

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 26, 2019

COMMISSIONER PRESENT:

John B. Rhodes, Chair

CASE 19-G-0678 - Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid.

ORDER ADOPTING AND APPROVING SETTLEMENT

(Issued and Effective November 26, 2019)

Introduction and Background

This Order adopts and approves the Settlement filed on November 24, 2019 (Settlement), attached hereto as Exhibit A, which resolves the allegations made in the Order to Show Cause (Order to Show Cause) filed in this case on October 11, 2019 against National Grid USA and its affiliates, KeySpan Gas East Corporation d/b/a National Grid (KEDLI) and The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) (collectively and individually, National Grid or Companies). The Order alleges, among other things, that on or about May 15, 2019 and absent any notice, National Grid issued a moratorium on all new gas service connections, causing an undue hardship to more than 3,700 existing and new customers, including existing customers who had temporarily suspended gas service to facilitate renovations to their homes or businesses.

Based on these allegations, the Order to Show Cause directed National Grid to show cause why it could not or should not:

- (i) immediately provide gas service to 1,157 residential customers ("initial customers") denied service between the date when National Grid imposed the moratorium and early September 2019;¹
- (ii) provide an Implementation Plan by October 21, 2019 that identifies a portfolio of demand and supply solutions that would allow National Grid to connect the initial customers;
- (iii) provide a Contingency Plan by October 21, 2019 that identifies alternative supply and demand solutions that could be implemented to safely accommodate gas service being provided to all customers that have been denied service as of the date of issuance of the Order to Show Cause; and
- (iv) incur financial penalties subject to Public Service Law (PSL) §§ 25 or 25-a within 30 days of this Order.

On October 21, 2019, National Grid filed an Implementation and Contingency Plan with the Commission, in which it agreed to immediately begin the process to provide service to the initial customers directed to be connected by the Order to Show Cause, and proposed demand- and supply-side measures to ensure adequate gas supply to connect the initial and remaining customers denied service as of the date of

¹ Based on information provided by National Grid, the Department of Public Service (Department) learned that over 1,400 customers were denied service during this timeframe.

issuance of the Order to Show Cause. For example, as part of its Implementation Plan, National Grid proposed to expand existing demand response, non-firm, and energy efficiency programs to ensure sufficient supply to connect the initial customers denied service. National Grid's Contingency Plan proposed to provide service to additional new customers by increasing the use of compressed natural gas (CNG) during peak supply periods (i.e., during the coldest days of the year), soliciting delivered peaking supplies, continuing to explore pipeline solutions, and deploying non-pipe solutions, such as renewable natural gas and geothermal development.

The Department and National Grid have been involved in confidential settlement discussions since the Companies' filing of the Implementation and Contingency Plan. Those discussions have now concluded by the parties' entry into the Settlement. As discussed below, this Order adopts and approves the Settlement in full as a means of resolving all of the claims asserted in the Order to Show Cause.

SUMMARY OF SETTLEMENT

The Settlement resolves all claims against National Grid based upon the conduct related to or arising out of the moratorium issued by the Companies on or about May 15, 2019. A summary of the pertinent terms of the Settlement is as follows:

Under Section II of the Settlement, National Grid is required to lift the moratorium upon the Commission's approval of the Settlement - defined as the "Effective Date." With respect to the initial customers denied service, National Grid must within 30-days of the Effective Date have made best efforts to contact each such customer. Of note, National Grid has provided information showing that, since issuance of the Order to Show Cause, it has provided gas service to over 500 customers, and has otherwise scheduled service to be provided to the remaining initial customers denied service or such customers have informed National Grid that they do not need service. Thus, the 30-day best efforts requirement with respect to this class of customers is intended to provide National Grid with time to confirm that this information is accurate. With respect to all other residential and small business customers denied service since imposition of the moratorium, National Grid must make best efforts to contact such customers within 45-days of the Effective Date. Finally, National Grid must provide service to all future customers as soon as practicable.

The requirement for National Grid to lift the moratorium applies until at least September 1, 2021. If National Grid is able to develop a long-term supply solution, it is expected that the Companies would be able to continue to provide gas service to all new customers well after that date.

However, if it is unable to develop a long-term supply solution, National Grid would be allowed to deny applications for new or expanded service to large commercial and industrial customers seeking service by March 31, 2021, so long as it provides at least 60 days-notice to the Commission describing its efforts and explaining why the service restrictions are required for public safety.

Section III of the Settlement requires National Grid to provide an Action Plan for providing new and expanded gas service until September 1, 2021, while Section IV requires National Grid to develop long-term supply solutions that would establish a plan for the provision of service to all new and expanded service until well after that date. The Action Plan must be filed with the Department within one week of the Effective Date and would become an enforceable requirement of the Order. As for long-term solutions, National Grid is required to provide a Long-Term Capacity Report within three months of the Effective Date, which is to analyze all reasonable available options, including pipeline construction, Liquefied Natural Gas and CNG facilities, renewable energy sources, and conservation strategies. Any long-term solutions proposed in the Report would then be subject to no fewer than four public meetings to be held in the areas of downstate New York impacted by the moratorium.

To mitigate the hardships caused by the moratorium, Section VI of the Settlement requires National Grid through its shareholders to provide \$15 million in monetary relief and/or energy efficiency projects to those customers denied service to date. Section VII requires National Grid, again through shareholder funding, to pay \$20 million toward clean energy projects and/or investments in New York-based startup energy businesses and technologies to reduce reliance on fossil fuels. Given the potential need for consultation from several agencies, including the Department, Economic State Development, the New York State Energy Research and Development Authority, and the New York State Attorney General's Office, the Division of the Budget will be responsible for directing the use of these funds.

To ensure compliance with all of the requirements of the Settlement, Section XI authorizes the Department to appoint an Independent Monitor or Monitors, who, upon the development of a reasonable protocol and scope, will be provided with access to National Grid management, personnel, books and records, and which shall be paid for by National Grid's shareholders up to one million dollars. The parties are to negotiate the specific scope regarding the responsibilities of such Monitor(s) and the Department shall select such Monitor(s) within thirty days of entry of the Settlement.

Finally, the Settlement includes standard clauses, including a release from liability associated with claims arising from the Order to Show Cause, no admission of liability, and confidentiality of settlement discussions.

CONCLUSION

The Order to Show Cause alleged violations of PSL §31(3), (4) and §66-a(1), which provisions taken together require all gas corporations to provide safe and reliable service to any gas customers. As discussed above, the Settlement resolves all the alleged violations in the Order to Show Cause by, among other things, requiring National Grid to immediately lift the moratorium, provide relief to those customers harmed by the moratorium, and ensure adequate future supply by preparation of an Action Plan and Long Term Capacity Report, the second of which requires significant public input. Because it is in the public interest, the Settlement is adopted as a reasonable resolution of the Order to Show Cause. Given the onset of winter weather and the winter heating season, this Order is adopted forthwith.

It is ordered:

1. The Settlement is adopted and approved.
2. The Order to Show Cause and all of the claims alleged thereto are hereby resolved pursuant to this Order.

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

4. This case is continued to ensure compliance with this Order and to the extent that other filings are required to be made pursuant to this Order.

(SIGNED)

Commissioner

EXHIBIT A

Settlement

This Settlement (“Settlement”) is made this day of November 24, 2019 (the “Effective Date”), by and among National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid (collectively, “**National Grid**” or the “**Company**”); and the New York State Department of Public Service Staff (the “**Department**” or “**Staff**”) (each individually a “**Signatory Party**” and collectively, the “**Signatory Parties**”). This Settlement resolves or establishes a plan for resolving all issues arising out of the gas moratorium implemented by National Grid in May 2019, including but not limited to the Public Service Commission’s (“**Commission**”) October 11, 2019 Order to Show Cause in Case No. 19-G-0678 (“**Order**”).

RECITALS

WHEREAS, National Grid provides natural gas services to customers located in Brooklyn, Queens, and Long Island;

WHEREAS, National Grid began imposing conditions of gas service on new and expanded service connections for certain large customers beginning in November 2018 and began denying such connections for all applicants in May 2019 (collectively, the “**Moratorium**”);

WHEREAS, the Order alleges, among other things, that since imposition of the Moratorium National Grid had denied gas service to more than 3,700 existing and new customers, including inactive customers who had temporarily suspended gas service to facilitate renovations to their homes or businesses, and that the failure to provide such service coupled with the lack of appropriate notice of the Moratorium created an undue hardship for these customers;

WHEREAS, the Order directed National Grid to safely connect a group of residential and small commercial customers allegedly denied service between the onset of the Moratorium and early September 2019;

WHEREAS, the Order directed National Grid to develop a Contingency Plan that would allow the Company to safely connect the maximum of customers denied service and to show cause why civil penalties should not be imposed under Public Service Law (“PSL”) § 25-a regarding the violations alleged in the Order;

WHEREAS, National Grid and other experts agree that there is a long-term supply issue which must be anticipated and resolved;

WHEREAS, National Grid agrees to begin connecting all eligible inactive and other Customers in coordination with the Department as soon as is practicable;

WHEREAS, in developing potential options to lift the Moratorium, National Grid represents that it has been able to leverage new developments since it imposed the Moratorium, including, previously-unknown to National Grid, a source of peaking supply on the Iroquois Gas Transmission System (“IGTS”) pipeline available for the winter of 2019-2020 and potentially in winters beyond; achieving greater-than-previously-anticipated by National Grid demand reduction through the performance of its demand response and energy efficiency initiatives in 2019; experiencing greater-than-anticipated customer interest in offers to transition from firm to non-firm service; increased confidence that it will be feasible from an engineering and siting perspective for the Company to add compressed natural gas (“CNG”) facilities at additional sites in its constrained service

areas; and an expectation that a proposed compression project on the IGTS pipeline may be able to provide additional capacity to constrained portions of the Company's Long Island service area in 2023 or later;

WHEREAS, the Signatory Parties now wish to resolve the matters set forth in the Order, without any admissions or findings of liability, on the terms and conditions specified herein;

NOW THEREFORE, in consideration of the agreements, promises, and representations set forth in this Agreement, the receipt and sufficiency of which are hereby agreed to and acknowledged, the Signatory Parties, intending to be bound, agree as follows:

TERMS

I. Definitions

The following definitions shall apply to this Agreement:

- a. The term “best efforts” shall mean that National Grid has made every attempt to contact the Customer by email, telephone or mail regarding its intent to provide gas service and has either provided such service, been informed by such Customer that such service is no longer necessary, or has been unable despite such outreach to provide such service as a result of the Customer’s failure to respond or to provide necessary access or information.
- b. The term “Claims” shall mean any and all claims, obligations, liabilities, damages, contribution, losses, costs, expenses, attorneys’ fees, injunctive, declaratory or equitable relief, actions, charges, suits, demands or other claims of any nature whatsoever.
- c. The term “Customers” shall mean any persons that fall into any of the following customer classes and located within National Grid’s Service Territory: (1) residential customers; (2) small commercial customers; (3) multi-family customers; and (4) large commercial or industrial (“C&I”) non-firm customers.
- d. The term “Large Commercial or Industrial Customer” shall mean any large commercial or industrial customer that requests firm gas service, and is located within National Grid’s Service Territory.
- e. The term “Effective Date” shall mean the date when authorized officials of the Department and National Grid execute and sign this Agreement, and the Commission approves the Agreement.
- f. The term “Initial Customers Denied Service” shall mean any Customers who applied for and were denied service by National Grid between the Company’s imposition of the Moratorium and early September 2019.
- g. For purposes of this Agreement only, “National Grid’s Service Territory” or “Service Territory” shall mean those areas of Long Island, Queens, Brooklyn and Staten Island to which National Grid provides gas service pursuant to its Tariffs.
- h. The term “New Customers” shall mean all potential eligible Customers that apply for gas service from National Grid between the Effective Date and September 1, 2021, or by later date if authorized by National Grid in its sole discretion pursuant to Section II(b) of this Agreement.
- i. The term “Other Initial Customers” shall mean any potential eligible Customers who applied for and were denied service by National Grid since the Company’s imposition of the Moratorium and prior to the Effective Date, except for Initial Customers Denied Service.

II. Lifting of Moratorium

- a. In coordination with the Department, National Grid shall lift the Moratorium as of the Effective Date, and provide gas service to all eligible customers as follows:
 - i. Initial Customers Denied Service: With respect to all Initial Customers Denied Service, National Grid shall have made best efforts to contact such customers to provide gas service

within 30 days of the Effective Date, except for those customers who informed National Grid they no longer require service.

- ii. Other Initial Customers: With respect to Other Initial Customers, National Grid shall make best efforts to contact such customers to provide gas service within 45 days of the Effective Date, except for those customers who informed National Grid they no longer require service.
 - iii. New Customers and Large Commercial or Industrial Customers: National Grid shall provide service to all New Customers and Large Commercial or Industrial Customers as soon as practicable and in compliance with the requirements of its Tariff and the Public Service Law.
- b. Nothing in this Agreement shall be construed as requiring National Grid to continue connecting all additional New Customers or customers seeking expanded service beyond September 1, 2021, if in National Grid's sole discretion it determines that extension of service to such New Customers, or to expanded use by existing Customers, would create or would in the future create an unacceptable risk to its ability to continue providing safe and reliable service. If National Grid makes such determination, it shall be subject to review by the Department.
 - c. National Grid has committed that there will be no Moratorium for approximately two years. However, in the exigent circumstance that there is no long-term supply identified and expected to be in service for winter peak demand, and National Grid determines it must discontinue connecting new Large Commercial or Industrial Customers, or providing expanded service to existing Large Commercial or Industrial Customers, seeking such service beyond March 31, 2021, it must provide at minimum 60 days prior notice to the Secretary describing the Company's efforts to minimize the potential impacts and explaining why the service restrictions are prudent and necessary in consideration of public safety. The determination by National Grid shall be subject to review by the Commission.
 - d. The Department acknowledges and agrees that National Grid's, or any other gas provider's, ability safely to continue to serve its customers depends upon resolving the long-term supply constraints in downstate New York, and that National Grid may be required to take further steps to curtail or limit new gas connections after September 1, 2021 if those constraints are not meaningfully addressed.
 - e. National Grid agrees to voluntarily suspend or withdraw its related Tariff filings (18-G-0711, 18-G-0709, 18-G-0710) until a long-term supply option(s) is presented to the State in the Long-Term Capacity Report required in Section IV of this Agreement.

III. Action Plan for Lifting Moratorium

Within one week after the Effective Date, National Grid shall provide to the Department an action plan that shows how it will provide safe and adequate service to allow it to address the increased load associated with gas being provided to the Customers identified in Paragraph II(a) of this Agreement. The action plan shall describe all supply, demand response, energy efficiency and any other measures the Company will use to

address such increased load and show how such measures will otherwise be employed to ensure it will meet the anticipated demands in its Service Territory. Such action plan once filed shall be incorporated by reference into and become a requirement of this Agreement and any Commission Order approving this Agreement. National Grid may amend such action plan, on notice to the Commission and the Independent Monitor established in Paragraph XI, which amendments shall take effect upon filing, to alter the measures employed to ensure National Grid will meet the anticipated demands in its Service Territory. Amendments to the action plan shall not diminish any obligation to provide service pursuant to its tariff or the Public Service Law.

IV. Development of Long-Term Solutions and Solicitation of Public Input

National Grid shall prepare, and shall release publicly no later than three (3) months from the execution of this Agreement, an analysis of the long-term capacity constraints affecting its downstate operations (the “**Long-Term Capacity Report**”).

- a. The Long-Term Capacity Report shall present and analyze comprehensively and clearly all reasonably available options for meeting long-term demand, including but not limited to pipeline construction, LNG facilities, CNG facilities, renewable energy sources, conservation strategies, and inter-operable systems, and shall include recommendations as well as an identification of actions needed (including but not limited to policy and regulatory changes) to implement each option or options.
- b. Following the public release of the Long-Term Capacity Report, National Grid agrees to work with the Department and local officials to conduct no fewer than four (4) public meetings to solicit public input on the Long-Term Capacity Report, the recommendations set forth therein, and any available alternatives. Such meetings shall take place in Queens, Brooklyn, Nassau and Suffolk counties.
- c. National Grid agrees that a long-term option or options should be identified and agreed to by the State of New York by June 2020 to allow a safe adequate construction and transition period and have the long-term option or options in place and functioning in approximately two years.

V. Approval by Commission

This Agreement is subject to approval by the Commission, and shall not be effective until approved by the Commission. No provision of this Agreement or the Commission’s adoption of the terms of this Agreement shall in any way abrogate or limit the Commission’s statutory authority under the Public Service Law. The Parties recognize that any Commission adoption of the terms of this Agreement does not waive the

Commission's ongoing rights and responsibilities to enforce its orders and effectuate the goals expressed therein, nor the rights and responsibilities of Staff to conduct investigations or take other actions in furtherance of its duties and responsibilities.

VI. Mitigating Hardships and Resolving Customer Complaints

The Company has developed an Energy Efficiency Proposal (the "Efficiency Plan") and a customer assistance plan to address hardships endured by Customers subject to the Moratorium (the "Assistance Plan"). The Efficiency Plan is to be paid for by National Grid shareholders and would be incremental to any programs or projects required by any future orders issued by the Commission that address energy efficiency requirements.

- a. The Efficiency Plan proposes to deliver a comprehensive package of new Company-funded energy efficiency, demand response, and other gas conservation measures designed to reduce peak-day gas usage among current Customers to enable certain new Customer connections. National Grid agrees to fund the Efficiency Plan with \$8 million.
- b. The Assistance Plan is a Company-funded plan to address hardships that resulted from the Moratorium, including but not limited to those hardships identified in complaints filed with the Office of the Attorney General of the State of New York. National Grid agrees to fund the Assistance Plan up to \$7 million. If these funds are not needed in their entirety for the Assistance Plan, such monies will be used to increase funds available for the Efficiency Plan.

VII. Investment in Clean Energy Projects

National Grid and its affiliates through shareholder funding shall commit \$20 million towards clean energy projects and/or investments in New York-based startup energy businesses and technologies to reduce reliance on non-renewable sources as directed by the Director of the Division of the Budget, in consultation with the Department. National Grid and its affiliates shall be prohibited from receiving any such funding under this Section.

VIII. Release of National Grid

- a. The Department and the Commission shall release National Grid and its affiliates from Claims that the Department and the Commission have or may have against National Grid based upon conduct actually known at the time of the execution of this Agreement related to or arising out of

the Moratorium or Order, including but not limited to any payment, penalty, forfeiture, or fine that has accrued or may accrue and any customer complaints filed with the Office of Consumer Services arising out of or otherwise relating to the Moratorium.

- b. The Department and the Commission shall exclude complaints related to or arising out of the Moratorium from the calculation of any negative revenue adjustments due under National Grid's PSC Complaint Rate metrics, as set forth in Sections IV(7.1) and V(7.1) of the Joint Proposal in Cases 16-G-0058 and 16-G-0059, dated September 7, 2016, for calendar year 2019.
- c. The Department and the Commission shall release National Grid from Claims that the Company's franchise(s) or license(s) should be revoked, relating to any conduct actually known at the time of execution of this Agreement by the Company or its agents in connection with the Moratorium or National Grid's supply planning prior to the Effective Date of this Agreement.

IX. No Admission of Liability

This Settlement represents a negotiated resolution between the Signatory Parties of all issues related to the hardships created by the imposition of the Moratorium. The Settlement shall in no way be construed as an admission by the Company of any violation of any law, regulation, or order of the Commission.

X. Confidentiality of Settlement Discussions

Pursuant to 16 NYCRR 3.9(d), all settlement negotiations leading to this Agreement are and remain confidential and shall not be disclosed by either Signatory Party except (a) with the permission of the other Signatory Party; (b) to National Grid's attorneys, auditors, accountants, lenders or putative lenders (and their respective advisors), tax advisors, or insurers, or such other persons as are mutually agreed, provided such persons agree to keep said information confidential and not to disclose it to others except as required by law or regulatory inquiry; (c) where required by law, court order, or regulatory inquiry; or (c) in connection with any dispute concerning, or action to enforce, this Agreement. Each of the Parties further agrees that the Settlement Matters shall not be admissible as evidence in any proceeding, including, but not limited to, uses as evidence prohibited by Fed. R. Evid. 408 and CPLR 4547, except as set forth in this Paragraph. This provision shall survive the termination of the Agreement.

XI. Independent Monitor

The Department shall select at its sole discretion an independent monitor or monitors to monitor

National Grid's natural gas supply operations and compliance with its obligations under this Agreement. The Department shall provide within thirty (30) days of the Effective Date a protocol for the engagement and scope of the work to be undertaken by the independent monitor(s). The scope shall include provisions related to, at minimum: (a) such monitor's or monitors' reporting obligations, including the reporting of any evidence of violations of this Agreement; (b) reasonable access of the monitor(s) to National Grid management and other personnel; (c) the reasonable opportunity of the monitor(s) to interview such management and personnel; and (d) reasonable access to National Grid's books and records. The monitor costs incurred in connection with responsibilities identified hereto shall be conducted at National Grid shareholder expense, which amount shall be no more than one million dollars (\$1,000,000).

XII. Other Provisions

a. Application of Agreement/No Precedent

The provisions contained herein apply solely to and are binding only in the context of the Settlement. None of the terms of the Settlement and none of the positions taken with respect to the Settlement may be referred to, cited by, or relied upon by anyone in any manner as precedent or otherwise in any other proceeding before the Commission or any other regulatory body or before any court of law for any purpose other than the adoption, implementation, furtherance, or extension of the settlement.

b. Dispute Resolution

In the event of any disagreement over the interpretation of this Agreement or the implementation of any of the provisions of this Agreement, which cannot be resolved informally among the Signatory Parties, such disagreement will be resolved as follows: the Signatory Parties promptly will confer and in good faith will attempt to resolve such disagreement. If any such disagreement cannot be resolved by the Signatory Parties within 15 business days from notification invoking this process, or a longer period if agreed to by the Signatory Parties, any Signatory Party may petition the Commission for a final determination on the disputed matter.

c. Governing Law and Jurisdiction

This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws thereof.

d. **Counterparts**


This Settlement is being executed in counterpart originals and will be binding on each Signatory Party when the counterparts have been executed.


e. **Authorization.**

The execution, delivery and performance of this Agreement by each Party is within its corporate or statutory powers, as applicable, has been duly authorized by all necessary corporate or statutory action, and does not and will not (a) require any additional consent or approval, (b) contravene its organizational documents or enabling legislation, or (c) violate applicable law.

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

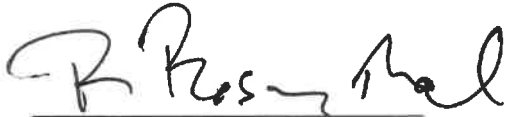
National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid have this day signed and executed this Settlement Proposal.

By: 
Keri Sweet Zavaglia
Senior Vice President and US General Counsel

By: 
Philip A. DeCicco
Vice President and Deputy General Counsel Date:

November 24, 2019

New York State Department of Public Service Staff has this day signed and executed this Settlement.

By: 
Robert Rosenthal
General Counsel, Department of Public Service

Date: November 24, 2019