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.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE STAFF RESPONSE TO PETITION FOR REHEARING

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INTRODUCTION

On December 16, 2016, the Commission issued an Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans (Rate Order) in the above captioned proceedings. The Rate Order set rates for The Brooklyn Union Gas Company d/b/a National Grid NY (Grid-NY) and KeySpan Gas East Corporation d/b/a National Grid (Grid-LI) (collectively, the Companies). On January 17, 2017, the Public Utility Law Project of New York, Inc. (PULP) filed a Petition for

Rehearing (Petition). This Response addresses the issues raised in the Petition and recommends that the Commission deny the Petition.

ISSUES RAISED BY PULP

In its Petition, PULP raises three issues. First, PULP asserts that the Rate Order lacks a statutory or public policy basis for the decision that the Companies "should now be permitted to recover the bulk of their Site Investigation and Remediation (SIR) costs through base rates." Second, PULP asserts that not requiring the Companies' shareholders to shoulder some portion of SIR costs contravenes "the market-incentive concept, which the Commission insists is one of the foundation concepts of its Reforming the Energy Vision (REV)" initiative. Third, PULP asserts that the bill impacts included in the Rate Order relied on a wholesale gas cost that, according to PULP, was out of date.[1]

STANDARD FOR REHEARING

The Commission's regulations at 16 NYCRR §3.7(b) state that "rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."

DISCUSSION

As explained below with regard to each of its claims, PULP has not raised substantial issues that demonstrate any of the three grounds upon which a petition for rehearing may be sought. Accordingly, the Petition should be denied.

SIR Cost Recovery

Within its two arguments regarding SIR cost recovery, PULP makes a number of assertions. First, PULP makes a number of assertions that merely seek

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[1] Petition, pp. 3-4. The Petition pages are not numbered, the page numbers cited in this Response refer to the page of the PDF file of the Petition.

to re-hash arguments fully litigated in Case 11-M-0034, in which the Commission considered SIR cost recovery on a generic basis.

It is easiest to begin addressing PULP's arguments within the context of a review of the evolution of the consideration of SIR costs by the Commission. In a rate proceeding regarding another National Grid operating company, Niagara Mohawk Power Corporation d/b/a National Grid (Grid-Upstate), soon after National Grid assumed ownership of Grid-NY and Grid-LI in 2007, Grid-Upstate noted the unavoidability of the site investigation and remediation work. Grid-Upstate also recognized that its SIR obligations arise from its legacy business operations and they do not pertain to the Company's current business of providing electric and gas delivery service.[2] However, the Commission recognized at that time the fundamental elements of site investigation and remediation work was the importance of thorough, timely cleanups, both for public health and for economic vitality of affected communities.[3]

The Commission explained that it is the responsibility of utilities to further the twin goals of both thorough and timely clean ups. Despite the Commission having established a sharing mechanism in that case, the Commission specifically noted that mechanism was intended only as an interim measure.

> The mechanism would remain in effect until revised by a Commission order. Because this provision will only apply to costs exceeding the allowance, it reflects a reasonable interim approach pending the development and analysis of alternative cost sharing arrangements which could focus incentives more directly on the cost effective, timely and thorough remediation of the contaminated sites.[4]

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[2] Case 10-E-0050, Initial Brief of Niagara Mohawk Power Corporation d/b/a National Grid Initial Brief (dated October 8, 2010), p. 195.

[3] Case 10-E-0050, Order Establishing Rates for Electric Service (issued January 24, 2011) (Grid-Upstate Rate Order), p. 105.

[4] Grid-Upstate Rate Order, p 106, n. 40.

At the same time as it set up this interim sharing mechanism, the Commission directed advisory staff to present the Commission with a proposal for a proceeding to examine this issue on a statewide basis. The Commission stated that the proceeding should:

> develop a comprehensive record to describe the scope of the utility SIR programs in our State and their anticipated scope in the future, review the processes used by our utilities to develop and implement the SIR implementation plans, and review existing and alternative cost sharing mechanisms or other forms of incentive that could be adopted to further the goal of accomplishing thorough, timely clean-ups with the least impact on ratepayers.[5]

Soon after, the Commission commenced Case 11-M-0034, the Generic SIR Proceeding.[6] Ultimately, the Commission issued an order in the Generic SIR Proceeding that made findings on a number of issues and provided a structure for review of utilities' SIR costs in individual rate cases, such as the instant proceedings.[7]

Among the SIR Order's findings, the Commission determined that relying on a strict "used and useful" formula when considering recovery of SIR costs was inappropriate. Although PULP recommends the "used and useful" formula in its Petition,[8] it fails to acknowledge the extensive review undertaken and findings made in the Generic SIR Proceeding. The SIR Order explains that the Commission fully considered the arguments by the parties in that proceeding that it should apply the "used and useful" standard when considering recovery of SIR costs. The Commission concluded that there is no required formula, i.e., "used and useful,"

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5 Grid-Upstate Rate Order, pp. 106-107.

6 Case 11-M-0034, Review and Evaluation of Utilities SIR Costs, Order Instituting Proceeding (issued February 18, 2011).

7 Case 11-M-0034, supra, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012) (SIR Order).

8 Petition, pp. 8-9.

that it must follow to carry out its mandate to set just and reasonable rates. The Commission continued, stating that its consistent application of "the general principle of allowing recovery of prudent costs is a factor in satisfying investor expectations and in maintaining a predictable regulatory environment." The Commission acknowledged that, in commencing the Generic SIR Proceeding, it voiced concerns that customers who are paying for the remediation are not those who benefited from the manufactured gas plants (MGP) themselves. However, the Commission found, inter alia, that the risk of an increase in the utility cost of capital following the adoption of sharing is "sufficiently credible and disturbing to lead us to reject adopting a generic sharing policy."[9] The SIR Order does explain that "sharing as an incentive in specific cases may be useful to ensure utility attention to cost controls."[10] Specifically, the SIR Order notes that sharing would be appropriate if there were "indications, in future rate reviews, that a utility's cost controls are inadequate" or if the utility's practices stray from the adopted best practices.[11] Neither of these circumstances are present in these proceedings, as the Commission found in the Rate Order.[12] PULP has not provided any evidence to suggest an infirmity or error in that analysis, rather it simply advocates the use of a different standard. Mere disagreement with the conclusion reached in an order does not constitute grounds to sustain a petition for rehearing.

In addition, PULP asserts that "prudence of costs, and compliance of [sic] the SIR Order, were not raised as an issue in this case, nor in PULP's opinion should they be reasons for why cost sharing of these superfund cleanup costs can be summarily ignored."[13] This statement contains a number of infirmities. First, the

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9 SIR Order, p. 12.

10 SIR Order, p. 21.

11 SIR Order, p. 22.

12 Rate Order, pp. 85-86.

13 Petition, p. 10.

framework set forth in the SIR Order requires a review of the prudence of the costs the Companies seek to recover, as well as the Companies' compliance with the other requirements of the SIR Order, such as the use of best practices for cost containment. PULP is mistaken when it asserts that these issues were not raised in this case, as they were the subject of both the Companies' and Staff's pre-filed testimonies.[14] Furthermore, PULP's assertion that its proposed cost sharing was "summarily ignored" is also erroneous. The Commission was correct to reject PULP's proposal as PULP provided no evidence supporting its appropriateness. PULP had ample opportunity, but failed to explain why cost sharing was appropriate beyond asserting that the overall level of SIR costs warranted sharing. The Generic SIR Proceeding involved extensive analysis of cost sharing for cost sharing's sake and rejected it.[15] The SIR Order found that sharing would be appropriate as a tool to redress "indications, in future rate reviews, that a utility's cost controls are inadequate." The record in this case demonstrates that the Companies had adequate cost controls and complied with the SIR Order. PULP provides no evidence to suggest otherwise. Thus, PULP's assertions point to a disagreement about the structure of the review, not to an error of fact, law or new facts. Accordingly, as PULP's assertions fail to meet the required basis for sustaining a petition for rehearing, the Petition should be denied.

The SIR Order also found that utilities are required 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.[16] The annual reporting is to be done utilizing a prescribed template. The template

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[14] See, Exs. 62-84, Prepared Testimony and Exhibits of Charles Willard; Exs. 318-319, Prepared Testimony and Exhibits of the Staff SIR Panel. "Ex(s)." refers to the exhibits admitted into the evidentiary record in these proceedings.

[15] See the discussion, supra, regarding the Commission's consideration of applying the "used and useful" standard.

[16] SIR Order, p. 5.

includes a space where the utility has the opportunity to explain any additional cost-containment strategies in addition to the "best practices." PULP asserts that the inclusion of this space equates to a mandate that utilities undertake additional cost-containment strategies in addition to best practices, and that the Companies in most instances did not do so.

PULP's argument lacks merit. There is no language in the annual reporting template that establishes an expectation that the utilities will implement cost management and mitigation strategies beyond what is included in the Inventory of Best Practices for Utility SIR Programs. In fact, the SIR Order contemplates the Inventory of Best Practices for Utility SIR Programs to "…serve as a benchmark for evaluation of future SIR activity."[17] It should also be noted that the annual reporting template does not establish any requirements that a utility must satisfy in order to seek rate recovery of SIR expenditures. The Companies' have provided an attestation of their compliance with the Inventory of Best Practices for Utility SIR Programs, as required by Ordering Clause 3(2) of the SIR Order, and a comprehensive description of their cost management and mitigation strategies. PULP's assertion that additional methods for cost containment are required in order to satisfy the Commission's requisites for recovery of SIR expenditures is unsubstantiated.

The SIR Order also addresses incentive ratemaking, rejecting the idea of applying incentive ratemaking to SIR cost recovery in all cases, but instead applying it only in limited circumstances. It states that if a utility's "practices [are] shown to stray from an adopted best practices compilation, a specific incentive plan can be crafted to reward improvement, deter backsliding, or both."[18] Thus, PULP's argument that what it calls "REV principles," which it terms the "market-incentive

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[17] SIR Order, p. 30.

[18] SIR Order, p. 22.

concept," must be applied to SIR in this case is misplaced. PULP rests its argument on the fact that "the Commission's REV orders don't explicitly exempt SIR."

First, that SIR cost recovery was not explicitly exempted in the Commission's REV orders does not equate to a requirement that the "market-incentive concept" be applied to SIR cost recovery. PULP does not even assert that the Commission considered SIR cost recovery in the REV proceeding. Thus, it is illogical to read those orders as mandating certain treatment of SIR costs. Furthermore, as noted above, the SIR Order did consider incentive ratemaking for SIR cost recovery, and found that it would be appropriate where a utility's performance needed improvement or where a deterrent to backsliding was warranted. PULP has submitted no evidence on this issue, it merely asserts that cost sharing should be imposed. As PULP has not demonstrated an error of fact or law in the Rate Order, the Petition should be denied.

In addition to PULP's re-litigation of issues from the Generic SIR Proceeding, it makes a number of claims in the Petition that warrant attention. First, PULP asserts that, "while scope and timing of MGP site clean-up may fall under DEC's primary control, the costs incurred for site investigation and remediation activities are reviewed and approved by the PSC and the DEC consent orders with the Companies recognize the PSC's authority in this regard."[19]

PULP's claim that "…the costs incurred for site investigation and remediation activities are reviewed and approved by the PSC…" is incorrect. While the Commission does review SIR costs in rate proceedings that occur after those costs are incurred, the Commission does not have a role in approving the utilities' expenses themselves. Rather, the Commission addresses the recovery of SIR costs from ratepayers through base rates or an alternative recovery mechanism.

Second, PULP asserts that the Commission erred in finding that DEC has primary control over the scope and timing of clean ups, as Companies can seek

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[19] Petition, p. 6.

a change in timeframes. Therefore, according to PULP, "it is not accurate for the Commission to correlate the Companies compliance with DEC obligations as evidence that an incentive wouldn't provoke the Companies to accelerate the timing of clean-up of a particular site… ." PULP further opines that "a cost sharing incentive could act as an additional consideration the Companies would weigh before requesting an extension from the DEC."[20]

PULP's assertion that a cost-sharing mechanism would deter the Companies from requesting extensions from DEC, or alternatively would serve as an incentive to accelerate the timing of SIR work is unsupported. The arguments made by PULP seemingly ignore the fact that the timing of SIR activities are often dictated by several factors, including access restrictions, land-owner agreements, permitting requirements, and other variables over which the Companies do not have full control. Nothing in the record in these proceedings supports PULP's claims that a sharing mechanism would incent the Companies to accelerate the timing of SIR projects. Furthermore, PULP fails to demonstrate whether or how the acceleration of SIR activities would reduce SIR expenditures.

Third, PULP asserts that the Commission failed to acknowledge that the Companies "knowingly took ownership of the SIR" sites and "those sites provided value to" the Companies predecessor companies, whereas today's ratepayers received little benefit from activities that occurred at those sites. Thus, according to PULP, it is improper for today's ratepayers to shoulder the entire cleanup burden.

Whether National Grid "knowingly took ownership of the SIR" sites" is of no moment. PULP fails to recognize that, regardless of National Grid's purchase of the predecessor companies, those original utilities would retain legal responsibility for these MGP sites. Whatever PULP's intent, its argument would have no impact on the SIR costs incurred by the gas company, or companies,

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[20] Petition, pp. 6-7.

currently serving Brooklyn, Staten Island and Long Island. Had National Grid not acquired Grid-LI and Grid-NY, the operating companies would still have the same SIR liabilities today, and they would still seek to recover the costs of those liabilities from ratepayers.

Fourth, PULP asserts that the parties did not consider allocating some portion of excess earnings to SIR costs. In support of this assertion, PULP reasons that:

> the public record itself is suggestive enough. Other than PULP, no other party, including Staff, suggested SIR cost sharing in their pre-filed testimony. Settlement discussions are based on pre-filed testimony and parties attempt to reach a compromise based on each of their individual filings.[21]

PULP, though it opposed the Joint Proposal, was a party to the negotiations. Therefore, according to the logic of PULP's own argument, from the publicly available information, i.e., PULP's pre-filed testimony, one can conclude that the parties to the negotiations considered SIR cost sharing. The parties who supported the Joint Proposal simply reached the conclusion that cost sharing was not appropriate in this case.

Fifth, PULP asserts that "the Commission must consider the extent to which the settlement is contested" and that "no party challenged PULP in cross-examination on this issue." While PULP submitted a Statement in Opposition to the Joint Proposal, the assertions in that statement were refuted, point by point in Staff's and the Companies' Reply Statements. PULP then chose not to press its arguments any further through the ample process available to it, as it failed to attend the subsequent evidentiary hearing held on October 26, 2016.[22]

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[21] Petition, p. 10.

[22] See Case 16-G-0058 et al., supra, Transcript of Evidentiary Hearing, October 26, 2016 (filed November 16, 2016).

Furthermore, as noted in the Rate Order, 13 parties[23] submitted pre-filed testimony in these proceedings and nine parties of "varying interests" executed the Joint Proposal.[24]

Gas Costs

PULP asserts that the Commission relied upon a historically low price of natural gas in calculating the bill impacts cited in the Rate Order. Specifically, PULP argues that the calculation proffered by Staff and the Company in these proceedings was based upon a variable rate, i.e., the spot market price of gas at the Henry Hub, that increased by more than 50% during the process of the rate case. Further, PULP opines that the Companies and Staff never corrected their formulae, which led the Commission to approve rate increase percentages that are much higher than those cited in the Rate Order.[25]

The cost of gas is appropriately used when calculating total bill impacts. The bill impacts, as presented on Appendix 4, Schedule 5 of the Joint Proposal, clearly show that the average annual price of gas was projected to be approximately $4 per dekatherm (Dt) during each rate year.[26] These gas cost projections were derived from the Companies' testimony and exhibits,[27] and are based on normal weather conditions. More importantly though, the monthly cost of gas is a blend of spot purchases, storage gas and contracts as well as capacity costs. PULP's claim points to only one of the components that make up the total cost of

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[23] This count treats Grid-NY and Grid-LI as one party.

[24] Rate Order, pp. 16, 140.

[25] Petition, p. 4.

[26] GRID-NY's January 2017 cost of gas statement number 220 shows a weighted average commodity cost of gas of $2.98 per Dt and a total cost of gas before adjustments of $4.83 per Dt. Grid-LI's January 2017 cost of gas statement number 214 shows a weighted average commodity cost of gas of $2.98 per Dt and a total cost of gas before adjustments of $4.69 per Dt.

[27] Ex. 2, Prepared Testimony of Ms. Arangio; Ex. 8, (Exhibit__(EDA-6).

gas price. In addition, PULP has had since the end of January 2016 to probe the cost of gas forecasts and chose not to provide any evidence or testimony on the issue.

As shown in PULP's attachment, the spot purchase cost of gas fluctuates, which can be caused by many factors including the weather and the economy. PULP claims that the spot purchase prices "used" were too low, but simple mathematics prove that when calculating bill impacts of the delivery rate change, a higher cost of gas would produce lower bill impact percentages, if all else is equal. In this case, if the Companies had reflected updated commodity pricing, the percentage impact of the delivery rate change on customers' total bills would have been lower.

Furthermore, the Purchased Gas Adjustment, changed to the Gas Adjustment Clause (GAC) in 1973, was first approved by the Commission in 1953. The adjustment was designed so that variations in the cost of purchased gas could be reflected on the customers' bills without the necessity of filing for new rates. In 1975, an annual reconciliation was instituted to ensure that the GAC recoveries equaled the GAC purchased gas costs. Because the GAC mechanism reconciles the difference between recoveries and costs, when delivery rates are adjusted the purchase cost of gas revenues and expenses are removed from the income statement and has no impact on revenue requirement, as can be seen on Appendix 1 Schedule 1 of the Joint Proposal.[28]

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[28] Some gas utilities show purchase gas revenues and expenses on the income statement, but the dollars match so there is no impact to the revenue requirement.

CONCLUSION

For the reasons stated above, the issues raised by PULP in its Petition do not meet the standard required in the Commission's regulations that a petition for rehearing be based on an error of fact, law or new information. Accordingly, the Commission should deny the Petition.

Respectfully submitted,

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Dated: February 1, 2017
Albany, New York