

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-E-0586 - Proceeding on Motion of the Commission of an
Investigation into the Utilities' Preparation
for and Response to August 2020 Tropical Storm
Isaias and Resulting Electric Power Outages.

ORDER ADOPTING TERMS OF JOINT PROPOSAL

(Issued and Effective January 21, 2021)

BY THE COMMISSION:

INTRODUCTION

This order adopts the terms and conditions of a Joint Settlement Agreement (Joint Proposal) that would resolve penalty amounts for the alleged violations by New York State Electric & Gas Corporation (NYSEG or the Company) identified and described in the November 19, 2020 Staff Interim Storm Report (Interim Report) published in this proceeding. The Joint Proposal, attached to this order as Appendix A, has been submitted for our review by the Company and Staff of the Department of Public Service (DPS Staff).

BACKGROUND

On August 4, 2020, Tropical Storm Isaias (TS Isaias) struck the State and caused nearly a million power outages.

Of these outages, 183,000 were located in the NYSEG service territory. The majority of outages experienced by NYSEG were in its Brewster Division, which serves customers in Dutchess, Putnam, and Westchester Counties. By 5:00 p.m. on August 8, 2020, more than 90 percent of customers in the NYSEG's Brewster Division were restored, with full restoration occurring just before 10:00 a.m. on August 10, 2020.

Initiated at the direction of Governor Andrew M. Cuomo, DPS Staff conducted an in-depth investigation into the preparation and response to TS Isaias by the State's major electric and telecommunications utilities, including NYSEG.

DPS Staff, as part of its investigation, considered whether the Company properly prepared for, and responded appropriately to, the effects of TS Isaias, in compliance with their annually filed Emergency Response Plans (ERPs), Commission regulations and orders, and the Public Service Law (PSL).¹

Promptly after TS Isaias, on August 19, 2020, Public Service Commission (PSC) Chair John Rhodes issued a letter to NYSEG and National Grid, which outlined several initial after-action findings related to utility preparedness, response and recovery, and required certain corrective action items be submitted.² On September 2, 2020, NYSEG submitted, a response

¹ See Case 19-E-0742, In the Matter of the December 15, 2019 Electric Emergency Plan Review, Order Approving Electric Emergency Response Plans on an Interim Basis (issued May 14, 2020) (ERP Order). 16 NYCRR Part 105 requires compliance with the effective ERP and requires annual ERP filings. PSL §66(21) requires those filings to be made on or before December 15 for the following calendar year.

² Case 20-E-0586, Investigation into the Utilities' Preparation for and Response to August 2020 Tropical Storm Isaias, Letter from Chair Rhodes, Re: Tropical Storm Isaias After-Action Responses (August 19, 2020).

to the corrective action items outlined by Chair Rhodes.

On October 8, 2020, the Company submitted its Tropical Storm Isaias Part 105 Report (105 Report) in these proceedings. In the 105 Report the Company admitted to three potential violations of its ERP. NYSEG stated that it failed to contact 80% of its Life Support Equipment (LSE) dependent customers within 12 hours, only reaching 59%; they failed to contact 100% of LSE customers within 24 hours, reaching 99%;³ and they failed to respond to 80% of all in-coming customer calls with 90 seconds on August 4, 2020, only achieving a 71.3% response rate.⁴ It should be noted that the LSE violations are repeat ERP violations.⁵

The Staff Interim Report which addresses, among other topics, preliminary findings outlining the extent to which the performance of the Company and other utilities fell short of what is required by law, regulation, rule, and/or Commission Order. With respect to NYSEG, the Interim Report identified three possible violations resulting from the Company's alleged failure to follow their ERP. DPS Staff's conclusions in the Interim Report concurred with the Company's 105 Report findings, as a result, rather than pursue further enforcement actions, Staff engaged the Company in settlement negotiations regarding the three apparent violations.

³ NYSEG Tropical Storm Isaias Scorecard Report, p.33.

⁴ The Company 105 Report also identified and reported, as required, issues with employees creating double tickets in the Outage Management System during the event. The Company was able to identify the problem and conduct on-site training, with no significant customer impacts. The Company also reported intermittent server errors with its website, although an outage map was available to customers and accurate throughout this time, with only intermittent inability to view other pages.

⁵ Cases 19-M-0285, 19-E-0105, and 19-E-0106.

The settlement discussions led to the filing of a Joint Proposal, executed by NYSEG and DPS Staff on December 31, 2020, that seeks to resolve the issue of NYSEG's liability for penalties under PSL §§25 and/or 25-a.

While NYSEG must continue to work with the Department, municipal leaders, and its customers to improve its storm preparation and response,⁶ as part of this settlement, the Commission acknowledges NYSEG's generally improved storm performance in Tropical Storm Isaias as compared to its previous performance in the 2018 Riley and Quinn winter storms. It should also be noted that the PSC received only 35 total customer complaints regarding the NYSEG Tropical Storm Isaias response.

APPLICABLE LEGAL STANDARDS

PSL §25-a (3) and (5) authorize the Commission to commence an administrative penalty proceeding against combination gas and electric corporations to determine, by a preponderance of the evidence, whether the corporation violated the Public Service Law or an order or regulation adopted pursuant to the Public Service Law. Pursuant to PSL §25-a(5), such violations may warrant a Commission-assessed penalty of "five hundred thousand dollars or four one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater"⁷ Under PSL §25-a, each alleged violation of the Company's ERP could be viewed as a violation of the corresponding Commission's Order adopting such Emergency Response Plan and the Commission's

⁶ See United Westchester August 2020 Storm Response Report.

⁷ PSL §25-a(5).

regulations under Part 105.⁸

SUMMARY OF THE JOINT PROPOSAL

Under the terms of the Joint Proposal, the Company and DPS Staff agree to settle matters related to the three alleged violations described in the Interim Report. As part of the settlement, NYSEG admitted to all three violations, and the Company stipulated that their actions did not comply with the Public Service Law, their ERP, the Commission order adopting and approving the ERP, and the Commission regulation regarding electric utility emergency plans, 16 NYCRR Part 105.⁹

In the Joint Proposal, the Company agreed to a penalty amount of \$1.5 million (the Settlement Amount) paid from shareholder funds for the admitted three violations. The funds will be used to provide ratepayer benefits in a manner to be determined by the Commission in the Company's next electric rate case, allowing for ratepayer notice and comment on the funds use.

Upon the Commission's approval of the Joint Proposal, the Department's investigation into NYSEG's preparation and response to power outages during the August 4, 2020 TS Isaias would be "deemed completed" and all issues and concerns that were or could have been raised or asserted in Case 20-E-0586, as to the Company, are to be fully and finally resolved. However, the Department and the Commission will continue to exercise oversight over the implementation of the recommendations contained in the 2020 Tropical Storm Isaias Interim Storm Report

⁸ Under PSL §25(4), civil penalties may be assessed in the amount of \$500,000 for each separate and distinct offense and, pursuant to PSL §25(5), are recoverable in an action brought in a court of competent jurisdiction in the State.

⁹ See Joint Proposal incorporate herein as Attachment A.

and the letter from PSC Chair John Rhodes to the Company on or about August 19, 2020, entitled "Tropical Storm Isaias After-Action Responses" as they apply to the Company.

The Joint Proposal provides that it is a settlement of the potential penalties identified in Case 20-E-0586 as to the Company, and that the parties view the Joint Proposal as a fair and reasonable resolution of all outstanding issues raised in this case, and that the Company may withdraw their acceptance of the Joint Proposal's terms unless the Commission approves the Joint Proposal as written or as modified in a manner acceptable to the Companies.

DISCUSSION

The obligation in reviewing a Joint Proposal is to ensure that its terms, viewed as a whole, produce a result that is in the public interest. The Commission's Settlement Guidelines describe the factors the Commission must weigh in making that assessment.¹⁰ In general, a desirable settlement should balance protection of consumers, fairness to investors, and the long-term viability of the utility. It should be consistent with the environmental, social, and economic policies of the Commission and the State; and it should produce results that are within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding.

The parties both stipulate in the Joint Proposal that the agreement is "consistent with the law and regulatory, economic, social and other policies of the Commission and the State and also compares favorably with the likely result of full litigation and is within the range of reasonable outcomes."¹¹ The

¹⁰ Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

¹¹ Attachment A. Joint Proposal, p. 3 (clause 9)

Commission agrees that the Joint Proposal is in the public interest because the Joint Proposal is reasonable and provides substantial funding at no expense to ratepayers that would not be currently available for ratepayer benefit, but for the Joint Proposal.

We find that the Joint Proposal is in the public interest and we adopt its terms, except for paragraphs numbered 3, 5 and 6, which are not proposals for decision by the Commission, but rather agreements governing the relationships among the signatory parties. The Joint Proposal contains an admission by the Company and provides for funds to be paid by the Company's shareholders and used for ratepayer benefits as determined by the Commission in the Company's future electric rate cases.

Moreover, the record establishes that the Joint Proposal achieves a fair balance of interests, and, as discussed in more detail above, produces a result within the reasonable range of results that could be expected if these proceedings had been fully litigated.

Because the Company admitted to the violations and agreed to the maximum penalty amount, there is no litigation risk, or potential risks of further delay as a result of appellate review, or the need to pursue additional procedural actions.

Viewed in this context, the \$1.5 million Settlement Amount is reasonable. The Commission agrees that resolving the alleged violations in this manner ensures that ratepayers will timely receive the benefits of the initiatives and projects that will be funded by the Settlement Amount without the risk and delay of further litigation of the administrative penalty

proceeding under PSL §25-a or civil penalty action under to PSL §25.

CONCLUSION

Based upon our review of the Joint Proposal we find that the terms of the Joint Proposal meet the criteria set forth in our Settlement Guidelines. The record demonstrates that all procedural protections were afforded to the participants in these proceedings. The Joint Proposal that resulted from the settlement negotiations reflect compromises made by the parties with strong incentives to craft resolutions addressing their interests. The terms of the Joint Proposal are consistent with the environmental, social, and economic policies of the Commission and the State and are within the range of reasonable outcomes that could be expected after a fully litigated proceeding. We conclude that the terms of the Joint Proposal should be adopted.

The Commission orders:

1. The terms of the Joint Proposal Executed on December 31, 2020, which is attached to this Order as Attachment A, are adopted, except for paragraphs numbered 3, 5, and 6.

2. 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 three days prior to the affected deadline.

3. Within thirty days after the issuance of this Order, New York State Electric & Gas Corporation shall file in this proceeding documents establishing that they have complied with the requirements of paragraph two of the Joint Proposal under which they agreed to accrue regulatory liabilities in the

amount of \$1.5 million in interest bearing accounts for the benefit of their electric ratepayers with the interest to be calculated using the pre-tax rate of return.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

Attachment A

BEFORE THE NEW YORK STATE PUBLIC SERVICE COMMISSION

-----X
Proceeding on Motion of the Commission of an
Investigation into the Utilities' Preparation for and
Response to August 2020 Tropical Storm Isaias and
Resulting Electric Power Outages.

Case 20-E-0586

-----X
JOINT SETTLEMENT AGREEMENT

This Joint Settlement Agreement (“Agreement”), dated as of the 31st day of December 2020, is by and among the New York State Department of Public Service (“Department”) and New York State Electric & Gas Corporation (“NYSEG”), and concerns Case 20-E-0586. NYSEG, may be referred to herein as the “Company.” The Company and the Department may be referred to herein together as the “Parties.”

BACKGROUND

On August 4, 2020, Tropical Storm Isaias struck the State. Peak outages across New York reached approximately 900,000 customers, and approximately 1.3 million customers experienced a power outage during the event. Of these customer outages, 183,000 were in NYSEG’s service territory. The majority of outages experienced by NYSEG were in its Brewster Division, which serves customers in Dutchess, Putnam, and Westchester Counties. By 5:00 p.m. on August 8, 2020, more than 90 percent of customers in the NYSEG’s Brewster Division were restored with full restoration just after 10:00 a.m. on August 10, 2020.

On August 5, 2020, Governor Andrew M. Cuomo directed the Department to investigate New York State’s major electric utilities following the slow and inadequate response of certain electric utilities to Tropical Storm Isaias.

The Department conducted a thorough investigation of NYSEG’s response to Tropical Storm Isaias, and an evaluation of their consistency with their Emergency Response Plan (“ERP”), the Public Service Law and its related orders and regulations. The investigation revealed that NYSEG apparently violated their ERP three times when they failed to contact Life Support Equipment (LSE) dependent customers in a timely manner, and for failing to respond on the first day of the storm only, to 80% of all in-coming customer calls within 90 seconds.

The Department and the Company, in an effort to forego litigation of this matter, propose the following settlement, described in detail below, for a negotiated settlement of \$1.5 million in ratepayer benefit, including utility admissions to the three identified apparent violations.

**TERMS OF THE SETTLEMENT
WITH RESPECT TO CASE 20-E-0586**

The Parties have agreed to settle matters associated with the three apparent violations at issue in Case 20-E-0586 on the terms set forth in Paragraphs 1 – 11 below.

1. NYSEG acknowledges and admits the three violations identified in Attachment A of this Agreement, and the Company further stipulates that the Company's actions did not comply with the Company's Emergency Response Plan, the Commission Orders adopting and approving the Plan, the Public Service Law and 16 NYCRR Part 105. The admissions and stipulations in this paragraph relate only to the violations identified in Attachment A to this Agreement.
2. NYSEG agrees to a penalty amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "Settlement Amount"). NYSEG will credit to electric customers \$1,500,000 in an interest-bearing regulatory deferred liability account funded at shareholder expense, with interest to be applied at the pre-tax rate of return. The funds shall be used for ratepayer benefit and the use of such funds will be authorized at the discretion of the Commission. Unless otherwise provided for by the Commission, the proposed use of the funds shall be determined in the Company's next respective rate case with appropriate State Administrative Procedures Act notice and comment process for ratepayer input. Any use of the funds will be excluded from the Company's earnings sharing mechanism calculation. The impact on the Company's earnings sharing mechanism calculation shall be normalized so that customers will not forgo a sharing amount that they would have normally received absent the settlement.
3. The terms of this Agreement that pertain to Case 20-E-0586 shall be presented to the Commission for review and approval via a joint proposal submitted by the parties.
4. The terms of this Agreement fully and finally resolve all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted, in Case 20-E-0586 as to the Company.
5. Accordingly, the Department will recommend that the Commission not institute or cause to be instituted against NYSEG or its respective directors, officers, employees, agents, shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to the Company's actions, inactions, or practices, directly or indirectly related to the Company's preparation for or response to Tropical Storm Isaias (the "Recommendation").
6. This Agreement is subject to ratification or approval by the Commission and will have no effect in the absence thereof. Unless the Commission approves this Agreement in its entirety, without modification, and accepts the Recommendation of the Department not to institute or cause to be instituted against NYSEG or its respective directors, officers, employees, agents, shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to the Company's actions, inactions or practices, directly or indirectly related to the 2020 Tropical Storm Isaias, the Company may withdraw its acceptance of this Agreement by serving written notice on the Commission, and shall be free to pursue its position without prejudice. If the Commission approves this Agreement or modifies it in a manner acceptable to the

Company, the Parties intend that this Agreement thereafter be implemented in accordance with its terms.

7. The execution, delivery and performance of this Agreement by each Party hereto is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not (i) require any governing or governmental consent or approval except as required in Paragraph 2, 3, and 6 (ii) contravene its organizational documents or enabling legislation, or (iii) violate applicable law.
8. This Agreement has been entered into voluntarily by the Parties. The Parties have determined the Agreement constitutes a fair and reasonable resolution of all outstanding issues relating to Case 20-E-0586 and avoids litigation. This Agreement is not and should in no way be construed as an admission by the Company of a violation of any law or regulation or order except as expressly made in Paragraph 1 above. This Agreement is a settlement of potential penalties in Case 20-E-0586 as to the Company.
9. The Parties agree that the Agreement is in the public interest because, in their view, the Agreement is reasonable and provides substantial funding at no expense to customers that would not be available for the benefit of the Company's respective electric customers, but for the Agreement. The Parties further agree that the Agreement is consistent with the law and regulatory, economic, social, and other policies of the Commission and the State and compares favorably with the likely result of full litigation and is within the range of reasonable outcomes.
10. Further, upon such Commission ratification or approval as described in Paragraph 6 herein, the investigative examinations by the Department initiated in Case 20-E-0586 is deemed completed as it relates to the Company; however, the Department and the Commission will continue to exercise oversight over the implementation of the recommendations contained in the 2020 Tropical Storm Isaias Interim Storm Report and the letter from PSC Chair John Rhodes to the Company on or about August 19, 2020 entitled "Tropical Storm Isaias After-Action Responses" as they apply to the Company.
11. This Agreement may be executed by original, facsimile, or electronic signature, each of which shall be equally binding. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the day and year first written above.

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: Carl A Taylor

Name: Carl. A. Taylor

Title: President and Chief Executive Officer

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

By: Andrea Cerbin Date: 12-31-2020

Name: Andrea Cerbin

Title: Assistant Counsel, DPS OIE

ATTACHMENT A

List of Admitted Violations

New York State Electric & Gas (NYSEG):					
#	Utility	Activity Type	Note	Storm Event	Violation §
1	NYSEG	LSE Customer Communications	NYSEG failed to contact 80% of LSE customers within 12 hours, contacting only 59% on August 4, 2020.	Tropical Storm Isaias	ERP §9.3.2.2
2	NYSEG	LSE Customer Communications	NYSEG failed to contact or refer all of its affected LSE customers within the 24-hour period as required.	Tropical Storm Isaias	ERP §9.3.2.2
3	NYSEG	Customer Relations	NYSEG failed to meet the 80% minimum call answer rate target on August 4, 2020 with 71.3% of calls answered within 90 seconds.	Tropical Storm Isaias	ERP §9.1