NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

CASE 20-G-0131 - Proceeding on Motion of the Commission in Regard to Gas Planning Procedures.

# STAFF MORATORIUM MANAGEMENT PROPOSAL

(Filed February 12, 2021)

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## INTRODUCTION

On March 19, 2020, the Commission instituted this proceeding to consider issues related to gas utilities' (also referred to as local distribution companies, or LDCs) planning procedures.[1] In the Order Instituting Proceeding, the Commission noted that LDCs have invoked moratoria on new service connections in some locations, leading in some cases to customer hardships. Accordingly, among other issues, the Commission determined that this proceeding would address standards for managing any moratoria that may be called in the future. This does not suppose that moratoria will be called, and, with diligent effort from all stakeholders, no moratoria may be needed in the foreseeable future. This Department Staff Proposal sets forth criteria for managing future moratoria, if required.

## BACKGROUND

### Recent Experience with Moratoria

On January 17, 2019, Consolidated Edison Company of New York, Inc. (Con Edison) notified the Commission of a moratorium on new firm gas service in most of Westchester

[1] Case 20-G-0231, Gas Planning Procedures, Order Instituting Proceeding (issued March 19, 2020) (Order Instituting Proceeding).

County, commencing March 15, 2019. This moratorium remains in effect.

Beginning November 2018, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), for the portion of its service territory in Brooklyn and parts of Queens, and KeySpan Gas East Corporation d/b/a National Grid (KEDLI) (collectively, National Grid) began informing large applicants for new service that National Grid would be unable to provide firm service unless a pending supply project was approved. As of May 15, 2019, National Grid stated that it would not fulfill applications for new firm service connections, or requests for additional firm load from existing customers on Long Island, including Queens and Brooklyn. Based on a settlement adopted and approved by the Commission, National Grid ended its moratorium as of November 26, 2019.[2]

Finally, in February 2015, New York State Electric and Gas Corporation (NYSEG) declared a moratorium on new gas customer attachments in the Town of Lansing, in Tompkins County. This moratorium remains in effect.

## Order Instituting Proceeding

In the Order Instituting Proceeding, the Commission stated that moratoria can create adverse impacts on customers. PSL §66-a specifies that, if a shortage of gas causes an LDC to be unable to meet the reasonable needs of its consumers and of applicants for new or additional gas service, the Commission can authorize the utility to cease providing new or incremental gas

[2] Case 19-G-0678, Proceeding on Motion of the Commission to investigate Denials of Service by National Grid, Order Adopting and Approving Settlement (issued November 26, 2019); Case 19-G-0678, supra, Confirming Order (issued December 12, 2019).

service to applicants. Further, PSL §66-a provides that this should be done in a manner that avoids undue hardship.

The Commission identified several issues in the Order Instituting Proceeding related to moratoria. The Commission stated that recent experience has shown that the specific manner in which moratoria are declared and managed can itself create or mitigate hardship and inequity. Topics arising from this recent experience include:

- Declarations of moratoria: Existing gas utility tariffs have differing provisions regarding how a gas utility declares a moratorium on new customer additions. Furthermore, internal utility processes regarding identifying the potential need for declaring a moratorium, and the steps to take upon identifying such a need vary from utility to utility. This proceeding will explore best practices and opportunities for enhancements to these processes, propose standards and practices for identification of potential gas supply constraints and the data necessary to justify a moratorium, and set forth clear steps that must be taken thereafter, including notification to the Commission and stakeholders.
- Treatment of applicants and customers: Moratoria may impact applicants and customers. Applicants and customers who undertook projects expecting that they could receive firm gas service may not be able to modify plans, resulting in confusion, disruption, loss of business, and the appearance of inequity. Standards and practices for treatment of applicants and customers need to be established, to align gas utility supply planning with the reasonable expectations and needs of existing and prospective customers. This includes, but is not limited to, consideration of: (a) how to address applicants and customers with projects that are "in flight" when a gas utility declares a moratorium; and (b) how to define a material increase in load for existing customers.
- Communications standards and practices: There is a need to establish standards and practices for communications with applicants, customers and the general public – to address entities who might be planning to apply for gas service in the near future, to ensure that applicants and customers are informed and updated about moratoria in a timely and appropriate manner.

- Prioritization: Moratoria may not need to be imposed on an all-or-nothing basis; the extent of the need for a moratorium will depend on the severity of the forecast imbalance and the availability of alternatives, such as demand reduction and delivered services. Where a partial moratorium is warranted, prioritization of new or expanded service applications may be implemented using clear and equitable standards. Criteria may include: the extent of energy efficiency and demand response built into a development plan; the extent to which practical alternatives to gas service are available for the applicant; conditions under which adding load to an existing customer account constitutes new service; effects on low-and-moderate income residential customers; effects on emissions; effects on economic development and employment; timeliness of application; and other factors.
- Lifting of moratoria: Gas utility plans to relieve supply constraints will typically include a target date for elimination of the supply/demand imbalance. In the near term, lifting moratoria will present a practical issue of timing, and clarity on whether commitments for new service should be made in advance of the date when the gas utility forecasts that the imbalance will resolve, so that development and construction can commence, or whether commitments should be made only upon the completion of relief projects and adequate supply is actually available.

LDC Proposals

The Order Instituting Proceeding required each LDC to file within 120 days, either individually or in concert with the other LDCs, a proposal for criteria for moratorium management issues as described above. On July 17, 2020, Con Edison; KEDNY; KEDLI; Niagara Mohawk Power Corporation d/b/a National Grid; NYSEG; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; and Orange and Rockland Utilities, Inc. jointly filed a proposal for moratoria management, as the Joint Utilities.

The Joint Utilities explain that moratoria should only be implemented as a last resort and are committed to avoiding the need for moratoria through appropriate long-term and short-term planning activities. The Joint Utilities propose identifying a "Vulnerable Location" along with a communication protocol and the commencement of appropriate actions to offset gas demand.

The LDC's actions to offset demand would include the potential use of market solicitations for non-traditional solutions such as energy efficiency and demand response, with the implementation of a moratorium to maintain reliable service to existing customers as a back stop, if efforts fail to address gas customer demand. Prior to a public declaration of plans to establish a moratorium, an LDC would demonstrate to Staff that it has assessed available resources and exhausted all reasonable and feasible alternatives. The LDC would declare a moratorium when it reaches the conclusion that it may not be possible to address the supply/demand imbalance in time to avoid an imbalance that threatens the LDC's ability to reliably supply gas to existing customers.

Additionally, the Joint Utilities propose that moratoria be applied consistently to all firm customers across the constrained geographic region, which could be smaller than the LDC's entire service territory. The LDC may choose to implement a structure for considering exceptions to the moratorium under extraordinary circumstances. Prior to lifting a moratorium an LDC would demonstrate that peak demand has diminished to a sufficient degree and/or that the LDC has acquired sufficient firm resources and/or adequate infrastructure has been put in place to meet forecasted design day demand for a minimum of the next five winter seasons.

A formal declaration of a moratorium would include a communications plan that addresses the impacts of moratorium events on customers. The proposed communications protocol would endeavor to provide adequate notice to policymakers, civic leaders, customers, and other stakeholders.

Additionally, the Joint Utilities propose that the Commission establish a statewide "Moratorium Customer Bill of Rights" for LDC guidance to interact with customers during moratorium conditions. The proposed rights include various methods to deal with the allocation of available gas supply to existing customers and new customers that submitted applications prior to declaration of a moratorium. As part of their communications plans, the LDCs state that they would communicate the statewide Moratorium Customer Bill of Rights throughout the duration of a moratorium event.

Liberty Utilities (St. Lawrence Gas) Corp. (SLG) and Corning Natural Gas Corporation (Corning) each separately filed their responses regarding moratoria management. Both SLG and Corning state that, based on multiple factors, such as a current lack of system constraints and a distribution system built for loads significantly greater than long-term forecasts, among others, no moratorium management issues exist in their respective service territories.

## STAFF PROPOSAL

The following proposed criteria and requirements reflect Staff's observations and experiences with recent moratoria, as well as input from the LDCs and stakeholders.[3] The foundational recognition and premise are that moratoria impose

[3] By reference here to input from stakeholders, Staff includes the comments and other filings and feedback from entities and individuals in various proceedings such as: Case 19-G-0080, In the Matter of Staff Investigation into a Moratorium on New Natural Gas Services in the Con Edison Service Territory; Case 17-G-0606, Petition of Con Edison for Approval of the Smart Solutions for Natural Gas Customers Program; Case 19-G-0678, supra; Cases 19-E-0065 and 19-G-0066, Con Edison Electric and Gas Rates; Cases 19-G-0309 and 19-G-0310, KEDNY and KEDLI – Gas Rates; and the instant proceeding.

significant hardship on customers, and for that reason are a last resort, to be avoided and mitigated to the maximum extent practical. If moratoria do become necessary in certain situations, then they should be implemented according to rules that have the purpose of mitigating that hardship to the maximum extent practical.

As discussed in the Order Instituting Proceeding in this case, PSL §65(1) requires that gas service to customers must be safe and adequate at rates that are just and reasonable and PSL §66-a provides that managing customer access to natural gas should be done in a manner that avoids undue hardship. Gas utilities have the responsibility to manage their supply portfolios and system assets in a way that minimizes hardship and ensures access to optimal solutions. This is discussed more in the companion document filed by Staff in this proceeding dealing with modernizing the gas planning process.[4]

Rules for moratorium management should ensure that the public, in general, and an individual LDC's potential and existing customers, specifically, receive sufficient notice of the need for, implementation of, and cessation of a moratorium. In addition, these proposed criteria should provide some "rules of the road" during a moratorium. Finally, they should ensure consistency across New York State, so that entities with interests across various service territories can know what to expect from the LDCs. Staff notes that the Order Instituting Proceeding required responsive filings from the State's 11 largest gas utilities, including Corning and SLG, and that Staff's proposal herein is intended to apply equally to all 11 of these LDCs.

[4] Case 20-G-0131, supra, Staff Gas System Planning Process Proposal (filed February 12, 2021).

General Framework

Staff proposes that the LDCs be required to make filings within approximately 90 days of a Commission order taking action on this proposal. These filings would incorporate the Commission's decision on moratoria criteria and metrics in the LDC's tariffs and procedures. In these filings each LDC would identify the specific metrics by which an LDC would identify the potential need for a moratorium, as well as the LDC's communications protocols to be used if the LDC does implement a moratorium.

It is important that the LDCs develop metrics that can be used to gauge the need for a moratorium. These metrics should be analogous to those used by electric utilities to call for load shedding or demand response assets, and indicate what increase in load will cause reliability issues in a given service territory. The metrics can vary by LDC, given their unique service territories, but must be set forth with specificity in each LDC's tariff leaves. LDCs should identify what metrics they would consider using to gauge the need for a moratorium in their comments on this proposal.

The following general rules should apply to all LDCs and guide them through the process of considering when and how to declare the need for a moratorium:

- Each LDC should identify the reliability metrics and the quantitative reliability criteria from its Long-Term Plan (or Gas System Resource Plan, per the Joint Utilities' filing in this proceeding on July 17, 2020) that indicate the need to declare a moratorium. The LDC should also identify the trigger values that would identify the future possibility of a moratorium and identify the present need for a moratorium.
- Each LDC should identify the prioritization of customer classes, based on size, vulnerability, availability of alternatives, stage of project development, etc., related to availability of natural gas. The LDC should specify if the prioritization of service classes varies depending on whether a moratorium is first being initiated, whether the LDC is

using the prioritization to manage a waitlist, or manage how to prioritize service requests as the LDC exits the moratorium.

- A plan to curtail the natural gas usage of any firm customer attached to the utility's distribution system is not acceptable as an alternative to a moratorium. Every utility should ensure continued service to all firm customers during design day conditions.
- Each LDC should identify the rules for managing a waitlist during a moratorium, such as how much peak day capacity must be available prior to beginning to attach customers on the waitlist, and how far in advance of planned projects actually being placed in service customers can be attached.
- Each LDC should outline moratorium management services to be established in the event of a moratorium, such as a hotline, ombudsperson, special web page and assistance finding alternate energy services such as electrification options, energy efficiency and demand response.
- Each LDC should also describe the rules it will apply for lifting a moratorium, including, but not limited to, the metrics that will be relied on (e.g., recordings of pressure levels on specific points on the distribution system, metered usage, etc.).

Additionally, LDCs must have comprehensive communications plans ready for if they determine they need to declare a moratorium. As noted above, the Joint Utilities stated in their filing that a proposed communications protocol would endeavor to provide adequate notice to policymakers, civic leaders, customers, and other stakeholders. As discussed more fully below, Staff believes that the LDCs need to establish communications plans in the near future, in advance of any particular potential moratorium. Recent experiences with the Con Edison and Downstate National Grid moratoria demonstrate that these plans must be in place prior to the LDC publicly identifying the need for a moratorium. This will ensure that there is no delay in providing needed information to affected customers, applicants, municipal officials, and the public at large. The initial comprehensive communications plans must be provided to Staff for review. Further, each LDC must review its plan on an annual basis, and provide any revisions to Staff for review. Staff recognizes that the plans may need to be tailored to the specific circumstances of a moratorium at the time an LDC determines a moratorium is needed.

Accordingly, each LDC must develop a comprehensive customer communication plan. This plan will describe the LDC's planned communications from when the LDC provides an initial notice of potential moratorium through to the point at which the LDC has resolved any remaining requests for service at the conclusion of the moratorium. This plan would include the following:

- A media strategy, including the use of a dedicated webpage, to ensure that residents in the impacted municipalities, particularly those residing in low- and moderate-income areas, are aware of their consideration of a moratorium.
- An explanation of how the LDC will notify officials of the municipalities affected by a moratorium.
- An explanation of how the LDC will use bill inserts and bill messages to be provided to existing customers to inform them of the upcoming moratorium and gas supply constraints.
- An explanation of how the LDC will maintain communications with local permitting agencies to ensure that development being planned in the area of a potential moratorium will be considered by the LDC and that the LDC will provide developers with notice of the potential moratorium.
- An explanation of how the utility will engage local community groups and social media to ensure customer engagement.
- With regard to lifting the moratorium, an explanation of the utility's proposed outreach campaign, including a media component and outreach materials, that will alert residents in the affected municipalities that the moratorium is lifted.

<u>Requirements Prior to Implementing a Moratorium</u>

The requirements in the General Framework section would be completed without reference to any specific potential moratoria. This section sets forth the requirements Staff proposes for LDCs if they approach a specific potential moratorium. The overarching goal of these proposed requirements is to ensure that the LDCs seek to avoid actually implementing a moratorium except as a last resort, and that any future moratoria do not come as a surprise to the Commission, customers, or the general public.

In their filed comments, the LDCs discuss the implementation of a statewide Moratorium Customer Bill of Rights throughout the duration of a moratorium event. Staff agrees that this would be an effective way to preserve customer and applicant rights and access to resources. The LDCs should propose the substance of a Moratorium Customer Bill of Rights in their comments on this proposal.

Regarding actions utilities should take prior to implementing a moratorium, Staff proposes the following:

- At least two years in advance of the potential implementation date of a moratorium, the utility must make a filing with the Commission and give all stakeholders notice including the expected scope, likely duration, identification of affected customers, and available assistance programs.
- This notification should include a history of all actions the LDC has taken to avoid or mitigate the potential for a moratorium, including both demand and supply-side measures.
- These filings should be updated with the Commission every six months, with notification to all local officials, existing and potential customers.
- No more than 60 days after it files the notice of a potential moratorium, the LDC should issue a request for proposals for non-pipeline alternatives that can be used to relieve or mitigate the potential moratorium. Within 120 days of the issuance of the request for proposals, the LDC should determine which, if any, non-pipeline alternatives will be effective and have a reasonable benefit-cost ratio.
- At least 120 days before the institution of a moratorium, the utility must provide a Notice of Moratorium to the Commission. The Notice of Moratorium will be issued for comment pursuant to the State Administrative Procedure Act.

- The Notice of Moratorium must include the following information:
  - The specific municipalities, or portions thereof, that will be impacted.
  - The communications plan that the LDC will implement, generally conforming to the communications plan described in the general framework section of this proposal, including any details and outreach materials specific to the moratorium the LDC proposes to call.
  - Whether all new potential customers will be impacted, or only potential customers of a certain size (e.g., potential non-residential customers).
  - Whether new non-firm service requests will be accepted and the amount of load a customer must have to qualify for non-firm service (e.g., could a residential customer who wishes to install a pool heater apply for non-firm service).
  - Whether new seasonal customers will still be allowed (e.g., asphalt distributors who only use gas in the warmer months).
  - Sufficient data to illustrate the reliability impact if the moratorium is not implemented as requested by the utility, including historical information on distribution system pressures and a demonstration that distribution system upgrades, such as adding pressure regulation, will not eliminate the need for a moratorium. The LDC has the ability to seek confidential treatment for some of this information, for example, if the LDC claims it concerns critical infrastructure.
  - The LDC’s plan for lifting the moratorium, addressed in greater detail below, including identifying how much demand reduction in terms of dekatherms on a design day is needed to lift the moratorium.
  - A history of the LDC’s prior steps taken in seeking demand-side and supply-side solutions in order to avoid a moratorium, why the LDC chose those steps, including whether the LDC anticipated that those steps would be sufficient to avoid a moratorium, and why they ultimately were not sufficient, or an explanation of why the LDC took no such steps. The Notice of Moratorium must include how much peak day load is currently being met through the use of delivered or peaking services and how that can or cannot change to accommodate load growth from accepting new customers.

  - o How low- and moderate-income customers will be protected, including all programs that assist them in acquiring energy and energy efficiency measures.
  - o The effect on greenhouse gas emissions from imposing a moratorium, including the increased use of alternate fuels, such as low sulfur diesel fuel, as well as the increased use of alternatives to fossil fuels such as ground- and air-source heat pumps.
  - o The impacts on economic development from the moratorium, especially any job losses from impacted customers or increases in hiring by firms that provide energy efficiency or renewable heating and cooling applications.

- The utility should ensure that all customers who have received natural gas service within 24 months of the date the utility proposes to begin the moratorium, but are presently not receiving service, will be able to resume natural gas service, with or without a moratorium, to prevent undue hardship.
- The utility will conduct in-person public information sessions throughout its service territory to advise the public of the upcoming moratorium.
- No large customer who has taken service from a gas marketer or an Energy Services Company (ESCO) and not used upstream pipeline capacity provided by the utility since 1998 has a right to expect to be able to use utilize upstream pipeline capacity in the future.
- If the Commission decides that the utility has not adequately demonstrated the need for a moratorium, it may deny the utility’s plan to implement a moratorium. Inaction by the Commission ensures that the moratorium will begin but does not eliminate the Commission’s ability to pursue action against the LDC if further investigation proves imprudence on the part of the LDC.

Requirements During A Moratorium

Once a moratorium is implemented, the LDC must ensure that those who seek natural gas service are treated appropriately. Furthermore, the LDC must work to end the moratorium as expeditiously as possible. To that end, each utility must plan to do the following:

- Continue to accept applications for gas service, and individually consider those applications to ensure that, if the applicant is entitled to service (e.g., a customer who moves from one portion of the LDC's service territory to another), it receives service. Utilities should be required to respond to any applications within the timeframes prescribed in the PSL and the Commission's regulations. For applicants to which the LDC cannot provide service, the LDC shall provide a written response so indicating, and stating that the customer has been added to the LDC's waitlist.
- Maintain an appeals process for customers who are denied service during the moratorium, especially for those customers who were previously customers of the utility and are attempting to return to natural gas service, such as if they moved to a different residence within the LDC's service territory.
- Maintain a list of customers desiring natural gas service who cannot be served due to the moratorium and report the information to the Commission (without providing personally identifiable information) quarterly, with a breakout detailing service class and differentiating low- and moderate-income customers who cannot be served, from those customers in the general population.
- On a quarterly basis, report to the Commission all opportunities evaluated and explored to reduce current system gas demand through demand-side management including non-pipeline alternatives, energy efficiency, electrification, weatherization and clean demand response alternative solutions.
- Provide a set of moratorium management services, including establishing an ombudsman for customers seeking natural gas service, developing direct contact lines to that ombudsman, and developing a list of services such as references to alternative energy providers and information on the availability of energy efficiency and demand response programs.
- Offer alternatives to customers who seek natural gas service, but are unable to get it due to the moratorium. These alternatives should include possible energy efficiency programs and/or beneficial electrification programs that would meet thermal loads in alternative ways, such as air- or ground-source heat pumps. Such alternatives may require investment on the part of the customer or be provided by the LDC at no, or reduced, cost to the customer.

- Work with all impacted municipalities to address economic development issues and reduce potential negative economic impacts, including seeking information from all impacted municipalities regarding potential development projects that may need natural gas service.
- At least semi-annually, report to the Commission on each municipality where a moratorium has been declared, listing all alternative solutions offered, how many customers took part, how many customers on the wait list indicated they were no longer interested in natural gas service, and any economic development issues that were addressed, especially where utility programs/ratepayer dollars were used to address the issues.

Requirements Related to Lifting the Moratorium

As part of the Notice of Moratorium, the LDC must provide its plan for ultimately lifting the moratorium. During the moratorium, the LDC must work to end the moratorium as expeditiously as possible. To that end, as the utility identifies the possibility of ending the moratorium, it must do the following.

- If the utility has identified a specific project, or mix of measures, that will enable it to lift the moratorium, the utility should indicate to the Commission how success will be measured, such as whether a necessary permit is issued or local distribution system pressure reaches a predetermined level at a certain temperature.
- Explain how the LDC’s use of the metrics established above demonstrate that the need for the moratorium has been alleviated and that it can ensure the provision of reliable service.
- At least two weeks prior to the date the LDC intends to lift the moratorium, the LDC must make a filing with the Commission that demonstrates the LDC’s ability to provide safe and adequate service while lifting the moratorium. The filing must include a listing of all customers still waiting to receive natural gas service and when the utility will provide service to those customers and how much load such customers will add on a design day.

- If the moratorium can only be partially lifted, e.g., only for a segment of the customer base or certain locations, the utility should clearly state which types and sizes of customers will not be served after the moratorium is partially lifted only for customers meeting certain criteria, if any. Public information sessions shall be conducted in those affected areas.
- The Commission may deny the request to lift the moratorium if the utility has not satisfactorily demonstrated that it can provide safe, adequate, and reliable service if the moratorium were lifted.

## CONCLUSION

Staff proposes that the Commission direct the State's 11 LDCs identified in the Order Instituting Proceeding to implement the moratorium management measures identified above. These measures should ensure that, in the event an LDC needs to implement a new moratorium in the future, the public, in general, and an individual LDC's potential and existing customers, specifically, receive sufficient notice of the need for, implementation of, and cessation of a moratorium. In addition, these proposed criteria should provide some "rules of the road" during a moratorium. Staff looks forward to continued engagement with all interested parties as the Commission considers these recommendations.