivered and used increases beyond the plus or minus 2% "tolerance band." Customers also are subject to penalty charges for the unauthorized use of gas during an interruption or in violation of Operational Flow Orders (OFOs).

In testimony, Staff recommended that the daily balancing provisions be clarified to make clear that the cost of gas is reflected in the daily gas purchase price and that the discounts and surcharges applied to that price are in reality penalty charges.[335] Staff explained that those penalties are designed to provide electric generators with an incentive to better manage imbalances, which have the potential to cause cost and reliability issues for firm gas ratepayers.[336] Staff asserted that electric generators should not be allowed to present such penalties as a cost of gas in bids submitted to the New York Independent System Operator, Inc. (NYISO) even though this could result in an increase to the cost of electric power.[337] LIPA disagreed with Staff's recommendation, arguing that current penalty charges for the unauthorized use of gas in violation of OFOs are sufficient to protect system integrity and that the designation of balancing charges as penalties likely would lead to increased electricity prices without increased gas system reliability.[338]

The treatment of balancing charges as penalties is significant under NYISO's tariff, which excludes unauthorized natural gas consumption charges from reference levels calculated by NYISO and from costs that power generators are eligible to

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335 Ex. 353, pp. 48-49.

336 Id., p. 52.

337 Id., p. 60.

338 Ex. 491, pp. 2-8.

recover.[339] It defines "unauthorized" natural gas use to include "use of natural gas balancing services that are explicitly identified in the relevant natural gas LDC's [local distribution company's] . . . tariff, rate schedule or contract as unauthorized use or penalty gas."[340]

FERC approved those provisions over LIPA's objections, rejecting LIPA's arguments that NYISO should distinguish unauthorized gas use from the authorized use of balancing services and allow routine charges for imbalances to be included in generator reference levels. In doing so, FERC recognized that NYISO's tariff only excluded from reference levels balancing charges explicitly identified as penalty charges by the local gas distribution companies, which, FERC pointed out, are in the best position to determine what charges should be treated as a penalty "for the purposes of maintaining the reliability and integrity" of their own natural gas delivery systems.[341]

Although LIPA has not filed a statement in opposition to the Joint Proposal, Potomac, which serves as the Market Monitoring Unit for the NYISO, argues that section VI.9.1 unreasonably changes the definition of the term "unauthorized use" to include balancing charges. Potomac also argues that section VI.9.1 is improperly designed to influence wholesale electric rates that are within FERC's jurisdiction and would render the NYISO tariff unjust because it would exclude

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339 NYISO Market Administration and Control Area Services Tariff, paragraph 23.3.1.4.6.2.1.

340 Id., paragraph 23.3.1.4.6.2.1.1.

341 FERC Docket Nos. ER16-168-000 and ER16-168-001, Order Accepting Proposed Tariff Revisions Subject to Condition (issued February 18, 2016), p. 21.

balancing charges from generator reference levels even though balancing charges do not result from the unauthorized use of gas. Potomac further maintains that section VI.9.1 actually will tend to increase deviations in the use of gas from the delivered amounts, and will lead to large increases in costs to consumers.

We do not find Potomac's arguments persuasive. Section VI.9.1 does not change the definition of unauthorized use, but merely clarifies that balancing charges should be treated as penalties to ensure they achieve their intended purpose to provide an economic incentive for generators to properly manage their imbalances in an effort to maintain the integrity of the natural gas delivery system. Local gas distribution companies are authorized and in the best position to make that determination, which is meant to discourage generators from deviating beyond the 2% tolerance band. Electric generators are sophisticated customers and should be encouraged to keep their imbalances within reasonable bounds to maintain gas system distribution reliability. Potomac offers no record evidence to support its assertions that section VI.9.1 inevitably will lead to increased costs to consumers or will result in greater imbalances.

The parties do not object to the remaining provisions of the Joint Proposal regarding power generation issues, which we determine are reasonable. As recommended in Staff's testimony, which the Companies originally opposed, section VI.9.2 of the Joint Proposal would modify the balancing provisions to conform to the daily balancing provisions of other customers. Daily imbalances less than or equal to 2 percent would be aggregated on a monthly basis and cashed out at a monthly index price. Daily imbalances greater than 2 percent would be cashed out at a daily index price with respect to that portion of the imbalance that is greater than two percent.

In addition, section VI.9.3 of the Joint Proposal would provide for a collaborative to consider power generation issues. The collaborative would be conducted in two phases. Phase one would address implementation of (1) "no-harm, no-foul" balancing provisions under which daily imbalances greater than 2 percent would be cashed out only if there also is a system-wide imbalance for the entire pool of electric generators, (2) monthly trading of imbalances, and (3) implementation of load following or other enhanced balancing services. The parties would file a report concerning phase one issues by April 30, 2017, with either recommendations to us or the positions of the parties in dispute for our resolution.

During phase two, and within 150 days of the filing of the Joint Proposal, the Companies would develop a study with input from Staff and other parties of the costs incurred to serve electric generators, TC and non-firm customers as well as the contributions received from such customers. The collaborative then will develop a report concerning the issues raised in the study, which would be filed by July 1, 2017 and would set forth recommendations or the positions of the parties in dispute for our resolution. At a minimum, the report will contain recommendations concerning (1) value-based and cost-based rate design for power generators, (2) balancing services for customers that take service pursuant to the Companies' tariffs as well as customers with negotiated agreements, (3) changes to the Companies' distributed generation tariffs, and (4) bill impacts associated with any recommended changes.

Reforming the Energy Vision (REV) Demonstration Projects

The Joint Proposal recommends that the Companies implement three demonstration projects during the term of the KEDNY and KEDLI rate plans. The projects are: (i) distribution of flood zone protection packages; (ii) installation of micro combined heat and power (micro CHP) home energy management solutions; and (iii) a commercial demand response program.[342] The JP also commits KEDNY and KEDLI to discussing with Staff how the impact of a broader penetration of the micro CHP pilot on peak demand would be assessed. The overall Rate Year 1 costs for the KEDNY programs would be approximately $1.35 million, which is comprised of approximately $790,000 in capital costs and $560,000 in O&M expenses.[343] The overall Rate Year 1 costs for the KEDLI programs would be about $1.23 million, which is comprised of approximately $750,000 on capital costs and $482,000 in O&M expenses.[344] The Rate Year 2 and Rate Year 3 expenses will be limited to O&M costs, which are adjusted for inflation in the JP.[345]

Flood Zone Packages

KEDNY and KEDLI proposed to distribute 1000 flood zone protection packages to customers located in flood zones, 500 to KEDNY customers and 500 to KEDLI customers.[346] The packages would contain equipment that interfaces with the gas meter and communicates with other devices to detect flooding and excess

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342 Ex. 506, Sec. VI.13. Exhibits 41 (SPM-4) and 47 detail to projected 2017 costs (capital and O&M) for each program.

343 Ex. 525, ALJ-9.

344 Id.

345 Id.

346 Ex. 37, p. 22 and Ex. 42, p. 23.

methane levels, and provides data that could potentially be useful in detecting the use of ovens for distressed heating and theft of service.[347] The equipment would also permit automatic, remote shut-off of a customer's services if any of these conditions were detected and provide notice to customers of these conditions. And, it would monitor pressures and gas compositions and identify opportunities for customers to install energy efficiency measures.[348] KEDNY and KEDLI asserted that the flood protection equipment would protect customers in the event of severe flooding and enable the Companies to test customer behaviors and response to energy efficiency options identified for them.[349] The JP recommends adoption of the flood zone protection package program as proposed.

Commercial DR

The Companies' commercial demand response program would provide a pre-determined market-based credit for each unit of gas demand reduction by commercial firm gas customers who reduce their gas usage by 10%-20%, when called upon to do so by KEDNY or KEDLI pursuant to a preexisting agreement with that company.[350] According to KEDNY and KEDLI, the program would enable them to assess the effectiveness of voluntary peak reductions and the use of market-based credits to drive customers' behaviors.[351]

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[347] Tr. 38.

[348] Ex. 37, p. 22 and Ex. 42, p. 23.

[349] Ex. 37, p. 25 and Ex. 42, p. 26.

[350] Ex. 37, p. 24 and Ex. 42, p. 25.

[351] Ex. 37, p. 25 and Ex. 42, p. 26.

Micro CHP

Under the Joint Proposal's CHP proposal, KEDNY and KEDLI would each install 10 gas-fired micro CHP electric generating units to provide heat, hot water, and supplemental electricity to low income residential customers in low income areas.[352] Each company would lease the units to customers under a shared savings agreement managed by CHP unit vendors.[353] The Companies contend that the micro CHP project will allow them to evaluate the effectiveness of energy savings sharing arrangements and, in coordination with the electric service provider, assess the effectiveness of these units in reducing electric load and deferring future investments in electric infrastructure.[354] They also note that successful deployment of CHP would enhance energy efficiency and the resiliency of electric distribution system, have the potential to reduce the need for future investments to serve electric load and enable customers to benefit from economic conditions that favor the use of gas to generate electricity.[355]

Parties' Positions

Staff is the only party to submit testimony specifically addressing the proposed REV demonstration projects. Although it expressed general support for the three REV demonstration programs in its pre-filed testimony, it noted that any cost and benefit analysis performed of the micro CHP program should include the impact of each unit on the peak day gas

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[352] Ex. 37, p. 23 and Ex. 42, p. 24. The generating capacity of each unit is less than five kilowatts.

[353] Id.

[354] Ex. 37, p. 25 and Ex. 42, p. 26.

[355] Ex. 37, p. 23 and Ex. 42, p. 24.

requirements of the system.[356] And, it proposed a collaborative to consider demand response in an effort to design a replacement or modification of the existing Temperature Controlled (TC) customer class.[357] According to Staff, micro CHP systems have the potential to become a viable component of a demand response program.[358]

The Companies argue that the three REV demonstration projects are but a few of the many programs in the JP that will benefit customers and provide additional support for the Commission's adoption of the terms of the Joint Proposal.[359] CPA states that the three REV demonstration projects in these areas represent important steps towards the achievement of REV goals.[360]

Discussion

REV was instituted in an effort to effect a substantial transformation of electric utility practices and system to maintain system reliability, improve system efficiency and resiliency, empower customer choice, and encourage greater penetration of clean generation and efficiency technologies that reduce fossil fuel emissions.[361] It aims to reorient the electric industry and ratemaking paradigm toward a consumer-centered approach that harnesses technology and markets. Reliability of

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356 Ex. 353, pp. 64-68.

357 Id.

358 Tr. 36.

359 Companies' Statement in Support, p. 21.

360 CPA Statement in Support, p. 3.

361 Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014).

the electric system is of paramount consideration.[362] Increasingly severe weather events have elevated concerns over system reliability, because, with increases in the frequency of major storms, the vulnerabilities of the traditional distribution system are more exposed.[363] Weather-driven forecasts of higher peak loads will exacerbate the inefficiencies of a system that is planned to meet unmanaged demand levels. Although, to date, we have not adopted REV programs expressly targeted to our natural gas utilities, we support economically viable projects to the extent that they advance REV goals and benefit the gas system.

The flood zone protection program offers several desirable benefits. In addition to potentially curbing the release of methane into the environment as a result of flooding and allowing the monitoring of customer behavior to identify opportunities for energy efficiency, the flood zone equipment would protect public health and safety by remotely shutting gas service to premises and notifying customers when flooding or excess methane levels exist. Finally, the overall cost of the programs for KEDNY and KEDLI and the unit cost of the flood protection packages are relatively low in comparison to the potential benefits.

With respect to the proposed commercial demand response program, such demand response programs are considered a viable REV distributed energy resource.[364] The program

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[362] Case 14-M-0101, Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015), p. 2.

[363] Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2016), p. 3.

[364] Id., p. 3, n. 3.

recommended in the Joint Proposal has the potential to yield significant reliability benefits for the electric system from a 10% - 20% reduction in commercial gas usage during peak demand periods. This program also has the potential to provide substantial benefits to the gas system through the reduction of system load during peak periods. And, the projected capital and O&M costs for the KEDNY and KEDLI programs (approximately $420,000 for KEDNY and $300,000 for KEDLI) appear reasonable in light of the potential gas system benefits that might result from this program.[365]

Regarding the micro CHP program, one of the stated goals of REV is to encourage CHP as a distributed energy resource, in part, because overall system efficiency can exceed combined efficiencies of separate electric generation and can result in lower customer loads on the electrical system.[366] We agree with Staff's conclusion that the micro CHP project could assist in testing the viability of this distributed energy resource and the potential to avoid upgrades to the electric system in a particular constrained area, as well as the impact of micro CHP systems on the overall peak demand on the electric and gas systems.[367] The Companies note that, in addition to testing the technology to see how micro CHP would work with the KEDNY and KEDLI systems, there is a potential benefit by providing these units in a service area where the low income customers can rely on it.[368] We believe that, under the circumstances, a micro CHP program limited to 10 customers for

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[365] Exs. 41 and 47.

[366] Case 14-M-0101, Order Adopting Regulatory Policy Framework and Implementation Plan, p. 43 and App. B, pp. 14-15.

[367] Tr. 35-36 and Staff Statement in Support, p. 72.

[368] Tr. 35.

each company would provide a statistically representative sample of the electric and gas peak system impacts from which a determination could be made that the CHP program would warrant broader application in the future. We concur with the Companies conclusion that the program will, at a minimum, provide sufficient data for the Companies to assess the effectiveness of these energy savings sharing arrangements and the units in reducing electric load and deferring future investments in electric infrastructure, as well as whether further deployment of these units would reduce the need for future electric system investments and enhance electric system resiliency.

The pre-filed testimony of the Companies and Staff, along with their testimony at the evidentiary hearing and written response to the judges' questions,[369] provide sufficient details regarding the REV demonstration projects to indicate that the REV goals could be advanced by successful deployment of the three demonstration projects. Staff says that the JP establishes a dialogue between Staff and the Companies to assess the impact of the pilot projects on peak day gas demand requirements.[370] We expect that dialogue, however, to include an assessment of each of the REV demonstration projects. The Companies shall submit annual reports, within 45 days after the end of each rate year, providing the status of the implementation of each project and any preliminary findings made. We, therefore, adopt the Joint Proposal's REV demonstration projects and the annual reporting requirement.

[369] Ex. 525, ALJ-34.

[370] Ex. 506, Sec. VI.13.

AUDIT COMPLIANCE

Public Service Law (PSL) §66(19)(c) requires the Commission, upon the application of a gas or electric corporation for a major change in rates, to review the corporation's compliance with the directions and recommendations made previously by the Commission, as a result of the most recently completed management and operations audit. In 2013, the Commission instituted a comprehensive management and operations audit of National Grid USA's New York gas companies, including KEDLI and KEDNY.[371] The Commission thereafter approved National Grid USA's plan to implement recommendations of the consultant, NorthStar Consulting Group.[372]

In pre-filed testimony the Companies and Staff discussed KEDLI's and KEDNY's overall compliance with the 2015 Audit Order, as well as the status of other ongoing audits.[373] The consultant's report contained 31 recommendations for improvement and each recommendation was accompanied by a Customer Benefit Analysis that detailed anticipated costs and benefits associated with implementing the specific recommendations, as well as potential risks of not implementing

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[371] Case 13-G-0009, Comprehensive Management and Operations Audit of National Grid USA's New York Gas Companies, Letter to Thomas King (dated June 13, 2013).

[372] Id., Order Approving an Implementation Plan (issued May 14, 2015) ("2015 Audit Order").

[373] Ex. 30, pp. 6-12; Ex. 320, pp. 5-6. Case 13-M-0314, Review of Reliability and Customer Service Systems of NYS Gas and Electric Utilities (instituted July 16, 2013) ("Data Audit"). Staff also discussed the status of Case 13-M-0449, Operations Audit of Major Utility Internal Staffing Levels and Use of Contractors for Selected Core Functions ("Staffing Audit"). The Commission did not issue an order in either case directing implementation of any specific audit recommendations.

the recommendation.[374] The Companies and Staff agreed that most of the 31 recommendations, adopted as part of the 2015 Audit Order, have been implemented. Staff further noted that, although none of the implemented recommendations have been completed, the Companies' implementation efforts have been satisfactory.[375] Notwithstanding incompletion of the recommendations, Staff recommended adjustments to the proposed KEDLI and KEDNY revenue requirements, which include removal of certain full time equivalent employee (FTE) positions and an adjustment to reflect audit productivity savings.[376] The Companies note that these adjustments are reflected in the JP's revenue requirements for KEDLI and KEDNY.[377] They also point out that the JP incorporates recommendations generated from the Data Audit's review of reliability and customer service systems, including the damage prevention gas safety metric and the adjusted bills customer service quality metric.[378]

We find, pursuant to PSL §66(19)(c), that KEDNY and KEDLI are currently in compliance with the directives and recommendations in our 2015 Audit Order, the most recently completed audit for these companies.[379] Although we are not prejudging or limiting the ultimate adjustments and savings that might be produced as a

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[374] 2015 Audit Order, Attachment A, p. 4.

[375] Ex. 320, p. 9.

[376] Id., pp. 19-22.

[377] Companies' Statement in Support, pp. 24-25.

[378] Case 13-M-0314, Review of the Accuracy and Effectiveness of Reliability and Customer Service Systems of NYS Gas and Electric Utilities (instituted July 16, 2013). Reporting of compliance with recommendations developed in this audit would not otherwise be required by PSL §66(19)(c) since the audit has not been completed.

[379] Case 13-G-0009, supra.

result of the completion of other ongoing audits involving the Companies, we support and adopt the Joint Proposal's recognition of the employee adjustments and productivity savings generated from those audits.

Implementing Provisions

The Joint Proposal contains numerous provisions implementing agreements among the parties, which do not require our adoption. Those provisions, enumerated in the ordering clauses below, are not disapproved, but their terms are not adopted as part of this order.

CONCLUSION

We find that the record compiled in these cases is complete and supports our decision to adopt the terms of the Joint Proposal as proposed by the signatory parties, with the slight modification or clarification discussed above regarding annual reporting on the REV demonstration projects. We conclude from our review of the record that the Joint Proposal provides a fair and impartial balancing of the interests of ratepayers and the Companies and their investors. It provides sufficient funding for KEDNY and KEDLI to maintain safe and reliable service and attract necessary capital to ensure the long-term viability of the Companies, while mitigating the ratepayer impact through levelization of the revenue increases. We note that KEDNY's and KEDLI's customers have benefited from several years of unchanged base rates, despite continuing significant increases in the Companies' operating expenses and plant investments. The Joint Proposal provides reasonable resolutions for the vast majority of issues raised in the pending cases and, for those that were not concluded, sets forth the processes for resolving the issues. It recommends funding levels and programs that are within the range of outcomes that might be expected as a result of the cases being fully litigated. The fact that the JP was executed by eight parties of varying interests, in addition to the Companies, demonstrates the parties' extensive efforts to address and resolve the outstanding issues to the extent practicable. Finally, the terms of the JP also evidence its consistency with our environmental, social and economic policies and those of the State.

We, therefore, find that the rates plans established herein for KEDNY and KEDLI will provide just and reasonable rates and are in the public interest.

The Commission orders:

1. The rates, terms, conditions, and provisions of the Joint Proposal dated September 7, 2016, filed in these proceedings and attached hereto as Attachment 1, with the exceptions of Sections VII.1, VII.2, VII.3, VII.6, VII.7 and VII.8, are adopted and incorporated herein to the extent consistent with the discussion herein.

2. The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) is directed to file a cancellation supplement, effective on not less than one day's notice, on or before December 23, 2016, cancelling the tariff amendment and supplements listed in Attachment 2.

3. KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I. (KEDLI) is directed to file a cancellation supplement, effective on not less than one day's notice, on or before December 23, 2016, cancelling the tariff amendment and supplements listed in Attachment 3.

4. KEDNY and KEDLI are authorized to file, on not less than one day's notice, to take effect on January 1, 2017 on a temporary basis, such tariff changes as are necessary to effectuate the terms of this Order for the rates in the rate

year beginning January 1, 2017, and to incorporate any tariff amendments that were previously approved by the Commission since the tariff amendments listed on Attachment Nos. 2 and 3 were filed.

5. KEDNY and KEDLI shall serve copies of their filings on all active parties to these proceedings. Any party wishing to comment on the tariff amendments may do so by filing an original and five copies of its comments with the Secretary to the Commission and serving its comments upon all active parties within ten days of service of the tariff amendments. The amendments specified in the compliance filings shall not become effective on a permanent basis until approved by the Commission and will be subject to refund if any showing is made that the revisions are not in compliance with this Order.

6. KEDNY and KEDLI are directed to file such further tariff changes as are necessary to effectuate the rates for Rate Year 2 beginning January 1, 2018, and for Rate Year 3 beginning January 1, 2019. Such changes shall be filed on not less than 30 days' notice to be effective on a temporary basis.

7. On June 17, 2016, KEDNY and KEDLI moved for an extension of the suspension period to February 1, 2017. On July 21, 2016, KEDNY and KEDLY moved for an extension of the suspension period to March 1, 2017. Because this order is made within the suspension period to and including December 28, 2016, those motions are dismissed as moot.

8. The requirements of the Public Service Law §66(12)(b) that newspaper publication be completed prior to the effective date of the amendments for Rate Year 1 is waived; provided, however, that KEDNY and KEDLI shall file with the Secretary of the Commission, no later than six weeks following the effective date of the amendments, proof that a notice to the

public of the changes set forth in the amendments and their effective date has been published once a week for four consecutive weeks in one or more newspapers having general circulation in the service territory. The requirements of Public Service Law §66(12)(b) are not waived with respect to Rate Year 2 and Rate Year 3, or with respect to tariff filings in compliance with this order made in subsequent years.

9. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

10. Cases 14-G-0091, 14-G-0503, 13-G-0498, and 11-G-0601 are closed and the proceedings in Cases 12-G-0544, 16-G-0058 and 16-G-0059 are continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary