

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 14, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman  
James S. Alesi

CASE 15-G-0298 - Proceeding on Motion of the Commission  
Regarding a Natural Gas Incident Located at 21  
Old Country Road, Water Mill, NY on  
February 11, 2015.

ORDER APPROVING JOINT PROPOSAL AND USE OF SETTLEMENT FUNDS

(Issued and Effective June 14, 2018)

BY THE COMMISSION:

INTRODUCTION

On February 11, 2015, an explosion occurred at 21 Old Country Road in Water Mill, New York. The explosion destroyed the property and seriously injured two people inside the residence, who were air-lifted to the hospital. No one had been living at the residence at the time of the explosion. The incident was caused when the workers, who were performing demolition inside the home, struck a gas pipe in the basement through which gas service had been provided by KeySpan Gas East Corporation d/b/a National Grid (KEDLI, National Grid).

This case was commenced with an Order to Show Cause requiring National Grid to show cause why either a Public Service Law (PSL) §25 civil penalty action or a Public Service Law §25-a administrative penalty action should not be commenced

against National Grid for violations of gas safety regulations that appeared to have caused or contributed to the incident and the two injuries.<sup>1</sup> Prior to further Commission steps to pursue a civil or administrative penalty action, settlement discussions took place.

On January 29, 2018, the Department of Public Service (DPS, Department) and the Company signed a Joint Proposal (JP). As described more fully below, the JP, pursuant to which National Grid shareholders will fund a \$1.98 million deferral to be used for gas safety programs benefiting ratepayers, is consistent with Commission guidelines for settlements and is in the public interest. It is, therefore, approved.

In conformance with the State Administrative Procedure Act (SAPA) §202(1), notice of the proposed use of funds for ratepayer benefit was published in the State Register on March 13, 2018 [SAPA No. 15-G-0298SP1]. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on May 14, 2018. On May 2, 2018, KEDLI filed its Statement in Support of the JP (National Grid Statement in Support) and on May 8, 2018, the DPS filed the Staff Statement in Support (Staff Statement in Support). No other comments were received.

#### BACKGROUND

After the gas incident at 21 Old Country Road in Water Mill, New York, DPS investigators concluded that the cause of the explosion was the release of gas, the service for which had not been locked despite the customer's notice that no one would be living in the home for some time. The Department's investigation culminated in an Incident Investigation Report, which was filed in our Document and Matter Management system on

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<sup>1</sup> Order Initiating Proceeding and to Show Cause (issued September 14, 2017) (Order to Show Cause).

September 12, 2017. DPS investigators identified two violations of the PSC's regulations.

On September 14, 2017, the Commission issued an Order Instituting Proceeding and to Show Cause why the Commission should not bring a penalty action against KEDLI for these violations. The Order to Show Cause identified two potential violations of our code of gas safety regulations. The first, 16 NYCRR §255.727(d), required KEDLI to disconnect or lock the service to 21 Old Country Road when the customer asked that gas service to the building be discontinued. The second, 16 NYCRR §255.603(d), required the Company to follow its own procedures for discontinuing gas service. Rather than filing a formal response, KEDLI reached out to Staff to discuss settling the matter.

As the only parties to an enforcement proceeding, the Department and the Company commenced negotiations and reached agreement that the violations would be settled for \$1.98 million, \$500,000 of which would be deemed a penalty. Because the JP included use of the \$1.98 million in settlement funds "for the benefit of ratepayers," the proposed use of settlement funds required public notice.<sup>2</sup> To that end, KEDLI filed a Notice of Settlement on February 13, 2018.<sup>3</sup> The proposed use of the funds included in the JP was thereafter published in the State Register.

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<sup>2</sup> Public Service Law 25-a(7) states, "[a]ll moneys recovered pursuant to this section, together with the costs thereof, shall be remitted to, or for the benefit of, the ratepayers in a manner to be determined by the commission."

<sup>3</sup> See 16 NYCRR §3.2, which requires notice "to all persons who participated in either of the subject utility's two most recent proceedings of the same or similar type."

LEGAL AUTHORITY

Public Service Law §25 authorizes the Commission to commence penalty actions in civil court if any "public utility company, corporation or person and the officers, agents and employees thereof" violates the PSL, an order of the Commission, or a regulation if the regulatory violation caused or contributed to a personal injury. Similarly, PSL §25-a, enacted in 2013, authorizes commencement of an administrative penalty action against "a combination gas and electric corporation and the officers thereof" for violations of Commission orders, the PSL, or regulations.

SETTLEMENT STANDARD

In Case 15-G-0171, the Commission first determined "the significance of the Joint Proposal [in PSL §25-a penalty actions] to be the same as that attributed to Joint Proposals submitted to us in other cases."<sup>4</sup> Citing the Commission's "Procedural Guidelines for Settlements" in Cases 90-M-0225 and 92-M-0138 - Procedures for Settlement and Stipulation Agreements the Commission applied the standard for approving JPs, stating,

Our guidelines for the evaluation of Joint Proposals, in general, identify three criteria which could be used to assess the extent to which the recommendations found in a Joint Proposal are coincident with the public interest. These three factors are:

1. A balance of the protection of ratepayers, fairness to investors, and long-term viability of the utility,
2. Consistency with environmental, social, economic policy,

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<sup>4</sup> See Case 15-G-0171 - In the Matter of a Natural Gas Incident at 310 Paige Street, Schenectady on August 10, 2014, in the Service Territory of Niagara Mohawk Power Corporation d/b/a National Grid, Order on Consideration of Settlement (issued December 16, 2016) (Paige Street Order) at 4.

3. Results within the range of likely litigation outcomes.<sup>5</sup>

Finally, in "judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties."

SUMMARY OF SETTLEMENT

In the Joint Proposal, National Grid commits its shareholders to fund two gas safety programs and will establish a deferral at shareholders' expense in the amount of \$1.98 million, of which \$500,000 will be deemed a penalty under PSL §25-a.<sup>6</sup> In the first program, KEDLI states, shareholders would use the \$500,000 penalty to create and implement a public education campaign for small construction crews and homeowners. In KEDLI's experience, small contractors and homeowners would benefit from information on the value of contacting their utilities before performing inside renovations to avoid incidents like Water Mill. Confirmation that all inside utilities had been completely disconnected prior to commencing renovations would have prevented the Water Mill incident.

In the second program, National Grid shareholders would pay to install excess flow valves (EFVs) in KEDLI's service territory, a \$1.48 million effort that also will

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<sup>5</sup> See Settlement Procedures, as filed in Case 11175, Opinion 92-2, dated March 24, 1992, at Appendix B, 15-G-0171. See also Order on Consideration of Settlement (issued December 16, 2017) (Paige Street order) at 7. As the Paige Street order stated, "Taken together, our statute, the Code of Gas Safety, and the procedures specified in the Code for locking gas service when such service will be discontinued are a good reflection of our environmental, social, economic policies."

<sup>6</sup> The Joint Proposal refers to the funding for the two gas safety programs as the result of the creation of a "deferral." In this Order, it will be referred to as a "regulatory liability."

improve gas safety. DPS Staff states that, had EFVs been installed at 21 Old Country Road, the explosion would not have been as severe because less gas would have been flowing to the residence.<sup>7</sup> While EFVs have been installed in some areas of KEDLI's service territory, customers have had to request them; therefore, the area can benefit from more EFVs.<sup>8</sup> The Company will submit to Staff a risk-based proposal on where the EFVs from this case will be installed.

In the Joint Proposal, Staff and the Company agree that the execution of the Joint Proposal is not an admission of liability by the Company. The Company and Staff also agree that any violation of law is expressly denied.

#### PARTIES' STATEMENTS

In its Statement in Support, National Grid explains that, while outreach efforts with respect to preventing third-party excavator damage have been "robust," less attention has been paid to preventing damage to "inside gas facilities from homeowners or home improvement contractors performing demolition and renovations activities."<sup>9</sup> Thus, the "outreach and education program targeted directly at homeowners and home improvement contractors engaged in construction and demolition activities" will prevent further incidents like Water Mill.<sup>10</sup>

National Grid further describes the practices it has adopted to prevent gas services from remaining unlocked when

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<sup>7</sup> Staff Statement in Support at 3.

<sup>8</sup> As of 2017, operators were required to inform customers of their right to have an EFV added to gas service lines, regardless of the service line's date of installation.

<sup>9</sup> National Grid Statement in Support at 7. National Grid goes on to explain in detail what its education program will include.

<sup>10</sup> National Grid Statement in Support at 1.

there is no customer of record. These efforts include training employees about inactive accounts, improved customer communications, and commencing a replevin process. Through these efforts and others, National Grid now locks "the vast majority of accounts" within 30 days.<sup>11</sup>

With respect to EFV installation, National Grid states that the settlement funds will pay for the installation of "hundreds" of EFVs in KEDLI's service territory.<sup>12</sup>

Finally, National Grid states, "Given that the Company's shareholders will fund the full amount of the settlement that includes a significant financial component and reinvestment in gas safety programs benefiting customers, such an outcome is clearly within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding."<sup>13</sup>

In its Statement in Support, Staff states it supports the public education campaign, noting that the program will include a direct mail campaign to individual residents and small contractors as well as in-person training/education sessions. The expectation is that such outreach will prevent incidents like Water Mill.<sup>14</sup>

Department Staff explains in detail the history of EFVs.<sup>15</sup> Staff states that "EFVs benefit ratepayers because they reduce the risk and magnitude of explosions on natural gas

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<sup>11</sup> National Grid Statement in Support at 8-9.

<sup>12</sup> National Grid Statement in Support at 6.

<sup>13</sup> National Grid Statement in Support at 5.

<sup>14</sup> Staff Statement in Support at 5.

<sup>15</sup> Staff Statement in Support at 6-7.

distribution pipelines by shutting off unplanned, excessive gas flows.”<sup>16</sup>

#### DISCUSSION AND CONCLUSION

This was the second National Grid gas incident within one year that was attributable to an unlocked gas service. Six months before the Water Mill incident, in August 2014, the Paige Street incident occurred. In approving the JP in that case, the Commission stated,

[o]ur Code of Gas Safety regulations is comprehensive and specific. It is susceptible to strict compliance, and we expect utilities to achieve the highest level of compliance. Indeed, compliance with the Code is one of the most important ways that utilities make gas service safe as required by our statute. Because of the direct relationship between the Code and customer safety, strict and uncompromised compliance with the Code provisions must be the touchstone for the Code’s enforcement.<sup>17</sup>

Consistent with this, part of the \$1.98 million regulatory liability that will be created by shareholder funds, \$500,000, is deemed a penalty pursuant to Public Service Law §25-a.<sup>18</sup> It shall be used to benefit ratepayers, as PSL §25-a(7) requires, by funding a new public education effort that focuses on educating those who perform small, inside renovations on the need to make sure utilities have been disconnected.

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<sup>16</sup> Staff Statement in Support at 7.

<sup>17</sup> Paige Street Order at 9.

<sup>18</sup> It is important to recognize the significant difference in income tax treatment between what is considered to be a penalty amount versus the remaining regulatory liability amount, even though both are coming from shareholder funds. The identified penalty amount is not allowed to be deductible for State and federal income tax purposes, whereas the use of the remaining regulatory liability amount would be deductible for income tax purposes.



KEDLI shareholders will also fund an expansion of EFVs in KEDLI's service territory with the remaining \$1.48 million regulatory liability amount. As DPS Staff explains, had an EFV been installed at 21 Old Country Road, the explosion that occurred would not have been as destructive or harmful to the two workers who were injured.<sup>19</sup> EFV placement at other locations in KEDLI's service territory could prevent incidents altogether but will, at least, minimize the impact of gas incidents where an EFV has been installed.

The settlement terms in this case are in the public interest. At the expense of shareholders, National Grid will commence an unprecedented public education campaign to inform inside demolition contractors of the need to contact utility companies prior to performing inside demolition. On Long Island in particular, where residents continue to repair damage caused by Super Storm Sandy, the direct notice to homeowners reminding them of the need to turn off utilities before major inside renovations begin is a worthwhile program.

This incident could have been avoided altogether had the gas services at the curb been locked; however, it also could have been far less severe had an excess flow valve been in place at the time of the explosion. The JP provides for the addition of EFVs and that the Company shall share with DPS Staff a risk-based analysis of which services will receive an EFV. This provision is modified to require that the plan must be submitted to the DPS Chief of Pipeline Safety within 30 days of the issuance of this Order and that DPS Staff must find the Company's proposed plan to be reasonable. With respect to the costs associated with these programs, the costs should be excluded from the computation in any earnings sharing

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<sup>19</sup> Staff Statement in Support at 3.

calculation, and normalized out of any historical test year period that is used in a future rate filing to establish delivery rates.

The JP is fair to investors in that these safety improvements will minimize or even avoid future liability exposure associated with possible gas incidents. For ratepayers, both programs will improve overall gas safety. The \$1.98 million shareholder payment in lieu of litigating two violations of Commission gas safety regulations reasonably reflects the possible litigated outcomes of this case. For these reasons, the settlement is adopted as in the public interest, and is consistent with PSL 25-a(7) and Commission settlement guidelines.

As with all penalty action settlements, National Grid shall submit an annual report on the progress made in each of the areas for which JP funds are assigned. The first report shall be due December 15, 2018 and annually thereafter until all funds are spent.

The Commission orders:

1. The January 29, 2018 Joint Proposal is approved.
2. KeySpan Gas East Corporation d/b/a National Grid shall, within 30 days of the date of issuance of this Order, submit its risk-based analysis for installing Excess Flow Valves in the KeySpan Gas East Corporation d/b/a National Grid service territory for Department agreement that such analysis is reasonable.
3. KeySpan Gas East Corporation d/b/a National Grid shall submit an annual report on the progress made in each of the areas for which Joint Proposal funds are assigned. The first report shall be due December 15, 2018 and annually thereafter until all funds are spent.

4. Case 15-G-0298 is closed pending compliance with all filing requirements as stated in this Order and the Joint Proposal.

By the Commission

(SIGNED)

KATHLEEN H. BURGESS  
Secretary