STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 23-G-0225 - 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 23-G-0226 - 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 23-G-0200 - Petition of The Brooklyn Union Gas Company d/b/a National Grid NY for a New York State Sales Tax Refund under 16 NYCRR Section 89.3 and Request for an Extension.

STAFF STATEMENT IN SUPPORT OF THE JOINT PROPOSAL

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STAFF STATEMENT IN SUPPORT OF THE JOINT PROPOSAL

I. INTRODUCTION

On April 9, 2024, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid (KEDLI) (collectively, the Companies); Staff of the New York State Department of Public Service (Staff); Environmental Defense Fund (EDF); the City of New York (CNY); and NRG Energy (NRG) collectively the "Signatory Parties," submitted a Joint Proposal recommending a comprehensive resolution of all issues raised in the above-captioned proceedings.[1] By this Statement in Support of the Joint Proposal (Initial Statement), Staff recommends that the New York State Public Service Commission (Commission) adopt the provisions of the Joint Proposal and establish three-year gas rate plans for KEDNY and KEDLI to begin as of April 1, 2024.[2]

[1] Cases 23-G-0225 et al., KEDNY and KEDLI – Rates, Joint Proposal (filed April 9, 2024) (Joint Proposal).

[2] Staff recognizes that the Joint Proposal was submitted after the proposed beginning of the three-year rate plans. In order to allow for settlement negotiations and various procedural steps, the Companies' consented to extensions of the maximum suspension period for a major rate filing provided in Public Service law (PSL) §66(12)(f). As explained in the Joint Proposal and at various points herein, the Joint Proposal provides for a "make-whole," placing the Companies and customers in the same position they would have been in had the rate plans been in place on April 1, 2024.

II. PROCEDURAL HISTORY

On April 28, 2023, the Companies filed tariff leaves, direct testimony, and exhibits in support of their request to increase gas delivery rates for the rate year ending March 31, 2025, referred to in the context of the proposed three-year rate plans as "RY1." KEDNY requested a base delivery revenue increase of $429.2 million, and KEDLI requested a base delivery revenue increase of $232.6 million.

On June 14, 2023, Administrative Law Judges (ALJs) Maureen F. Leary and James A. Costello presided over a procedural conference and technical conference in these proceedings. Thereafter, the ALJs issued a ruling providing a procedural schedule for these cases.[3] The ruling provided that: the Company would file corrections and updates on June 30, 2023, and discovery-related exhibits on June 30, 2023; Staff and intervenors would file testimony and exhibits on September 1, 2023; all parties would file rebuttal testimony on September 22, 2023; and the evidentiary hearing would commence on October 10, 2023.

On June 30, 2023, the Companies filed their Corrections and Updates (C&U) testimony and exhibits in support of an increase of $466.5 million in the gas revenue requirement for KEDNY, and an and an increase of $277.3 million in the gas revenue requirement for KEDLI. KEDNY and KEDLI stated that these changes were the results of updates to revenue forecasts, capital investment plans and operations and maintenance (O&M) expenses.

On September 1, 2023, Staff filed direct testimony and exhibits and proposed a RY1 gas delivery revenue increase of $390.0 million (a decrease of $76.9 million from KEDNY's position) for KEDNY, and a RY1 gas delivery revenue increase of $220.0 million (a decrease of $57.4 million from the KEDLI's position) for KEDLI. On or around September 1, 2023, the following intervenors also filed direct testimony and exhibits: CNY, the Natural Resources Defense Council (NRDC), Department of State, Division of Consumer Protection, Utility Intervention Unit (UIU); Public Utility Law Project of New York, Inc. (PULP); the Environmental Defense Fund (EDF); the Alliance for a Green Economy (AGREE), NRG, Margot Spindelman, SANE Energy Project (SANE Energy), Mary Finneran and We Act for Environmental Justice (We Act). Exhibits containing responses to discovery requests were filed

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[3] Cases 23-G-0225 et al., supra, Ruling on Party Status and Schedule (issued June 21, 2023).

on their respective dates. The Companies, Staff, PULP, CNY, We Act, UIU, and SANE Energy filed rebuttal testimony on or around September 22, 2023.

On September 26, 2023, KEDNY and KEDLI filed a Notice of Impending Settlement Negotiations, stating that settlement discussions would begin on October 11, 2023. On September 27, 2023, KEDNY and KEDLI filed a request to extend the rate suspension period to May 31, 2024 provided that a make-whole provision would be included to ensure that each Company was not financially disadvantaged, which was subsequently approved by the ALJ's.[4] Further, on October 4, 2023, the Companies filed a notice of impending settlement negotiations, which also stated that the disposition of a KEDNY petition regarding a New York State Sales Tax refund would be included in the discussion.[5]

On October 4, 2023, the ALJs issued a ruling postponing the hearing until December 11, 2023. The first settlement session was held on October 11, 2023, with subsequent sessions held on various dates with notice provided to all parties to the proceedings.

On December 7, 2023, KEDNY and KEDLI filed a letter requesting to postpone the December 11, 2023, evidentiary hearing, and further extend the maximum suspension period through June 30, 2024, subject to a make whole provision, which the ALJ's approved.[6] On January 19, 2024, KEDNY and KEDLI submitted a letter requesting to postpone the January 23, 2024, evidentiary hearing, and requested an extension of the suspension period, with a make whole provision, through July 31, 2024, which the ALJ's approved.[7] On February 16, 2024, KEDNY and KEDLI submitted a letter requesting to postpone the evidentiary hearing schedule for February 27, 2024, and an extension of the suspension period, with a make whole provision, through August 30, 2024, which the ALJ's approved.[8]

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4 Cases 23-G-0225 et al., supra, Ruling Postponing Hearing and Revising Procedural Schedule (issued October 4, 2023).

5 Case 23-G-0200, Petition for a New York State Sales Tax Refund under 16 NYCRR Section 89.3 and Request for Extension, Notice of Impending Settlement Negotiation (dated October 4, 2023) (KEDNY Sales Tax Refund Case).

6 Cases 23-G-0225 et al., supra, Ruling Postponing Hearing and Revising Procedural Schedule (issued December 8, 2023).

7 Id., Ruling Postponing Hearing and Revising Procedural Schedule (issued January 22, 2024).

8 Id., Ruling Postponing Hearing and Revising Procedural Schedule (issued February 21, 2024).

III. OVERVIEW OF THE JOINT PROPOSAL

As discussed in greater detail below, and in the various sections of this Initial Statement, the Joint Proposal contains a number of provisions designed to protect and benefit customers' interests, maintain and improve the Companies' ability to provide safe, adequate and reliable service, incorporate expenses that were expended by the Companies' where recovery was delayed due to the COVID-19 pandemic, and provide a resolution to other issues raised by intervenors, including but not limited to incorporating provisions to further the goals and mandates of the Climate Leadership and Community Protection Act (CLCPA or Climate Act).[9] Section I of the Joint Proposal provides the procedural background for the proceedings addressed in the Joint Proposal. Section II provides the overall framework for the Joint Proposal. Section III provides definitions, including for the rate years: April 1, 2025, through March 31, 2025 (RY1); April 1, 2025, through March 31, 2026 (RY2); and April 1, 2026, through March 31, 2027 (RY3) (collectively, Rate Years).

Turning to the provisions of Section IV, Subsection 1 sets forth the effective date (April 1, 2024), and term (April 1, 2024, through March 31, 2027) of the rate plans. Subsection 2 provides the gas revenue requirement increases, the return on equity (ROE), and the make whole provision. Subsection 3 concerns the revenue allocation and rate design, and tariff changes such as the Rate Adjustment Mechanism (RAM). Subsection 4 addresses the disposition of excess earnings, calculation of the Companies' actual ROE after each rate year, and the details of the earnings sharing mechanism. Subsection 5 details the Companies' gas capital investment and infrastructure, including the review of KEDNY's Greenpoint Liquefied Natural Gas (LNG) Facility (Greenpoint LNG Facility or Greenpoint Energy Center), service lines, meter related issues, leakage inspections, and safety programs.

Subsection 6 addresses information technology and digital (IT&D) issues, including capital budgets, specific programs, and reporting requirements. Subsection 7 concerns programs and initiatives that will further the goals of the CLCPA, such as Non-Pipe Alternatives

[9] The CLCPA is a comprehensive climate policy legislation that was enacted in 2019 as Chapter 106 of the laws of 2019. The CLCPA sets targets to reduce greenhouse gas emissions (GHG) by at least 40 percent from 1990 levels by 2030 and by at least 85 percent from 1990 levels by 2050. Also, the CLCPA established targets that would require electric utilities, by 2030, to procure at least 70 percent of the State's electric load from renewable energy resources, and by 2040 have an electrical demand system that is zero emission.

(NPAs), Disadvantaged Community reporting and analysis, and limits on gas marketing. Subsection 8 discusses new and existing reconciliations, deferrals, and true-ups for KEDNY and KEDLI, including pension and Other Post-Employment Benefits (OPEBs) expense, the low income discount program, economic development grant programs, site investigation and remediation costs, property tax expense, City State Construction program, exogenous costs, and the net utility plant and depreciation expense reconciliation.

Subsection 9 addresses the Companies' customer service-related issues including customer service performance indicators, PSC complaint rate, customer satisfaction survey and call answer rate. Subsection 10 concerns gas safety metrics, leak prone pipe (LPP) removal, the related incentive program and reporting requirements, leak management, damage prevention, and emergency response. Subsection 11 addresses customer programs including energy affordability, collections and protections, outreach and education, arrears resolution, and language access. Subsection 12 addresses energy services company issues, including demand response notification. Subsection 13 concerns the procedures for filing for new rates during the term of the rate plan. Finally, Subsection 14 addresses corporate structure and affiliate rules, and standard provisions common to all joint proposals and the KEDNY Sales Tax Refund Case.[10]

IV. THE JOINT PROPOSAL IS IN THE PUBLIC INTEREST

1. Benefits of the Joint Proposal

The Joint Proposal provides various benefits to ratepayers. First, the plan provides for rate stability over its duration. The proposed RY1 levelized increases of $256.9 million for KEDNY and $147.1 million for KEDLI are significantly lower than those requested by the Companies in their testimony. The overall revenue requirement increases reflect a reasonable compromise between the Companies', Staff's, and other parties' litigation positions. The measured, multi-year rates set forth in the Joint Proposal would not be achievable in a litigated outcome.

Additionally, the Joint Proposal provides multiple non-monetary benefits while advancing important Commission and State priorities. First, it continues to ensure that the Companies are capable of providing safe and adequate service by funding necessary safety

[10] KEDNY Sales Tax Refund Case.

programs related to LPP removal,[11] methane detection programs,[12] and meter relocations[13] for gas service. The Joint Proposal also acknowledges that KEDNY's long-term plan, that will be filed on May 31, 2024, pursuant to the Commission's order in Case 20-G-0131,[14] will consider the future role of the Greenpoint LNG Facility.

The Joint Proposal furthers the State's environmental goals by requiring the consideration of NPAs to ameliorate the need for new or replacement gas infrastructure including replacement of LPP,[15] requiring the Companies to present information on clean energy heating alternatives to potential gas customers,[16] ensuring the Companies continue to refrain from marketing new gas services and requiring that the Companies seek acknowledgement from customers that those customers have received information regarding non-fossil alternatives,[17] and enhancing energy efficiency programs.[18] The Joint Proposal represents significant expansion in the scope of NPA-related activities required of KEDNY and KEDLI, requiring the Companies to engage much more deeply with development of NPAs instead of traditional infrastructure projects, and provides additional tools to engage customers in both existing NPA opportunities as well as the new opportunities which would be established if the Joint Proposal is approved. Decarbonization through participation in NPA projects is fundamentally aligned with both the spirit, through technology deployment, and the letter, through decarbonization targets, of the CLCPA.

Finally, the Joint Proposal provides consumer protections by expanding the budget of its energy affordability program,[19] and enhancing protections during adverse or extreme weather.[20]

Many of the features cited above, and others detailed below, would not have been achievable through litigation. The Joint Proposal is an over-all benefit to ratepayers, its terms

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[11] Joint Proposal, pp. 74 – 75.
[12] Id., p. 34.
[13] Id., pp. 26-27.
[14] Case 20-G-0131, Gas Planning Proceeding, Order Adopting Gas System Planning Process (issued May 12, 2022).
[15] Joint Proposal, pp. 39-46.
[16] Id., pp. 43 - 44.
[17] Id., p. 54.
[18] Id., pp. 90 – 91.
[19] Id., pp. 83 – 84.
[20] Id., p. 84.

are consistent with Commission and State mandates and requirements such as the CLCPA, and its terms should be adopted by the Commission.

2. Standard of Review

The Commission's Settlement Guidelines state that all decisions, including those to adopt the terms of settlement agreements (joint proposals) must be just and reasonable and in the public interest.[21] In addition to compliance with proper procedures, determining whether the terms of a joint proposal are in the public interest involves substantive consideration of the following:

1. consistency with the law and regulatory economic, social and environmental State and Commission policies;
2. whether the terms of the joint proposal compare favorably with the likely result of a fully litigated case and produce a result within the range of reasonable outcomes;
3. whether the joint proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and
4. whether the joint proposal provides a rational basis for the Commission's decision.[22]

3. The Joint Proposal Comports with the Commission's Settlement Guidelines

The Joint Proposal entered into in these cases resolves all outstanding issues presented in testimony and settlement negotiations. In doing so, it fully comports with the Commission's Settlement Guidelines. The fact that intervening parties such as CNY, EDF, and NRG are signatories to the Joint Proposal shows that the document balances the parties' diverse interests while ensuring the Companies' continued delivery of safe, adequate, and reliable gas service at just and reasonable rates. In addition to the parties that signed the Joint Proposal, Staff notes that UIU has stated that it will not oppose the Joint Proposal.

3.1 The Joint Proposal is Consistent with State Policies

The Joint Proposal recommends outcomes that are consistent with the State's and Commission's policies. The recommended outcomes ensure that the Companies will continue to

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[21] Cases 90-M-0225 and 92-M-0138, In the Matter of Settlement Procedures, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) (Settlement Guidelines), p. 30.

[22] Settlement Guidelines, p. 31.

provide safe and adequate service at just and reasonable rates. Specifically, the terms of the Joint Proposal will continue the Companies' efforts to retire LPP in their service territory, enhancing the safety of the communities served by KEDNY and KEDLI. Additionally, the rate levelization recommended in the Joint Proposal helps shield customers from significant rate increases during each specific rate year. Regarding environmental matters, the Joint Proposal is consistent with the CLCPA and with the Commission's energy efficiency policies as set forth in its order regarding New Efficiency: New York (NE:NY).[23]

3.2 The Joint Proposal is Consistent with the CLCPA

The CLCPA enacted Article 75 of the New York Environmental Conservation Law (ECL). ECL §75-0107 sets statewide greenhouse gas emissions limits of 60 percent of 1990 emissions levels by 2030 and 15 percent of 1990 emissions levels by 2050. Further, that provision requires the New York State Department of Environmental Conservation (DEC) to promulgate rules and regulations setting the greenhouse gas emissions limits in terms of carbon dioxide equivalents. Additionally, the CLCPA provides that state agencies must "consider whether [their] decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in [ECL §75-0107]." Where a decision is found to be inconsistent with the greenhouse gas emissions limits, an agency must "provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located."[24]

Complete CLCPA regulations have not yet been promulgated. In December 2022, as directed by the CLCPA, the New York State Climate Action Council (CAC) released its final Scoping Plan detailing recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide Greenhouse Gas (GHG) emissions limits established by the CLCPA. ECL §75-0103 provides that the final Scoping Plan "shall inform the state energy planning board's adoption of a state energy plan in accordance with section 6–104 of the energy law." Pursuant to ECL §75-0109, the DEC must "promulgate rules and regulations to

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[23] Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) (NE:NY Order).

[24] CLCPA §7.

ensure compliance with the statewide emissions reduction limits" that "[r]eflect, in substantial part, the findings of the scoping plan." DEC's efforts to promulgate rules and regulations concerning ECL §75-0109 is currently ongoing.

In this context of the implementation of the CLCPA, the Commission has ruled on the applicability of the CLCPA to rate proceedings. First, regarding gas service, in a recent Order approving rates for New York State Electric & Gas Corporation (NYSEG) and Rochester Electric and Gas Corporation (RG&E), the Commission considered arguments from third parties who alleged that the Joint Proposal in those cases failed "to address CLCPA §7(3)'s provisions regarding disadvantaged communities."[25] In that order the Commission found that "application of the CLCPA… cannot be done in a vacuum" and must be balanced against the requirements of the Public Service Law requiring "safe and reliable service at just and reasonable rates."[26] Further, the Commission stated:

> the question posed by the CLCPA is not whether gas utilities are reducing gas transmission and distribution, but whether an agency's action is consistent with the CLCPA greenhouse gas emission goals and, if inconsistent, has the agency adequately justified its action.[27]

Second, in a recent rate proceeding regarding Corning Natural Gas Corporation (Corning),[28] Corning proposed to accelerate the depreciation of its gas distribution infrastructure so that the company would recover the full return of its investment by 2050, reasoning that the CLCPA will render these assets valueless by 2050. The Commission rejected this proposal, determining that it was impossible to know in 2020 what Corning's business will look like in 2050. Further, the Commission found that there is presently great uncertainty as to how the CLPCA goals will be met and the impact that may have on the value of Corning's gas distribution system. The Commission reasoned that the climate goals could be achieved without affecting gas distribution or that the infrastructure could be repurposed and retain all or a portion of its value. Given these possibilities, the Commission found Corning's proposal premature.

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[25] Cases 22-E-0317 et al., NYSEG and RG&E - Rates, Order Adopting Joint Proposal (issued October 12, 2023), p. 55.

[26] Id.

[27] Id., p. 56.

[28] Cases 20-G-0101 & 16-G-0204, Corning Natural Gas Corporation – Rates, Order Establishing Rates and Rate Plan (issued May 19, 2021) (Corning 2021 Order).

Under this framework, the Joint Proposal in these cases clearly meets the requirements of the CLCPA. While as gas utilities the Companies must, by law, provide service to all in their authorized service territories who request it, the Joint Proposal commits KEDNY and KEDLI to reducing the environmental impact of the utility service it provides to customers. As detailed further below, the Companies will pursue policies designed to reduce the expansion of gas heating while ensuring the safety and reliability of the existing gas distribution infrastructure. The Joint Proposal continues and improves on existing reporting requirements, including a significant expansion of tracking information on NPA projects, Disadvantaged Community impacts, and emissions impacts, among others. Taken as a whole, the Joint Proposal will contribute to the goals of the CLCPA while satisfying the Companies' obligations under the PSL to provide safe and adequate service to its ratepayers.

Regarding gas sales, the Joint Proposal includes forecasts for increases in non-generator gas sales in RY1, RY2, and RY3. These forecasts are not goals or targets in the sense of a desired outcome, but rather a best estimate of customer usage that can be expected based on the available data and economic variables. Leveraging beneficial provisions of the Joint Proposal, KEDNY and KEDLI can potentially avoid the forecasted increases in gas usage and make more effective use of its existing infrastructure through various means, including: maximizing energy efficiency savings and program improvements discussed in Sections V.6.5, V.7.4, and V.11.10; continuing to grow its demand response programs discussed in Sections V.7.11 and V.12; using non-gas non-pipe alternatives in lieu of LPP replacements, customer connections, and system reinforcement projects discussed in Section V.7.1; working with Consolidated Edison Company of New York (Consolidated Edison or Con Ed) and PSEG Long Island (PSEG LI) as service provider to the Long Island Power Authority (LIPA) to promote geothermal and electric heating options to new customers discussed in Section V.7.4; further curtailing and eliminating all promotional and marketing programs related to the expansion of gas service and encouraging applicants for service to consider electrification discussed in Section V.7.5; supporting implementation of approved UTEN projects during the term of the rate plan discussed in Section V.7.6; and allowing the Companies to request a waiver from the "100 foot rule" and "revenue test" provisions of 16 NYCRR §§230.2 and 230.3 discussed in Section V.7.7.[29]

The Companies' LPP program will also contribute to the CLCPA's goals, most directly by reducing the amount of gas escaping from the Company's infrastructure, but also through the Joint Proposal's requirement to consider NPAs to remove, rather than replace, LPP. Specifically, KEDNY and KEDLI will identify sections of LPP that can be eliminated through the use of "thermal energy networks or individual ground- or air-source heat pumps" for affected customers.[30] The Companies will also commit to addressing five LPP segments annually through removal of the infrastructure, where cost-effective.

Finally, to ensure the various environmental efforts are effective, the Joint Proposal requires the Companies to provide significant reports regarding its gas system, including: (1) energy efficiency spending, including details on energy efficiency savings in disadvantaged communities;[31] (2) demand response participants and total program savings;[32] (3) information on the Companies' efforts to train residents of disadvantaged communities for clean energy related jobs;[33] and (4) in their next rate filing, a detailed analysis of the Companies' capital projects' impact on Disadvantaged Communities.[34]

The Joint Proposal provides cost recovery to enable the implementation of energy efficiency programs and establishes a downward-only cost reconciliation mechanism and surcharge mechanism to reconcile any difference between program budgets and actual expenditures.[35] The Joint Proposal also includes a shareholder-funded program to remediate health and safety barriers to energy efficiency improvements in low-income and Disadvantaged Community households.[36] The Joint Proposal includes funding for updating core energy efficiency-related IT functionality through the Clean Energy 2.0 Project, and provides new functionality for customers to more deeply engage with energy efficiency and demand response providers through sharing of billing and usage data on the Green Button Connect (GBC)

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[29] Joint Proposal, pp. 42, 53, 54, 58, & 90-91.
[30] Id., p. 40.
[31] Id., p. 47.
[32] Joint Proposal, p. 48.
[33] Id., p. 50.
[34] Id., p. 51.
[35] Id., p. 90.
[36] Id., pp. 93-94.

platform. The Joint Proposal also requires the Companies to improve communication processes with firm customer gas demand response aggregators, participants, and stakeholders to better inform them of upcoming program activity and provide additional post-activation information.

While the Companies are legally required to provide gas service to applicants under current law, the proposed provisions within the Joint Proposal will result in a more efficient use of existing gas infrastructure while endeavoring to minimize the expansion of gas service in favor of more environmentally friendly alternatives. In this way the Joint Proposal satisfies the criteria the Commission has established for complying with the CLCPA at this stage in the CLCPA's implementation, while still meeting the PSL's requirement to provide safe and adequate service at just and reasonable rates.

If, in the alternative, the Commission were to determine that adopting a rate plan for the Companies as recommended in the Joint Proposal would be inconsistent with or would interfere with the attainment of the State's emission reduction targets, the Commission should still adopt the provisions of the Joint Proposal. The Commission should adopt the Joint Proposal on this basis because, as discussed in this Statement, the Joint Proposal is consistent with the other requirements and necessary findings the Commission must reach to approve the proposed rate plan. Further, the Commission may and should adopt the Joint Proposal on this basis because the Joint Proposal provides for the necessary and legally required provision of safe, reliable, and adequate service to the Companies' gas customers. The proposals and programs therein, specifically those regarding the Companies' capital investment, LPP removal, gas safety performance, customer service, and energy efficiency collectively support the Companies' ability to provide, safe, reliable, and adequate service to their gas customers.

Moreover, if in this hypothetical scenario the Commission were to find that adopting the terms of the Joint Proposal would interfere with the attainment of the CLCPA's GHG emission reduction targets, the provisions which Staff has highlighted still represent meaningful progress toward addressing the attainment of the CLCPA's GHG emission reduction targets within the context of the ratemaking process for gas-only utilities. Further, the terms of this Joint Proposal provide meaningful tools through enhanced reporting regarding Disadvantaged Communities to identify benefits and burdens to these communities, and the requirement that the Companies submit Disadvantaged Community burden assessments with their next rate filings improves upon what the Commission has approved in recent rate cases.

As described above, the commitment to further development of emissions tracking, reporting, and reductions may not wholly avoid or reduce impacts in the aggregate, but they do mitigate the impact of the Companies' original rate plan as proposed. Furthermore, the various commitments established in this Joint Proposal toward assessing and mitigating impacts to Disadvantaged Communities represent a meaningful step forward in addressing the historical disproportionate impacts of developing gas infrastructure in those communities. When considered in the context of balancing the Commission's obligation to provide utilities rates sufficient to ensure safe, reliable, and adequate service, the Joint Proposal represents a just and reasonable balance between that obligation and satisfying the emissions reduction and equity requirements of the CLCPA.

In addition, the provisions of the Joint Proposal concerning updates to performance metrics, outreach programs, language access, updates to reflect current Commission policies and guidance, and creating a linkage to the Commission's generic proceedings such as the Gas Planning Proceeding through the Companies' imminent long-term gas system plan filing are essential to advancing the public interest and should not be overlooked. For these reasons, Staff strongly argues that adopting the terms of the Joint Proposal would not interfere with attaining the GHG emission reduction targets of the CLCPA. However, in the event the Commission finds adopting the terms of the Joint Proposal would interfere with attaining those targets, the Commission still has a reasonable basis justify the adoption of the terms of the Joint Proposal in furtherance of the Commission's obligation to provide utilities rates sufficient to ensure safe, reliable, and adequate service at just and reasonable rates while mitigating the impacts of the Companies' initial rate proposals.

3.3 The Joint Proposal Compares Favorably to the Litigation Positions of the Active Parties to These Proceedings

The terms of the Joint Proposal are more favorable to ratepayers than the litigation positions of the Parties, and the Joint Proposal produces a result within the range of what could be expected in litigation.[37] In fact, the levelized revenue requirement increases for RY1 contained in the Joint Proposal is below the parties' testimonial positions, in which the Companies had proposed RY1 total revenue increases of 19.2 percent for KEDNY, and 17.5

[37] Parties' testimonies and briefs are referenced herein only as examples of potential litigated outcomes.

percent for KEDLI. Staff proposed total revenue increases of 13.9 percent for KEDNY, and 11.5 percent for KEDLI.[38]

The Joint Proposal's recommended allowed ROE of 9.35 percent is a fair compromise between the Company's and Staff's filed positions of 9.8 percent and 9.1 percent, respectively. Additionally, the 9.35 percent ROE is comparable to, though slightly higher than, the ROE allowed for other major utilities operating under recent Commission-approved multi-year rate plans.[39] Moreover, the 9.35 percent ROE for a multi-year rate plan compares favorably to the 9.25 percent ROE for a three-year rate plan adopted by the Commission in November 2023 for the Consolidated Edison Steam rate case,[40] and the 9.25 percent ROE for a single rate year recommended recently by DPS Staff in its pre-filed testimony in the rate proceedings for National Fuel Gas Distribution Corporation.[41] Furthermore, the earnings sharing mechanism mandates sharing with customers if the Companies were to over-earn.[42]

Further, the Joint Proposal contains various provisions that place a strong emphasis on the Companies managing their costs and provides controls and/or incentives to that end (e.g., downward-only net plant reconciliation, the gas safety performance metrics, and customer service performance mechanisms). At the same time, the Companies will receive sufficient additional revenues enabling them to implement new programs and maintain their gas systems to ensure the continued provision of safe, adequate, and reliable service. Moreover, the Joint Proposal continues reconciliation mechanisms and reporting requirements characteristic of Commission-adopted rate plans, which ensure adequate resources for utility operation while ensuring the funds are responsibly spent.

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38 Case 23-G-0225 et al., supra, Exhibit___(SRRP-4), p. 4.

39 See, Case 22-E-0064 et al., Consolidated Edison of New York – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023), p. 17; Case 22-E-0317, et al., supra, Order Adopting Joint Proposal (issued October 12, 2023) p. 27.

40 Case 22-S-0659, Consolidated Edison of New York - Steam Rates, Order Adopting Terms of a Joint Proposal (issued November 16, 2023), p. 9.

41 Case 23-G-0627, National Fuel Gas Distribution - Rates, Testimony of Staff Witness David Warnock (filed March 1, 2024), p. 4.

42 Joint Proposal, pp. 22-23.

3.4 The Joint Proposal Appropriately Balances the Interests of Stakeholders

This proceeding has seen the participation of parties representing multiple interests: large industrial customers, Energy Services Companies (ESCOs), consumer advocates, environmental advocates, individuals, and a municipality. Fourteen parties including the Companies and Staff submitted testimonies. Many parties actively participated in settlement negotiations, including the 24 settlement meetings held by the parties between October 2023 and March 2024. As a result of this participation, the Joint Proposal accommodates the interests of the various parties.

This balancing can be seen in the levelized annual rate increases, which will mitigate the rate increases for ratepayers, especially those on a fixed income or still feeling the economic effects of the COVID-19 pandemic, while still ensuring that the Companies will have sufficient funds to provide safe and adequate service.

The treatment of gas service and infrastructure also shows the efforts taken to balance parties' interests in the Joint Proposal. While the Companies will continue the work of enhancing safety and reducing gas loss through the replacement of LPP, they will also explore NPAs as a substitute for replacement, discussed at length in Section V.7.1, below. For example, the improved process to identify and implement NPA projects could help convince customers served from a segment of LPP to convert to electric heating and appliances, enabling the Companies to abandon that segment of LPP rather than replace it. The Joint Proposal also includes Section V.5.5, which addresses innovative technologies to address leak detection at an increased cadence. Also, as an accommodation to the testimonial positions of environmental advocates, the Companies will discontinue its gas marketing to prospective customers and provide information on no-fossil fuel heating alternatives.

The Joint Proposal also includes provisions to enable an evaluation of the Greenpoint Energy Center as part of the Companies' Long Term Plan (LTP) in Case 24-G-0248.[43, 44] The Companies are required to include specific information pertaining to the Greenpoint Energy Center to facilitate a comprehensive review of the need for that facility. This

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43 Joint Proposal, pp. 27-30.

44 Case 24-G-0248, In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid.

provision of the Joint Proposal is an extension of AGREE Witness Kleinginna's recommendation that the Greenpoint Energy Center should be studied.[45] Further, this evaluation will enable more thorough consideration of potential alternatives as discussed in SANE Energy's testimony.[46]

3.5 The Commission has a Rational Basis on which to Adopt the Terms of the Joint Proposal

As discussed above, the parties to these proceedings have had the opportunity to file multiple rounds of testimony and exhibits. Fourteen parties have done so. This pre-filed testimony thoroughly identifies the basis for parties' litigation positions in these cases. Accordingly, these cases present the Commission with a practically complete litigation record. The Joint Proposal provides for the resolution of all of the issues raised in these cases in a reasonable manner, reflecting parties' positions in litigation and compromises between those positions. All parties to these cases had the opportunity to participate in the settlement negotiations and many parties actively participated in the settlement negotiation process. Moreover, the parties have the opportunity to explain their positions with regard to the Joint Proposal in the Initial and anticipated Reply Statements. Accordingly, there is an ample record with sufficient support for the Commission to have a rational basis on which to adopt the terms of the Joint Proposal.

In sum, the Joint Proposal should be adopted because it satisfies the criteria the Commission has established, pursuant to the PSL, for judging the reasonableness of proposed settlements, namely that they set forth terms that enable the continued provision of safe an adequate service at just and reasonable rates. Furthermore, the Joint Proposal fairly balances parties' interests on the issues presented in these cases and produces results that may not have been attainable except through a joint proposal.

Additionally, as part of the Joint Proposal, the Companies agreed to submit various reports and convene meetings with Staff and other interested parties on a variety of issues, including addressing CLCPA goals through Disadvantage Community impact assessments and emissions reduction report, and progress toward limiting gas usage. The Joint

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[45] Case 23-G-0225 et al., supra, Direct Testimony of Mark Kleinginna on Behalf of Alliance for a Green Economy (filed September 1, 2023) (Kleinginna Testimony), p. 21.

[46] Case 23-G-0225 et al., supra, Direct Testimony of SANE Energy Project, (filed September 1, 2023) (Sane Energy Project Testimony), p. 13.

Proposal requires the Companies to provide a comprehensive Disadvantaged Community Report that will include data on energy efficiency, demand response, clean energy jobs, main replacement and leak repair, and customer operations.[47] Also, the Companies will be required to hold a stakeholder meeting regarding the Disadvantaged Community Report after it is filed. The Joint Proposal also contains numerous improvements to the Companies NPA procedures, including prioritizing LLP NPA projects within Disadvantaged Communities.[48] These reports and meetings will enable parties to engage with the Companies during the term of the proposed rate plan and in advance of their next base rate filing. The Signatory Parties recognize the importance of an open exchange of ideas and information with respect to these topics. These collaborative processes ensure that the Companies, Staff, and other interested parties will have the opportunity to work together to develop mutually beneficial projects and ideas.

The Joint Proposal provides details regarding the costs and revenues underlying the proposed base rates and mechanisms provided for in the Joint Proposal. These costs and revenues, along with the other terms of the Joint Proposal, provide a sound, equitable, and rational evidentiary basis on which to determine that the provisions of the Joint Proposal are reasonable and, therefore, should be adopted.

When considering whether the Joint Proposal is in the public interest, the document should be considered as a whole, with each individual provision providing support and balance to the others. Staff is aware that the Commission may accept, reject, or modify, in whole or in part, any recommendation or term of the Joint Proposal; however, it is Staff's belief that the Joint Proposal fairly resolves the ratemaking and policy initiatives of the Commission, thereby providing improved service at an equitable and well-reasoned cost. The Joint Proposal meets the public interest standard and, thus, should be adopted.

The record is more than adequate to support the terms of the Joint Proposal, which are consistent with both law and policy, have a rational basis, balance the interests of customers and the Companies, and compare favorably with the outcome of litigation. For these reasons, the Joint Proposal should be adopted.

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[47] Joint Proposal, pp. 46 – 51.

[48] Id., p. 41.

V. ELEMENTS OF THE JOINT PROPOSAL[49]

1. Effective Date and Term

As explained above, the Joint Proposal recommends three-year rate plans for KEDNY and KEDLI. The effective date, i.e., the beginning of RY1 is April 1, 2024. A three-year rate plan allows for levelization of revenue requirement increases, and thus provides consistency, and rate stability over the term.

2. Revenue Requirements

2.1 Rate Plan Revenue Requirements

The Joint Proposal recommends base delivery revenue increases in each of the three Rate Years as follows for KEDNY: $444.0 million in RY1; $172.1 million in RY2; and $132.0 million in RY3; and as follows for KEDLI: $246.8 million, in RY1; $116.5 million in RY2; and $75.7 million in RY3. As discussed in various sections below, these revenue requirement increases will ensure that the Companies are able to recover the reasonable costs of continuing to provide safe and reliable service. Additionally, it is important to note that in KEDNY and KEDLI's previous three-year rate plan, the revenue requirement increases were limited to 0 percent in RY1, 2 percent in RY2, and 2 percent in RY3, by utilizing a significant amount of the Companies' deferred credits, and delaying recovery of certain expenses due to the COVID-19 pandemic.

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[49] To facilitate the reader's comparison of the actual provisions of the Joint Proposal with the descriptions included in this Initial Statement, the headings in this section generally correspond to the headings in Section IV of the Joint Proposal.

KEDNY ($M)			
	Revenue Requirement Increase	Delivery Revenue Percent Increase	Total Revenue Percent Increase
RY1	$444.0M	30.7%	15.9%
RY2	$172.1M	8.9%	6.9%
RY3	$132.0M	6.2%	5.3%

KEDLI ($M)			
	Revenue Requirement Increase	Delivery Revenue Percent Increase	Total Revenue Percent Increase
RY1	$246.5M	26.8%	13.4%
RY2	$116.5M	9.8%	7.3%
RY3	$75.7M	5.7%	4.7%

As set forth in testimony and exhibits, Staff recommended a single-year base revenue increase of $389.5 million for KEDNY, and $219.9 million for KEDLI. For KEDNY, Staff premised its recommendation on a 9.10 percent ROE and a 6.82 percent overall after-tax rate of return (ROR). On a pre-tax basis, Staff's recommendations totaled an 8.56 percent rate of return. In comparison, in KEDNY's rebuttal testimony, it proposed a $522.7 million base rate increase, including an ROE of 9.80 percent and a 7.09 percent overall after-tax ROR. The difference between the Joint Proposal's recommendation and Staff's litigation position is approximately $54.4 million. This difference is primarily comprised of adjustments to three main areas: net sales (an increase of $20.1 million), operation and maintenance (O&M) expenses (an increase of $20.1 million), and ROE (an increase from 9.10 percent to 9.35 percent, or an increase of $12.8 million). These adjustments are discussed in further detail below.

For KEDLI, Staff premised its recommendation on a 9.10 percent ROE and a 6.74 percent overall after-tax ROR. On a pre-tax basis, Staff's recommendations totaled an 8.48 percent rate of return. In comparison, in KEDLI's rebuttal testimony, it proposed a $320.3 million base rate increase, including an ROE of 9.80 percent and a 7.05 percent overall after-tax ROR. The difference between the Joint Proposal's recommendation to Staff's litigation position is approximately $26.6 million. This difference is comprised of adjustments to five main areas: net sales (an increase of $2.3 million), operation and maintenance (O&M) expenses (an increase of $17.7 million), depreciation (a decrease of $3.4 million), rate base (an increase of $1.6 million) and ROE (an increase from 9.10 percent to 9.35 percent, or an increase of $8.1 million).

2.1.1 Depreciation

In its testimony, KEDNY proposed gas depreciation rate modifications to all storage, transmission, and general plant accounts, and 18 of 19 distribution plant accounts.[50] In its testimony, KEDLI proposed gas depreciation rate modifications to all storage, transmission, and general plant accounts, two of three production plant accounts, and 13 of 14 distribution plant accounts.[51] The Companies proposed changes to service lives and net salvage factors, which impact current depreciation rates, as well as survivor curves which impact the theoretical reserve calculation.

KEDNY proposed to phase in the full depreciation rates over a four-year period, and KEDLI proposed to phase in the full depreciation rates over a two-year period to mitigate bill impacts. Based on the depreciation factors, KEDNY calculated a book to theoretical gas reserve deficiency of $398.0 million, or 27 percent of the recorded reserve, of which it proposed to amortize the amount in excess of ten percent over a 20-year period, beginning in RY2. KEDLI calculated a book to theoretical gas reserve deficiency of $595.0 million, or 73 percent of the recorded reserve, of which it proposed to amortize the amount in excess of ten percent over a 20-year period, beginning RY2.[52, 53, 54]

Both Companies proposed delaying the amortization of their gas depreciation reserve deficiencies in an effort to mitigate the bill impacts in these proceedings. Further, KEDNY proposed to recover the estimated net book value of its remaining LPP, over a 20-year period, beginning RY1. KEDLI proposed to continue recovering the estimated cost of its remaining LPP, which was approved in the prior rate plan. [55]

In its pre-filed testimony, CNY recommended different depreciation rates than the Companies based on its review of the depreciation studies. CNY took no position on the Companies' proposed phase in approach. The depreciation factors selected by CNY resulted in

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50 Case 23-G-0225 et al., supra, Exhibit___(NWA-3) pp. 1-3.
51 Id., Exhibit___(NWA-4) pp. 1-2.
52 Case 23-G-0225 et al., supra, KEDNY Revenue Requirement Panel Testimony (filed April 28, 2023) (KEDNY Revenue Requirement Panel), p. 89, line 6 - p. 90, line 3.
53 Case 23-G-0225 et al., supra, KEDLI Revenue Requirement Panel, (filed April 28, 2023) (KEDLI Revenue Requirement Panel) p. 89 line16 – p. 90, line 5.
54 Case 23-G-0225 et al., supra, Direct Testimony of Ned W. Allis (filed April 28, 2023) (Ned W. Allis Testimony), p. 28, line 6 - p. 29, line 2.
55 Ned W. Allis Testimony, p. 25, line 14 - p. 6, line 3.

its calculated theoretical reserve deficiency for KEDNY of less than 10 percent which is the level where an amortization would typically be recommended. Therefore, CNY did not recommend an amortization of its calculated reserve deficiency. CNY, however, did state that it would not take issue with establishing an amortization if the reserve variance exceeded 10 percent of the book reserve. For KEDLI, CNY calculated a reserve deficiency of $366.5 million, which exceeded the generally accepted 10 percent variance and therefore proposed to amortize the excess over a 20-year period.[56] CNY also recommended not recovering both Companies estimated cost of LPP over a 20-year period.[57]

Staff's direct testimony recommended different depreciation rates for 21 of the 45 gas storage, transmission, distribution, and general plant accounts for KEDNY, and 26 of the 38 gas production, storage, transmission, and distribution plant accounts for KEDLI. Staff agreed with the concept of phasing in the depreciation rate changes over four and two years for KEDNY and KEDLI respectively.[58] Overall, the depreciation rates proposed by Staff reduced the book to theoretical reserve deficiency for KEDNY to $279.956 million, or 19 percent of the recorded reserve, and $419.853 million, or 51 percent of the recorded reserve for KEDLI.

Like the Companies, Staff recommended amortizing the amount in excess of ten percent over a twenty-year period, beginning in RY2.[59] Staff agreed with the Companies' proposals regarding the treatment of LPP.[60]

The Joint Proposal contains the depreciation positions that were recommended by Staff and agreed upon by the Signatory Parties. The recommended rates make intentional directional movement toward the average service lives and net salvage factors indicated by the depreciation study and should therefore be adopted. The Companies' proposed phase-ins to calculated depreciation rates, which are also recommended by Staff, are reasonable. The phase-ins allow for a more gradual transition to the depreciation rates indicated by the depreciation

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[56] Case 23-G-0225 et al., supra, Prepared Direct Testimony of David Garrett On Behalf of the City of New York (filed September 1, 2023) (David Garrett Testimony), p. 35 line 3 – line 16.

[57] David Garrett Testimony, p. 9, line 1 – line 19.

[58] Case 23-G-0225 et al., supra, Direct Testimony Paul J. Darmetko Jr., (filed September 1, 2023) (Paul J. Darmetko, Jr. Testimony) p. 12, line 5 – p. 6, line 17.

[59] Paul J. Darmetko Jr. Testimony, p. 26 line 5 – p. 27, line 5.

[60] Id., p. 27 line 7 – p. 28, line 8.

studies and mitigate bill impacts associated with fully adjusting depreciation rates in a single year.[61]

The Joint Proposal includes the amortization of the portion of the theoretical reserve deficiencies in excess of ten percent of the book, based on Staff's recommended depreciation factors, over a 20-year period. This treatment is reasonable as book to theoretical reserve differences change based on the depreciation factors approved by the Commission in each proceeding. This approach reflects the variability inherent in adjusting depreciation rates over time and allows the Companies to recover the portion of the deficiency in excess of a reasonable level, over a reasonable timeframe. The Joint Proposal recommends beginning the LPP amortization in RY1 for KEDNY and continuing the amortization for KEDLI. This is reasonable as it will reduce intergenerational inequity associated with the removal of these assets prior to their normal expected end of useful life due to safety concerns. As such, the provisions included in the Joint Proposal associated with depreciation are in the public interest and should be adopted.

2.2 Levelization of Rate Increases

In order to mitigate the impact of the RY1 incremental revenue requirements on ratepayers, the Signatory Parties recommend levelizing the revenue increases in each of RY1, RY2, and RY3. Levelization results in aggregate revenue increases on a total bill basis of 10.5 percent in each rate year for KEDNY, as compared to an un-levelized aggregate revenue increase of 15.9 percent in RY1. For KEDLI, the levelized aggregate revenue increases are 9.4 percent in each rate year, as compared to an un-levelized aggregate revenue increase of 12.7 percent in RY1.

Levelization creates a deferral of the revenues the Companies otherwise would have recovered in RY1, and then collects those revenues during the remainder of their rate plans. This deferral will accrue interest at the pre-tax weighted average cost of capital (WACC), as established in this rate plan. As a result of levelization, the Companies' rates will be higher at the end of RY3 than they would otherwise be absent levelization. The Joint Proposal includes

[61] As the Joint Proposal only includes a three-year rate plan, the depreciation rates as calculated for KEDNY will not be fully phased in upon completion of the rate plan. As such, the depreciation rates that will remain in effect after the end of the rate plan will equal, three-fourths or ¾ of the change from present depreciation rates to the full rates calculated for KEDNY.

provisions to ensure that the Companies do not retain revenues in excess of the unlevelized RY3 revenues should new rates not become effective immediately at the conclusion of RY3. Overall, levelization benefits ratepayers by moderating the bill impacts resulting from the rate increases over the term of the rate plan.

2.3 Make Whole Provision

As RY1 began on April 1, 2024, Commission action regarding the Joint Proposal will not occur until part way through RY1. To facilitate the orderly resolution of this case, KEDNY and KEDLI consented to extend the maximum suspension period through August 31, 2024. The Joint Proposal allows for the Companies to recover revenues as if the revenue requirement increases were effective as of April 1, 2024. The Joint Proposal's make-whole provision recommends that KEDNY and KEDLI recover the revenue shortfall resulting from the extension of the suspension period beyond April 1, 2024, over the course of the remainder of the RY1.

To accomplish this, the Joint Proposal allows the Companies to reconcile the difference between the revenues the Companies would have received during the extension of the suspension period and the actual revenues received. The revenue adjustment will include all applicable surcharges, carrying charges, and be consistent with all applicable reconciliation mechanisms. The Joint Proposal identifies a make whole provision for the period from April 1, 2024, through May 31, 2024, presuming new rates would go into effect on June 1, 2024. However, if new rates do not go into effect until after June 1, 2024, the make whole would cover the period from April 1, 2024, through any alterative of new rates becoming effective. Accordingly, the Signatory Parties will file revised appendices updating the make whole mechanism.

The proposed make whole provision is reasonable because it restores the Companies to the same financial position they would have been in, had rates gone into effect on April 1, 2024, absent the extension of the suspension period, which was necessary to reach a fair and reasonable outcome in this proceeding.

3. Revenue Allocation and Rate Design

3.1 Revenue Forecast

In its direct testimony, the Companies projected total operating revenues of $2.245 billion for KEDNY[62] and $1.539 billion[63] for KEDLI based on existing rates. On June 30, 2023, the Companies updated the revenue forecast to reflect an update in the sales forecast. The sales forecast was updated to include historical sales data through February 2023 instead of October 2022, as well as updated economic data.[64] KEDNY updated its revenue forecast to $2.217 billion.[65] KEDLI updated its forecast to $1.466 billion.[66] The Companies sales forecast was projected on a 30-year average weather normal basis.[67] To allocate forecasted usage into applicable rate blocks the Companies proposed a three-year historical average of actual billed block percentages.[68] To calculate the revenues, the Companies multiplied current applicable rates by the forecasted sales volumes.

In its direct testimony, the Staff Rates Panel projected total operating revenue of $2.123 billion for KEDNY and $1.407 billion for KEDLI utilizing DPS Staff's Forecast and Inflation panel 10-year weather normalized sales forecast. Staff also recommended adjusting the revenue forecast by excluding Net Utility Plant (NUP) surcharge revenues and excluding the Demand Capacity Surcharge Mechanism (DCSM) because these revenues were being rolled into base rates.[69] In addition, Staff recommended including revenues associated with the Revenue Adjustment Clause (RAC).[70] Also, Staff supported the Companies' method of allocating block usage based on a three-year historical average of actual usage.[71]

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62 Case 23-G-0225 et al., supra, KEDNY Rate Design Panel Exhibit__(RDP-2) (filed April 28, 2023).
63 Id., KEDLI Rate Design Panel Exhibit__(RDP-2) (filed April 28, 2023).
64 Id., Corrections and Updates Testimony of Gas Load Forecast Panel (filed June 30, 2023) (C&U Gas Load Forecasting Panel), p. 2.
65 Id., KEDNY Rate Design Panel Exhibit__(RDP-2CU) (filed June 30, 2023).
66 Id., KEDLI Rate Design Panel Exhibit__(RDP-2CU) (filed June 30, 2023).
67 Id., KEDNY & KEDLI Testimony of Gas Load Forecast Panel (filed April 28, 2023) (KEDNY & KEDLI Gas Load Forecast Panel Testimony), p. 21.
68 Id., KEDNY Testimony of the Rate Design Panel (filed April 28, 2023) (KEDNY Rate Design Panel) p. 73; Case 23-G-0225 et al., supra, KEDLI Testimony of the Rate Design Panel (filed April 28, 2023) (KEDLI Rate Design Panel) p. 72.
69 Id., Staff Gas Rates Panel Testimony (filed September 1, 2023) (Staff Gas Rates Panel Testimony), pp. 13-14.
70 Staff Gas Rates Panel Testimony, pp. 14-15.
71 Staff Gas Rates Panel Testimony, p. 12.

CNY recommended that the Companies employ block consumption shares from the historical year that most closely matches Fiscal Year (FY) 25 usage per customer to allocate forecasted usage into applicable rate blocks.[72]

In their rebuttal testimony, the Companies supported Staff's recommendation to remove the NUP and DCSM revenues from and to include RAC revenues in the Rate Year revenue forecast.[73]

The revenue forecasts set forth in Appendix 3 Schedule 1 and Appendix 4 Schedule 1 of the Joint Proposal for KEDNY and KEDLI respectively reflect compromises between the parties regarding forecasted customers and gas usage. The revenue forecast reflects sales projected on a 10-year average weather normal basis, which more reasonably reflects anticipated weather trends relevant to forecasted monthly sales than the 30-year weather normalization used by the Companies. The proposed revenue forecast also reflects the inclusion of the RAC surcharge and the exclusion of the NUP and the DCSM surcharge revenues. It is reasonable to include the RAC revenues because it is a component of delivery revenue that is used to offset revenue requirement, and excluding it would overstate the incremental revenue requirement needed. The removal of the NUP and DCSM is appropriate as they are surcharges that will now be included in base rates. For these reasons, the gas sales and revenue forecasts recommended in the Joint Proposal are reasonable and should be adopted.

3.2 Revenue Allocation

The Companies filed pro-forma cost of service studies to support their proposed revenue allocation and rate design. The pro-forma Embedded Cost of Service (ECOS) studies allocate operating costs to the different service customer classes based on an analysis of the forecasted rate year rate base, operating expenses, and revenues associated with each service class. In the pro-forma ECOS studies the Companies classified distribution mains to customer and demand components using the average of the minimum system study conducted in this rate case and two prior rate cases.[74] Using the results of the ECOS studies, the Companies allocate

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72 Case 23-G-0225 et al., supra, Prepared Direct Testimony of Michelle Chait (filed September 1, 2023) (Michelle Chait Testimony), p.25.

73 Case 23-G-0225 et al., supra, KEDNY & KEDLI Rebuttal Testimony of the Rate Design Panel (filed September 22, 2023) (KEDNY & KEDLI Rate Design Panel Rebuttal Testimony), pp. 2-3.

74 KEDLI Rate Design Panel, p. 27; KEDNY Rate Design Panel (KEDNY), p. 26.

the revenue requirement among Service Classes (SC). Those SC's who are over contributing relative to their cost of service will receive a lower-than-average percentage increase, while SCs who are under contributing relative to their cost of service are given a higher-than-average percentage increase. On September 1, 2023, the Companies filed updated ECOS studies to reflect the corrections and updates to their revenue requirements filed on June 30, 2023.[75]

In the testimony of the Staff Gas Rates Panel, Staff recommended the updated ECOS studies, filed on September 1, 2023, be used for revenue allocation and rate design. While Staff had certain concerns with the ECOS studies, Staff stated that it was unlikely that updating the Companies' pro-forma ECOS studies for Staff's recommended changes would materially affect the results.[76] In addition, the Staff Gas Rates Panel supported the three-study average of minimum system study results.[77]

In its direct testimony, CNY supported the use of a minimum system study to determine customer-related share of gas distribution mains, but disagreed with the Companies' proposal to average the three most recent minimum system study results to determine the ratio.[78]

In its initial testimony, UIU recommended uniform increases for each SC given the magnitude of the Companies' proposed revenue requirements in a one-year case.[79] In the event of a multi-year rate case, UIU recommended using the outputs of both the Companies' pro-forma ECOS studies as well as ECOS studies that allocate distribution mains based 100 percent on demand.[80] UIU also recommended that in future rate cases the Companies should be required to provide the results of multiple gas ECOS studies, including studies that allocate 100 percent of distribution mains to demand.[81]

In their rebuttal testimony, the Companies disagreed with UIU's proposal to assign uniform increases to the SCs rather than rely on an ECOS study as well as using the

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75 Case 23-G-0225 et al., supra, Corrections and Updates Testimony of the KEDNY Rate Design Panel (filed June 30, 2023) (KEDNY C&U Rate Design Panel), p. 1; Case 23-G-0225 et al., supra, Corrections and Updates Testimony of the KEDLI Rate Design Panel (filed June 30, 2023) (KEDLI C&U Rate Design Panel), p. 1.
76 Staff Gas Rates Panel Testimony, pp. 24-26.
77 Id., p. 23.
78 Michelle Chait Testimony, p. 3.
79 Case 23-G-0225 et al., supra, Direct Testimony of Danielle Panko on behalf of UIU (filed September 1, 2023) (Danielle Panko Testimony), p. 18.
80 Danielle Panko Testimony, p. 18.
81 Id., p. 19.

ECOS studies that allocated 100 percent of distribution mains costs to demand.[82] The Companies also disagreed with CNY's proposal to use the most recent minimum system study to allocate distribution mains between demand and customer and remained in favor of their three-study average methodology.[83] In rebuttal testimony Staff also disagreed with UIU's proposal to allocate 100 percent of distribution mains costs to demand,[84] as well as UIU's proposal to give uniform increases to each SC instead of relying upon the ECOS studies.[85] Staff stated, assigning a uniform increase to all SCs would ignore that there are multiple SCs at both Companies that are over contributing or under contributing toward their cost of service. A uniform increase would therefore be an inequitable way of allocating the incremental revenue requirements.[86] Staff also did not support allocating 100 percent of distribution mains costs to demand because doing so would completely ignore that the costs of installation of mains depends on the length of mains and number of customers.[87]

While the final revenue allocations used the results of the Companies' proposed ECOS, the Joint Proposal does not endorse the usage of any particular ECOS study. The agreed-upon revenue allocations reflect the efforts of the signatory parties to produce just and reasonable rates for rate payers while allowing the Companies to collect the appropriate level of revenue. As referenced in Section 3.17 of the Joint Proposal and as further discussed later in this document, the Companies will be required to submit multiple ECOS studies in their next rate filings.[88]

3.3 Rate Design – Firm Service Classifications

In its initial testimony, KEDNY proposed minimum charge increases for their Residential Non-Heat, Residential Heat, Residential Distributed Generation, Non-Residential Non-Heat, Non-Residential, Multifamily, High Load Factor, Compressed Natural Gas, Year Round Air Conditioning, Seasonal, and Distributed Generation.[89] Where feasible, KEDNY

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82 KEDNY & KEDLI Rate Design Panel Rebuttal Testimony, p. 7.
83 Id., p. 4.
84 Case 23-G-0225 et al., supra, Rebuttal Testimony of the Staff Gas Rates Panel (filed September 22, 2023) (Staff Gas Rates Panel Rebuttal Testimony), p. 6.
85 Staff Gas Rates Panel Rebuttal Testimony, p. 5.
86 Id., p. 6.
87 Id., pp. 8-9.
88 Joint Proposal, p. 20.
89 KEDNY Rate Design Panel, pp. 38, 42.

designed volumetric rates where the tail blocks were increased by a greater percentage than the mid-block, moving away from a declining rate structure.[90] In its initial testimony, KEDLI proposed minimum charge increases for their Residential Non-Heat, Residential Heat, Residential Distributed Generation, Non-Residential Non-Heat, Non-Residential Heat, Multifamily, Wholesale Natural Gas Vehicles, High Load Factor, Year Round Space Conditioning, and Distributed Generation.[91] Where feasible, KEDLI designed volumetric rates where the tail blocks were increased by a greater percentage than the mid-block, moving away from a declining rate structure.[92]

In its direct testimony, Staff supported the minimum charges proposed by the Companies as they were supported by the Marginal Cost of Service (MCOS) studies.[93] While Staff was supportive of the concept of block flattening generally, Staff did not support block flattening in a one year rate case due to the magnitude of the proposed rate increases and their rate impacts for high use customers.[94] Staff also stated that it would reconsider block flattening in a multi-year rate plan.[95]

In its direct testimony, PULP recommended that the Companies explore alternative rate designs that would, at a minimum, freeze minimum charges and reward energy conservation and energy efficiency through lower delivery bills.[96] Also, UIU supported the Companies' proposal to move away from declining block rates.[97]

In their rebuttal testimony, the Companies disagreed with Staff's recommendation to maintain the current declining block structure in a one year case, as flattening block rates for higher usage customers directly assists in achieving CLCPA goals. CNY proposed that the Companies be required to carry out additional class-by-class rate design analysis to better balance bill impacts across usage levels while still moving toward State policy goals.[98]

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90 KEDNY Rate Design Panel, p. 38.
91 KEDLI Rate Design Panel, pp. 38-42.
92 Id., p. 38.
93 Staff Gas Rates Panel Testimony, p. 42.
94 Id., p. 40.
95 Id., p. 41.
96 Case 23-G-0225 et al., supra, Corrected Testimony of William D. Yates on behalf of PULP (filed September 19, 2023) (Corrected William D. Yates Testimony), p. 17.
97 Danielle Panko Testimony, p. 29.
98 Case 23-G-0225 et al., supra, Prepared Rebuttal Testimony of Michelle Chait (filed September 22, 2023) (Michelle Chait Rebuttal Testimony), p. 5.

The Joint Proposal reflects a compromise between the signatory parties' positions in order to achieve just and reasonable rates for customers. The summary of these rates can be found in Appendix 3, Schedule 3, and Appendix 4, Schedule 3 for KEDNY and KEDLI respectively. Amongst the compromises made was continuing the efforts from the last rate case to move away from the declining block rate structure for applicable service classes.[99] Moving away from the declining block rates is in public interest as it allows the Companies to further CLCPA goals by sending desired price signals to encourage energy conservation. Given the revenue increase and bill impacts are moderated through levelization, Staff's concerns associated with the bill impacts for high use customers are also moderated. For these reasons, the proposed rate design should be adopted.

3.4 Rate Design – Non-Firm Demand Response

The Companies' current Non-Firm Demand Response (NFDR) rates are based on the otherwise applicable firm rates for the Companies' respective SC 2 and SC 3 firm SCs. These NFDR rates are separated into two tiers, Tier 1 with a 50 percent discount and Tier 2 with a 60 percent discount for the volumetric rates for SC 2 and SC 3. In their direct testimonies, the Companies proposed to increase their Tier 1 and Tier 2 discounts from 50 and 60 percent to approximately 55 and 65 percent respectively. The Companies proposed this increase to provide greater incentive for the current non-firm customers to stay on non-firm service.[100]

Staff agreed with the Companies' proposal to increase the discounts for NFDR customers in order to discourage customers migrating to firm service.[101] CNY also supported the Companies' proposal to increase discounts for Tier 1 and Tier 2 NFDR customers from 50 percent and 60 percent to 55 percent and 65 percent respectively.[102]

The Joint Proposal contains NFDR rate design based on the agreed upon approximate 55 and 65 percent discounts. The proposed rate design discounts are in the public interest because they incentivize customers taking non-firm service, which helps alleviate system constraints and continue to maintain system reliability during times of peak customer

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[99] 2021 Rate Order, p. 90.
[100] KEDNY Rate Design Panel, p. 42; KEDLI Rate Design Panel, p.43.
[101] Staff Gas Rates Panel Testimony, p. 44.
[102] Michele Chait Testimony, p. 27.

demand, by discouraging them from transitioning to firm service.[103] Having more firm customers would create more supply constraints on the system during peak cold weather events, as their service is uninterruptible, whereas non-firm customers may be interrupted during times of peak demand. Additionally, the proposal is widely supported and unopposed. For these reasons, the proposal should be adopted.

3.4.1 Non-Firm Demand Response (NFDR) Reconciliation

As required in the 2021 Rate Order, the Companies are required to propose a mechanism that reconciles the NFDR gas costs in the instant rate proceeding.[104] To comply with that requirement, the Companies proposed to include gas supply costs for NFDR customers in their respective annual Gas Adjustment Clause, or GAC filings.[105] As a result of the addition of NFDR gas supply costs to the GAC, the Companies also proposed a corresponding change to the System Performance Adjustment (SPA), to include all firm and NFDR sales and transportation customers.[106, 107]

Staff supported the modifications to the Companies' respective GAC filings and SPA to account for the addition of the NFDR customers.[108]

The Joint Proposal adopts the Companies' proposal to include NFDR customers to the GAC and SPA calculations as outlined in Section 3.4.1. As the Companies cannot separate the NFDR gas costs from their total portfolio, the addition of the NFDR gas costs to the annual GAC and SPA is the best solution to allow the Companies to reconcile these gas costs and complies with the requirement from the 2019 Rate Cases. For these reasons, the inclusion of NFDR customers to the GAC and SPA calculations should be adopted.

3.5 Lost and Unaccounted For Gas (LAUF)

In their direct testimony, KEDLI and KEDNY proposed to update the Lost and Unaccounted For Gas (LAUF) targets and deadbands using the most recent five years of data.[109]

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[103] Case 23-G-0225 et al., supra, Staff Gas Reliability and Supply Panel Testimony (filed September 1, 2023) (Staff Gas Reliability and Supply Panel), p. 22.
[104] 2021 Rate Order, Attachment A, pp. 20-21.
[105] Id.
[106] Id., p. 60.
[107] KEDLI Rate Design Panel, p. 59.
[108] Staff Gas Rates Panel, p. 58.
[109] KEDNY Rate Design Panel, Exhibit RDP-5, p. 1.

The Companies also proposed to include NFDR customers in the SPA Reconciliation.[110] The SPA reconciliation compares actual system LAUF to the LAUF targets established in a rate case proceeding.

Staff supported the Companies proposal to update LAUF targets and deadbands.[111] Also, Staff supported the Companies proposal to include NFDR customers in the SPA Reconciliation, as discussed above. The Joint proposal includes the Companies proposed updates to the LAUF targets and deadbands.

It is necessary to update these targets to reflect actual system performance. Refraining from updating these targets to reflect actual system performance could result in higher surcharges resulting from the reconciliations and could result in the Companies earning undue incentives or penalties. The Joint Proposal also includes the Companies proposal for the SPA changes as it conforms with the Companies' requirement for an NFDR gas cost reconciliation from the previous Joint Proposal.[112]

3.6 Revenue Decoupling Mechanisms (RDM)

In their initial testimony, the Companies proposed updating the RDM targets to reflect changes in delivery rates and billing service fees.[113, 114] Staff agreed and recommended in their testimony to update the RDM targets based on the total revenue requirement received from the Staff's Revenue Requirements Panel.[115] The Joint Proposal updates the RDM targets for both Companies as shown in Appendix 3, Schedule 7 and Appendix 4, Schedule 7 for KEDNY and KEDLI respectively, and includes no changes to the mechanics of the mechanism itself.

Updating the RDM targets is necessary to ensure the Companies collect revenues consistent with the revenue requirement established in this Joint Proposal.[116] Should the RDM targets not be updated, the Companies RDM would remain at their current targets, meaning the Companies would return the revenue increases approved in these rate cases to customers each year. Setting the RDM targets based on the updated revenues in the Joint Proposal is appropriate

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110 KEDNY Rate Design Panel, p. 60.
111 Staff Gas Rates Panel Testimony, p. 51.
112 Staff Gas Rates Panel Testimony, p. 58.
113 KEDNY Gas Rates Panel, p. 53.
114 KEDLI Gas Rates Panel, p. 53.
115 Staff Gas Rates Panel Testimony, pp. 50-51.
116 Joint Proposal, p. 15 (referencing Appendix 3, Schedule 7 and Appendix 4 Schedule 7).

and since there are no other changes to the RDM itself, it is appropriate to continue the RDM as such.

3.7 Paperless Billing Credit

In their direct testimonies, KEDNY and KEDLI proposed to update the paperless billing credit. KEDNY proposed increasing the credit from $0.43 per bill to $0.48 per bill. Subsequently, KEDNY updated the paperless billing credit to account for updated inflation factors, however this did not change the $0.48 per bill proposal,[117] while KEDLI proposed to update its paperless billing credit from $0.41 to $0.52 per bill based on the latest inflation factor.[118] In its direct testimony, Staff agreed with the Companies proposed updates to the paperless billing credit, but also recommended that the Commission change the billing credits if there is a material change to the inflation rates.[119]

The Joint Proposal reflects the Paperless Billing Credits as proposed by the Companies, which also represent the most up to date actual costs at the inflation rate proposed in the Companies' corrections and updates. As there were no material changes to the inflation rate, further updating the billing credits for inflation would not be necessary. It is important to update the Paperless Billing Credits as failure to update the credits as proposed by the Companies could result in customers failing to receive the appropriate credit(s) and would unfairly subsidize cost of services those customers do not receive.

3.8 Merchant Function Charge (MFC)

For firm sales customers, the Merchant Function Charge (MFC) is designed to recover the costs associated with gas supply procurement, commodity-related credit and collection expenses, commodity-related uncollectible expenses, the return requirement on gas purchase-related working capital, the return requirement on gas storage inventory, and commodity-related working capital expenses.[120] For firm transportation customers, the MFC is designed to recover the return requirement on gas storage inventory that the Companies manage on behalf of these customers.[121] For NFDR sales customers, the MFC is designed to recover the

[117] KEDNY C&U Rate Design Panel, p. 7.
[118] KEDLI C&U Rate Design Panel, p. 6.
[119] Staff Gas Rates Panel Testimony, p. 64.
[120] KEDNY Rate Design Panel, p. 46; KEDLI Rate Design Panel, p. 47.
[121] KEDNY Rate Design Panel, p. 47; KEDLI Rate Design Panel, p. 48.

costs associated with gas supply procurement, commodity-related credit and collection expenses, commodity-related uncollectible expenses, and the return requirement on gas purchase-related working capital.[122]

The Companies updated the gas supply procurement expenses component of MFC,[123] commodity-related credit and collection expenses,[124] commodity-related uncollectible components,[125] to reflect their proposed Rate Year revenue requirements. Further, the Companies updated gas purchase-related working capital to reflect the updated pre-tax WACC.[126] The Companies also updated their gas storage inventory targets based on the latest storage cost forecasts and the pre-tax WACC.[127] On June 30, 2023, KEDLI provided updates to the MFC to align with the updated revenue forecast provided by the testimony of the Gas Load Forecasting Panel.[128] The Company's ECOS studies, sales forecast, and pre-tax weighted WACC, and commodity cost forecast contributed to the adjustment of the MFC.[129] On June 30, 2023, KEDNY provided updated testimony updating the MFC based on corrections to the revenue requirement from the April 28, 2023 filing.[130] The final MFC targets for each Company included in the Joint Proposal reflect the cost of service and should be adopted. Should the MFC not be updated to reflect the changes described in this section, these costs would shift into base delivery rates and would create inequitable cost recovery as not all customers are subject to all components of the MFC.

3.9 Consolidated Billing fees

In its initial testimony, KEDNY and KEDLI filed testimony proposing consolidated billing fees as $1.20[131] and $1.18 per service period,[132] respectively. The

122 Id.
123 KEDNY Rate Design Panel, p. 48; KEDLI Rate Design Panel, p. 49.
124 KEDNY Rate Design Panel, p. 49; KEDLI Rate Design Panel, p. 50.
125 Id.
126 KEDNY Rate Design Panel, p. 50; KEDLI Rate Design Panel, p. 51.
127 KEDNY Rate Design Panel, p. 51; KEDLI Rate Design Panel, p. 52.
128 KEDLI C&U Rate Design Panel, p. 6.
129 Id.
130 KEDNY C&U Rate Design Panel, p. 7.
131 KEDNY Rate Design Panel, p. 71.
132 KEDLI Rate Design Panel, p. 71.

Companies provided updates to their Consolidated Billing charges to \$1.22[133] and \$1.19[134] for KEDNY and KEDLI, respectively. These figures reflect updates to the revenue requirement and forecasted number of bills.[135]

In its direct testimony, Staff agreed with the updated consolidated billing charges for both Companies.[136] The Joint Proposal contains a Consolidated Billing charge for both Companies of \$1.18 per bill for the rate plan, excluding for RY1[137] based on each Company's final revenue requirement. The RY1 Consolidated Billing charge including in the Joint Proposal for both Companies is set at \$1.15 per bill to reflect a reduction in the fee to reflect rate compression present from collecting the full twelve-month revenues over less time.[138] The new Consolidated Billing Fees represent the actual cost of service and the most likely outcome achieved through litigation, therefore, should be adopted.

3.10 Miscellaneous KEDNY Fees

In its direct testimony, KEDNY proposed to update the unproductive field visit charge, reconnect at the meter charge, and reconnect at the street charge based on the historic costs.[139] As these updated costs were based on actual historic costs, the Staff's Rates Panel supported these updates.[140] The Joint Proposal adopts the Companies proposed updates to each of these fees. The changes to the miscellaneous KEDNY fees were based on actual costs and are reasonable because they reflect the actual cost of administering these various services or operations. The updated fees should therefore be adopted.

3.11 Miscellaneous KEDLI Fees

In its direct testimony, KEDLI proposed to update the unproductive field visit charge, reconnect at the meter charge, and reconnect at the street charge based on historic costs.[141] [142] As these updated costs were based on actual historic costs, the Staff's Rates Panel

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133 KEDNY Exhibit__(RDP-8CU) Schedule 3.
134 KEDLI Exhibit__(RDP-8CU) Schedule 3.
135 KEDNY C&U Rate Design Panel, p. 8; KEDLI C&U Rate Design Panel, p. 6.
136 Staff Gas Rates Panel Testimony, p. 64-65.
137 Joint Proposal, p. 15.
138 Id.
139 KEDNY Rate Design Panel, p. 70-71.
140 Staff Gas Rates Panel Testimony, p. 63.
141 KEDLI Rate Design Panel, p. 70.
142 Id., p. 62.

was supported these updates.[143] The Joint Proposal adopts the Companies proposed updates to each of these fees. The changes to the miscellaneous KEDLI fees were based on actual costs and are reasonable because they reflect the actual cost of administering these various services or operations. The updated fees should therefore be adopted.

3.12 Economic Development Discount Program Rates

KEDLI and KEDNY proposed to extend the Area Development Rates (ADR) and Business Incentive Rates (BIR) through the end of the Rate Year.[144, 145] The ADR[146, 147] and BIR[148, 149] are programs that allow certain business entities to receive a discounted rate on gas after they have used over 250 therms per billing period. In its direct testimony, Staff supported the Companies proposal to extend the ADR and BIR rates.[150] The Joint Proposal extends the terms of the ADR and BIR through the end of the rate plan.[151] The Joint Proposal extends the terms of the ADR and BIR rates as it is necessary for the Companies to continue to offer delivery rate discounts and support economic development.

3.13 Tariff Provisions Applicable to Electric Generators

The Companies proposed no changes to the delivery rates for electric generators. The Companies stated in their direct testimony that they will address the changes to the tariff rates when a Commission Order is issued in the Statewide Electric Generator Proceeding in Case 17-G-0011.[152, 153] The Companies as part of their direct testimony also proposed to modify certain general tariff provisions to exclude the generators from a $25.00 per dekatherm penalty for gas usage in excess of authorized levels during curtailment periods.[154, 155] The Companies

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[143] Staff Gas Rates Panel Testimony, p. 63.
[144] KEDLI Rate Design Panel, p. 69.
[145] KEDNY Rate Design Panel, p. 70.
[146] KEDLI Tariff Leaf 79.3.
[147] KEDNY Tariff Leaf 94.
[148] KEDLI Tariff Leaf 79.1.
[149] KEDNY Tariff Leaf 107.
[150] Staff Gas Rates Panel Testimony, p. 63.
[151] Joint Proposal, p. 16.
[152] KEDNY Rate Design Panel, p. 53.
[153] KEDLI Rate Design Panel, p. 54.
[154] Id., p. 67.
[155] KEDNY Rate Design Panel, p. 68.

stated that the generators are already assessed a $100 per dekatherm penalty for usage during the curtailment period under a separate provision.[156, 157]

Staff agreed with the Companies proposal and recommended that the delivery rates for gas generators remain unchanged until the Commission makes a determination in the generic proceeding in Case 17-G-0011.[158, 159] Staff and other parties did not file testimony regarding the Companies proposal to modify the tariffs to exclude the generators from the $25.00 per dekatherm penalty for usage during the curtailment period.

In the Joint Proposal, the parties agreed that the Companies' delivery rates for gas generators will remain in place until modified by the Commission in Case 17-G-0011 and that each Company's tariff will be revised accordingly to exclude electric generators from the $25.00 per dekatherm penalty.[160] The delivery rates for gas generators are being evaluated and should remain unchanged in this proceeding until the Commission makes a determination in Case 17-G-0011. Further, excluding generators from the $25.00 penalty is reasonable because the generators are already assessed $100 per dekatherm for usage during the curtailment period and removal of the $25.00 penalty avoids assessment of multiple penalties.

3.14 Miscellaneous Tariff Changes

In their direct testimonies the Companies proposed to eliminate the Demand Capacity Surcharge Mechanism (DCSM)[161, 162] and the Late Payment Charges and Other Waived Fees (LPCO) in their testimony.[163, 164] Costs currently collected through the DCSM will be collected through the Non-Labor Demand Response Operation and Maintenance Cost (DROM) surcharge instead, making the DCSM unnecessary.[165] After June 30, 2025, the cost recovery currently included in the LPCO will end, and therefore, the LPCO will no longer be needed.[166] The Companies proposed to continue the existing Gas Safety and Reliability

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[156] Id., p. 69.
[157] KEDLI Rate Design Panel, p. 68.
[158] Id., p. 66.
[159] KEDNY Rate Design Panel, p. 67.
[160] Joint Proposal, p. 16.
[161] KEDNY Rate Design Panel, p. 65.
[162] KEDLI Rate Design Panel, p. 64.
[163] Id., p. 69.
[164] KEDNY Rate Design Panel, p. 70.
[165] Id., p. 65.
[166] Id., p. 70.

Surcharge (GSRS) to allow a unit cost incentive for LPP.[167, 168] Finally, the Companies proposed to modify the tariff to state that the revenue tax statement (RTS) will be filed no less than 15 days as opposed to filed 15 business days from the effective date to be more consistent with the tariff language already utilized.[169]

Staff agreed with the Companies proposal to eliminate the DCSM and the LPCO surcharges, as well as to modify the RTS statement tariff language in the Staff Gas Rates Panel's direct testimony.[170] However, the Staff Gas Infrastructure and Operations Panel (GIOP) opposed the GSRS stating the unit cost utilized for this incentive is not based on historical expenditures and is untested as there are no historical Operator Qualification costs to assess the accuracy of the Companies' forecast.[171] The Staff Gas Rates Panel supported the proposed change to require the RTS to be filed no less than 15 days prior to the effective date from the current 15 business days.[172]

In addition, the Staff Consumer Service Panel (SCSP) proposed to modify the Companies' tariff to include language requiring the Companies' personnel to make an appearance prior to assessing the missed appointment fee.[173] The fee applies:

> when a customer makes a future appointment for non-safety related service and 1) the Company's personnel arrive at the agreed upon location, date, and time, (2) the Company contacts the customer at least twice, before and/or at the appointment time, and (3) the Company's personnel are unable to provide the service requested because of the customer's culpability.[174]

As such, there are reasonable pre-conditions which predicate when the fee may be assessed against customers.

The Joint Proposal adopts the Companies proposal to eliminate the LPCO and DCSM as these surcharges will no longer be needed. The Joint Proposal also eliminates the GSRS because the costs currently recovered through the GSRS will be recovered through base rates and thus no changes to the tariff are needed. The Joint Proposal requires the Companies to

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167 Id., p. 69
168 KEDLI Rate Design Panel Testimony, p. 65.
169 Id., p. 66.
170 Staff Gas Rates Panel Testimony, p. 62.
171 Case 23-G-0225 et al., supra, Staff Gas Infrastructure and Operations Panel Testimony (filed September 1, 2023) (Staff GIOP Testimony), p. 111.
172 Staff Gas Rates Panel Testimony, p. 66.
173 Joint Proposal, pp. 17-18.
174 Joint Proposal, p. 18.

file their RTS statements from no less than 15 business days to 15 calendar days prior to the effective date as proposed by the Companies. The requirement is consistent with other tariff statements. Streamlining the provisions of the tariff should provide administrative benefits to the Companies and provide more clearly understood requirements or provisions for its customers.

Finally, the Joint Proposal will require the tariff for Missed Appointment Fees to be updated to require the Companies' personnel to make an appearance prior to assessing the missed appointment fee. As the Companies must incur certain costs of missed appointments it is appropriate for the Companies to assess the fee if the requisite conditions are met. Adoption of a Missed Appointment Fee should be adopted because it aligns with the Companies' Tariff provisions approved by the Commission for the majority of the major investor-owned utilities.

3.14.7 System Wide Tests of Dual-Fuel Equipment

While not a topic of testimony in this proceeding, the Joint Proposal states that Staff will meet with the Companies and CNY to discuss operational and safety concerns related to unannounced testing of dual-fuel equipment ahead of the winter heating season.[175] The purpose of these tests is to ensure that interruptible service customers are capable of halting taking gas service on short notice. The Companies cannot always provide lengthy advanced notice of a lack of available supply to enable customers to switch off from the gas system. These tests help ensure the reliability of the system can be maintained in the event of an unforeseen condition.

Unlike the electric system which results in "brown-outs" or complete opening of electric circuit that do not majorly impact public safety, shortages in gas supply, which result in "brown-out" like conditions or the complete isolation of sections of the system, do not likewise immediately result in safe shutdown of the system.

The discussions regarding system wide tests will further develop communication among the parties, improve safety and operational concerns and provide a methodology for how to proceed going forward. This provision should be adopted based on the benefits associated with increased safety and operational communications among the Staff, the Companies, the CNY, and interested customers.

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[175] Id.

3.15 The Rate Adjustment Mechanism (RAM)

In testimony, the Companies proposed to implement a RAM to recover costs from or pass back credits to customers on a timelier basis. More specifically, the Companies proposed that in the first year the RAM would be limited to certain existing reconciliations, and the associated deferral amounts booked during the bridge period, i.e., from January 1, 2023, through March 31, 2024. In the second year of the RAM, the Companies proposed that both the existing deferrals and the Companies' newly proposed deferrals would be recovered through the RAM.[176] In their testimony, the Staff Policy Panel disagreed with implementation of a RAM in the context of a one-year rate proceeding.[177]

The Joint Proposal recommends implementing a RAM that consolidates certain deferral balances into a single surcharge/credit for recovery from or refund to customers.[178] These deferrals include Property Taxes, the Energy Affordability Program, and certain costs collected through the Exogenous Clause (excluding costs related to Pipeline Hazardous Materials Safety Administration (PHMSA) rulemakings). Further, the RAM is subject to an annual cap of 2.00 percent of each Company's actual operating revenues for the prior year (excluding ESCO commodity revenues) and will be recovered from July 1 through June 30 of the respective Rate Years. Moreover, the deferral accounts reconciled in the RAM will also be subject to Staff audit.[179]

Implementation of the RAM is reasonable because this is a recovery/pass back mechanism that can reduce deferred balances, of both regulatory assets and regulatory liabilities, that would otherwise need to be addressed in future rate proceedings which can create inequities to rate payers. Also, the RAM allows the Companies to recover or pass back costs more quickly, which reduces the carrying charges on such balances. Accordingly, these provisions are reasonable, in the public interest, and should be adopted.

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[176] KEDNY Rate Design Panel, pp. 63-64; KEDLI Rate Design Panel, pp. 62-64.

[177] Case 23-G-0225 et al., supra, Staff Policy Panel Testimony (filed September 1, 2023) (Staff Policy Panel Testimony) pp. 18-21.

[178] Joint Proposal, pp. 18-19.

[179] Id., p. 19.

3.16 Newtown Creek Revenue Reconciliation

The Joint Proposal revises the revenue reconciliation for the Newtown Creek Project, which ensures that KEDNY will be responsible for a reasonable portion of revenue shortfalls below the revenues reflected in rates. Currently, KEDNY's rates reflect $4.007 million of revenues from the sale of gas and environmental attributes. KEDNY is currently authorized to reconcile the actual revenues derived from the sales of gas and environmental attributes associated with the Newtown Creek Project to the amounts reflected in rates with shareholders assuming the risk for the first $1.6 million in revenue each year and then an equal sharing of the reconciled revenues above $1.6 million. In its testimony, KEDNY proposed to true-up the actual revenues to the amounts included in rates and defer the difference for future recovery or pass back. Any revenues realized above the level necessary to fully reimburse customers for the project costs must be shared equally between customers and the City of New York.[180]

The Joint Proposal recommends that if actual revenues from the Newtown Creek Project exceed the targets set in rates, or $4.657 million in RY1; $5.295 million in RY2; and $5.705 million in RY3, KEDNY will defer the difference for future refund to customers. If actual revenues from the Newtown Creek Project are below the revenue targets, KEDNY will defer for future recovery 100 percent of the difference up to $1 million and 90 percent of any difference thereafter.[181]

The Joint Proposal is reasonable because the Companies' shareholders are responsible for a portion of any revenue shortfall above $1.0 million. This recognizes that the project produces enough revenues to offset, or partially offset its costs, while ensuring that the Companies maintain some risk in the event the anticipated level of revenues do not materialize.

3.17 Next Base Rate Filing

This section of the Joint Proposal requires that the Companies commit to providing, for informational purposes, ECOS studies that classify distribution main costs as 100 percent demand-related, and one or more ECOS studies that classify distribution main costs as customer-related and demand-related by using a minimum system study. This provision is reasonable because it is part of the compromise among the parties to resolve the differences in

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[180] Case 23-G-0225 et al., supra, John Sano Testimony on behalf of the City of New York (filed September 1, 2023) (John Sano Testimony), p. 36.

[181] Joint Proposal, p. 20.

the ECOS studies as previously discussed in Section 3.2 and it commits the Companies to providing data in their next rate proceedings of interest to other parties and that will contribute to a complete record in those future proceedings.

3.18 Rate Adjustment Clause

As a result of the United States Department of Justice's investigation into bribery and conspiracy charges against five former managers previously employed by National Grid, the Commission found it necessary to require some portion of the revenue requirement in the Companies' current rate plan, established in the 2021 Rate Order, to be collected through the Rate Adjustment Clause (RAC). Recoveries through the RAC were to continue until the Commission determines that the Companies have fully satisfied their burden of proof in regard to the expenditure made in conjunction with the charged employees or until a disallowance determination is made.[182] Since implemented, KEDNY and KEDLI each collect $2.5 million, annually, through the RAC.

The Joint Proposal recommends discontinuance of the RAC.[183] While the Joint Proposal recommends discontinuance, it will not limit the Commission's authority to assess a penalty or disallowance exceeding the amounts already collected through the RAC. The Joint Proposal also provides that any funds owed to customers over and above amounts collected through the RAC will be borne by Companies' shareholders and not considered retroactive ratemaking. As such, the amounts collected through the RAC remain available for disposition by the Commission and the Commission is in no way limited from assessing a penalty or disallowing amounts already collected.

Further, the amounts collected through the RAC in Cases 19-G-0309 and 19-G-0310 remain subject to audit by Staff and subject to disposition by the Commission. This provision is reasonable because the Companies will collect the revenue requirement through base delivery rates, and any amount previously collected through the RAC remains subject to disposition by the Commission. In no way does the elimination of the RAC limit the Commission's ability to act, which Staff anticipates the Commission will do in Case 21-M-0351

[182] 2021 Rate Order, pp. 99-100.
[183] Joint Proposal, p. 21.

which was established to examine National Grid's justification for the expenditures associated with the bribery and conspiracy charges.

4. Computation and Disposition of Excess Earnings, and Cost of Capital

4.1 Earnings Report

By August 31 of each year, commencing in 2025, the Companies will file their earnings reports using the methodology described below in this Section and as shown in Appendix 5 of the Joint Proposal.

4.2 Discrete Incentive and Revenue Adjustments

There are a number of discrete incentives, and negative and positive revenue adjustments that are excluded from the calculation of the Companies' ROE calculation because these items are not directly related to regulated gas earnings. Including them in the ROE calculations would improperly interfere with these incentive mechanisms. Accordingly, this provision is reasonable.

4.3 Earnings Sharing Mechanism

The Joint Proposal recommends an earnings sharing mechanism with the first earnings sharing threshold set at 50 basis points above the recommended ROE of 9.35 percent, or 9.85 percent. Earnings above this threshold will be deemed "shared earnings." Earnings above the 9.85 percent threshold but less than 10.35 percent will be shared equally (50 percent/50 percent) between customers and the Companies. Earnings equal to or in excess of 10.35 percent, but less than 10.85 percent, will be shared 75 percent/25 percent between customers and the Companies, respectively. Lastly, earnings equal to, or in excess of 10.85 percent will be shared 90 percent/10 percent between customers and the Companies, respectively.[184]

In the event of a partial or "stub" period, the earnings sharing threshold of greater than 9.85 percent will be prorated to develop a stub period earnings sharing threshold. The stub period earnings will be calculated by adjusting the actual average rate base for that period by an operating income ratio factor. The operating income ratio factor will be calculated as the ratio of operating income during the same partial period in the previous rate year to the total operating

[184] Joint Proposal, p. 23.

income for that rate year. The operating income ratio factor adjustment is necessary and reasonable because it addresses the impact of seasonality of the Companies' sales between the end of the rate plan, March 31, 2027, and the beginning of the year under a new rate plan.

The use of an earnings sharing mechanism is beneficial because it provides the Companies with a financial incentive to control their costs, while also ensuring ratepayers an opportunity to share in those efficiency gains. Thus, any gains that the Companies achieve would also benefit ratepayers in future rate proceedings, while also providing a safeguard against the potential for excess earnings by the Companies.

The use of earnings sharing thresholds and the tiered nature of the earnings sharing mechanism is consistent with recent multi-year rate plans approved by the Commission.[185] In addition, the Joint Proposal recommends calculating shared earnings on an annual basis, which is in line with the overwhelming majority of earnings sharing mechanisms contained in many recent joint proposals adopted by the Commission. Requiring the sharing of earnings on an annual basis in a multi-year rate plan offers greater opportunities for ratepayers to potentially receive a larger share of earnings as compared to those on a cumulative basis. Accordingly, the Commission should adopt this provision of the Joint Proposal.

4.4 Cost of Capital

In the Companies' initial testimony and subsequent update, the Companies sought an overall after-tax rate of return of 7.09 percent for KEDNY, which consisted of an ROE of 9.8 percent, a common equity ratio of 48.0 percent, and a long-term debt ratio of 51.82 percent with a cost rate of 4.6 percent. For KEDLI, they sought an overall after-tax rate of return of 7.05 percent, which consisted of an ROE of 9.8 percent, a common equity ratio of 48.0 percent, and a long-term debt ratio of 51.73 percent with a cost rate of 4.53 percent.[186]

Staff's direct testimony recommended an overall after-tax rate of return of 6.82 percent for KEDNY, which was predicated upon an ROE of 9.10 percent, a common equity ratio

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[185] Case 22-E-0064 et al., Consolidated Edison of New York – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023); Case 22-E-0317 et al., New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation – Rates, Order Adopting Joint Proposal (issued October 12, 2023); Case 22-S-0659, Consolidated Edison of New York, Steam Service - Rates, Order Adopting Terms of the Joint Proposal, (issued November 16, 2023).

[186] KEDNY Exhibit___(RRP-1 C&U), Summary, p. 5; KEDLI Exhibit___(RRP-1 C&U), Summary, p. 5.

of 48.0 percent, and a long-term debt ratio of 51.82 percent with a cost rate of 4.70 percent. For KEDLI, Staff's direct testimony recommended an overall after-tax rate of return of 6.74 percent, which was predicated upon an ROE of 9.10 percent, a common equity ratio of 48 percent, and a long-term debt ratio of 51.73 with a cost rate of 4.56 percent.[187]

The Joint Proposal's revenue requirements for KEDNY are based on an overall after-tax rate of return of 8.72 percent for RY1, 8.81 percent for RY2, and 9.01 percent for RY3, respectively.[188] The Joint Proposal's revenue requirements for KEDLI are based on an overall after-tax rate of return of 8.64 percent for RY1, 8.82 percent for RY2, and 9.15 percent for RY3, respectively. The overall rates of return for both KEDNY and KEDLI are premised upon an ROE of 9.35 percent and a common equity ratio of 48.0. However, the Joint Proposal's weighted average cost of debt differs for KEDNY and KEDLI. Specifically, the weighted average cost of debt for KEDNY is 4.71 percent for RY1, 4.88 percent for RY2, and 5.26 percent for RY3, respectively, and for KEDLI it is 4.57 percent for RY1, 4.91 percent for RY2, and 5.55 percent for RY3, respectively.[189]

The cost of capital contained in the Joint Proposal, and the 9.35 percent ROE, are a reasonable outcome given the current economic and market environment. Equity return requirements have increased in recent months. This is demonstrated by the 9.25 percent ROE for a single rate year recommended recently by DPS Staff in its pre-filed testimony in the ongoing rate proceedings for National Fuel Gas Distribution Corporation.[190] Moreover, the 9.35 percent ROE for the Joint Proposal compares favorably to the 9.25 percent ROE for a three-year rate plan adopted by the Commission in November 2023 for the Consolidated Edison Steam rate case.[191]

The 48.0 percent common equity ratio, to which the Companies have managed their equity layers for at least the last eight years, will allow the Companies to continue to access capital at reasonable terms. Furthermore, the 48.0 percent common equity ratio is in line with

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[187] Case 23-G-0225 et al., supra, Kwaku Duah Testimony, pp. 9-10; Case 23-G-0225 et al., supra, Kwaku Duah's Exhibit___(KXD-2), pp. 1-2.

[188] Joint Proposal, pp. 8 - 9.

[189] Id.

[190] Case 23-G-0627, National Fuel Gas Distribution – Rates, Testimony of Staff Witness David Warnock (filed March 1, 2024), p. 4.

[191] Case 22-S-0659, Consolidated Edison of New York- Steam Rates, Order Adopting Terms of a Joint Proposal (issued November 16, 2023), p. 9.

recently approved rate plans for other utilities in New York State.[192] In addition, the costs of debt for the Companies do not allow for any reconciliations, which is beneficial to ratepayers because it requires the Companies to effectively manage their debt portfolios to the agreed-upon debt cost rates.

The terms of the Joint Proposal adequately recognize the increased financial and business risks inherent in setting rates over a multi-year period. As opposed to a single rate year, the extended term of the Joint Proposal inherently carries more financial risk as investors are subject to additional risk that economic conditions will change and the actual cost of capital could increase during the three-year term. Furthermore, because the Joint Proposal locks in forecasted amounts for numerous elements of expense for the three-year term, the Companies' business risk is also impacted by the potential that actual operating costs are greater than those forecasted.

Overall, the allocation of risk and the rate of return reflected in the Joint Proposal reasonably balance the return requirements of the Companies' investors with customers' expectations of safe and reliable service at just and reasonable rates. In addition, the Joint Proposal will benefit customers in that the multi-year rate plans will provide relative predictability and stability to the Companies' operations over the next three years.

5. Capital Investment Levels and Operations & Maintenance

5.1 Capital Investment Levels

In its initial testimony, KEDNY proposed gas capital budgets of $855.164 million,[193] $1.013 billion, $1.016 billion, and $995.634 million, in FY4, FY25, FY26, and FY27, respectively.[194] In its initial testimony, KEDLI proposed gas capital budgets of $520.784 million,[195] $671.469 million, $721.539 million, and $722.226 million, in FY24, FY25, FY26,

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[192] Case 22-E-0064 et al., Consolidated Edison of New York – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023); Case 22-E-0317 et al., New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation – Rates, Order Adopting Joint Proposal (issued October 12, 2023); Case 22-S-0659, Consolidated Edison of New York - Steam Rates, Order Adopting Terms of the Joint Proposal, (issued November 16, 2023).

[193] Case 23-G-0225 et al., supra, KEDNY Exhibit___(GIOP-1).

[194] Id., KEDNY Gas Infrastructure and Operations Panel Direct Testimony (filed April 28, 2023) (KEDNY GIOP Testimony), p. 12.

[195] Id., KEDLI Exhibit___(GIOP-1).

and FY27, respectively.[196] In its Corrections and Updates filing, KEDNY updated its proposed capital budgets to $1.008 billion, $1.027 billion, and $1.015 billion for FY25, FY26 and FY27, respectively.[197] In its Corrections and Updates filing, KEDLI updated its proposed capital budgets to $665.030 million, $721.169 million, and $729.241 million for FY25, FY26 and FY27, respectively.[198]

In its initial testimony, Staff proposed gas capital budgets of $832.143 million, $951.791 million, $1.028 billion, and $1.063 billion, in FY24, FY25, FY26, and FY27, respectively at KEDNY and $511.159 million, $611.608 million, $677.044 million, and $693.873 million, and in FY24, FY25, FY26, and FY27, respectively at KEDLI.[199]

Staff made several reductions to the Companies' proposed budgets to reflect Staff's projected costs to complete certain projects, removal of projects due to uncertainty and inconsistency with the cost estimation performed by the Companies, and removal of some projects that Staff recommended were unjustified and/or unnecessary.[200] Staff's adjustments pertained to the following project categories: (1) Customer Connections which provide funding to install mains and services to serve customers; (2) Non-Infrastructure which includes investments to telecommunications, tools and equipment; and (3) Future of Heat which funds non-traditional gas projects such as Renewable Natural Gas (RNG) Interconnections, and the Hydrogen Blending Project (in the Town of Hempstead).

Staff also adjusted the Companies' budgets to facilities improvements which include programs or projects related to training centers, and infrastructures within the Greenpoint Energy Center. Finally, Staff also recommended increases to KEDNY's and KEDLI's proposed budget to reflect a higher LPP mileage target, as discussed in further detail later, which resulted in an overall increase to KEDNY's gas capital budget.

In its direct testimony, CNY recommended a reduction to the Companies' overall capital spending by 27 percent for KEDNY and 43 percent for KEDLI. CNY's adjustments were mainly driven by blanket reductions based on historic spending, elimination of all proposed

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[196] Id., KEDLI Gas Infrastructure and Operations Panel Direct Testimony (filed April 28, 2023) (KEDLI GIOP Testimony), p. 12.
[197] Id., KEDNY Exhibit___(GIOP-1CU).
[198] Id., KEDLI Exhibit___(GIOP-1CU).
[199] Id., Staff GIOP Exhibit___(SGIOP-2).
[200] Staff GIOP Testimony, pp. 27-29, 67-69, & 84-86.

spending in the Customer Connections, and adjustments to LPP removal budgets and targets.[201] In its direct testimony, AGREE recommended denying cost recovery of all projects associated with the Greenpoint Energy Center so that stakeholder groups could review costs associated with its potential retirement, downsizing, and/or repurposing. AGREE also recommended considering alternatives to provide safe, reliable, and cost-effective service to ratepayers.[202]

EDF in its direct testimony, stated that the Commission must prioritize safety, climate benefits, and cost effectiveness, to carefully assess mixing hydrogen into existing gas pipeline systems. Further, EDF recommended that the Commission should not approve the HyGrid proposal for cost recovery in this rate case but should instead direct National Grid to resubmit its proposal in a unified proceeding, after statewide evaluation standards have been developed.[203]

In its direct testimony, SANE Energy recommended the retirement of LPP instead of replacement and advocated for the establishment of a well-defined and measurable plan for the complete retirement of all gas infrastructure at the Greenpoint Energy Center by 2030.[204] SANE Energy also recommended retirement of Vaporizers 7 & 8 at the Greenpoint Energy Center and retiring pipelines in Eastern Long Island, including the KEDLI Southampton-Transmission-Main.[205]

In their rebuttal, the Companies rejected all capital expenditure adjustments proposed by Staff and the CNY. Further, the Companies stated that Staff's adjustments were not supported by sufficient data and analysis. The Companies also argued that their basis and methodology in forecasting capital investments was on a program-by-program basis and was followed by detailed analysis of each program, including examination of historic spend.[206] The Companies argued that CNY's recommendation to eliminate all proposed capital spending associated with Customer Connections is unreasonable and will unfairly require the Companies

201 John Sano Testimony, pp. 3-4.
202 Mark D. Kleinginna Testimony, p. 4.
203 Case 23-G-0225 et al., supra, Direct Testimony of Ilissa Ocko on Behalf of Environmental Defense Fund (filed September 1, 2023) (Ilissa Ocko Testimony), p. 41.
204 SANE Energy Project Testimony, pp. 11 - 12.
205 Id., p. 17.
206 Case 23-G-0225 et al., supra, KEDNY & KEDLI Gas Infrastructure and Operations Rebuttal Testimony (filed September 22, 2023) (KEDNY & KEDLI GIOP Rebuttal Testimony), pp. 4-6.

to fund new connection costs and establish regulatory deferrals that would need to be collected in the future.[207]

Further, the Companies emphasized that the Greenpoint Energy Center is a critical component of KEDNY's gas supply portfolio and gas operating network and plays a critical role in meeting peak demand. The Companies, therefore, contend that SANE Energy and AGREE's recommendations to defer or avoid investments to the Greenpoint Energy Center are unsupported and should be rejected.[208]

The Joint Proposal includes gas capital budgets for KEDNY of $833.287 million, $924.025 million, $960.042 million, and $971.114 million, in FY24, FY25, FY26, and FY27, respectively,[209] and for KEDLI budgets of $511.408 million, $645.687 million, $705.264 million, and $729.318 million in FY24, FY25, FY26, and FY27, respectively.[210] These budgets represent a total reduction of $194.975 million for KEDNY and $35.172 million for KEDLI from the Companies' Corrections and Updates testimony proposals.

The proposed budgets are reasonable as they reflect reasonable cost estimates and include funding for critical projects that allow the Companies to comply with their regulatory requirements, maintain facilities to ensure system reliability, and improve gas safety. The agreed upon budgets incorporate agreement among the parties regarding the CSC, LNG infrastructure, customer connections, future of heat, and LPP programs which will be discussed further below. The Joint Proposal also includes company specific Net Plant reconciliations to ensure the revenue requirement associated with underspending is returned to rate payers, which addresses Staff's original concern with cost estimation for select projects.[211] Finally, the Joint Proposal also excludes funding for projects which do not address immediate operational needs and/or risk to service reliability and public safety, such as the Greenpoint Master Plan.

5.1.1 Net Utility Plant and Depreciation Expense Reconciliation Mechanism

In its initial testimony, Staff recommended continuing the downward-only reconciliation of actual gas net plant and depreciation expense to the targets set for the rate

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207 KEDNY & KEDLI GIOP Rebuttal Testimony, pp. 11-12.
208 Id., p. 50.
209 Joint Proposal, Appendix 1, Schedule 4.
210 Joint Proposal, Appendix 2, Schedule 4.
211 Staff GIOP Testimony, pp. 84-85.

years.[212] The Joint Proposal incorporates a downward-only net plant reconciliation mechanism. The Joint Proposal, if adopted, would require each Company to defer for future rate payer benefit, the revenue requirement difference of the actual net plant balance to that of the established target values.[213] This reconciliation mechanism provides customers with important protections against underspending that would otherwise not be captured through traditional rate making.

The mechanism also provides the Companies with the flexibility over the term of the gas rate plan established in this proceeding to modify the type, timing, identity, nature and scope of capital projects from those currently incorporated into the net plant targets. Such flexibility is critical to allow the Companies to react to changing conditions, both on their supply and delivery systems, and in the general construction environment as projects can be delayed or accelerated for any number of reasons that are difficult to predict months or even years in advance. The downward-only reconciliation mechanism included in the Joint Proposal is consistent with the downward-only reconciliation mechanism that was in place under the 2021 Rate Order.[214] In additional to the net plant reconciliation for the total gas capital expenditure, the Joint Proposal includes several individual reconciliations with specific targets for programs such as CSC projects and Customer Connections. The details of these reconciliations are discussed further below.

5.1.2 City/State Construction

In its direct testimony, KEDNY stated it did not include a forecast of CSC reimbursements from CNY in its capital plan because the Cost Sharing Agreement (CSA) between KEDNY and CNY expires in June 2025.[215] KEDLI also did not include CSC reimbursements from CNY in its capital plan forecast due to the CSA expiring in June 2025.[216] In direct testimony, Staff included CSC reimbursements for FY 2024, FY 2025, and FY 2026 reflecting historic amounts reimbursed to the Companies, in its recommended capital plan

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212 Staff GIOP Testimony, p. 12.
213 Joint Proposal, pp. 23-24.
214 2021 Rate Order, p. 95.
215 KEDNY GIOP Testimony, p. 44-45.
216 KEDLI GIOP Testimony, p. 48.

forecast for both KEDNY and KEDLI.[217] In rebuttal testimony, the Companies disagreed with Staff's proposal to include CSC reimbursements.[218]

The capital plan included in the Joint Proposal includes a forecast of CSC reimbursements from CNY and establishes capital expenditure levels, net of reimbursements from CNY, for the CSC programs as follows: for KEDNY, $310.790 million in RY1, $331.133 million in RY2, and $342.118 million in RY3. For KEDLI, $10.631 million in RY1, $11.829 million in RY2, and $12.400 million in RY3.[219] These CSC capital budgets reflect a prudent level of expenditure because they reflect a reasonable forecast of reimbursements pursuant to the terms of the agreement between CNY and the Companies. The reimbursement forecast was developed based on a historical ratio between reimbursements the Companies are entitled to and the total CSC budget.

In the 2021 Rate Order the Commission approved the CSC reconciliation mechanism which allows the Companies to defer, for future recovery from or return to customers, 90 percent of the difference between the Companies' actual capital spending for CSC, net of municipal reimbursements, and the forecasted CSC budgets for each Rate Year. In its direct testimony, KEDNY proposed to continue this mechanism with a modification to allow for 100 percent recovery of CSC costs.[220] KEDLI proposed the same modification to this mechanism.[221] In its direct testimony, Staff agreed to continue the CSC mechanism but rejected the Companies' proposal to modify the CSC mechanism to allow for 100 percent recovery.[222]

In its direct testimony, CNY also disagreed with the Companies proposal to modify the CSC mechanism to allow for 100 percent recovery.[223] In rebuttal testimony, the Companies disagreed with Staff's recommendation to continue the CSC mechanism at 90 percent recovery.[224]

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217 Staff GIOP Testimony, pp. 40-43.
218 KEDNY & KEDLI GIOP Rebuttal Testimony, p. 15.
219 Joint Proposal, p. 25.
220 KEDNY GIOP Testimony, p. 45.
221 KEDLI GIOP Testimony, p. 49.
222 Staff GIOP Testimony, p. 108.
223 John Sano Testimony, p. 27.
224 KEDNY & KEDLI GIOP Rebuttal Testimony, p. 18.

The Joint Proposal continues the CSC mechanism at 90 percent recovery.[225] Continuing the CSC mechanism, as adopted in the 2021 Rate Order, is reasonable because the expenditures in this program are subject to a high degree of variability based on coordination with municipal construction activities. However, the Companies still manage aspects of the program including contractor oversight, quality control, material procurement, workforce control, and productivity.[226] Balancing the variability of municipal operations with the Companies' role in said operations necessitates continuation of the 90 percent recovery and serves as an incentive for the Companies to endeavor to control costs.

5.1.3 Customer Connections

For the Customer Connections line items, KEDNY proposed a capital budget of $35.685 million, $35.746 million, and $31.505 million for FY 2025, FY 2026, and FY 2027, respectively.[227] For the Customer Connections line items, KEDLI proposed a capital budget of $47.505 million, $48.613 million, and $49.623 million for FY 2025, FY 2026, and FY 2027, respectively.[228] In its direct testimony, Staff proposed reduced Customer Connections budgets of $27.761 million, $27.811 million, and $22.658 million for FY 2025, FY 2026, and FY 2027, respectively, for KEDNY and $34.412 million, $35.186 million, and $35.963 million for FY 2025, FY 2026, and FY 2027, respectively, for KEDLI.[229]

In the Staff GIOP Panel's direct testimony, Staff agreed to the Companies' unit cost forecast but did not agree with the number of units forecast. Staff recommended using a 3-year average of number of services installed using FYs 2020-2022 to establish the average.[230]

In its direct testimony, CNY recommended all spending on Customer Connections be eliminated, citing new laws such as Local Laws 97 and 154 prohibiting most new gas connections.[231] In their rebuttal testimony the Companies stated that due to the uncertainty created by legislation that prohibits new gas connections, the Companies made adjustments to its budget to reflect the potential reduction in customer connections associated

225 Joint Proposal, p. 25.
226 Staff GIOP Testimony, p. 109.
227 KEDNY GIOP Exhibit___(GIOP-1).
228 KEDLI GIOP Exhibit___(GIOP-1).
229 Staff GIOP Exhibit___(GIOP-2).
230 Staff GIOP Testimony, pp. 26-27
231 John Sano Testimony, pp. 9-10.

with Local Laws 97 and 154.[232] The Companies also proposed to continue the existing two-way tracker for the Install Main, Install Services, and Install Meter/Regulator programs.[233]

The Joint Proposal includes a Customer Connection budget for KEDNY of $27.761 million in RY1, $27.811 million in RY2, and $22.658 million in RY3; and, for KEDLI a budget of $34.412 million in RY1, $35.186 million in RY2, and $35.963 million in RY3.[234] Additionally, the Joint Proposal includes continuation of the existing two-way tracker for Customer Connection line items, but imposes a cap for both KEDNY and KEDLI. The cap for KEDNY is $58.539 million in RY1, $58.638 million in RY2, and $51.681 million in RY3. The cap for KEDLI is $66.247 million in RY1, $67.797 million in RY2, and $69.211 million in RY3.[235]

Although certain parties advocated for the removal of any customer connection budget, such action runs violates the Companies' legal requirement to provide service pursuant to the Public Service Law and Transportation Corporations Law.[236] Further, it is reasonable to retain the Customer Connection budget because Local Laws 97 and 154 have exceptions and therefore the Companies will likely experience some limited growth over the term of the proposed rate plan. Accordingly, it would be unreasonable to forecast no capital expenditures for connecting customers that are exempt from Local Laws 97 and 154. However, in the interest of supporting other alternatives to expansion of gas service and to facilitate further efforts to reduce GHG emissions to achieve the state-wide, economy-wide, targets of the Climate Act the Joint Proposal reduces the Companies' proposed Customer Connections budget and applies caps and reconciliation mechanisms which incentivize the pursuit of such alternatives.

The Joint Proposal's recommended Customer Connection provisions are a reasonable and fair resolution that adequately addresses the concerns raised by all parties. The agreed upon budgets reflect a reduction compared to historical spending levels to incorporate anticipated reductions in customer connections, while allowing the Companies to reconcile and recover costs if those reductions do not materialize. Further, the cap on the Customer Connection budget protects customers and incentivizes the Companies to seek opportunities to

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[232] KEDNY & KEDLI GIOP Rebuttal Testimony, p. 9; See also, Exhibit____(SGIOP-1), pp. 46-54.
[233] KEDNY GIOP Testimony, p. 72 and KEDLI GIOP Testimony, p. 68.
[234] Joint Proposal, pp. 25-26.
[235] Id., p. 26.
[236] PSL §31(4); Transportation Corporations Law §12; 16 NYCRR Part 230.

limit the amount of new gas customers it allows on their systems, by allowing the Companies to recover only 90 percent of the carrying costs on the amounts beyond the cap.

5.2 Review of the Operation of KEDNY's Greenpoint Energy Center in Case 20-G-0131

In its initial testimony, KEDNY proposed to implement specific LNG capital improvement projects and "blanket" LNG programs to continue operability and safety of Greenpoint Energy Center.[237] In direct testimony, Staff supported the Companies' proposal to implement the various capital projects and programs because improvements are intended to maintain reliability, safety of each facility, and ensure operability when called upon during peak demand events during winter heating seasons or during supply constraint events.[238] CNY also supported the overall LNG capital programs.[239]

SANE Energy recommended the retirement of the Greenpoint Energy Center due to its proximity to Disadvantaged Communities and proposed a plan be set for the complete retirement of the facility by 2030.[240] SANE Energy also recommended that a comprehensive evaluation of the facility be initiated due to the significant investments being proposed and in the context of environmental impacts being driven by fossil fuel investments.[241] SANE Energy recommended that funding for Greenpoint LNG projects be significantly reduced arguing that the projects extend the longevity of the facility and continued use of fossil fuels.[242]

AGREE believes that there is a potential for stranded costs associated with the Greenpoint Energy Center because of the potential impacts of various factors that may reduce customer demand and the overall need for the facility.[243] Additionally, AGREE recommended that the proposed projects for the facility be deferred and studied further to see if they can be canceled in favor of alternative solutions.[244]

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237 KEDNY GIOP Testimony, p. 68; KEDLI GIOP Testimony, p. 64.
238 Staff Gas Reliability and Supply Panel Testimony, p. 21.
239 John Sano Testimony, p. 30.
240 SANE Energy Testimony, p. 7.
241 Id., p. 14.
242 Case 23-G-0225 et al., supra, SANE Energy Rebuttal Testimony (filed September 22, 2023) (SANE Energy Rebuttal), p. 4.
243 Kleinginna Testimony, p. 21.
244 Id., p. 22.

While the Joint Proposal includes certain of Staff's adjustments related to capital projects at the Greenpoint Energy Center, as discussed above, it also adopts requirements for the Companies to include information necessary to conduct a comprehensive review of the long-term need for the Greenpoint Energy Center and the facility's role through 2044. This information will be included in the Companies' upcoming LTP filing in Case 24-G-0248[245] (as required by the Commission's Order in Case 20-G-0131).[246] The Companies will include a specific chapter in their LTP dedicated to addressing the facility along with providing specific information as detailed in the Joint Proposal. The Joint Proposal requires inclusion of multiple criteria for analysis including demand forecasts, identifiable benefits and costs, specific or a portfolio of specific NPAs, the estimated reductions in customers necessary were Greenpoint taken out of service, additional quantitative and qualitative information for both continued operation and viable alternatives which should include health, economic, land-use, and environmental impacts, and a safety and reliability analysis so that the consultant selected to review the Companies' LTP in Case 24-G-0248 can consider any viable infrastructure and non-infrastructure alternatives.[247]

These requirements provide for a detailed analysis for the long-term need for the Greenpoint Energy Center and will inform participants of what reasonable solutions may exist while protecting customers from continuing investment in the facility if other solutions are found. Moreover, the inclusion of provisions regarding the Companies' LTP filing creates a natural linkage between these rate cases and that proceeding.

In addition, the Joint Proposal includes acknowledgement by the Signatory Parties that the Commission, in addressing the Companies' LTP,

> may consider the record in that case and take appropriate action(s) including but not limited to requiring the Companies to defer the revenue requirement associated with any unspent capital investment, including return on and return of the investment as well as related O&M expenses, that the Companies can reasonably avoid if the Commission determines that the investment is not needed.[248]

The Joint Proposal's provisions regarding the Greenpoint Energy Center acknowledge that should the analysis show there are viable alternatives that the Commission can

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[245] Case 24-G-0248, In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid.

[246] Case 20-G-0131, supra, Order Adopting Gas System Planning Process (issued May 12, 2022).

[247] Joint Proposal, p. 30.

[248] Id.

take appropriate action. As discussed above, multiple parties including AGREE and SANE Energy proposed extreme reductions in the various capital projects and programs associated with the Greenpoint Energy Center. However, because of the age of the facility and the improvements needed for the LNG facilities to remain reliable and safe, and ensure operability when called upon during peak demand events during winter heating seasons or during supply constraint events, those capital project costs are included in the Joint Proposal. Should the analysis in the LTP proceeding provide other viable alternatives, those costs can be reduced or avoided.

The LTP is the proper proceeding for such an analysis, as it will allow for consideration of necessary information, including potential alternative solutions, to ensure that customers continue to have safe, adequate and reliable gas service during the transition to alternative energy sources to reduce emissions. As such, the Joint Proposal provides a fair and reasonable resolution to address the concerns of opposing parties while also utilizing the Commission's already established proceedings available to conduct a comprehensive analysis of the Greenpoint Energy Center. For these reasons, the Commission should adopt the Joint Proposal and the provisions related to the Greenpoint Energy Center.

5.3 Capitalization Changes

In their initial testimonies, KEDNY and KEDLI proposed to capitalize all joint repairs on large diameter cast iron pipes, 16 inches and larger.[249, 250] In direct testimony, Staff supported the Companies' proposal to begin capitalizing joint repairs on large diameter cast iron pipes.[251] In direct testimony, CNY did not support the Companies request to capitalize joint repairs on large diameter pipes, stating this approach is not in line with the goals of the CLCPA. CNY also stated that capitalizing these costs will increase long-term costs to customers, as doing so would enable the Company to earn a return on this work.[252]

The Joint Proposal adopts capitalizing the cost of joint repairs on pipe facilities that are 16 inches in diameter or larger, rather than expensing the repairs as is done currently.[253]

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249 KEDNY GIOP Testimony, p. 86.
250 KEDLI GIOP Testimony, p. 87.
251 Staff GIOP Testimony, p. 96.
252 John Sano Testimony, p. 28
253 Joint Proposal, p. 30.

This change is necessary because the repair extends the useful life and integrity of the asset and follows the general accounting standards and guidelines for the treatment of such costs. This change also aligns the accounting treatment of joint repairs with the Companies accounting treatments for similar costs that prolong the life of an asset, such as the cost of the cast iron sealing robot (CISBOT) and the repair of joints 48 inches or larger.[254]

5.4 Relocation of Inside Gas Meters

The 2021 Rate Order required KEDNY and KEDLI to develop plans to address any remaining meters that are not located in a readily accessible location and file those plans in connection with their next rate proceedings.[255] In their direct testimonies the Companies proposed a new Meter Relocation Program which is a standalone meter relocation program to relocate meters that are not part main and service replacements as required by the 2021 Rate Order. Under this program the Companies would proactively contact customers with gas meters located inside their premises to solicit meter relocations to outside their premises. Customers who consent to meter relocation will be put into a queue and the Companies will complete meter relocations concurrently with associated field work.[256] In its direct testimony, Staff agreed with KEDNY's and KEDLI's proposed new Meter Relocation Program and the funding requests associated with it.[257]

The Joint Proposal adopts a comprehensive meter relocation program inclusive of both the Companies' current programs and the program as proposed in testimony. As such, the Joint Proposal requires the Companies to perform meter relocations when performing any planned service line replacements, new service line installations, and other field work where the relocation can be feasibly performed; allowing for efficient and more cost-effective means to address this safety issue. The Companies may also consider whether and where to best relocate inside meters if a premise is located in a flood plain. The Joint Proposal also contains additional reporting requirements which will track the Companies' progress in relocating inside meters and directs the Companies to include the information in their Gas Safety Reports filed pursuant to

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[254] Case 23-G-0225 et al., supra, Exhibit___(GIOP-5), p. 24.
[255] 2021 Rate Order, p. 57.
[256] Case 23-G-0225 et al., supra, KEDNY & KEDLI Gas Safety Panel Direct Testimony (filed April 28, 2023) (KEDNY & KEDLI Gas Safety Panel Testimony), pp. 19-20,
[257] Case 23-G-0225 et al., supra, Staff Pipeline Safety Direct Testimony (filed September 1, 2023) (Staff Pipeline Safety Panel Testimony), p. 70.

PSL §66-u, and in the instant cases.

Underground natural gas leaks will follow the path of least resistance, which is typically through the sand padding along the outside of gas lines, as the gas attempts to find a way to atmosphere. Service lines for inside meters enter the building below grade making that the most likely point of entry of natural gas from a leak into building. Once inside a building natural gas can accumulate into an explosive gas-air mixture. Often as gas flows through soils the odorant is stripped away, making such accumulation not readily detectable by smell alone. Service lines with outside meters typically enter the build above grade breaking the underground path of entry associated with inside meters. The same holds true for service lines with outside meters, where the piping goes back underground prior to entering the building. The requirement to relocate meters outside when conducting field work reduces costs associated with relocating the meter and has a safety benefit of reducing the risk of a gas leak migrating in a building. As such, the Meter Relocation programs included in the Joint Proposal should be adopted.

5.5 Supplemental Leak Surveys

In its initial testimony, the Companies proposed an Advance Leak Detection (ALD) Program that would continue the Companies' ALD pilot approved 2021 Rate Order for an additional year to allow the Companies to assess two additional vendors.[258] This one-year expansion of the pilot program would allow the Companies to further evaluate competing ALD technologies.

There is an impending rule that the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administrations is expected to issue that will specify technologies allowed to conduct ALD surveys. Therefore, continuation of the pilot or adoption of a longer-term program would be imprudent. In EDF witness Ocko's testimony, EDF supported having ALD surveys in "overburdened" communities.[259]

As stated in the Joint Proposal, the Supplement Leak Surveys provisions require the Companies to survey 50 percent of the LPP mains in RY1 and 100 percent each year thereafter using advanced leak detection technology.[260] Advanced leak detection technology includes vehicle-mounted cavity ring down spectroscopy with Global Positioning System (GPS)

[258] KEDNY & KEDLI Gas Safety Panel Testimony, p. 23.
[259] Ilissa Ocko Testimony, pp. 54-55.
[260] Joint Proposal, p. 32.

and wind measurement technology or any new Commission-approved leak detection device or methodology that is capable of measuring or determining leak flow rate to find high emitting leaks (leaks emitting 10 standard cubic feet per hour or more on LPP segments. Further, the Companies will be required to repair any leaks emitting 10 standard cubic feet per hour or more within 180 days.[261]

In addition, the Joint Proposal will require the Companies to report data on high emission leak detected annually. The annual report would identify: (i) the miles of pipe surveyed; (ii) the number of high emitting leaks identified by the survey; (iii) relative emissions by those leaks; and (iv) the estimated methane emission reductions achieved by repairing the high emissions leaks.

Implementation of advanced leak detection through the Supplemental Leak Survey Program enhances the safety of the public and Companies' employees and is in line with the CLCPA goal of reducing GHG emissions through reducing methane emissions.[262] Thus, these provisions should be adopted. Further, the provisions included in the Joint Proposal do not preempt the anticipated issuance of ALD requirements by PHMSA, in fact, until those rules are issued these provisions will provide for added safety and leak management controls in the interim. For these reasons, the provisions of the Joint Proposal should be adopted.

5.6 Gas Safety Public Awareness Program

In its initial testimony, KEDNY proposed implementing a Gas Safety Public Awareness Program to increase pipeline safety public awareness for its multi-dwelling locations in its service territory.[263] In direct testimony, Staff recommended that the Commission reject KEDNY's proposal to avoid duplicating existing efforts and enhance its Natural Gas Safety Outreach Program.[264] In its rebuttal testimony, KEDNY acknowledged the communication overlap between its existing and proposed programs, however, KEDNY reiterated the need to provide a direct line of communication with impacted stakeholders who are non-customers.[265]

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261 Joint Proposal, pp. 33-34.
262 CLCPA §7(2).
263 KEDNY & KEDLI Gas Safety Panel Testimony, p. 34 line 18 - p. 35 line 10.
264 Case 23-G-0225 et al., supra, Staff Consumer Services Panel Direct Testimony (filed September 1, 2023) (Staff Consumer Services Panel Testimony), p. 103.
265 Case 23-G-0225 et al., supra, KEDNY & KEDLI Gas Safety Panel Rebuttal Testimony (filed September 22, 2023) (KEDNY & KEDLI Gas Safety Panel Rebuttal Testimony), p. 27.

The Joint Proposal enhances the Companies' existing Natural Gas Safety Outreach Program by including improved efforts to reach landlords, in collaboration with the CNY to leverage its existing outreach efforts, and ensuring landlords have gas safety outreach material to provide their tenants as required by CNY Local Law 153.[266] Additionally, as proposed, KEDNY will file its revised Program within 60 days after Commission approval of the Joint Proposal and include future updates in its Annual Outreach and Education Plan in Case 17-M-0475.[267] Section 11.7 of the Joint Proposal provides a language access provision to expand the availability of translated safety materials.[268] These enhancements to the Companies' existing Natural Gas Safety Outreach Plan will increase KEDNY's reach rate to ensure landlords and tenants receive critical gas safety outreach information, eliminate the need to duplicate existing efforts, and avoids the need for additional funding to be borne by the Companies' customers. For these reasons, these provisions should be adopted.

5.7 Gas Capital Reporting Requirements

Although, the Companies did not propose reporting requirements in their direct testimony, Staff recommended that the Companies continue their current reporting requirements for capital expenditures consistent with the 2021 Rate Order.[269] The 2021 Rate Order required the Companies to provide quarterly reports, annual reports, and five-year investment plan for gas capital expenditures. The Companies will also continue to submit annual reports on their performance related to LPP retirement, LPP prioritization summaries identifying proposed projects and their estimated cost, an inventory of Type 3 leaks on each system, leak management, damage prevention, and emergency response by April 1st of the following Calendar Year. Finally, the Companies would file a report prior to the construction of any biomethane interconnection project, allowing Staff to monitor and review the cost estimate(s) and potential benefits of the interconnection. As set forth in the Joint Proposal, the Companies will continue the reporting requirements as required in the 2021 Rate Order.[270] The Companies will provide the actual and forecasted expenditures, in the same format, for all capital projects identified in

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[266] Joint Proposal, pp. 32-33.
[267] Joint Proposal, p. 33.
[268] Joint Proposal, p. 86.
[269] Staff GIOP Testimony, p. 116.
[270] Joint Proposal, p. 33.

Appendix 1, Schedule 5 for KEDNY and Appendix 2, Schedule 5 for KEDLI of the Joint Proposal. These appendices provide a list of the planned capital expenditures for KEDNY and KEDLI for RY1-RY3. The capital reporting requirements are aligned with Staff's monitoring, review, and tracking goals while enabling transparency with respect to the Companies' progress and spending levels associated with gas capital projects, programs, and investments. Given the magnitude of the gas capital budgets, these reports are necessary to provide the ratepayers, Staff and active parties with the opportunity to monitor Companies' progress and their capability of managing capital projects.

5.8 Connected Remote Methane Detection Pilot Program

In their direct testimony the Companies proposed to implement a Connected Remote Methane Detection (RMD) Pilot Program to install RMD devices that use cellular technology to provide data.[271] In its direct testimony, Staff recommended an alternative that would use connected RMDs devices that make use of Long Range Wide Area Network (LoRaWAN) technology, similar to the RMDs used by Consolidated Edison in its service territory.[272]

Under the terms of the Joint Proposal the Companies will implement a Connected Remote Methane Detection Pilot Program to install RMD devices that use cellular technology to provide data. The Companies will use any respective Negative Revenue Adjustments (NRAs) related to the Gas Safety Metrics to reduce expenditures for this program. Also, the Companies will file a report annually with the results of the program.[273] After the installation of connected RMDs, the Companies will be able to reduce the frequency of associated inspections (leak surveys, corrosion inspections, etc.) to reduce annual inspection costs without compromising customer or public safety. The proposed program provides measurable gas safety benefits while also managing costs, through the use of new or innovative technologies, and for these reasons this program should be adopted.

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[271] KEDNY & KEDLI Gas Safety Panel Testimony, pp. 27 - 28.
[272] Staff Pipeline Safety Panel Testimony, pp. 63 - 64.
[273] Joint Proposal, p. 34.

5.9 Voluntary Integrity Management Program

In their direct testimony, the Companies proposed to implement a Voluntary Integrity Management Program (IMP) for pipelines operating at greater than 125 pounds per square inch gauge (psig). Under the Voluntary IMP, the Companies would inspect five miles of pipeline per year with a total cumulative of 20 miles of pipeline inspected per company between the beginning of the RY through the end of CY 2028. The Companies have identified and prioritized these pipelines segments across all areas of their service territories based on the following criteria: (i) operating stress of the pipeline; (ii) installation date; (iii) maximum allowable operating pressure of greater than 125 psig; and (iv) the population concentration around the pipeline. [274] In its direct testimony, Staff agreed with the purpose of the proposed Voluntary IMP, however, Staff disagreed that this should be a voluntary program. In its direct testimony, Staff contends that the transmission mains covered under this program are "transmission lines" as defined by Title 16 of New York Codes, Rules and Regulations (16 NYCRR) 255.3 and are therefore subject to the transmission integrity management program requirements.[275] However, Staff also noted in testimony that, in the absence of clarification from the Commission related to the definition of "distribution center", both the Companies' interpretation and Staff's interpretation are reasonable interpretations.[276]

The Joint Proposal provides that the Companies will implement a Voluntary IMP for pipeline facilities operating at greater than 125 psig but below specified minimum yield strength (SMYS) of 20 percent as proposed by the Companies' direct testimony.[277] The primary benefit of this program is the enhancement of continuous, safe, and reliable natural gas to customers through the integrity assessments of higher pressure pipelines. Adoption of the program would improve monitoring of system risk and further improve the safety of the Companies' gas systems.

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[274] KEDNY & KEDLI Gas Safety Panel Testimony, p. 28.
[275] Staff PipelineSafety Panel Testimony, p. 77.
[276] Staff Pipeline Safety Panel Testimony, pp. 78-80.
[277] Joint Proposal, p. 34.

6. Information Technology and Digital

6.1 Information Technology and Digital (IT&D) Capital Investment Level

IT&D investments are made up of capital costs, operating expense and Rent expense. In the initial filing, the Companies proposed aggregate annual capital costs for the IT&D projects of $308.584 million in RY1, $310.054 million in RY2, $298.348 million in RY3, and $215.117 million in FY28.[278] In the Companies' Corrections and Updates testimony, the Companies updated the capital expenditures to $307.9 million, $314.6 million, $300.4 million, and $220.9 million for RY1, RY2, RY3, and FY28, respectively.[279] Staff's Information Technology Panel in its direct testimony proposed a reduction of the Companies IT&D capital expenditures budgets at the Service Company level by $190.617 million in RY1.[280]

The Service Company also assigns operating expenses and run the business (RTB) costs.[281] Operating expenses consist of initial project expenses such as internal labor, contractor and consultant costs, as well as post-implementation costs, incurred with new projects that are not able to be capitalized.[282] RTB costs are the costs of running a project once it is in service, including costs associated with licensing and maintenance agreements, and application support.[283] In its initial testimony, KEDNY's IT&D operating expense amounts as proposed were $9.7 million in RY1, $9.2 million in RY2, and $3.1 million in RY3.[284] In its initial testimony, KEDLI's IT&D operating expense amounts as proposed were $5.2 million in RY1, $5.2 million in RY2, and $1.8 million in RY3.[285] In the Companies Corrections and Updates testimony, the Companies proposed a cumulative decrease of $4.04 million and $2.01 million for KEDNY and KEDLI for FY24 through RY3, respectively, when compared to the initial rate filing for the incremental IT&D operating expenses. [286] This results in an updated incremental

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278 Case 23-G-0225 et al., supra, KEDNY & KEDLI Information Technology and Digital Panel Testimony (filed April 28, 2023) (KEDNY & KEDLI IT&D Testimony), p. 42, lines 17-19.
279 Case 23-G-0225 et al., supra, KEDNY & KEDLI Exhibit___(ITDP-4CU).
280 Case 23-G-0225 et al., supra, Staff Information Technology Panel Testimony (filed September 1, 2023) (Staff IT Panel Testimony), p. 55, lines 14-17.
281 Staff IT Panel Testimony, p. 20.
282 Id., p. 20, lines 2-6.
283 Id., p. 20, lines 7-10.
284 KEDNY & KEDLI IT&D Testimony, p. 44, lines 5-11.
285 KEDNY & KEDLI IT&D Testimony, p. 44, lines 13-17.
286 Case 23-G-0225 et al., supra, KEDNY & KEDLI Corrections and Updates Testimony of the Information Technology and Digital Panel (filed June 30, 2023) (KEDNY & KEDLI IT&D C&U Testimony), p. 12, lines 1 - 3; see also Exhibit__(ITDP-7CU).

IT&D operating expense of $9.6 million in RY1, $7.2 million in RY2, and $4.6 million in RY3 for KEDNY and $5.1 million in RY1, $4.0 million in RY2, and $2.7 million in RY3 for KEDLI.[287] Staff proposed to reduce IT&D operating expense at the Service Company level by $9.380 million for KEDNY and $5.216 million for KEDLI in RY1.[288]

In their initial testimony, KEDNY and KEDLI forecasted IT&D Service Company Rent expense in RY1 of $67.412 million and $32.972 million, respectively.[289] Service Company Rent expense generally represents the return on, and the depreciation expense associated with IT&D assets. Increases in IT&D Service Company Rent expense are driven by new IT&D capital projects planned to be implemented in RY1, and RY2, and RY3.[290] The Companies' Rent Expense is further broken down by category, i.e., existing projects, Digital Platforms and Infrastructure Technology, security, customer, gas operations, continued scaling and evolution, Customer Related Information Systems to Customer Service System, Customer Information System Enhancements, customer experience, energy efficiency, Backoffice Refresh and other initiatives.[291] The Companies' Corrections and Updates testimony included a cumulative decrease in IT&D Rent expense of $0.583 million and $0.818 million for KEDNY and KEDLI.[292] The updated RY1 incremental Rent expense for IT&D investments was proposed as $67.383 million and $32.894 million for KEDNY and KEDLI, respectively.[293]

Based on the reductions to capital expenditures, Staff proposed a reduction to Service Company Rent expense by $8.027 million and $4.292 million for KEDNY and KEDLI, respectively.[294] In addition, Staff proposed a reduction to KEDNY and KEDLI's forecasted Service Company Rent expense by $1.675 million and $1.807 million, respectively to account for Staff's proposed rate of return.[295] This resulted in cumulative reductions of $9.702 million for KEDNY and $6.099 million for KEDLI.

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287 KEDNY & KEDLI IT&D C&U Testimony, p. 11, lines 14- 16.
288 Staff Information Technology Panel Testimony, p. 56, lines 20-21.
289 KEDNY & KEDLI IT&D Testimony, p. 10, lines 22-23.
290 Id., p. 11, lines 1-2.
291 Id., Table 1 – KEDNY IT&D Rent Expense p. 11; Table 2 – KEDLI IT&D Rent Expense, p. 12.
292 KEDNY & KEDLI IT&D C&U Testimony, p. 11, lines 5- 8.
293 Id., p. 11, lines 9 – 11.
294 Staff IT Panel Testimony, p. 55, lines 17- 20.
295 Staff IT Panel Testimony, p. 58, lines 15- 17.

The Joint Proposal recommends incremental Service Company IT&D capital investments of $240.2 million in RY1, $246.6 million in RY2, and $243.8 million in RY3. The IT&D operating expenses and RTB generally track the recommended level of IT&D capital investment. Accordingly, the Joint Proposal reflects IT&D operating expense and RTB amounts of $8.467 million in RY1, $6.123 million in RY2, and $3.275 million in RY3 for KEDNY and $4.512 million in RY1, $3.409 million in RY2, and $1.915 million in RY3 for KEDLI. Aside from the reconciliations applied to the Backoffice Refresh and Core IT categories as discussed further below, the Joint Proposal is not intended to limit the Companies' flexibility during the term of the rate plan to substitute, change, or modify the IT&D capital projects, rather it empowers the Companies to effectively and efficiently invest in IT projects by allocating risks equitably between the Companies and customers.

The incremental Service Company IT&D capital investment levels in each in each of the Rate Years is reasonable as it strikes an equitable balance between Staff's and the Companies' proposed IT&D capital investment levels. In addition, the levels of IT&D capital investment will allow the Companies to appropriately invest in needed IT&D projects. These investments will enable the Companies to further enhance customer experience, and provide safe and reliable service. The incremental Service Company IT&D capital investment levels established in the Joint Proposal are reasonable as they balance Staff's and the Companies' proposed IT capital investment levels, while maintaining capital investment to allow the Companies to invest in needed IT projects. For these reasons, the Joint Proposal should be adopted.

6.2 Service Company Rent: IT&D Net Utility Plant and Depreciation and Expense Reconciliation Mechanism

In the 2021 Rate Order, the Commission adopted an IT and Gas Business Enablement Net Utility Plant and Depreciation Expense Reconciliation Mechanism.[296] In its direct testimony, Staff recommended the Companies continue this downward-only reconciliation mechanism for Service Company Rents, Net Utility Plant, and Depreciation Expense Reconciliation Mechanism to protect customers from paying delivery rates higher than necessary

[296] 2021 Rate Order, pp. 149-150.

to support the IT assets actually implemented.[297] The mechanism requires the Companies to reconcile their respective actual IT&D average net utility plant and depreciation expense revenue requirements to the forecast revenue requirements. The IT&D average net utility plant and depreciation expense revenue requirement would be calculated by applying the Companies' authorized pre-tax Weighted Average Cost of Capital (WACOC) for RY1 to the IT&D average net utility plant balance and adding the depreciation expense to the product. Staff's direct testimony also recommend that at the end of RY1, if the actual IT&D average net utility plant and depreciation expense revenue requirement is less than the target average net utility plant and depreciation expense revenue requirement, the Companies would defer the revenue requirement impact for the benefit of customers.[298] Further, Staff recommended that the mechanism should be a one-way, downward only true-up.[299]

In their rebuttal testimony, the Companies agreed with Staff's recommendation that downward-only Service Company Rent IT&D Net Utility Plant and Depreciation Expense Reconciliation Mechanism should remain in effect.[300]

The Joint Proposal recommends continuing a downward-only IT&D Utility Plant and Depreciation Expense Reconciliation Mechanism. For each Rate Year, the Companies will reconcile their respective actual IT&D average net utility plant and depreciation expense revenue requirements to the forecast revenues requirements as set forth in the Joint Proposal. The difference between the actual IT&D average net utility plant and depreciation expense revenue requirement and the target average net utility plant and depreciation will carry forward for each Rate Year and be summed up at the end of RY3. If at the end of RY3, the cumulative actual IT&D average net utility plant and depreciation expense revenue requirements are negative, the Companies will defer the revenue requirement impact for the benefit of customers. If at the end of RY3, the cumulative actual IT&D Program average net utility plant and depreciation expense revenue requirements are positive, there will be no deferral. The mechanism recommended in the Joint Proposal is reasonable as it addresses Staff's concern for customers paying delivery

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[297] Staff IT Panel Testimony, pp. 67 line 18 - p. 68, 15.
[298] Staff IT Panel Testimony, p. 68, lines 1-15.
[299] 2021 Rate Order, pp. 154.
[300] Case 23-G-0225 et al., supra, KEDNY & KEDLI Information Technology & Digital Panel Rebuttal Testimony (filed September 22, 2023) (KEDNY & KEDLI IT&D Rebuttal Testimony), p. 13.

rates higher than necessary to support the actual costs associated with IT&D assets. Accordingly, these provisions of the Joint Proposal should be adopted.

6.3 Core IT and Backoffice Refresh Reconciliation Mechanism

As proposed in Staff's direct testimony, Staff recommended that in conjunction with the IT&D Net Utility Plant and Depreciation Expense Reconciliation Mechanism, the Companies implement downward-only net utility plant and depreciation expense reconciliations for each of the Core IT and Backoffice Refresh categories of IT&D capital investments.[301] As proposed in the Joint Proposal, each Rate Year, the Companies will reconcile their respective capital IT average net utility plant and depreciation expense revenue requirements for the Core IT and Backoffice Refresh categories to the forecast revenue requirements as shown on Appendix 6, Schedule 13 for KEDNY and Appendix 7, Schedule 13 for KEDLI.[302]

The difference between the actual average net utility plant and depreciation expense revenue requirements and the target average net utility plant and depreciation expense revenue requirements for the Core IT and Backoffice Refresh categories will carry forward for each Rate Year and be summed at the end of RY 3 for KEDNY and KEDLI, respectively.[303] As illustrated in Appendix 6, Schedule 13 for KEDNY and Appendix 7, Schedule 13 for KEDLI, if, at the end of RY 3, the cumulative actual average net utility plant and depreciation expense revenue requirements for the Core IT or Backoffice Refresh categories are negative, the Companies will defer the revenue requirement impact for the categories with negative balances for the benefit of customers.[304]

6.4 IT&D Reporting Requirements

Staff recommended the continuation of the reporting requirements authorized by the Commission in Cases 19-G-0309 and 19-G-0310.[305] Staff's direct testimony recommended that the reporting requirements continue with the modification to include physical and cybersecurity projects, and the development of enhanced standards for the information required for individual IT projects because of their critical nature and the Companies' need to adequately

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301 Joint Proposal, p. 36.
302 Id., p. 37.
303 Id.
304 Id.
305 2021 Rate Order, pp. 151-152.

manage costs.[306] In addition, Staff 's direct testimony recommended that the required information should include, among other things, clear identification of risks and mitigation strategies, project budgets with a breakdown of cost type, and cost analyses of alternatives. Additionally, there should be discussion on how to reflect IT projects in testimony and exhibits to allow for easier identification and mapping of projects across testimony components.[307]

In their rebuttal testimony, the Companies' Customer Panel indicated its disagreement with the Staff Efficiency Panel's (SEP's) recommendation to exclude the costs and FTEs associated with GBC and CE2.0.[308] The Companies' Customer Panel's rebuttal stated that established Company processes do not require the development of formal sanction papers until a program or project has secured funding.[309] In addition, the Companies' Customer Panel rebuttal testimony provided an Investment Estimation Tool for each program, intended to address Staff's concerns about the lack of sanction papers.[310]

The IT&D reporting requirements included in the Joint Proposal require further development on a going forward basis.[311] Within 60 days of the issuance of a Commission order adopting the terms of this Joint Proposal, the Companies and Staff will begin a collaborative process to develop modified and improved IT annual and quarterly reporting requirements.[312] The goal of the collaborative will be to implement improved IT reporting formats during RY 1.[313] Pending the conclusion of the collaborative, the Companies will file IT quarterly and annual reports in their agreed upon formats.[314] The Companies will file a report with the Commission describing the reporting requirements agreed to through the collaborative process no later than 60 days prior to the end of RY 1.[315]

Both quarterly and annual reports should provide information concerning the status and explanation of any variances for the following IT project elements: (i) schedule, (ii)

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306 Staff IT Panel Testimony, p. 66.
307 Id., p. 67.
308 Case 23-G-0225 et al., supra, KEDNY & KEDLI Customer Panel Rebuttal Testimony (filed September 22, 2023) (KEDNY & KEDLI Customer Panel Rebuttal Testimony), p. 37, lines 1-7.
309 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 44, lines 1-11.
310 Id., p. 44, lines 12-15.
311 Joint Proposal, p. 38.
312 Id., p. 39.
313 Id.
314 Id.
315 Id.

scope, (iii) budget, (iv) delivery of benefits, and (v) reductions in costs and/or realization of savings.[316] All reports should also include project mapping and/or project interdependencies, fully explain any project interdependencies, and provide information on the status of project staffing, including contractors.[317]

For quarterly IT reporting, the goal of the collaborative is to develop a quarterly reporting framework for an appropriate subset of the Companies' IT projects that make up at least 50 percent of the New York IT spending which includes: (i) a risk register showing any changes since the previous report, (ii) a issues log, (iii) a change log, (iv) a lessons learned register, (v) identification of project milestones since the previous report, (vi) details on project governance, including any changes, and (vii) any updates to the previous project management plan.[318] With respect to annual reporting, the goal of the collaborative will be to develop annual reports that provide a more detailed and actionable description of the status of the projects including the elements addressed in the quarterly reports as well as information concerning (i) the lead project staff, (ii) the percentage of projects completed and expected project completion dates for projects in progress, (iii) actual project expenditures for the year, and categorization of project performance compared to budget, (iv) an explanation of how issues with respect to projects were addressed and the steps taken to ensure that issues do not recur, and (v) lessons learned.[319]

The updated reporting framework will provide Staff with more meaningful information to review and monitor the status of the Companies IT projects. This will allow the Department to better assess whether the Companies are able to keep their IT projects on schedule and within budget. Accurately assessing the Companies progress in the implementation of IT projects is necessary to ensure that the funds approved to support these programs are being appropriately spent. Further, the collaborative process will help the Companies and Staff to identify synergies between internal and external reporting criteria to build on the data which the Companies already collect.

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316 Id.

317 Id.

318 Id.

319 Joint Proposal, p. 39.

6.5 IT Issues: Green Button Connect, Clean Energy 2.0

In the direct testimony of the ITD Panel, the Companies proposed a total capital budget of $12.71 million through FY 2024, $12.23 million in the Rate Year, $11.79 million in Data Year 1, $11.44 million in Data Year 2, to fund the capital costs associated with the implementation of GBC and Clean Energy 2.0 (CE2.0) IT projects.[320] To support these programs, the Companies also requested rate year incremental rent expense for the two programs of $0.682 million for KEDNY, and $0.325 million for KEDLI.[321] The Companies indicated that implementation of GBC allows for data sharing and integration with the user's utility and is already available to Niagara Mohawk customers.[322] To implement GBC, the Companies proposed half a Full Time Equivalent (FTE) in the Customer Enablement organization and an additional FTE to support the replacement of the current InDemand system with CE2.0.[323] The Companies asserted that implementing CE2.0 will enable the Companies to manage various aspects of clean energy program implementation.[324]

In its direct testimony, the SEP identified the absence of sanction papers and indicated that the Companies did not appropriately justify the proposed costs, scope, FTEs, and timing of the GBC and CE2.0 projects.[325] The SEP did not support the Companies' proposals given the lack of sanction papers.[326] Intervening parties did not address the projects in their testimony.

In their rebuttal testimony, the Companies' Customer Panel indicated its disagreement with the SEP's recommendation to exclude the costs and FTEs associated with GBC and CE2.0.[327] The Companies' Customer Panel's rebuttal stated that established Company processes do not require the development of formal sanction papers until a program or project has secured funding.[328] In addition, the Companies' Customer Panel rebuttal testimony provided an Investment Estimation Tool for each program, intended to address Staff's concerns about the

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320 KEDNY & KEDLI IT&D Testimony, p. 37, lines 1-5.
321 Id., p. 37, lines 6-8.
322 Id., p. 36, lines 19-22.
323 Case 23-G-0225 et al., supra, KEDNY & KEDLI Customer Panel Testimony (filed April 28, 2023) (KEDNY & KEDLI Customer Panel Testimony), p. 107, lines 7-13.
324 KEDNY & KEDLI IT&D Testimony, p. 36, lines 9-17.
325 Case 23-G-0225 et al., supra, Staff Efficiency Panel Testimony (filed September 1, 2023) (Staff Efficiency Panel Testimony, p. 48, lines 1-14.
326 Staff Efficiency Panel Testimony, p. 48, lines 1-2.
327 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 37, lines 1-7.
328 Id., p. 44, lines 1- 11.

lack of sanction papers.[329] The Companies' Customer Panel rebuttal testimony maintained that both GBC and CE2.0 should be implemented, and provided additional justification for GBC, pointing to the Commission's Order Adopting Accelerated Energy Efficiency Targets issued in Case 18-M-0084 on December 13 , 2018, which directed utilities to pursue the GBC implementation.[330] The Companies' Customer Panel's rebuttal further stated that CE2.0 is operating in Massachusetts and Upstate New York, and excluding KEDLI and KEDNY customers' access will delay project timelines.[331]

The GBC and CE2.0 projects are included in the Joint Proposal, Appendix 1, Schedule 5 for KEDNY and Appendix 2, Schedule 5 for KEDLI.[332] Both of these IT projects provide customers, project applicants, and/or program and project managers with increased insight, access and transparency into energy usage data and project workflow. Further, given the Companies Customer Panel rebuttal testimony described above, which addressed the original concerns raised by the SEP direct testimony the inclusion of the GBC and CE2.0 in the Companies' rate plans is a reasonable outcome and therefore should be adopted as part of this Joint Proposal.

7. Future of Heat and CLCPA Programs

7.1 Commitments to Non-Pipe Alternatives

The regulatory framework for the Companies to engage in NPA projects was established as part of the 2021 Rate Order, including screening criteria for proposed traditional infrastructure projects to be considered for development of an NPA, eligibility requirements for resources to participate in an NPA project, NPA project cost and incentive cost recovery mechanisms, and reporting requirements.[333] The 2021 Rate Order obligated each Company to attempt development of NPA solutions for at least five segments of Leak-Prone Pipe during each year of that Rate Plan, and allowed the Company to offer NPA solutions in lieu of new customer connections greater than 500 feet in length.[334] Among the only foundational NPA-related

[329] Id., p. 44, lines 12-15.
[330] Id., p. 45, lines 17-22.
[331] Id., p. 44, lines 19-22.
[332] Within Appendix 1, Schedule 5. CE2.0 is referred to as Clean Energy Platform.
[333] 2021 Rate Order, p. 175.
[334] Id., pp. 175-176.

mechanism not specifically established in the 2021 Rate Order was an NPA shareholder incentive mechanism, based on retention of a percentage of the difference between the costs of the traditional solution and the NPA, which would be proposed by the Companies concomitant with their first petition for approval of an NPA project.[335]

Subsequently, in the Gas System Planning Order, the Commission required the Companies, along with other gas utilities, to file proposals regarding utility-specific traditional infrastructure NPA suitability screening criteria, NPA cost recovery procedures, and NPA shareholder incentive mechanisms as part of the Gas Long Term Planning Proceeding in Case 20-G-0131.[336] KEDNY and KEDLI made their NPA-related proposals as directed, however, as the Commission has not completed its review of those, the NPA-related mechanisms from the 2021 Rate Order are still in effect at present.[337]

In their initial testimony, the Companies stated that they have incorporated NPA screening criteria into its capital planning processes and look for opportunities to avoid installation or replacement of traditional gas infrastructure by using alternatives, such as geothermal heat pumps or electrified solutions.[338] The Companies also stated that they have made their filings as required by the Commission in the Gas System Planning Order, and will incorporate any guidance from that proceeding into their capital planning processes.[339] The Companies proposed to continue to look for opportunities to advance NPAs over the term of their rate plan, and proposed to continue current NPA obligations, such as the annual obligations to submit a request for proposal for NPA solutions and to identify five LPP projects that could be replaced with NPAs.[340] The Companies also proposed that they would continue the existing electrification referral program for new customers in conjunction with Consolidated Edison and PSEG Long Island , and identified that as of the date of their testimony the Companies had

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[335] 2021 Rate Order, p. 175; 2021 Rate Order, Attachment A, pp. 80-81.

[336] Case 20-G-0131, supra, Order Adopting Gas System Planning Process (issued May 12, 2022) (Gas System Planning Order), pp. 40-43.

[337] Case 20-G-0131, supra, National Grid Non Pipe Alternative Screening and Suitability Criteria Filing (filed August 10, 2022); Case 20-G-0131, supra, Joint Local Distribution Companies Proposals for Non-Pipe Alternative Incentive Mechanism and Cost Recovery Procedures (filed August 10, 2022).

[338] KEDNY GIOP Testimony, p. 18; KEDLI GIOP Testimony, p. 18.

[339] Id.

[340] Id.

referred over 800 potential customers to the Con Edison and PSEG LI heat pump programs.[341, 342]

We Act witness Jessel addressed the Companies' NPA proposals in her direct testimony. We Act commended the Companies for conducting NPA evaluations before proceeding with construction of new or replacement gas infrastructure, and for identifying at least five segments of LPP which could be replaced via NPAs, however, Witness Jessel identified four concerns regarding the Companies' implementation of NPAs.[343] First, We Act stated that the Companies have not identified a single line item of their capital spending on NPAs.[344] Second, We Act asserted that the Companies have failed to conduct a robust comparison between NPAs and pipe replacement programs, suggested that the Companies should compare NPA projects against LPP replacement projects on a dollar-per-metric ton of carbon dioxide equivalents, and suggested that the Benefit-Cost Analyses (BCAs) completed on NPAs should include the impacts of state and federal rebates against heat pump costs as a benefit.[345]

Third, We Act expressed concern that the Companies consider and refer to the HyGrid Hydrogen project as an NPA, noting issues with Hydrogen blending and differences between NPAs as the Commission has established them versus the broader use of the same language espoused by the Companies.[346] Fourth, We Act stated that the Companies do not include Disadvantaged Communities in the screening or suitability criteria for NPAs, and have never performed or commissioned any study to analyze the challenges of electrification in Disadvantaged Communities, compared to other communities.[347] We Act recommends that the LPP algorithm and NPA criteria be updated to include consideration and prioritization of Disadvantaged Communities, commission a study which will analyze the long-term effect of the

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341 KEDNY GIOP Testimony, p. 18; KEDLI GIOP Testimony p. 18.

342 Case 23-G-0225 et al., supra, KEDNY & KEDLI Climate Leadership and Community Protection Act Panel Direct Testimony (filed April 28, 2023) (KEDNY & KEDLI CLCPA Panel Testimony), p. 13.

343 Case 23-G-0225 et al., supra, WE-ACT Witness Sonal Jessel Direct Testimony (filed September 1, 2023) (Sonal Jessel Testimony), pp. 48-49.

344 Sonal Jessel Testimony, p. 49.

345 Id., pp. 49-51.

346 Id., pp. 52-53.

347 Id., pp. 53-54.

maintenance of gas infrastructure on the affordability of gas for those in Disadvantaged Communities, where electrification may be more slowly implemented.[348]

Various other parties provided testimony regarding NPAs. NRDC Witness Alice Napoleon recommended that the Companies be required to prioritize implementation of NPAs over replacement of LPP, and recommended that incentives related to replacement of LPP should require successful implementation of NPAs.[349] CNY Witness John Sano recommended that NPAs need to be implemented, not just considered, recommended that Companies identify what NPAs can be implemented now and proceed to implement them, requested that that the Commission require National Grid to file more robust NPA screening and suitability criteria, and suggested that the Companies should look beyond only LPP projects for NPA opportunities.[350] The CNY Policy Panel recommended that the Companies find ways to further promote NPA projects in lieu of LPP and other infrastructure projects.[351]

In their rebuttal testimony, the Companies acknowledged that they have not yet identified a suitable NPA, however, the Companies argued that they are actively seeking to find and implement NPAs.[352] The Companies contended that they are taking a reasonable approach to developing NPA projects, and will consider other ways to improve the process to identify and implement NPAs, as well as incorporate any guidance on NPAs from the Commission through the Gas Planning Proceeding.[353]

The Joint Proposal continues already-approved mechanisms for the Companies to implement NPA projects, while also significantly advancing the types of traditional projects that the Companies will seek to defer or eliminate via NPAs as well as provides the Companies with additional resources to be better able to implement potential NPA opportunities based on best practices from other utilities. Starting with NPA features which are continued from the 2021 Rate Order, the Joint Proposal requires the Companies to make evaluations of possible NPAs a

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348 Id., pp. 54-55.
349 Case 23-G-0225 et al., supra, NRDC Witness Alice Napoleon Direct Testimony (filed September 1, 2023) (Alice Napoleon Testimony), pp. 9, 35-36, & 52.
350 John Sano Testimony, p. 23.
351 Case 23-G-0225 et al., supra, City of New York Policy Panel Direct Testimony (filed September 1, 2023) (CNY Policy Panel Testimony), pp. 8-9.
352 KEDNY & KEDLI GIOP rebuttal testimony, p. 51.
353 Id., p. 52.

standard activity prior to beginning construction of new or replacement gas infrastructure.[354] The Joint Proposal allows the Companies to defer the costs incurred to implement NPA projects, establish a regulatory asset for recovery from customers, including an overall pre-tax return on such costs,[355] effectively treating NPA project costs as if they were capital expenses such that on a dollar-for-dollar basis, the Companies should have no incentive to prioritize traditional infrastructure expenditures over implementing NPA projects.

Further, the Joint Proposal continues the requirement that the Companies propose an NPA Incentive Mechanism based on retention of a percentage of the difference between the cost of a traditional investment in facilities and the proposed cost of the NPA project, adjusted for other net benefits.[356] The Joint Proposal also acknowledges that NPA issues are presently being considered by the Commission in the ongoing Gas Planning Proceeding, and gives an opportunity for modifications to the NPA framework approved by the Commission – including infrastructure project NPA suitability criteria, cost recovery mechanisms and incentive mechanisms – to be implemented during the term of the Rate Plan.[357] The Joint Proposal continues the requirement that the Companies annually identify at least five segments of LPP each which might be avoided through successful implementation of an NPA project,[358] and continues the requirement that the Companies annually seek to develop at least one NPA project associated with larger gas system infrastructure investments through a Request for Proposals (RFP) process.[359]

Also, the Joint Proposal continues to allow National Grid to attempt to develop NPA projects to potentially avoid new customer connections,[360] and expands the types of projects the Companies are allowed to pursue, discussed in greater detail below. The Joint Proposal continues existing NPA activity reporting requirements and strengthens those requirements to provide more robust and useful annual reports, discussed in greater detail below.[361]

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[354] Joint Proposal, p. 39.
[355] Joint Proposal, pp. 39-40.
[356] Joint Proposal, p. 39.
[357] Id., p. 39.
[358] Id., p. 40.
[359] Id., pp. 42-45.
[360] Id., pp. 42-43.
[361] Id., p. 45.

The Joint Proposal includes numerous improvements to the NPA development and implementation process which are not likely to have been possible through a fully-litigated proceeding. As summarized above, while several parties pointed out issues or failings of the Companies' implementation of NPAs to date – and it is a well-reported fact that there had been none as of the time of the Companies' rebuttal testimony[362] – many of the Parties recommendations are light on specific actions the Commission could direct the Companies to implement to immediately improve NPA project outcomes. Instead, the Joint Proposal recommends eight distinct improvements to the Companies NPA procedures which should result in substantially greater NPA-related activity during the proposed Rate Plan than the previous one.

First, the Joint Proposal requires the Companies to prioritize LPP NPA projects located within Disadvantaged Communities.[363] This modification is similar to the request that We Act made in its initial testimony, as described above. Second, the Joint Proposal requires the Companies to work with the New York City Housing Authority to attempt to develop a large-scale NPA opportunity at a particularly promising location.[364]

Third, the Joint Proposal includes an updated and improved process for the Companies to follow to ensure that the Companies are attempting to develop LPP NPA projects with the greatest chance of success.[365] This new prioritization process would start by prioritizing LPP segments with the lowest risk-ranking, improving the chances that the Companies do not have to abandon an otherwise promising NPA opportunity due to emergent safety needs; simultaneously with prioritizing areas with the greatest concentration of LPP miles which could be addressed through an NPA, to better ensure that the Companies outreach and education efforts in trying to get customers to switch from gas to heat pumps via the NPA project are maximally effective.[366] The new process would attempt to match the Companies' NPA development efforts with LPP replacement timelines, seeking to ensure that the Companies can adequately pitch NPA projects to customers before the equipment that serves those customers must be replaced.[367]

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362 KEDNY & KEDLI GIOP Rebuttal Testimony, p. 51.
363 Joint Proposal, p. 41.
364 Id.
365 Id.
366 Id.
367 Id.

Further, the new process would result in repeating 5-year cycles, beginning with identification of LPP clusters which would be targeted during year 1; progressing to outreach and education with applicable customers during year 2 including anticipated conversion timelines, available incentives, and a list of developers and vendors to install electric equipment; and finally progressing to potential implementation during years 3 through 5.[368] The new process also requires the Company to seek and attempt to replicate successful methodologies for convincing customers to participate in NPA projects.[369] The new 5-year LPP NPA project identification and implementation process is meaningfully similar to the process improvements the CNY requested in its initial testimony, described above.

Fourth, the Joint Proposal requires the Companies to develop and file a new LPP NPA implementation plan, which would be subject to stakeholder review and comment, and thereafter file an updated implementation plan incorporating the feedback received.[370] Following publication of the updated LPP NPA implementation plan, and no later than the end of Rate Year 2, the Joint Proposal requires the Company to hold a stakeholder engagement session to discuss its progress and lessons learned in implementing LPP NPA projects.[371]

The fifth and sixth improvements relate to the Joint Proposal's expansion of the types of traditional infrastructure projects that the Companies are required to attempt to develop NPAs to avoid, as alluded to above. Fifth, the Joint Proposal requires the Companies to perform an analysis on any main extension request greater than 100 feet,[372] as opposed to the present requirement of only new mains greater than 500 feet. If an NPA in lieu of the main extension is found to be feasible, beneficial for customers from a cost perspective, and would result in a reduction of greenhouse gas emissions, and acceptable to the customer seeking the main extension, the Company would issue an RFP for contractors and vendors to install the alternate non-gas equipment.[373] Sixth, the Joint Proposal requires the Companies to seek opportunities to provide incentives to get customers to switch away from gas equipment instead of installing new service lines or otherwise replacing or relocated existing service lines (Service Line NPAs).[374]

368 Id.
369 Id.
370 Joint Proposal, p. 42.
371 Id.
372 Id., pp. 42-43.
373 Id.
374 Id., pp. 43-44.

The Joint Proposal requires the Companies to convene a stakeholder engagement session no later than the end of Rate Year 1 to discuss its progress in developing Service Line NPA opportunities, share learnings on successful and unsuccessful strategies, and discuss plans to modify the program going forward.[375]

Seventh, the Joint Proposal significantly strengthens customer outreach and education efforts regarding participation in NPA opportunities. The Joint Proposal requires the Companies to retain an implementation contractor to help the Companies inform potential NPA project participants via multiple communication channels including: email; phone; bill insert or other marketing material; local/public events; and through in-person engagement, literally knocking on doors.[376] The Joint Proposal requires the Companies to take note of effective and ineffective strategies as part of their engagement efforts, and to report on the effectiveness of their efforts annually.[377] Although this significantly improved marketing and engagement effort cannot avoid all instances of customer reticence to change – that is, customers who choose to retain gas service despite significant financial incentives and clear individual and societal benefits – these enhanced marketing requirements should ensure that customers posed with the question of whether to participate in an NPA project or not are fully engaged and informed of the options available and potential outcomes of their decisions.

Finally, and as alluded to above, the Joint Proposal further improves the NPA project annual reporting process. Beginning in Rate Year 2, the Companies will file an annual "NPA Opportunities and Programmatic Success" report covering the Companies' efforts to pursue LPP NPAs, system reinforcement NPAs, service line NPAs, and customer connections NPAs, as well as the Companies' progress retaining an implementation contractor and resulting impacts to the program.[378] The Joint Proposal requires that the annual NPA Opportunities and Programmatic Success Report will include: (1) a discussion of all instances where the Companies provided analyses and concluded that an NPA was not feasible or beneficial; (2) prioritized portions of its service territories experiencing constraints; (3) a list of all gas

[375] Id., p. 43.
[376] Joint Proposal, p. 44.
[377] Id.
[378] Id., p. 45.

alternatives recommended to customers including available electrification and non-fossil alternatives; and (4) example marketing materials.[379]

The Joint Proposal represents a significant advance in the scope of NPA-related activities required of KEDNY and KEDLI. The Joint Proposal provides much of the relief that Parties requested in their initial testimonies, while also providing numerous improvements which were not included in any Party's testimony. The Joint Proposal requires the Companies to engage much more deeply with development of NPAs instead of traditional infrastructure projects, and provides additional tools to engage customers in both existing NPA opportunities as well as the new opportunities which would be established if the Joint Proposal is approved. The NPA requirements included in the Joint Proposal are also flexible enough to adapt to new policies which may be established in the Gas Planning Proceeding during the term of the Rate Plan; for example, although absent from this Joint Proposal and the previous Rate Plan, the Commission is presently considering KEDNY and KEDLI's NPA-related proposals in the Gas Planning Proceeding which includes a mechanism for reconciling the Companies' net plant in service balance to the extent that an NPA project displaces a project included in the forecast net plant in service balance.[380] Decarbonization through participation in NPA projects is fundamentally aligned with both the spirit and binding technology deployment and decarbonization targets of the CLCPA. The Joint Proposal is reasonable, in the public interest, consistent with the CLCPA and Commission policy, and should be adopted.

7.2 CLCPA and Disadvantaged Community Report

The Joint Proposal commits the Companies to robust annual reporting of data pertaining to their CLCPA- and Disadvantaged Communities-related investments and activities. Within 120 days of the end of each Rate Year, the Companies will file a CLCPA and Disadvantaged Communities Report that includes data related to energy efficiency and demand response programming, main replacement and leak repair, customer operations, and clean energy jobs.[381] The Companies will also provide narrative discussion of the data, including descriptions of how it was tracked and collected and any assumptions relied on in the report. The Joint

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379 Id.

380 Case 20-G-0131, supra, Joint Local Distribution Companies' Proposal for Non-Pipe Alternative Incentive Mechanism and Cost Recovery Procedures (filed August 10, 2022), p. 7.

381 Joint Proposal, pp. 46-51.

Proposal requires the Companies to convene a meeting for interested stakeholders following the filing of each CLCPA and Disadvantaged Communities Report.

The CLCPA and Disadvantaged Communities Report will be additional to reporting required under other Commission proceedings, including greenhouse gas emissions reporting and Disadvantaged Community investments reporting required under Case 22-M-0149. The reporting requirements in the Joint Proposal will provide Staff, the Commission, and stakeholders with greater insight into the Companies' activities and investments in Disadvantaged Communities. They will enable Staff and the Commission to better assess the alignment of these activities and investments with the CLCPA mandates to prioritize the reduction of GHG and co-pollutant emissions in Disadvantaged Communities and to ensure that Disadvantaged Communities receive a minimum threshold of the benefits of clean energy and energy efficiency investments, and to track the Companies' progress in these areas over time.[382]

7.3 Disadvantaged Community Analysis for Next Rate Case

In its initial testimony, Staff developed an analysis to indicate whether the Companies' infrastructure plans represented a disproportionate burden on disadvantaged community areas within their service territories.[383] Staff hypothesized that if the amount of money spent on capital or O&M projects within Disadvantaged Communities was significantly higher than in other areas, it might indicate that Disadvantaged Communities are being disproportionately burdened through disproportionate siting of infrastructure, and conversely if the amount of money spent was significantly lower than in other areas, it might indicate unreasonable disinvestment in maintaining infrastructure.[384] Staff asserted that there were numerous measures which could be considered, including proportion of the population living in disadvantaged communities, proportion of customers living in disadvantaged communities, which Staff would have preferred, but stated that it had to rely on the percentage of land area within disadvantaged communities due to unavailability of data to support other metrics.[385]

Staff, based on this analysis, stated that KEDLI's 14 percent each of CapEx and O&M spending within Disadvantaged Community areas closely match that Company's 15

[382] CLCPA §7(2); ECL §75-0117.
[383] Staff Policy Panel Testimony, pp. 53-54.
[384] Id., pp. 54-55.
[385] Id., pp. 55-57.

percent of land area designated as a Disadvantaged Community.[386] Staff stated that KEDNY's O&M expenditures at 33 percent within Disadvantaged Communities was comparable to the 35 percent of land area designated as a disadvantaged community, however KEDNY's CapEx plans represented a slight mismatch of the 42 percent of CapEx spending located within the 35 percent of land area designed as a Disadvantaged Community.[387] Staff postulated that the mismatch in KEDNY's CapEx plans may stem from significant planned expenditures related to its Greenpoint Energy Facility, which is a single large facility located within a Disadvantaged Community area.[388] Staff stated that its analysis is just one of many tools which would allow the Commission to assess whether the Companies are complying with the CLCPA, and thus did not specifically assert whether the Companies' plans were compliant with the CLCPA.[389]

In its rebuttal testimony, the Company disagreed with Staff's proposed measures of proportionality for expenditures in Disadvantaged Communities. The Company stated that its customer systems were not configured to track individual customers taking service within disadvantaged communities, the number of total customers within Disadvantaged Communities, or the number of residents living within disadvantaged communities.[390] The Companies instead suggested that Staff's proposed methodology be addressed and considered by the Commission in the context of a generic proceeding, where a wider range of stakeholders and interests can participate.[391]

In its rebuttal testimony, We Act stated that it disagrees with the analysis Staff developed, and recommended that the Commission should not rely on it.[392] We Act asserted that Staff's analytical framework fails to distinguish between benefits and burdens, and appears to conflate the avoidance of disproportionate burdens in CLCPA §7(3) and the "investment mandate" that 35 percent or more of the benefits of clean energy and energy efficiency accrue to

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386 Id., p. 62.
387 Staff Policy Panel Testimony, p. 62.
388 Id., p. 63.
389 Id., p. 65.
390 Case 23-G-0225 et al., supra, KEDNY & KEDLI Rebuttal Testimony of the Climate Leadership and Community Protection Act Panel (filed September 22, 2023) (KEDNY & KEDLI CLCPA Panel Rebuttal Testimony), p. 11.
391 KEDNY & KEDLI CLCPA Panel Rebuttal Testimony, pp. 11-12.
392 Case 23-G-0225 et al., supra, Rebuttal Testimony of Sonal Jessel on Behalf of We Act (filed September 22, 2023) (Sonal Jessel Rebuttal Testimony), p. 6.

disadvantaged communities.[393] We Act suggested that individual expenditures should be investigated to determine whether such expenditure represents a benefit or a burden.[394] We Act recommended that each expenditure that is determined to be a burden should be considered for environmental, health, and energy bill impacts, and that the Commission should find that a burden is disproportionate if the burden adversely impacts more residents of Disadvantaged Communities than non-Disadvantaged Communities, or the proposal would result in more severe burdens for residents of Disadvantaged Communities.[395]

The Joint Proposal provides that in their next rate filings, the Companies will supply information about the potential impacts to Disadvantaged Communities of proposed capital projects. For capital projects with estimated costs of $1 million or greater that may be expected to impact a Disadvantaged Community, the Companies will identify: (a) GHG and co-pollutant emissions projected to be increased or reduced as a result of the investment, (b) the potential contribution of the project to existing pollution burdens in the affected Disadvantaged Community, and (c) proposed project design considerations including actions to eliminate disproportionate burdens associated with GHG and co-pollutant emissions.[396] The Companies will include this information in the standardized project justification forms that are included as attachments to their GIOP testimony, similar to those included in Exhibit___(KEDNY GIOP-5) and Exhibit___(KEDLI GIOP-5).[397] Also, the Joint Proposal specifies that any requirements that the Commission may establish in the future regarding the assessment of burdens on Disadvantaged Communities will supersede the requirements of this section of the Joint Proposal.[398]

The Disadvantaged Community-related provisions of the Joint Proposal for the next case closely match the requests of both We Act, related to consideration of burdens on a project-by-project basis, and the Companies, in that Disadvantaged Community examination and reporting provisions established in a statewide generic proceeding will supersede the requirements in the Joint Proposal. This provision of the Joint Proposal also goes beyond

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393 Sonal Jessel Rebuttal Testimony, p. 4.
394 Id., pp. 5.
395 Id., pp. 5-6.
396 Joint Proposal, pp. 51-52.
397 Id., p. 51.
398 Id.

Disadvantaged Community-related reporting requirements established in previous rate proceedings and reflects substantial progress in the implementation of the equity provisions of the CLCPA. The assessments supplied by the Companies pursuant to this agreement will greatly improve Staff's ability to assess the impacts of the Companies' proposed investments on Disadvantaged Communities and help to ensure that future rate plans adopted by the Commission do not disproportionately burden Disadvantaged Communities.[399] By addressing the potential for future directives related to burden assessment, the Joint Proposal ensures that the Companies' approach will align with any requirements that the Commission may establish for utilities statewide.

7.4 Capacity Demand Metrics

The Capacity Demand Metrics were initiated as part of the 2021 Rate Order to ensure that the Companies were taking aggressive actions to promote energy efficiency, demand response and electrification and seeking to offset the need for additional gas supply infrastructure through non-traditional solutions. In their initial testimony, the Companies proposed discontinuing the Capacity Demand Metrics which include metrics for energy efficiency, demand response, non-pipe/third-party solutions, electrification, and leak-prone pipe, non-pipes alternatives. The Companies argued the Capacity Demand Metrics were established solely for the purpose of determining whether the Companies would be permitted to recover the Long-Term Capital Capacity Projects proposed in the Cases 19-G-0309 and 19-G-310. The Companies further stated that they will endeavor to achieve the goals set, and continue to take actions to promote energy efficiency, demand response, electrification, and NPA projects.[400]

In its initial testimony, Staff disagreed with the Companies proposal to discontinue the Capacity Demand Metrics and recommended the Commission set updated targets for energy efficiency, demand response, and electrification metrics. Staff further recommended that the Companies report on the metrics on an annual basis, as opposed to a quarterly basis,

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399 CLCPA §7(3) provides that State entities "shall not disproportionately burden disadvantaged communities" in issuing decisions or administrative approvals pursuant to Article 75 of environmental conservation law, the article concerning climate change enacted by the CLCPA.

400 KEDNY & KEDLI Customer Panel Testimony, pp. 135-136.

arguing that the quarterly report captures a snapshot of a point in time and is not useful in determining if the Companies are making satisfactory progress during the year.[401]

In their rebuttal testimony, the Companies disagreed with Staff's recommendation to continue to track and report on the Capacity Demand Metrics. The Companies reiterated their argument regarding the purpose of the metrics and further stated that as cost recovery of Long-term Capital Capacity projects are no longer necessary, the metrics should be discontinued.[402]

The Joint Proposal adopts the continuation of the five Capacity Demand Metrics reporting on a quarterly basis as established in Cases 19-G-0309 and 19-G-0310. While cost recovery of Long-Term Capital Capacity projects are no longer necessary and performance penalties are no longer applicable, the Capacity Demand Metrics enable progress tracking and ensure that the Companies continue to strive to meet targets. The Joint Proposal also includes the Capacity Demand Metrics in the annual CLCPA and Disadvantaged Communities Report which will contain the Companies efforts to meet energy efficiency targets, the Companies performance of demand response targets, the Companies efforts to issue at least one RFP annually seeking non-traditional and cost-effective non-pipe/third-party solutions, the Companies efforts towards electrification, and the Companies annual identification of a minimum of five segments of LPP in each service territory where planned LPP replacement projects could be replaced by non-gas NPAs.[403]

The Capacity Demand Metrics are beneficial as they require the Companies to be accountable for their progress with their energy efficiency, demand response, electrification referrals, and NPA development efforts.

7.5 Gas Marketing

Neither the Companies nor staff proposed any modifications to gas marketing in testimony, however, WE Act, recommended that any marketing contrary to ratepayer interests should not be recoverable in rates i.e., funded by ratepayers.[404,]

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[401] Staff Efficiency PanelTestimony, pp. 87-91.

[402] Case 23-G-0225 et al., supra,, KEDNY & KEDLI Rebuttal Testimony of the Customer Panel (filed September 22, 2023) (KEDNY & KEDLI Customer Panel Rebuttal Testimony), pp. 48-49.

[403] Joint Proposal, pp. 52-54.

[404] Sonal Jessel Testimony, p. 69.

This provision of the Joint Proposal continues the Companies cessation of gas marketing adopted in the 2021 Rate Order.[405] The Joint Proposal includes the Companies agreement that the Companies and their affiliates will not conduct marketing for new gas connections and conversions during the term of the rate plan. The Companies will also encourage applicants to consider electrification options and require that new applicants acknowledge, in writing, that they have been provided information on non-fossil alternatives. Additionally, the Joint Proposal includes clarification that while the Companies will encourage customers to explore electrification options. The Companies will continue to be able to market their gas energy efficiency programs.

This provision provides for marketing terms that will continue to encourage increased adoption of non-fossil-based heating solutions that contribute towards emission reduction goals of the CLCPA which will ultimately benefit customers. As stated in the 2021 Rate Order,

> this provision of the Joint Proposal supports the Companies' commitment to reducing gas usage in their service territories, promotes the ambitious climate-related policy goals reflected in the CLCPA and Local Law 97,… while this provision ends the Companies' respective marketing programs, it does not constrain the Companies from its activities in responding to customer inquiries about service options or requests for service, particularly, but not limited to, those requests that implicate the Companies' obligation to serve.[406]

Based on the Companies continuing commitment to restrict gas marketing, and for the reasons stated above, this provision of the Joint Proposal should be adopted.

7.6 Utility Thermal Energy Network (UTEN) Providers

In its initial testimony, the Companies proposed to hire 10 FTEs for UTEN related work, five at KEDNY and five at KEDLI, and include the associated recovery of those costs in this proceeding.[407] In its initial testimony, Staff proposed removing the cost from this rate proceeding so that all cost recovery is addressed, accounted for, and consistently tracked in Case 22-M-0429.[408] In its initial testimony, CNY supported the overall UTEN Pilot for KEDNY.[409]

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[405] 2021 Rate Order, pp. 171-172.
[406] Id.
[407] KEDNY GIOP Testimony, p. 85; KEDLI GIOP Testimony, p. 85.
[408] Staff Gas Reliability and Supply Panel Testimony, p. 25.
[409] John Sano Testimony, p. 38.

In its initial testimony, SANE Energy did not support the FTE request highlighting that the job descriptions did not relate to UTEN work efforts.[410]

In rebuttal testimony, the Companies disagreed with Staff's recommendations on the basis that rate cases are typically the proceedings where incremental FTE requests are considered. Additionally, the Companies contended that the incremental FTEs were needed to advance the UTEN pilot to the next stage of project development.[411]

The Joint Proposal reaffirms the Companies commitment to participate in the UTEN proceeding to implement thermal energy networks on behalf of customers. While the Joint Proposal does not provide for the Companies' request for 10 FTE positions within base rates in this proceeding, consistent with the testimonial positions of Staff and SANE Energy, the Companies are not precluded from seeking approval of justified labor costs necessary to implement the approved UTEN projects as part of the generic proceeding in Case 22-M-0429.

7.7 Gas Transition Changes

The Joint Proposal recognizes the Companies' ability to petition the Commission to request a waiver of 16 NYCRR 230.2 and 230.3 to reduce certain incentives included in the Companies gas tariffs to connect to the Companies' gas distribution system. As discussed in the Gas System Planning Order:

> NYCRR Part 230 sets forth the rights and responsibilities of gas utilities and applicants for gas service regarding the extension of facilities. Specifically, Part 230 addresses what facilities new natural gas customers are entitled to receive at no charge (entitlements) and how the charges should be calculated for facilities in excess of the entitlements. Sometimes colloquially referred to as the "100-foot rule," it provides that residential customers are entitled to 100 feet of natural gas service line and 100 feet of main extension, while non-residential customers are entitled to 100 feet of main extension and any portion of their service line which lies within a public right-of-way.[412]

Further,

> Several commenters have suggested modifying Part 230 to eliminate the entitlement, including EDF and RHN... We [the PSC] recognize that continued extension of natural gas mains may be contrary to achievement of GHG emission reduction targets.[413]

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410 SANE Energy Testimony, p. 19.
411 KEDNY & KEDLI GIOP Rebuttal Testimony, p. 38.
412 Gas System Planning Order, p. 59.
413 Id.

This provision of the Joint Proposal merely acknowledges the Companies' ability to file a petition before the Commission, however, Staff notes that, such a petition to waive the requirements of 16 NYCRR Part 230 would be significantly constrained by the current statutory requirements of PSL §31(4) and Transportation Corporations Law §12.

7.8 Biomethane Supply Interconnections

In its initial testimony, KEDNY proposed a budget of $2.161 million, $9.243 million, and $1.792 million, for FY25, FY26, and FY27,[414] respectively to support infrastructure enhancements for the interconnection of two potential biomethane projects located in New York City. In its initial testimony, KEDLI also proposed a budget of $2.664 million, $4.888 million, and $2.315 million, for FY25, FY26, and FY27, respectively, to also support two potential biomethane projects on Long Island.[415]

In its initial testimony, Staff proposed removing all RNG Interconnection spending and allowing the Companies to recover the costs through a surcharge mechanism capped at the Companies' projected capital costs.[416] Staff was concerned with the cost recovery of RNG, the cost of RNG supplies and related environmental attributes, and further recommended that the attributes should not be purchased by the Companies on behalf of customers. Staff stated that RNG supply costs should be recovered similar to traditional gas supply costs, via the Gas Adjustment Statement mechanism, and that RNG pricing should not be at a premium to the traditional supply portfolio. Staff also recommended removal of the proposed FTEs associated with the Companies' proposed RNG projects due to the limited number of RNG projects proposed and the uncertainty associated with developer led RNG projects.[417]

In its initial testimony, We Act recommended that the Companies request for recovery for RNG Interconnections be denied.[418] In its initial testimony, CNY supported the RNG proposals and recommended no adjustments to the capital budgets for interconnection projects but requested that both Companies include a dedicated tracker to ensure any monies

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[414] KEDNY Exhibit___(GIOP-1).
[415] KEDLI Exhibit___(GIOP-1).
[416] Staff GIOP Testimony, p. 73, Staff Gas Reliability and Supply Panel Testimony, p. 16.
[417] Staff Gas Reliability and Supply Panel Testimony, p. 19.
[418] Sonal Jessel Testimony, p. 81.

"included for rate making purposes and not spent are returned to ratepayers at the Commission's discretion."[419] EDF raised concerns regarding the benefits and air quality issues related to biomethane and recommended that the projects must be held to a high standard to address those concerns.[420] In their rebuttal testimony, the Companies disagreed with Staff's proposed recovery of these interconnection projects through a surcharge subject to a cost cap.[421]

The Joint Proposal requires certain reporting prior to construction start to allow for an assessment of costs, benefits, materials, and an accounting of upstream GHG emissions avoided by the biomethane the Companies' will procure as a result of the interconnection. Further, the Joint Proposal allows the Companies to defer the revenue requirement impacts associated with the capital costs, which are capped at $13.195 million for KEDNY and $9.868 million for KEDLI, for new interconnections with biomethane production facilities. The Joint Proposal also states:

> To the extent that the Companies purchase biomethane from interconnected biomethane facilities, the prices paid for such supplies should be consistent with the market price of natural gas supplies purchased at similar locations and consistent with the Companies' existing gas supply portfolio. The prices paid should be no greater than prices of other gas supplies purchased at the Companies' city gates.[422]

Also, the Companies will engage with project developers on options concerning the monetization of the environmental attributes related to biomethane projects specifically necessitating that those attributes are (1) voluntary and (2) sold to an entity located in New York State.[423]

As stated in Staff's testimony, maintaining the Companies' ability to pursue these RNG interconnection projects is important as the CAC's Final Scoping Plan recognized the role renewable fuels play "to meet customer needs for space heating or process use where electrification is not yet feasible or to decarbonize the gas system as it transitions."[424] These provisions of the Joint Proposal should be adopted as they address Staff's concerns regarding the likelihood that developer-led RNG projects reach completion and provides a pathway to address

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[419] John Sano Testimony, pp. 39-40.
[420] Ilissa Ocko Testimony, p. 48.
[421] KEDNY & KEDLI GIOP Rebuttal Testimony, p. 32.
[422] Joint Proposal, p. 56.
[423] Joint Proposal, p. 56.
[424] Staff Gas Reliability and Supply Panel Testimony, p. 13, line 10-18.

concerns raised by the CAC. In addition, the added provision requiring the Companies to engage with RNG developers to discuss options for the purchase of the environmental attributes within New York State may provide individual customers with an opportunity to further support such developer projects if they so choose, and emission reductions contributing toward the CLCPA's GHG reduction goals.

These provisions of the Joint Proposal are reasonable because they provide a cost recovery mechanism that provides flexibility for the Companies to pursue RNG projects, which can contribute to the emission reduction goals of the CLCPA, while insulating customers from the risks associated with developer-led projects thus overall benefitting customers.

7.9 Newtown Creek Reporting Requirements

While not raised in testimony, this section of the Joint Proposal pertains to certain annual reporting requirements relating to operations of the Newtown Creek Project. These annual reports will identify (1) revenues from the sale of gas and environmental attributes; (2) the quantity of biomethane produced during the reporting period; (3) number of days offline; (4) the number of hours offline for those days; (5) the number and value of environmental attribute credits sold each month; (6) the estimated GHG emissions reductions to KEDNY's gas system associated with the project; and (7) the number and nature of formal complaints received by National Grid concerning the project.[425] In addition, the Joint Proposal requires KEDNY to engage with Consolidated Edison concerning the sale of biomethane credits, and it requires KEDNY to engage with the CNY Department of Environmental Protection (DEP) to negotiate an agreeable Service Level Agreement to address outage notifications at the Newtown Creek Project.[426]

These provisions are reasonable as they create requirements which enhance the transparency surrounding the operations at the Newtown Creek Project, provide delineated opportunities to sell the environmental attributes within New York State, and improve outage notifications to the CNY. Improved operations and enhanced communications or notices work in tandem to deliver on the benefits of such projects to ensure effective and regular operation. To that end, these provisions will assist in identifying areas of concern to be addressed if necessary.

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[425] Joint Proposal, p. 57.
[426] Id., pp. 57 - 58.

7.10 Hydrogen Pilot

In its initial testimony, KEDLI proposed a Hydrogen Blending Project in Long Beach with forecasted spending of $6.274 million and $6.752 million for FY 2024 and FY 2025, respectively along with a request for 1.5 FTEs for KEDLI and 0.5 FTEs for KEDNY.[427] In its initial testimony, Staff expressed concerns about the project, especially related to the safe delivery of hydrogen, and ultimately proposed delaying the project by one year; moving the proposed capital spending to FY25 and FY26. Staff also recommended removal of the proposed FTEs. [428] Staff also proposed a cap limiting the Companies to the project's projected cost.[429]

In its initial testimony, We Act recommended that the Companies request for recovery for the Hydrogen Blending Project be denied.[430] In its initial testimony, EDF also argued the Commission should not approve cost recovery for this project but should have KEDLI resubmit its proposal in a separate proceeding after statewide evaluations standards for the use of hydrogen have been developed.[431] Additionally, EDF requested the Commission make sure no Disadvantaged Communities are inappropriately overburdened with the new infrastructure for this project.[432] CNY, in its testimony, supported the project but recommended implementation of a tracker for the Future of Heat category of capital funding to return any unspent funds back to customers.[433] In rebuttal testimony, KEDLI disagreed with Staff's proposed cap for this project.[434]

The Joint Proposal prohibits the Companies from proceeding with any project that injects hydrogen into its distribution system without Commission approval. Removing the Hydrogen Pilot from the rate plan allows the Commission to ensure safety concerns are addressed before a hydrogen blending project is undertaken and highlights the importance of maintaining safety on behalf of customers. Removal of the project also reduces the revenue requirement impact to customers providing savings from the Companies' original proposal. For these reasons, these provisions of the Joint Proposal are reasonable and should be adopted.

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427 KEDLI GIOP Testimony, p 78.
428 Staff Gas Reliability and Supply Panel Testimony, pp. 26 - 30.
429 Id., p. 73.
430 Sonal Jessel Testimony, p. 81.
431 Ilissa Ocko Testimony, p. 41.
432 Id., pp. 52 – 53.
433 John Sano Testimony, p. 39.
434 KEDNY & KEDLI GIOP Rebuttal Testimony, p. 35.

7.11 System Efficiency Earnings Adjustment Mechanism (EAM) – Gas Demand Response

In its initial testimony, the Companies proposed a total of four EAM metrics to be measured on a calendar year basis. The Companies proposed the following EAMs: (1) a continuation of the existing Energy Efficiency Share the Savings metric; (2) a continuation of the existing Low- and Moderate-Income Energy Efficiency Savings, or low-to-moderate income (LMI) EE Savings metric; (3) a new Gas Demand Response metric; and (4) a new Energy Assistance Program (EAP) Enrollment metric. KEDNY and KEDLI proposed for each Company to be eligible separately for Share the Savings, Low Income Savings, and EAP Enrollment EAMs, and proposed a combined Gas Demand Response EAM for both Companies.[435] In total, these EAMs would have provided KEDNY and KEDLI with the opportunity to earn 14 annual basis points and 13.5 annual basis points, respectively, in each calendar years 2024 through 2027.[436] In addition to the basis points earning potential each of the Companies could have earned a 30 percent on the acquired energy efficiency savings, excluding LMI savings, as a sharing percentage incentive during a given year compared against a baseline established by the Commission in the NE:NY proceeding.[437]

In its initial testimony, Staff disagreed with the Companies proposals to continue their Share the Savings and Low Income Savings EAMs based on the Commission's guidance to pause energy efficiency EAMs in its July 20, 2023, Order Directing Energy Efficiency and Building Electrification Proposals in Cases 14-M-0094 and 18-M-0084.[438] Staff opposed the Companies proposed EAP Enrollment EAM for several reasons. Eligibility for the EAP Enrollment EAM is linked to customers' income, as such, this EAM would potentially reward the Companies in the event of an economic downturn leading to increased utility bills.[439] Lastly, Staff opposed the EAP Enrollment EAM as the Commission has previously considered whether customer engagement EAMs should be offered in the REV Track Two Order and found that no general EAM was necessary.[440] In direct testimony, UIU did not support the Companies

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435 KEDNY & KEDLI CLCPA Panel Testimony, p. 54.
436 KEDNY & KEDLI CLCPA Panel Testimony, Exhibit__(CLCPA-9).
437 KEDNY & KEDLI CLCPA Panel Testimony, p. 54.
438 Staff Efficiency Panel Testimony, pp. 68 - 69.
439 Id., pp. 83-84.
440 Id., pp. 81-82.

proposed EAP Enrollment EAM, stating that the Companies should not be rewarded for required activities and actions.[441]

In initial testimony, Staff also recommended rejecting the Demand Response EAM. Staff argued that the Companies business models are already aligned to maximize performance of the Demand Response Programs and, therefore, there is no need for additional incentivization in the form of an EAM.[442]

In rebuttal testimony, the Companies agreed with Staff's recommendation to discontinue both the Energy Efficiency Share the Savings and LMI EE Savings metric, but disagreed with Staff's position on the EAP Enrollment metric and Gas Demand Response metric.[443] The Companies asserted that the Demand Response EAM would incentivize the Companies not only to increase enrollment in the demand response programs, but also to innovate further to improve performance, thereby further reducing peak gas demand during events and reducing the need for future traditional gas plant in-service.[444] The Companies asserted that the Demand Response EAM metric would require the Companies to perform in a way that does not align with its business model and is not "business as usual" in order to meet the established targets.[445]

Demand response programs help to reduce stress on the system during periods of high usage or other system constraints. Successful demand response programs can delay the need for growth projects thereby providing savings to ratepayers. The Joint Proposal adopts the Gas Demand Response EAM which will encourage additional participation and performance in demand response programs within the Companies service territories and appropriately balance shareholder, customer, environmental, and public interests.[446] The Gas Demand Response EAM targets are based on achievements in excess of historical performance and escalate year-over-year, ensuring that the Companies continue to have an incentive to continually grow customer participation and performance within those programs. Therefore, this provision of the Joint Proposal should be adopted.

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[441] Case 23-G-0225 et al., supra, UIU Gregg C. Collar Testimony (filed September 1, 2023) (Gregg C. Collar Testimony), p. 27.
[442] Staff Efficiency Panel Testimony, pp. 76-79.
[443] KEDNY & KEDLI Customer Panel Rebuttal Testimony, pp. 54-55.
[444] Id., p. 56.
[445] Id.
[446] Joint Proposal, Appendix 8.

8. Additional Reconciliations, Deferrals, and True-Ups

Section 8 of the Joint Proposal contains the provisions for reconciliations, deferrals, and true-ups. This section includes a summary, briefly discussing all deferrals, many of which are part and parcel of most utility rate plans and are familiar to the Commission and follows with more specific discussions of certain mechanisms.

8.1 Existing Reconciliations, Deferrals, and True-Ups

Appendix 6, Schedule 1, of the Joint Proposal sets forth KEDNY's deferral accounts and other regulatory assets and liabilities forecast balances as of March 31, 2023, while Appendix 7, Schedule 1, sets forth the same for KEDLI. With the exception of the deferral accounts and other regulatory assets and liabilities identified as "Discontinued" on the Schedules, KEDNY and KEDLI are authorized to continue use of reconciliation mechanisms and/or deferral accounting (with certain modifications) with respect to the expenses set forth in the Schedules. The Joint Proposal recommends continuing deferrals for items such as: pension and OPEBs expense, the low income discount program, economic development grant programs, site investigation and remediation costs, property tax expense, the CSC program, exogenous costs, and the net utility plant and depreciation expense reconciliation. In addition, the Joint Proposal provides for the continuation of the following reconciliation mechanisms to continue outside of base rates such as the MFC, RDM, and the Electric Generator Revenue.

8.1.1 KEDNY & KEDLI Pension & Other Post-Employment Benefits (OPEBs)

The Joint Proposal allows the Companies to continue to defer and reconcile their respective actual pension and OPEB expenses to the levels allowed in rates in accordance with the Commission's Pension & OPEB Statement of Policy.[447] Additionally, for the purposes of determining the Companies' internal reserve and the carrying costs that apply to that reserve, the Companies are authorized to combine the funding of its pensions and OPEBs, and to offset, for example, any deficiencies in funding.

[447] Case 91-M-0890, In the Matter of the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other than Pensions, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions (issued September 7, 1993).

8.1.2 Energy Affordability Program (EAP)

The Joint Proposal allows the Companies to continue to defer and reconcile their actual EAP costs to the levels allowed in rates in accordance with the Commission's Order addressing energy affordability for low-income customers. [448]

8.1.3 Exogenous Costs

The Joint Proposal includes a provision allowing for 100 percent of all exogenous costs associated with, or caused by an individual instance to be deferred, once such costs exceed the three percent threshold of pre-tax utility income for the year in which the change first occurs. Additionally, KEDNY and KEDLI will be permitted to a single exogenous cost arising from multiple municipalities' laws, regulations, or ordinances relating to the same subject matter. This provision recognizes that prior to the beginning of the rate plans, it is impossible to know what circumstances may potentially change and impact the Companies, and providing some protection to the Companies against unknown, uncontrollable events is reasonable. Accordingly, this provision should be adopted.

8.1.4 Site Investigation and Remediation (SIR) Expense

In testimony, the Companies sought recovery of 100 percent of forecasted SIR expenses in base rates, and to continue amortization of the deferred SIR balances as of December 31, 2016.[449] In addition, KEDNY proposed to continue the SIR surcharge mechanism. Staff, in testimony, reviewed the Companies' SIR program, and recommended the use of a two-year historic average to forecast SIR expenses.

In its testimony, PULP argued that KEDNY be required to use 100 percent of its share of any earnings-sharing mechanism, including any dead-band, to reduce deferred SIR costs.[450]

The Commission, in Case 11-M-0034, concluded that the risk of a negative market reaction to a generic requirement of shareholder responsibility for SIR costs could

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[448] Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016).

[449] Cases 23-G-0226 et al., supra, Direct Testimony of Charles Willard for the Brooklyn Union Gas Company d/b/a National Grid NY, pp. 25-26

[450] Corrected William D. Yates Testimony, pp. 55-56.

diminish any economic benefit to ratepayers.[451] However, the Commission recognized, that sharing may be appropriate in a specific rate case, where the Companies' performance or other specific factors warrant different treatment.

The Joint Proposal provides for the annual rate allowance for SIR expenses of $78.959 million for KEDNY, and $4.813 million for KEDLI for the duration of the rate plan. Additionally, the Joint Proposal continues the amortization of the SIR deferral balance as of December 31, 2016. Further, the Joint Proposal continues to allow KEDNY to utilize an SIR surcharge for expenditures in excess of those used to forecast rates exceeding $25 million on a cumulative basis and be limited to an amount no greater than two percent of the Companies' prior year's aggregate revenues. Finally, as discussed in Section V.4.3, above, the ESM included in the Joint Proposal requires that KEDNY and KEDLI apply 50 percent of their share of earnings in the third and fourth tiers of the ESM to write down SIR deferrals. These provisions reflect reasonable potential outcomes in these proceedings and reflect forecasts of expenditures for SIR work and therefore they should be adopted.

8.1.5 Property and Special Franchise Taxes

In its initial testimony, the Companies proposed a full reconciliation mechanism for property and special franchise taxes.[452] In its initial testimony, Staff recommended against providing any reconciliation for property taxes for a one-year rate plan, as the Companies would have had the chance to update for any known material changes before conclusion of the rate proceedings.[453]

The Joint Proposal provides for the differences between actual property and special franchise taxes expense to the rate allowance to be deferred for future refund or recovery from customers. Differences will be shared 90 percent/10 percent between the customers and shareholders, subject to the following cap: the Company's 10 percent share of property tax

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451 Case 11-M-0034, Proceeding on Motion of the Commission to Commence a Review and Evaluation of the Treatment of the State's Regulated Utilities' Site Investigation and Remediation (SIR) Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012), pp. 14, 29.

452 KEDNY Revenue Requirements Panel, pp. 102-103; KEDLI Revenue Requirements Panel, pp. 102-103.

453 Case 23-G-0225 et al., supra, Staff Revenue Requirements Panel Testimony (filed September 1, 2023) (Staff Revenue Requirements Panel Testimony), p. 64.

expense above or below the level of rates is capped at an annual amount equal to 7.5 basis points on common equity in RY1, five basis points on common equity in RY2, and 2.5 basis points on common equity in RY3. The sharing mechanism, including the cap described above, is reasonable because, while the Companies do have some control in mitigating property tax expense, Staff recognizes that property tax expense, in large part is outside of their control and in the control of municipal entities such as the CNY. As such, implementing the caps provides Companies some protection from unlimited risk, while ensuring that shareholders are also expose to some level risk and will be incentivized to and therefore have an interest in controlling property tax expense.

Accordingly, this provision of the Joint Proposal is reasonable as it balances the Companies' shareholders and customers interests while also providing incentives to combat costs passed on to the Companies and its customers by municipalities. For these reasons these provisions of the Joint Proposal should be adopted.

8.1.6 Negative or Positive Revenue Adjustments

The Joint Proposal allows the Companies to defer any negative or positive revenue adjustments associated with the Customer Service Performance Indicators (Section 4.9 of the Joint Proposal) or the Gas Safety Performance Metrics (Section 10 of the Joint Proposal). This provision is reasonable, because any amounts deferred for the benefit of ratepayers, or shareholders, will be addressed in a future rate proceeding. In addition, in the Joint Proposal certain funds resulting from NRAs associated with Gas Safety Performance Metrics are also allocated toward enhanced gas safety programs such as the Connected Remote Methane Detection Pilot Program, as discussed above. Maintaining the incentives and disincentives to performance is a key ratemaking tool and should therefore be maintained.

8.1.7 Variable Pay

The Companies' variable pay "provides direct and specific incentives to employees to achieve or exceed certain operating performance goals" in their efforts of providing "customer service, safety, and reliability metrics the Commission has approved for KEDNY and KEDLI."[454] The Joint Proposal reflects for KEDNY, $11.972 million, $7.200

[454] Case 23-G-0225 et al., supra, KEDNY & KEDLI Human Resources Panel Testimony (filed April 28, 2023) (KEDNY & KEDLI Human Resources Panel Testimony), p. 28.

million, and $12.438 million and for KEDLI $7.484 million, and $12.921 million and $7.775 million for in RY1, RY2 and RY3, respectively. The Companies are required to defer and refund to customers any variable compensation amounts that are not paid to employees.[455] No other parties provided testimony on this issue. This provision is reasonable because the total compensation package is within a reasonable range relative to similarly situated companies.[456]

8.1.8 Electric Generator Revenues

Currently, the Companies credit 100 percent of electric generator revenue to the Companies' revenue requirements to reduce delivery rates for firm sales and firm transportation customers. The Companies reconcile the difference between the electric generator revenues included in the respective Companies' revenue requirements and the actual revenues recovered from the electric generators at the end of each rate year. Any difference is either credited or surcharged to all firm sales customers through the Delivery Rate Adjustment Mechanism. In their initial testimony, the Companies proposed to continue this mechanism and to update the electric generator revenue targets to reflect the average revenue received in the last two calendar years.[457, 458] Staff did not oppose the Companies' proposal to update the revenue targets. The proposed targets[459, 460] reflect a reasonable forecast and accurately reflect the amounts imputed in base delivery rates.

8.2 New Reconciliations, Deferrals, and True-Ups

There are a small number of new reconciliations, deferrals, and true-ups that are incorporated into the Joint Proposal. These deferrals include future management audit costs, and uncollectibles expense (through RY2 only). Additionally, the Companies will defer the costs relating to their Long-Term Plans in accordance with the Gas Planning Proceeding in Case 20-G-131 to comply with any directives from the Commission.

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455 Joint Proposal, p. 65.
456 Staff Revenue Requirements Panel Testimony, p. 39.
457 KEDLI Rate Design Panel Testimony, p. 54.
458 KEDNY Rate Design Panel Testimony, p. 53.
459 Joint Proposal, Appendix 4, Schedule 11.
460 Joint Proposal, Appendix 3, Schedule 11.

8.2.1 Management Audit

The Joint Proposal recognizes that future management and operations audit costs have not been included in any of the Rate Years of the Rate Plan because the timing of the next comprehensive management and operations audit is unknown. Accordingly, in the event the Commission were to initiate a future comprehensive management or operations audit, it is reasonable to allow KEDNY and/or KEDLI to defer the costs related to such audit, as such audits are currently required by the Commission. The Joint Proposal also recognizes the Companies' completion of their implementation of recommendations resulting from the 2018 comprehensive management and operations audit,[461] as acknowledged in a letter from the DPS Director for the Office of Accounting, Audits and Finance filed in Case 18-M-0195.[462]

8.2.2 Uncollectible Expense

The Joint Proposal recommends in RY1 and RY2, that the Companies reconcile actual uncollectible expense (*i.e.*, net write-offs) to the amounts recovered in base rates. The difference between actual uncollectible expense and the rate allowance will be deferred for future refund to or recovery from customers. The Companies' uncollectibles expense varied drastically in recent history a result of the COVID-19 Pandemic. This posed challenges in reasonably forecasting uncollectibles expense for the Rate Year. Accordingly, the Joint Proposal allows for reconciliation for two of the three Rate Years. This provision is reasonable, as it recognizes the challenges in forecasting uncollectible expense soon after the COVID-19 Pandemic, while providing the Companies' with an adequate amount of time to appropriately manage their uncollectibles

8.2.3 Gas Planning Proceeding

This section of the Joint Proposal recognizes that the Companies will comply with any directives from the Commission related to their LTP in the Gas Planning Proceeding in Case 20-G-0131 to ensure the Companies comply with any direction from the Commission.[463] Allowing the Companies to reconcile these costs is appropriate and reasonable as it is anticipated

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461 Joint Proposal, p. 66.

462 Case 18-M-0195, Proceeding on Motion of the Commission to Conduct a Comprehensive Management and Operations Audit of National Grid USA's New York Electric and Gas Utilities, Close Out Letter (filed March 20, 2023).

463 Joint Proposal, p. 67.

that during the rate plan the Commission will consider the Companies LTP as part of Case 24-G-0248, including but not limited to, the analysis of the Greenpoint Energy Center. This reconciliation will be necessary to effectuate any modifications or other policy initiatives borne out of the review of the LTP or in the Gas Planning Proceeding.

8.3 Additional Reconciliations, Deferrals, and True-Ups

The Joint Proposal recognizes that nothing in it precludes the Companies from implementing additional reconciliations if authorized by the Commission.

9. Customer Service Performance Indicators

In its initial testimony, the Companies proposed to maintain its Customer Service Performance Indicator (CSPI) metrics, targets, and NRAs, equating to a maximum risk amount of $11.7 million for KEDNY and $9.9 million for KEDLI.[464] The Companies NRA levels have not changed since the 2006 merger.[465] Currently, the Companies metrics, as established in the 2021 Rate Order, consist of: PSC Complaint Rate, based on the average number of escalated complaints per 100,000 customers; Residential Customer Satisfaction Survey, measured through the customer satisfaction survey; Telephone Answer Response, measured by the percent of calls answered within 30 seconds by a customer service representative; and Percent of Adjusted Bills, measured by the percentage of adjusted bills issued to customers.[466]

In direct testimony, Staff recommended adjustments to CSPI targets and NRAs to reflect the Companies' historical performance, align the Companies CSPI targets and NRAs with those at other major investor-owned utilities in New York State, and to standardize how the measures are referred to and tracked.[467] Specifically, Staff recommended updates to the Customer Satisfaction Survey and Adjusted Bill metric targets, increasing NRAs associated with the CSPI metrics, and changing NRA values for all metrics from fixed dollar amounts to pre-tax basis points.[468]

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464 KEDNY & KEDLI Customer Panel Testimony, pp. 40-42.
465 Staff Consumer Services Panel Testimony, p. 76.
466 2021 Rate Order, p. 204
467 Staff Consumer Services Panel Testimony, pp. 49, 57.
468 Id.

In its initial testimony, UIU proposed modifications to PSC Complaint Rate and Adjusted Customer Bill metric targets at KEDLI.[469] UIU also proposed NRA values for each metric at both Companies to be measured in basis points rather than fixed dollar amounts.[470]

In its rebuttal testimony, the Companies disagreed with the proposals made by Staff and UIU to adjust CSPI targets.[471] The Companies were not opposed to the proposals made by Staff and UIU to convert fix dollar NRAs to basis points, however, the Companies proposed that the amount of basis points at-risk should be based on the current fixed dollar NRAs.[472]

Section 9 of the Joint Proposal outlines the proposed changes to the CSPI for KEDNY and KEDLI. Importantly, the Joint Proposal includes a change from fixed dollar NRAs to pre-tax basis points based on new CSPI targets. Each Company will be subject to total pre-tax potential NRAs equal to forty (40) basis points in RY1, forty-eight (48) basis points in RY2, and sixty (60) basis points in RY3 for failure to achieve specified targets. If the Company incurs an NRA, the Joint Proposal establishes a provision to allow the balance to earn interest at the pre-tax return rate.[473]

A progressive increase in basis points at risk and CSPI targets reflects a compromise between the Companies, Staff, UIU, and will result in increased alignment between the Companies and other major investor-owned utilities CSPI targets by the end of the Rate Term. These changes to the CSPI protect customers' interests by securing an adequate incentive for the Companies' management to maintain acceptable levels of customer service. It also help to prevent the Companies from making business decisions that are not in the best interest of customers.

9.1 PSC Complaint Rate

The PSC Complaint Rate is based on the average number of escalated complaints per 100,000 customers at a utility. In its initial testimony, the Companies did not propose any modifications to the two-tier targets for this metric.[474] In direct testimony, Staff proposed

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469 Gregg C Collar Testimony, p. 8.
470 Id., p. 11.
471 KEDNY & KEDLI Customer Panel Rebuttal Testimony, pp. 9-10.
472 Id., p. 8.
473 Joint Proposal, p. 68.
474 KEDNY & KEDLI Customer Panel Testimony, p. 42.

maintaining the current 1.0 minimum target levels, consistent with other utilities, and modifying target tiers from two to four with associated NRAs.[475] In direct testimony, UIU proposed a more stringent target for KEDLI.

In rebuttal testimony, the Companies disagreed with Staff's and UIU's proposed targets and NRAs for this metric. The Companies asserted that target levels proposed by UIU were far more stringent than those set for other New York State utilities and there was no basis or evidence presented by Staff or UIU to demonstrate that the Company's customer service was likely to decline.[476]

The Joint Proposal modifies PSC Complaint Rate target levels, adds two additional performance tiers and associated NRA basis points for each tier, and allows exclusions for circumstances beyond the Companies' control.[477] These provisions are fair and reasonable because they will incent the Companies to address customer complaints in a timely manner but also modulate the NRAs based on varying degrees of the Companies performance. As amended the PSC Complaint rate metric provides a fair opportunity for the Companies to avoid NRAs provided they deliver adequate service quality. For these reasons these provisions of the Joint Proposal should be adopted.

9.2 Customer Satisfaction Survey

In its initial testimony, the Companies proposed aligning the Companies' Customer Satisfaction surveys with the Joint Utility Statewide Survey. However, to ensure target accuracy, the Companies proposed aligning the surveys starting in RY2 to allow the Companies more time to collect post-moratorium data.[478]

In direct testimony, Staff opposed the Companies' proposal to align its Customer Satisfaction survey with the Joint Utility Statewide Survey due to lack of sufficient data to ensure target accuracy. Staff recommended modifying target levels, adding two additional performance tiers and associated NRAs for each tier.[479] In rebuttal testimony, the Companies opposed Staff's modifications, arguing that the data Staff used to set minimum targets for assessing NRAs included the period during the COVID-19 pandemic. The Companies stated

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475 Staff Consumer Services Panel Testimony, p .61.
476 KEDNY & KEDLI Customer Panel Rebuttal Testimony, pp. 10-11.
477 Joint Proposal, pp. 68-70.
478 KEDNY & KEDLI Customer Panel Testimony, p. 43.
479 Staff Consumer Services Panel Testimony, p. 57.

that a substantial portion of the data was not representative of realistic customer satisfaction levels since it included the period during which the Companies implemented COVID-19-related collection moratoria.[480] Staff's position to include customer satisfaction data that spanned the COVID-19 related collection moratoria to set performance tiers is consistent with Staff's methodology for setting targets in these cases, further, adopting Staff's position holds the Companies to the same standard as the other investor-owned utilities in New York State.

The Joint Proposal modifies Customer Satisfaction target levels, adds two additional performance tiers, and associated NRA basis points for each tier.[481] These provisions are reasonable as they will incent the Companies to increase participation and reach a broad customer base, and the target levels would serve to gauge customer's satisfaction with the Companies.

9.3 Call Answer Rate

The Companies did not propose any modifications for its Call Answer Rate metric. In direct testimony, Staff and the Companies agreed to maintain the targets adopted in the 2021 Rate Order.[482] However, Staff recommended the inclusion of two additional performance tiers and associated NRAs for each of the tiers. Staff also recommended additional reporting for this metric, which is further discussed in section 9.7, below.

The Joint Proposal maintains the minimum target levels and it establishes a full four tiers for this metric with associated NRAs for both Companies.[483] These provisions are reasonable as they will encourage the Companies to maintain good customer service by promptly answering customer calls.

9.4 Percent of Adjusted Bills

The Companies did not propose any modifications for its Percent Adjusted Bills metric. In direct testimony, Staff recommended maintaining KEDNY's current minimum target level and reduce KEDLI's to match KEDNY's since the Companies share resources and have maintained consistent performance on this metric over recent years, which would allow them to

[480] KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 9.
[481] Joint Proposal, pp.70-71.
[482] Staff Consumer Services Panel Testimony, p. 66.
[483] Joint Proposal, p. 71.

manage to the same standard.[484] In its initial testimony, UIU recommended lowering KEDLI's target level more significantly.[485] In rebuttal testimony, KEDLI opposed any changes to the target level.[486]

The Joint Proposal maintains KEDNY's minimum target levels for its four tiers, reduces KEDLI's minimum target levels to match KEDNY's, establishes associated NRAs for each target tier level, and allows exclusions for circumstances when a second bill may be issued to replace an estimated bill, switching to or from budget billing, or to correct the responsible billing party. These provisions are reasonable because having the same minimum target is reflective of the Companies' shared efforts and their ability to manage the same standard, and they incentivize the Companies to improve customer service by reducing the levels of adjusted bills provided to customers, thus improving customer experience.

9.5 Reporting

The Joint Proposal maintains existing annual Customer Service performance reports to the Secretary of the Commission with minor modifications. Within the annual performance report, the Companies will provide more information on estimated bills and meter reading.[487]

Within monthly CSPI reports filed under Case 15-M-0566, the Companies will provide additional information regarding call hold times and the number of calls rejected by the Companies' IVR systems.[488] These reports are necessary to maintain visibility on the Companies performance and are a useful tool to inform Commission action if the Companies performance falters.

9.6 Estimated Bill Reporting

The Companies did not propose Estimated Bill reporting. In direct testimony, Staff recommended that the Companies provide estimated bills data, concerning the number of meters that have gone unread for various periods, for each calendar year from 2019 through

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484 Staff Consumer Services Panel Testimony, p. 69.
485 Gregg C. Collar Testimony, p. 10.
486 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 9.
487 Joint Proposal, p. 73.
488 Id.

2022.[489] In rebuttal testimony, the Companies stated that their Field Collection System does not disaggregate data as requested, however, the Companies agreed to work with Staff to identify data sets available from their CRIS and CSS systems.[490]

The Joint Proposal provides a provision that requires the Companies to include monthly estimated bill data in their annual performance reports.[491] This enhanced reporting provision is reasonable and should be adopted, as the additional data sets will allow Staff to assess the Companies' estimated billing process and procedures, address any concerns related to frequency of estimated bills, and ensure the Companies' billing system is performing as intended.

9.7 Call Answer Rate Reporting

The Companies did not propose Call Answer Rate reporting. In direct testimony, Staff recommended the Companies provide additional data associated with their Call Answer Rates as part of their monthly CSPI reports.[492] The Joint Proposal includes a provision that requires the Companies to provide additional data concerning customer hold times and calls rejected by the Companies' IVR system.[493] This provision is reasonable and should be adopted, as the it will allow Staff and the Companies to address any concerns about excessive hold times and excessive calls rejected, and ensures the Companies' performance related to customer calls is acceptable.

10. Gas Safety Performance Metrics

10.1 Leak Prone Pipe Retirement

In their direct testimonies, KEDNY and KEDLI proposed to slightly increase LPP the mileage removal targets established in the 2021 Rate Order in each year over a new four-year rate plan. KEDNY proposed LPP removal targets of 38, 41, 43, and 44 miles of LPP replacement in each CY 2024 through 2027, respectively, or the cumulative four-year total of 166 miles of LPP by the end of 2027. KEDLI proposed LPP removal targets of 110, 114, 115, and 117 miles of LPP replacement in each CY 2024 through 2027, respectively, or the cumulative four-year total of 456

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[489] Staff Consumer Services Panel Testimony, p. 70.
[490] KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 11-12.
[491] Joint Proposal, p. 73.
[492] Staff Consumer Services Panel Testimony, p. 66-67
[493] Joint Proposal, p. 73.

miles of LPP by the end of 2027.[494] Additionally, the Companies proposed to continue the NRA of 15 basis points should they fail to remove from service a minimum target of miles of LPP in each CY 2024 through 2027, and an additional 15 basis points should they fail to replace a minimum cumulative four-year total of LPP by the end of CY 2027.

In recognition of the significant threat to public safety posed by LPP, the Staff recommended returning to pre-2020 removal rates of LPP through aggressive increases in the amount of LPP to be removed each year. For KEDNY, Staff recommended minimum targets of 55 miles in CY24; 65 miles in CY25; 75 miles in CY26; and 85 miles in CY27. For KEDLI, Staff recommended the following LPP targets: 125 miles in CY 2024; 135 miles in CY 2025; 145 miles in CY 2026; and 155 in CY 2027.[495] Staff and the Companies agreed on the NRA structure for failure to meet annual and total retirement targets.

In the Joint Proposal, the parties agreed to targets much closer to the Companies testimonial position. In view of Staff's concern related to the threat of public safety, the Companies agreed to conduct Supplemental Leak Surveys (see, section 5.5, above) of the LPP in its service in addition to leakage surveys required under 16 NYCRR Part 255, as well as taking steps to ensure that higher risk segments are given priority consideration for removal.[496] The use of Supplemental Leak Surveys must be considered in conjunction with the lower LPP targets set forth in the Joint Proposal, as well as the prioritization of higher risk segments. These measures enable the adoption of lower LPP removal targets than what Staff initially proposed in its direct testimony.

Under the terms of the Joint Proposal, the Companies will each incur NRAs of 15 basis points should they fail to remove from service a minimum number of miles of LPP in CY24, CY25, or CY26, or the cumulative three-year totals of miles of LPP as set forth below by the end of CY26. For KEDNY, the minimum removal targets are 40 miles in CY24; 46 miles in CY25; 51 miles in CY26; with total minimum target of 152 miles over the three-year period. For KEDLI, the minimal removal targets are 114 miles in CY24, 121 miles in CY25, 129 and miles in CY26; with total minimum target of 379 miles over the three-year period.[497]

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[494] KEDNY & KEDLI Gas Safety Panel Testimony, pp. 37-38.
[495] Staff Pipeline Safety Panel Testimony, pp. 28-29.
[496] Joint Proposal, p. 75.
[497] Joint Proposal, pp. 74-75.

In addition to the minimum removal targets, the Joint Proposal establishes, for each year that KEDNY or KEDLI achieves the minimum removal target, a High-Risk Mileage Target in addition to the minimum removal targets, and associated NRAs. As such, KEDNY must also complete 80 percent and KEDLI must complete 70 percent of Proactive LPP removals from the high risk (Tier 1 and Tier 2) inventory. Should KEDNY or KEDLI fail to do so, they will be subject to an NRA of 5 basis points for that Calendar Year. This High-Risk Mileage Target will incent the Companies to remove their highest risk inventory of LPP even though it may be more costly to remove that lower risk pipe.

Additionally, given that KEDNY has significant inventory of in-service cast iron pipe relative to KEDLI, KEDNY will also be subject to a Cast Iron Target removal. Cast iron pipe is highly susceptible to brittle crack failures which result in a catastrophic circumferential break capable of releasing larger volumes of gas relative to a bell-and-spigot or corrosion leak. A high-volume release over short period of time that is in an area of wall-to-wall pavement is likely to result in an accumulation inside a building that can quickly reach the lower explosive limit. This can, and likely will, result in an explosion with little to no warning. Given this risk to public safety is imperative that KEDNY prioritize removal of cast iron pipe. For each Calendar Year that KEDNY meets minimum removal targets, a minimum of 80 percent of the Proactive LPP removed must be Cast Iron. Failure to meet the Cast Iron Target will result in 5 basis point NRA for KEDNY.[498]

The elimination of LPP from Companies' systems meets Commission's obligation to ensure public safety of jurisdictional systems and supports meeting the CLCPA goal to reduce the methane emission. Additionally, the High Risk Mileage Targets and Cast Iron Target will incent the Companies to remove segments of LPP that are most at risk of catastrophic failure. The additional controls in the Joint Proposal enable the lower LPP targets by providing priority to pipes with highest risk and those pipes most likely to have greater emissions. Therefore, the leak prone pipe removal metrics should be approved.

10.2 Leak Management

In its direct testimony, KEDNY proposed to maintain the current annual reduction in total leaks of 150 leaks, for proposed total leak backlog targets of 1,350 at the end of CY24,

[498] Id.

1,200 at the end of CY25, 1,050 at the end of CY26, and 900 at end of CY27. In its direct testimony, KEDLI proposed to implement phased reductions in the annual targets. KEDLI proposed to maintain their current annual reduction of 750 leaks for total leak backlog targets of 3,200 leaks at the end of CY24, and 2,450 leaks at the end of CY25. KEDLI proposed a reduction of 650 leaks for a proposed target of 1,800 total leak backlog at the end of CY26, and 1,250 total leak backlog at the end of CY27. KEDNY and KEDLI also proposed maintaining the current repairable leaks backlog target of twenty or less leaks at year-end for each CY.[499]

For total leak backlog, Staff recommended that KEDNY and KEDLI reduce their total leak backlog to the following target levels: for KEDNY 1,000 leaks at the end of CY24; 900 leaks at the end of CY25; 750 leaks at the end of CY26; and 600 leaks at the end of CY27. For KEDLI, Staff recommended the following leak backlog targets: 2,200 leaks at the end of CY24; 1,450 leaks at the end of CY25; 800 leaks at the end of CY26; 250 leaks at the end of CY27; and 150 leaks at year-end for every year thereafter until modified by the Commission. The 150-leak target post CY27 creates parity in the targets between KEDNY and KEDLI at that time.[500]

In the Joint Proposal, parties agreed that KEDNY and KEDLI will incur NRAs if they fail to achieve year-end leak backlog targets for: (i) workable leaks (Type 1, 2 and 2A leaks), and (ii) for all leaks (Type 1, 2, 2A and 3), as follows: KEDNY and KEDLI, shall each maintain a leak backlog of 10 or less workable leaks at year-end 2024 through 2026; failure to meet the target would result in a ten basis point negative revenue adjustment. For total leak backlog, KEDNY shall maintain a total leak backlog of 1,200, 1,000 and 800 leaks at year-end CY24 through CY26, respectively. KEDLI shall maintain a total leak backlog of 3,150, 2,250 and 1,250 leaks at year-end CY24 through CY26, respectively. Failure to meet these targets each year would result in a five-basis point negative revenue adjustment.[501] Also, the Companies will be considered to have met their annual backlog targets if the target is achieved any time between December 21 and December 31 of the respective CY.

The repair of hazardous leaks near start of frost conditions improves public safety and the elimination of leaks from Companies' systems supports meeting the CLCPA goal to reduce the methane emission, therefore, it should be approved.

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[499] KEDNY & KEDLI Gas Safety Panel Testimony, p. 41.
[500] Staff Pipeline Safety Panel Testimony, pp. 18-19.
[501] Joint Proposal, pp. 76-77.

10.3 Damage Prevention

In their initial testimony, the Companies did not propose any changes to their current damage prevention targets and their associated revenue adjustments. In the 2021 Rate Order, the Commission set damage prevention metric targets and associated revenue adjustments. The targets are as follows: for a total damage rate per 1,000 one-call tickets greater than 3.50, the Companies would incur a NRA of 20 BPs; for a rate between 3.26 and 3.50, the Companies would incur a NRA of 10 BPs; for a rate between 3.01 and 3.25, the Companies would incur a NRA of five BPs; for a rate between 1.51 and 3.00, the Companies would not incur or earn any BPs; for a rate between 1.26 and 1.50, the Companies would earn a PRA of five BPs; for a rate below 1.26 the Companies would earn a Positive Revenue Adjustment (PRA) of ten BPs.[502] There are no separate targets for damages due to mismarks and Companies' personnel and Companies' contractors.

In its direct testimony, Staff recommended for both KEDNY and KEDLI the following targets for the overall damage rate per 1,000 tickets: over 2.75 with an NRA of 20 BPSs; a rate between 2.51 and 2.75 with an NRA of 10 PBSs; a rate between 2.01 and 2.50 with an NRA of 5 BPSs for failure to meet the established targets; for a rate between 1.51 to 2.00 the Companies will not incur any revenue adjustments; for a rate between 1.10 and 1.50 the Companies will incur a PRA of 5 BPs; and for a rate less than 1.10 the Companies will incur a PRA of 10 BPs should the Companies exceed the established targets.[503]

The Joint Proposal incorporates the Staff recommended targets, which are for more stringent targets for the overall damage rate than the current targets, and negative revenues adjustments. Damages to natural gas pipelines frequently result in an uncontrolled release of natural gas. This places everyone nearby at risk should the natural gas ignite. This includes excavator employees, anyone walking by, first responders, and company employees repairing the damage. Reduced damages increase the safety of Companies' employees and the general public; thus, it should be adopted.[504]

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[502] KEDNY & KEDLI Gas Safety Panel Testimony, p. 45.
[503] Staff Pipeline Safety Panel Testimony, p. 46.
[504] Joint Proposal, p. 76.

10.4 Emergency Response Time

In their initial testimony, the Companies did not propose any changes to their current emergency response targets and their associated revenue adjustments. In the 2021 Rate Order, the Commission set Emergency Response Metric targets and associated revenue adjustments as follows: on a calendar year basis the Companies must respond to 75 percent, 90 percent, and 95 percent of all gas leak and odor calls within 30, 45, and 60 minutes, respectively. Failure to meet the 75, 90, or 95 percent thresholds within 30, 45, or 60 minutes, respectively, results in NRAs of twelve, eight, and five BPs, respectively. For responding to between 86 to 87.99 percent of emergency calls within 30 minutes, KEDNY and KEDLI can earn a PRA of two BPs; four BPs for responding to between 88 to 89.99 percent of emergency calls; and six BPs for responding to 90 percent or greater of calls within 30 minutes. [505]

In its direct testimony, Staff agreed with the Companies to maintain the current targets and associated revenue adjustments. Also, the Staff recommended that the Companies continue exclusion of instances of 20 or more odor calls in a two-hour period resulting from a mass area odor issue not caused by KEDNY or KEDLI.[506] This procedure detailed in Appendix 9 of the Joint Proposal.[507] The longer it takes a utility to respond to an odor call, the higher the risk and the higher the potential of a serious incident or safety threat to the general public. Therefore, it is important that utilities minimize their response times for responding to gas leaks and odor calls.

10.4.1 Emergency Response Time Exclusion Procedure.

As discussed above, the Joint Proposal provides for specific PRAs and NRAs associated with the Companies' ability to meet certain leak and order call response targets.[508] The Joint Proposal also references Emergency Response Exclusion Procedure included in Appendix 9 of the Joint Proposal. Upon further review, Appendix 9 inadvertently omitted any procedures concerning any exclusion process. In support of the provisions of the Joint Proposal Staff recommends that the Commission adopt the following, which Staff believes to be reflective

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505 Joint Proposal, pp. 78-79.
506 Staff Pipeline Safety Panel Testimony, p. 35.
507 Joint Proposal, p. 78-79.
508 Joint Proposal, p. 79.

of the signatory parties' understanding of the exclusion procedures, to allow the Companies to seek an exclusion for certain events as follows:

> Instances of 20 or more emergency reports within a 2-hour period resulting from mass area odor complaints, major weather-related events, or major equipment failure that is not caused by the Company may be excluded from the emergency response measure provided an informational filing is made within the respective case number. All emergency reports from an event shall be included in the exclusion filing. The exclusion filing shall: (1) be filed within 2 weeks, or 10 working days from the conclusion of such an event; (2) detail how and why the event met the prescribed exclusion criteria; (3) detail the number of emergency reports to be excluded; (4) detail the Company's response time for each of the emergency reports; and (5) detail any classified leaks, their respective Company identification numbers, and their respective dispositions, that resulted from the emergency reports. This exclusion, as well as the right to petition the Commission as discussed below, applies to the 30-Minute Response Time, 45-Minute Response Time and 60-Minute Response Time measures.
>
> The Companies will each report their emergency response time annual performance to the Secretary to the Commission no later than March 15 of the following calendar year. If a performance metric is not met, the associated negative revenue adjustment will be excused when the Companies can demonstrate to the Commission extenuating circumstance that prevented the Company from meeting such performance metric. The determination of whether such circumstances exist will be made on a case-by-case basis by the Commission.

This procedure allows for a defined process to take note of possible exclusionary events when they occur and means to be excused from the NRA should those events cause the Companies fail to meet a target. This also permits interested parties to comment on exclusions should the Companies need to petition the Commission to be excused from the NRA. Staff believes the procedure provided above greatly clarifies the Joint Proposal and that this procedure should be adopted in conjunction with continuation of the Emergency Response Time metric as discussed above.

10.5 Gas Regulations Performance Measure

The Gas Regulations Performance Measure applies to instances where Staff identifies non-compliance of the Companies to certain gas safety regulations included in 16 NYCRR during field and records audits. In their initial testimony, the Companies did not propose any changes to the calculation of this measure but did propose to align the NRAs to be similar to those in recently resolved rate proceedings, e.g., National Grid's upstate utility Niagara

Mohawk.[509] The Companies also proposed a mechanism for handling of violations of 16 NYCRR §255.603(d),[510] which are typically also accompanied by a violation of 16 NYCRR Part 255 .

In its direct testimony, Staff proposed to narrow the NRA brackets to incentivize the Companies to continue to improve on the safe delivery of gas.[511]

In furtherance of continued improvements to safe delivery of gas service, the Joint Proposal adopts Staff's recommendations. The procedure contained in Appendix 9 will ensure that KEDNY and KEDLI are treated the same as other major investor-owned gas companies in New York State. This measure should be adopted as proposal in the Joint Proposal, as it places KEDNY and KEDLI on par with the same measures which inform major investor-owned gas companies in New York State with the same measures and disincentives for poor performance. Moreover, these measures intend to increase the Companies' adherence to the Commission's regulations which establish the minimum requirements for safe and reliable service in New York State. For these reasons this proposal should be adopted.

10.6 Gas Safety Reporting and Exceptions

The Joint Proposal includes reporting requirement applicable to Section IV KEDNY and KEDLI Rate Plans subsections 10.1 through 10.4 of the Joint Proposal. The reporting requirements will allow the Commission and the public access to the Companies' annual performance related to the Gas Safety Performance Metrics contained in the Joint Proposal. This transparency allows the Commission and the public to assess the Companies' performance with respect to safe delivery and, therefore, the reporting requirements should be adopted.

11. Customer Initiatives

11.1 Economic Development

In their initial testimony, the Companies proposed to set the annual budget for economic development grant funding at $1.382 million for KEDNY and $1.160 million for

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509 KEDNY & KEDLI Gas Safety Panel Testimony, pp. 46-47.
510 Id.
511 Staff Pipeline Safety Panel Testimony, p. 52.

KEDLI.[512] Companies proposed discontinuing two grant programs, and modifying several other programs to better align with CLCPA goals.[513] In direct testimony, Staff agreed with the proposed modifications because the modifications would support growth in both disadvantaged communities and in the clean energy industry to align with the CLCPA, as discussed in Staff's Policy Panel direct testimony.[514] In its direct testimony, WE ACT recommended investments in disadvantaged communities to create workforce, business ownership, and sustainable development opportunities combined with tracking mechanisms to capture job growth and training, wages, and business ownership.[515]

The Joint Proposal provides that those same budget amounts will carry through each year of the Rate Plan. For each Rate Year, the Companies will amortize prior economic development deferral credits so that the net revenue requirement for each Company is $0.[516] Staff agrees with the use of deferral accruals to fund the economic development grant programs as it ensures that economic development funds already collected will be used for the purpose for which they were collected while simultaneously reducing any impact on ratepayers during the Rate Plan.

The Joint Proposal provides that the Companies will offer seven economic development grant programs during the rate plan: 1) Economic Development and the Future of Heat; 2) Cooperative Business Recruitment Program; 3) Natural Gas Manufacturing Productivity Program; 4) Brownfield Redevelopment Assistance Program; 5) Clean Tech Incubation; 6) Cinderella Program; and 7) Sustainable Gas and Economic Development Program. Staff supports this suite of economic development grant program offerings as they achieve the objectives of attracting, retaining, and expanding businesses while creating and retaining jobs.

Additionally, the programs support New York's CLCPA goals because they focus on energy efficiency and prioritizing projects in disadvantaged communities. For example, the Brownfield Redevelopment Assistance Program provides up to an additional 25 percent of funding above the otherwise applicable awarded grant amount if a qualifying project is located in

512 Case 23-G-0225 et al., supra, KEDNY & KEDLI Corrections and Updates Testimony of The Customer Panel Exhibit (CP-9CU) Schedule 2 (filed June 30, 2023), (KEDNY & KEDLI C&U Customer Panel), p. 1.
513 KEDNY & KEDLI Customer Panel Testimony, p. 141,
514 Staff Customer Service Panel Testimony, p. 94-97.
515 Sonal Jessel Testimony, p. 61-63.
516 KEDNY & KEDLI C&U Customer Panel, pp. 5-6.

a disadvantaged community.[517] These economic development grant programs are beneficial to ratepayers because they provide a wide range of opportunities that have helped to successfully attract, retain and expand businesses while creating and retaining jobs.

The Joint Proposal provides that the economic development programs will be subject to downward-only reconciliation over the term of the rate plan so that any underspent funds will be deferred for future use in funding the respective economic development grant programs.[518] Additionally, in the event of any anticipated over-expenditures, the Companies may petition the Commission for deferral treatment. However, they will have no obligation to make any additional expenditures unless and until the Commission authorizes the Companies to defer amounts in excess of the four-year aggregate rate allowance for future recovery. These processes for addressing both underspending and overspending scenarios and have proven to be a reasonable way to treat economic development funding and ensure that monies collected for economic development remain available for future use.[519].

The Joint Proposal provides that the Companies will file an annual economic development report no later than April 1 of each year detailing economic development activity for the prior calendar year and including any proposed minor modifications to existing grant programs for Staff's review and approval. These reporting requirements are reasonable, as they have allowed Staff to continually monitor the Companies' program activity and spending during a rate plan.[520]

11.2 Energy Affordability Program

In their initial testimony, the Companies proposed to continue recovering the costs associated with the EAP through base rates with an increase to their EAP rate allowances for KEDNY and KEDLI to $46.90 million and $8.85 million, an increase of $8.45 million and $2.10 million, respectively. [521] Staff recommended approval of the Companies' EAP rate allowance for their program budgets.[522]

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517 KEDNY & KEDLI Customer Panel Testimony Exhibit___(CP-9) Schedule 1, p. 16.
518 Joint Proposal, p. 83.
519 2021 Joint Proposal, p. 85.
520 All utilities in New York State that administer Economic Development grant programs file annual reports within the respective Rate Proceedings.
521 KEDNY & KEDLI Customer Panel Testimony, p. 23.
522 Staff Consumer Services Panel Testimony, p. 22.

In its corrected testimony, PULP proposed a customer service quality metric be adopted that tracks EAP self-certifications, manual enrollments, Home Energy Assistance Program (HEAP) automatic enrollments, and referrals to self-certification portals.[523] In their rebuttal testimony, the Companies stated that modifications such as those proposed by PULP should be discussed in the context of the EAP Working Group. In addition, the current annual report already includes EAP self-certifications and HEAP grants. The Companies stated that the proposed reporting would be duplicative, burdensome, and inconsistent with other New York utilities.[524]

In the Joint Proposal, annual EAP costs are set at $46.895 million for KEDNY and $8.849 million for KEDLI plus an incremental amount reflecting the change in the EAP discount amount from the rate increase for each Rate Year.[525] Modifications such as those proposed by PULP should be proposed to the EAP Working Group. These provisions are reasonable and should be adopted because they expand bill assistance to vulnerable customers who may struggle to pay their utility bill, while ensuring the Companies comply with the Commission's directives in Case 14-M-0565.

11.3 Weather-Related Protection

In its corrected testimony, PULP proposed new cold weather protections in the.[526] UIU and New York City also supported the cold weather protections in their direct testimony.[527,528] Under the PULP, UIU, and CNY proposal, the Companies would formally commit to cold weather protections including the suspension period from November 1 through April 15, each year, provide a Deferred Payment Agreement (DPA) to any customer who receives HEAP regardless of prior defaults, refraining from scheduling residential terminations on days when the local weather forecast predicts below-freezing temperatures, and a moratorium on winter terminations for Elderly, Blind and Disabled Protection (EBD) customers, all measures which now are currently voluntary.

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523 Corrected Testimony of William D. Yates, pp. 35-36.
524 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 24.
525 Joint Proposal, p. 60.
526 Corrected William D. Yates Testimony, p. 29.
527 Gregg C. Collar Testimony, pp. 29 - 30.
528 CNY Policy Panel Testimony, pp. 27 - 29.

In their rebuttal testimony, the Companies stated there is no need for cold weather protections pertaining to wind-chill temperatures for cold weather days as the current restrictions are sufficient. Instead, The Companies stated that they would continue to voluntarily agree to annual cold weather protections without a long-term commitment.[529]

The Joint Proposal adopts PULP's cold weather protections proposal with a modification to the termination suspension provision. As stated in the Joint Proposal, the Companies will suspend terminations of residential gas heating customers on days when either the local weather forecast (i.e., National Weather Service) predicts temperatures below 32 degrees Fahrenheit, or the forecast high temperature, factoring in the local wind chill, does not exceed 32 degrees Fahrenheit for two or more consecutive days in the Companies' geographic operating region.[530]

This provision is reasonable because it resolves the issue between normally adverse parties with minor modifications which will provide enhanced protections for the Companies' customers. I Additionally, as costs in energy continue to rise, particularly during cold weather periods when gas usage is highest, it is appropriate to ensure that customers will be protected from terminations on days when their safety may be compromised. These cold weather protections will provide enhanced protections for the Companies' most vulnerable customers and necessitate that Companies formally adopt procedures to implement consistently during these cold weather periods. For these reasons, these provisions of the Joint Proposal should be adopted.

11.4 Domestic Violence Policy and Procedures

In its corrected testimony, PULP expressed concern that the Companies do not have any specific training materials, internal policy documents, or other relevant communications involving situations in which its customers indicate they are victims of domestic violence.[531]

The Joint Proposal stipulates that within six months of its effective date "the Companies will develop and establish policies, procedures, and employee training for identifying and addressing situations" in which a customer indicates that they have been victims of domestic

[529] KEDNY & KEDLI Customer Panel Rebuttal Testimony, pp. 32-33.
[530] Joint Proposal, p. 84.
[531] Corrected William D. Yates Testimony, p.73.

violence.[532] These terms are reasonable, as they ensure appropriate treatment of customers who have experienced domestic violence, and therefore, Staff recommends that they be adopted.

11.5 DPAs

In its corrected testimony, PULP proposed that KEDNY adopt a procedure to take financial information for non-standard DPAs over the phone.[533] PULP also proposed that the Companies adopt a goal of 33 percent of customers entered into DPAs as compared to accounts in arrears. PULP argues that DPAs outstanding to arrears rates should match higher performing utilities to provide residential customer more protections under the Home Energy Fair Practices Act (HEFPA).[534]

In rebuttal testimony, the Companies argued that customers can currently use the online DPA instrument but that there are constraints in direct inputs with the current Customer Related Information System (CRIS) when taking customer financial information. This issue will be resolved once the conversion to Customer Service System (CSS) takes place. Regarding the participation rate of 33 percent DPAs, the Companies maintained that they cannot be expected to directly manage DPA participation rates. [535]

To address these concerns, the Joint Proposal requires that the Companies have 120 days from the Effective Date of the Joint Proposal to implement a procedure to take financial statements over the phone for non-standard DPAs. In addition, signed DPAs must be returned to the Companies to activate the DPA. Additionally, within 120 days of the Effective Date of the Joint Proposal, the Companies will implement text messaging for customers that default on DPAs and enhance outreach for awareness of the DPA process. Finally, on or before December 31, 2024, the Companies will implement web enhancements to permit customers to provide digital signatures.[536]

This provision of the Joint Proposal is reasonable and should be adopted because implementation of this process will enable the Companies to achieve greater success in executing DPAs and provide greater ease of access to its customers, while maintaining compliance with

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[532] Joint Proposal, p.84.
[533] Corrected William D. Yates Testimony, p. 66.
[534] Id., p. 67.
[535] KEDNY & KEDLI Customer Panel Testimony, p. 51.
[536] Joint Proposal, p. 85.

HEFPA, Rule 11.10. Additionally, increased awareness of the DPA application process and customer responsibilities will be achieved by new IT initiatives, including the conversion from CRIS to CSS, which will offer enhanced customer outreach, text messaging capabilities, and ensure customers are reading and signing electronic DPAs. This option grants customers the opportunity to avoid disconnections, potential delays in restoring service, and other unnecessary hardships.

11.6 Outreach and Education Reporting

In their initial testimony, the Companies did not propose changes to their outreach and education plan and reporting. In direct testimony, Staff recommended that the Companies use a modified budget template that will improve transparency into the Companies' outreach budget.[537] As part of Staff's review of the Companies' Annual Outreach and Education Plan in this rate proceeding, Staff was unable to reconcile the Companies' budget with those reported in the revenue requirement.[538] In rebuttal testimony, the Companies agreed to discuss Staff's proposals as part of a multi-year settlement.[539] The Joint Proposal adopts the use of the modified budget template for the Companies' outreach and education reporting.[540] In preparing such reports, the Companies will include separate budgets for each Company by program with dollar amounts for each activity line item. This provision is reasonable because it offers transparency into the Companies' budget planning and actual spend, which is vital in reconciling the Companies' yearly expenses and allows Staff to evaluate the need for outreach funding in future rate proceedings.

11.7 Language Access

In initial testimony, the Companies proposed implementing a Language Access pilot program to enhance outreach of their energy efficiency programs.[541] In direct testimony, Staff recommended the Commission reject approval of the additional funding for this pilot, as cost recovery will be considered under the NE:NY proceeding, Case 18-M-0084, which discussed in the Energy Efficiency section, below.

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[537] Staff Consumer Services Panel, p. 30-31.
[538] Staff Consumer Services Panel, p. 27.
[539] KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 23.
[540] Joint Proposal, p. 86.
[541] KEDNY & KEDLI Customer Panel Testimony, p.103, line 9 - p. 105, line 2.

In direct testimony, Staff discusses its review of the Companies' gas safety materials and highlights that there is no indication that the gas safety postcard is available in languages other than English.[542] This points to the need for translation of essential outreach materials. In its initial and rebuttal testimonies, CNY proposed that the Companies translate all their outreach materials into the top ten most spoken non-English languages in New York City, to expand access to programs that benefit disadvantaged communities.[543]

The Joint Proposal adopts a broader language access approach by ensuring that customer assistance program materials are available in the top nine most spoken non-English languages in the Companies' service territory, based on Company and census data regarding language preferences in a community, and assess and adjust language offerings annually, as needed. The Companies agreed to translate energy efficiency materials as part of the Energy Efficiency and Building Electrification Language Access filing in Case 18-M-0084. [544]

This provision of the Joint Proposal is reasonable because it allows the Companies to reach a broader audience, tapping into diverse demographics while ensuring customers are aware of programs and protections available to them. Additionally, this provision to translate the materials into nine languages other than English, which is a more vigorous attempt to expand language access than another recent neighboring utility.[545] This decision considers the position of CNY, the Companies, and Staff, ensuring a balanced approach to language access. For these reasons, this provision should be adopted.

11.8 Special Protection Marketing

In its corrected testimony, PULP recommended that the Companies increase their marketing efforts of their EBD program to protect eligible customers against service termination.[546] In its rebuttal testimony, the Companies' response to PULP's recommendations asserted that existing outreach efforts and enhancements to their website address PULP's recommendations.[547]

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[542] Staff Consumer Services Panel, p. 106
[543] CNY Policy Panel, p.15 line 9 - 10.
[544] Joint Proposal, p. 86.
[545] Case 22-E-0064, et al., supra, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans With Additional Requirements (issued July 20, 2023), p. 47.
[546] Corrected William D. Yates Testimony, p. 15 line 4 - 11.
[547] KEDNY & KEDLI Customer Service Panel Rebuttal Testimony, p. 53 lines 2 - 7.

The Joint Proposal adopts PULP's recommendations to increase the promotion of their special protection programs and bolsters the training program for the Companies' call center service representatives to identify customers who may be eligible for the EBD program.[548] This provision of the Joint Proposal is reasonable because it heightens the visibility of the Companies' EBD program, creating additional opportunities to identify EBD customers. It ensures that the EBD community is well-informed about special protections afforded to them, thereby safeguarding their wellbeing. This marketing initiative is a critical enhancement to the HEFPA annual notification requirement, the Companies must, at the time service is initiated to a residential customer, by a notice accompanying a regular bill or in a separate mailing, provide residential customers with a summary of their rights and obligations under the Home Energy Fair Practices Act, the Energy Consumer Protection Act of 2002 and the Commission's regulations.[549]

11.8.1 LMI Marketing and Outreach

In their initial testimony, the Companies requested $0.5 million to design and implement a LMI outreach and marketing program, split evenly between KEDNY and KEDLI in the Rate Year, to increase awareness of income-eligible programs to help customers manage their bills.[550] In direct testimony, Staff recommended the Commission reject the Companies' proposal because the Companies have an existing Energy Affordability Outreach Program that achieves the same goals.

In their rebuttal testimony, the Companies stated that there are likely over 300,000 customers who are eligible for HEAP but are unaware or do not know how to enroll.[551] In its initial testimony, PULP recommended a targeted community-based outreach strategy that prioritizes census tracts in which communities have energy burdens that are among the highest in the state.[552]

The Joint Proposal adopts the Companies' proposed LMI Marketing and Outreach Program.[553] However, it allocates $0.325 million for KEDLI and $0.175 million for KEDNY

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548 Id.
549 PSL § 44; 16 NYCRR § 11.17.
550 KEDNY & KEDLI Customer Panel Testimony, Exhibit___(CP-1). Schedule 5
551 Id.
552 Corrected William D. Yates Testimony, p. 15 line 4-11.
553 KEDNY & KEDLI Customer Panel Testimony, Exhibit___(CP-1), Schedule 5.

because the Companies' Long Island service territory does not have access to the file matching option available in New York City. This limitation creates a barrier for the Companies to enroll customers in its low-income program.

Within 60 days of approval of the Joint Proposal, the Companies agree to file an LMI Marketing and Outreach Program Plan, which will describe the outreach methods and channels, expected timeline, and geographic areas the Companies will target to reach LMI customers. Upon filing their Plan with the Commission, the Companies will hold a stakeholder meeting to present their Plan and seek stakeholder input. Additionally, the Companies agree to implement tracking measures to capture the Program's success in meeting program awareness and enrollment goals. Also, the Companies agree to hold annual stakeholder meetings to present their tracking and Program evaluation results and discuss opportunities for improvement.[554]

This provision of the Joint Proposal is reasonable as it fosters transparency, collaboration, and the opportunity to gather diverse perspectives to improve the Companies' outreach efforts. This approach ensures that all stakeholders have a voice in shaping the Program's success. Additionally, it raises awareness about energy affordability programs that are available to eligible customers, which is a priority of the Commission.

11.8.2 Stakeholder Meetings

Refer to section 11.8.1 LMI Marketing and Outreach, above.

11.9 Customer Service Full Time Equivalents ("FTEs")

In their initial testimony, the Companies proposed adding a total of 18 FTEs to fill customer service roles.[555] Additionally, the Companies requested 30 FTEs for KEDNY to support field collection activities.[556] This is a total of 40.2 FTEs for KEDNY and 7.8 FTEs for KEDLI.

In direct testimony, Staff recommended including funding for a total of 30 FTEs to support various customer service programs and collection programs and rejecting 18 FTEs. Staff recommended that the Commission approve 1 Energy Equity Segment Analyst, 1 data analyst, 3 Energy Affordability Program Administrators, 2 consumer advocates for KEDNY

[554] Joint Proposal, pp. 87-88.
[555] KEDNY & KEDLI Customer Panel Testimony, Exhibit__(CP-1), Schedules 1-6.
[556] KEDNY GIOP Testimony, p. 105.

only, 3 Collection Residential Account Management Staff, and 20 field collections FTEs.[557] Staff recommended the Commission reject 1 Energy Equity Analyst, 3 consumer advocates, 3 Clean Energy Advisors, 1 Marketing and Outreach Specialist, and 10 field collections FTEs. These positions were denied by Staff due to the duplicative nature of other program FTEs, a higher staffing level request than was necessary for program operations, and the removal of programs proposed by the Companies. UIU stated in its testimony that hiring any of the 18 customer service-related FTEs that will assist in increasing participation in the EAP will cause ratepayers to bear the burden of funding a significant rate increase to support the position and any Earnings Adjustment Mechanisms associated with EAP.[558]

In rebuttal testimony, the Companies disagreed with Staff's recommendations on the basis that their proposed programs and associated FTEs should be approved, Staff conflated job roles,[559] and the Companies requested fewer FTEs than would be needed to effectively manage their programs.[560]

The Joint Proposal includes funding for 25 field collection FTEs in addition to the 10 customer service FTEs recommended by Staff in direct testimony, bringing the total FTEs recommended by Staff to 35.[561] This provision is reasonable because the additional FTEs provide the Companies enough resources to streamline processes related to their EAP administration, collections, and outreach. Currently, EAP duties are spread between a larger number of FTEs, some of which are from other departments, the administrative and analytical staff approved will consolidate those positions. Additionally, these resources will allow the Companies to identify LMI customers, provide outreach to LMI customers, and add customers to EAP and other assistance programs, which will address the underserved LMI customer segment, Collections FTEs will address the high levels of arrears, and the outreach staff will help customers navigate customer assistance programs For these reasons, these provisions should be approved.

[557] Staff Consumer Services Panel Testimony, pp. 23, 40, 41, 85, & 89.
[558] Gregg C. Collar Testimony, p. 28.
[559] KEDNY & KEDLI Customer Panel Rebuttal Testimony, pp. 18-21.
[560] Id., p. 29.
[561] Joint Proposal, pp. 89-90

11.10 Energy Efficiency

11.10.1 Rate Year and Data Year Energy Efficiency Costs

The Companies have annual energy efficiency budgets and targets for calendar years 2021-2025 authorized by the Commission in the NE:NY Order.[562] Also, the Companies recover the costs of energy efficiency programs through base rates, as established in the Commission's 2021 Rate Order.[563]

In their initial testimony, the Companies proposed to recover energy efficiency costs of $34.719 million for KEDNY and $27.816 million for KEDLI.[564] These amounts reflect the Companies' prorated Commission-authorized energy efficiency budgets for 2024 and 2025, adjusted to reflect amounts previously collected through the Demand Capacity Surcharge Mechanism (DCSM). Staff recommended allowing the Companies to recover energy efficiency costs in RY1 in the amounts proposed by the Companies.[565]

For years beyond 2025, the Companies proposed to use their Commission-authorized 2025 energy efficiency budgets to calculate their revenue requirement. The Companies stated that they would update their energy efficiency budgets if and when the Commission authorizes future energy efficiency budgets and targets in the course of the NE:NY Interim Review.[566]

Staff testified that for years beyond 2025, the Companies should not use their Commission-authorized 2025 budgets as a placeholder.[567] Instead, the Companies should use the provisional annual budgets for 2026-2030 set forth in the Commission's July 20, 2023 Order Directing Energy Efficiency and Building Electrification Proposals in Case 18-M-0084, referred to as the Order Directing Proposals.[568] These provisional budgets are, for KEDLI, $23,070,760

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562 Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020).

563 2021 Rate Order, p. 91.

564 KEDNY Revenue Requirement Panel Testimony Exhibit___(RRP-3), Schedule 25, and KEDNY Revenue Requirement Panel Testimony Exhibit___(RRP-3), Schedule 25.

565 Staff Efficiency Panel Testimony p. 13, lines 6 - 17

566 KEDNY & KEDLI Customer Panel Testimony, p. 97, lines 2 - 8.

567 Staff Efficiency Panel Testimony p. 14, line 12

568 Staff Efficiency Panel Testimony p. 15, lines 8-24; Case 18-M-0084, supra, Order Directing Energy Efficiency and Building Electrification Proposals (issued July 20, 2023), p. 97.

annually for Non-LMI and $9,823,884 annually for LMI, and for KEDNY, $31,489,448 annually for non-LMI and $11,517,545 annually for LMI.

The Joint Proposal recommends that the Companies recover energy efficiency costs in RY1 through base rates in the amounts proposed by the Companies in their initial testimony. For RY2 and RY3, the energy efficiency costs included in the Joint Proposal reflect the provisional budgets indicated in the Order Directing Proposals. The Joint Proposal stipulates that the RY 2 and RY3 revenue requirements will be updated if the Commission authorizes final energy efficiency budgets for the post-2025 period prior to issuance of a rate order i.e., the conclusion of the instant proceedings.[569]

11.10.2 Incremental Energy Efficiency Surcharge Mechanism Energy Efficiency Cost Reconciliation Mechanism

In the direct testimony of the Companies' Customer Panel, the Companies proposed a true-up mechanism if the Commission does not authorize NE:NY budgets for years after 2025 before the conclusion of this rate case, with permission to collect any shortfalls through a surcharge.[570] The Joint Proposal includes an Incremental Energy Efficiency surcharge mechanism (IEE) and a downward-only energy efficiency cost reconciliation mechanism.[571] The IEE would permit the Companies to recover: (i) any difference between the amount of energy efficiency costs reflected in rates and the energy efficiency budgets approved by the Commission, and (ii) any incremental energy efficiency costs approved by the Commission in the future. The cost reconciliation mechanism would apply to each of the Companies' aggregate total energy efficiency spending over the rate period and would require the Companies to reconcile the energy efficiency costs recovered in both base rates and the IEE surcharge and their actual energy efficiency expenditures. Following the conclusion of RY3, the Companies would defer any cumulative unspent energy efficiency funds.

These provisions of the Joint Proposal are reasonable and should be adopted. They will enable the Companies to recover their Commission-authorized energy efficiency budgets, ensure appropriate oversight of any unspent energy efficiency funds, and provide a

[569] Joint Proposal, p. 90.
[570] KEDNY & KEDLI Customer Panel Testimony, p. 98, lines 1 - 9.
[571] Joint Proposal, p. 91

mechanism by which the Companies can recover any additional energy efficiency expenditures that the Commission may authorize during the term of the Joint Proposal.

11.10.4 Energy Efficiency, Demand Response, Non-Pipe Alternatives and Strategic Account Management Full Time Equivalents ("FTEs")

In addition to providing cost recovery for the Companies' energy efficiency program budgets, the Joint Proposal includes funding for labor associated with energy efficiency programming.[572] In their initial testimony, the Companies requested that funding for 14 additional FTEs related to energy efficiency be included in the revenue requirement.[573] The Companies stated that these FTEs are necessary to deliver their energy efficiency programs and achieve their energy efficiency savings targets through the end of 2025 and beyond.

In its direct testimony, Staff testified that the Companies should be allowed funding for approximately six additional FTEs. This number reflected the removal of one FTE associated with the Clean Energy 2.0 initiative and 0.5 FTEs associated with GBC, both of which Staff recommended removing from the revenue requirement because the Companies did not provide sanction papers associated with the requests. Staff then reduced the remainder of the Companies' request by one half. Also, Staff contended that this level of additional staffing would be sufficient for the Companies to meet the evolving goals of the NE:NY initiative.[574] The Companies maintained in rebuttal testimony that the full complement of 14 additional FTEs would be necessary.[575]

The Joint Proposal includes revenue requirement funding for 8.5 additional FTEs related to energy efficiency.[576] The increase of 1.5 FTEs over Staff's testimonial position reflects the readmission of 1.5 FTEs related to Clean Energy 2.0 and GBC. The remaining six FTEs are consistent with the position Staff articulated in testimony.

In addition to the 14 FTEs dedicated to energy efficiency activities, the Companies requested five FTEs to create a Strategic Account Managers (SAM) group intended to assist the Companies' largest customers with functions ranging from billing to the

[572] Joint Proposal, p. 91.
[573] KEDNY & KEDLI Customer Panel Testimony, p. 110, line 12.
[574] Staff Efficiency Panel Testimony p. 2, lines 2 - 19.
[575] KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 37, lines 9-19.
[576] Joint Proposal, p. 91.

development of Strategic Energy Management Plans.[577] The Companies proposed to hire four SAMs and one managing supervisor to oversee the SAM group.

Staff recommended rejecting the five SAM FTEs because their proposed functions are adequately served by the Companies' existing customer service and energy efficiency FTEs.[578] In rebuttal testimony, the Companies countered that the SAM positions are not duplicative of existing positions. Further, the Companies maintained that the SAMs would serve a novel and needed function as single points of contact for large customers, with the ability to coordinate between different departments within the Companies and dedicate the time necessary to guide large customers' longer-term energy transition plans.[579]

The Joint Proposal include funding for 0.75 SAM FTEs for KEDLI and 0.75 SAM FTEs for KEDLI.[580] This recommendation is reasonable because it will give the Companies an opportunity to demonstrate the SAMs' potential to drive more concerted, holistic clean energy planning for large customers without asking ratepayers to bear the cost of the Companies' full requested complement of SAM FTEs.[581]

11.10.5 KEDLI Heat

In 2022, following the adoption of KEDLI's most recent rate plan, KEDLI expanded its existing Home Energy Affordability Team (HEAT) program for low-income customers to include moderate-income participants.[582] The HEAT program is part of the State-wide LMI New Efficiency New York portfolio.[583] In its direct testimony, the Companies' Customer Panel, proposed to continue implementing the existing KEDLI HEAT Program at $2.5 million per year.[584]

In its direct testimony, Staff supported the Company's proposed continuation of the KEDLI HEAT program, stating it is still necessary to operate to maintain energy efficiency services to KEDLI LMI customers.[585] Specifically, Staff agreed with the Company's proposal to

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577 KEDNY & KEDLI Customer Panel Testimony, p. 121, lines 4-14.
578 Staff Consumer Services Panel, pp. 46-48.
579 KEDNY & KEDLI Customer Panel Rebuttal testimony, p. 47, lines 4-14.
580 Joint Proposal, p. 92
581 Staff Efficiency Panel Testimony, p. 13, lines 6-17.
582 KEDNY & KEDLI Customer Panel Testimony, p. 94, lines 3-17.
583 Id., p. 95, lines 17-21.
584 Id., p. 95, lines 17-21.
585 Staff Efficiency Panel Testimony, p. 25, lines 4-10.

maintain the HEAT program budget through the end of 2025, as it aligns with the timeline of the Commission's July 20, 2023, Order Directing Energy Efficiency and Building Electrification Proposals (Order Directing Proposals).[586] In addition, Staff further explained the Order Directing Proposals also adopted an implementation framework and program administrator roles, such that beginning in 2026, NYSERDA will act as the sole implementor of the statewide LMI programs for the one to four family home segment.[587] In order to align with the new program administrator roles and timeline, Staff recommended KEDLI complete all HEAT program projects by the end of 2025 and that KEDLI engage with DPS Staff and other program administrators to develop a detailed transition plan submitted no later than January 1, 2025.[588] Staff also pointed out, although the HEAT program was implemented within the Statewide EE/Beneficial Electrification (BE) portfolio and contributed to KEDLI's savings achievements, the program itself did not have any assigned MMBtu savings targets. To resolve this discrepancy, Staff recommended a MMBtu savings target of 23,144 MMBtu,[589] which it calculated by dividing the total Commission authorized 2019 through 2025 budget by the total 2019 through 2025 target, resulting in an authorized LMI run rate of $108.02 per MMBtu.[590]

In their rebuttal, the Company's Customer Panel stated they are agreeable to working with NYSERDA and DPS Staff to transition the KEDLI HEAT program to NYSERDA beginning in 2026.[591] However, the Customer Panel argued that a MMBtu target is not necessary. Further, that the Companies argued that calculating the target based upon the authorized dollar per MMBtu would not be appropriate, given the HEAT program's actual realized dollar per MMBtu run rate is higher due to the substantially higher contributions this program requires to support LMI energy efficiency.[592]

The Joint Proposal sets forth a commitment by KEDLI to: 1) develop, in consultation with NYSERDA and DPS Staff, a transition plan that ensures minimal disruption to the EE offerings available to KEDLI's LMI customers as the responsibility for serving LMI residential customers shifts to NYSERDA on January 1, 2026; and (2) discontinue their program

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586 Id., p. 26, lines 2 - 11.
587 Id., p. 26, lines 2 - 11.
588 Id., p. 27, lines 7 - 10.
589 Id., p. 27, line 22 – p. 29, line 1.
590 Staff Efficiency Panel Testimony, p. 29, Lines 13-20.
591 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 39, lines 10-18.
592 Id., pp. 40, line 13 – p. 41, line - 9.

after December 31, 2025.[593] In addition, the Joint Proposal reflects KEDLI's proposed, and Staff supported, budget of $2.5 million per year through the end of 2025 and adopts a target of 7,737 MMBtus. The final program target was calculated by dividing the program budget of $2.5 million by the actual realized dollar per MMBtu rather than the authorized dollar per MMBtuas that was recommended by Staff.

The Joint Proposal's HEAT program provision is reasonable because it complements the Commissions' Order Directing Energy Efficiency and Building Electrician Proposals, which supports the State's goals of increasing efficiency and customer access to energy efficiency benefits. This program was supported by Staff in testimony, and the Joint Proposal demonstrates a commitment to continue providing energy services to customers currently enrolled in the program. The Joint Proposal also adopted the MMBtu target that Staff supported.[594] The Joint Proposal reflects an MMBtu target that introduces an additional degree of performance accountability.

11.10.6 Weatherization Health & Safety Program

In their testimony, the Companies requested funding for a Weatherization Health and Safety program to address health and safety barriers to energy efficiency improvements for LMI customers and customers in Disadvantaged Communities.[595] The Companies had previously administered a Weatherization Health and Safety pilot program with shareholder funding.[596] Through the Pilot program, the Companies provided remediation services such as installation of ventilation fans and carbon monoxide detectors, natural gas equipment tuning, septic and plumbing troubleshooting, roof replacement, removal of mold and asbestos, pest control, moisture control, and correcting potential electrical hazards.[597] The Companies requested $0.750 million per year for KEDNY and $1.75 million per year for KEDLI to continue running the program,[598] stating that the pilot had proven beneficial for the uptake of weatherization programs in Disadvantaged Communities.[599]

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[593] Joint Proposal, p. 92.
[594] Id., p. 92.
[595] KEDNY & KEDLI Customer Panel Testimony, pp. 99 - 101.
[596] Id., p. 99, lines 16 - 18.
[597] Id., p. 99, line 18 – p. 100, line 2.
[598] KEDNY & KEDLI Customer Panel Testimony, p. 101, lines 4 - 9.
[599] Id., p. 100, lines 17 - 21.

Staff did not support including the cost of the Weatherization Health and Safety program in the Companies' revenue requirement.[600] While Staff affirmed the need to address health and safety barriers to energy efficiency improvements in low-income and Disadvantaged Community households, Staff expressed concern about allocating ratepayer funding for measures not directly related to energy savings or customers' energy use.[601] Further, Staff contended that any program designed to remediate health and safety barriers should be developed in a coordinated, intentional manner in the context of the statewide NE:NY proceeding.[602]

We Act testified in support of the Weatherization Health and Safety program, stating that it would increase energy efficiency and reduce the energy burden for low-income ratepayers and vulnerable populations including the elderly, the disabled, and children.[603] Also, We Act identified job creation as a benefit of this and other weatherization programs.[604]

CNY did not expressly support or oppose the Weatherization Health and Safety program, but it did testify that the Companies should do more to address barriers to the success of their energy efficiency programs,[605] and that their proposed incremental energy efficiency programs, including Weatherization Health and Safety, are more focused on outreach and education rather than program improvement.[606]

In their rebuttal testimony, the Companies agreed that health and safety barriers to weatherization should be addressed in the context of the NE:NY Interim Review, rather than in an individual company's rate proceedings, however, the Companies argued that their funding request would allow them to continue the Weatherization Health and Safety program through the RY1 and RY2, prior to the start of the 2026-2030 period contemplated in the Interim Review.[607]

We Act also replied in rebuttal testimony, contending that the program is vital to enable LMI and Disadvantaged Community households to access the benefits of weatherization programs.[608] Also, We Act indicated that lessons learned from the program could help the

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600 Staff Efficiency Panel Testimony, p. 35, line 21.
601 Id., p. 36, lines 1 - 14.
602 Id., p. 36, line 22 – p. 37, line 6.
603 Sonal Jessel Testimony, p. 67, lines 6 - 9.
604 Id., p. 67, lines 9 - 12.
605 CNY Policy Panel Testimony, p. 32, line 16 – p. 33, line 2.
606 Id., p. 32, lines 7 - 13.
607 KEDNY & KEDLI Customer Panel Rebuttal Testimony, p. 42, lines 6 - 14.
608 Sonal Jessel Rebuttal Testimony, p. 8, lines 1 - 6.

Companies, Staff, and stakeholders to identify and quantify the energy and non-energy benefits of health and safety interventions, which can then inform cost-effectiveness analyses.[609]

The Joint Proposal provides that the Companies will implement the proposed Weatherization Health and Safety program using shareholder funds, with no contribution from ratepayers.[610] The program will be capped at $2.0 million annually for both Companies, totaling $6.0 million over the three-year term of the rate plan.[611] The Companies will allocate unspent funds in any given Rate Year to the following year.[612] After the Rate Plan, the Companies will perform a reconciliation of program expenditures.[613] Further, the Joint Proposal establishes requirements for annual implementation plans and annual performance reports to be filed by the Companies commencing in RY1 and RY2, respectively, and requires the Companies to convene an annual conference to discuss progress and improvements.[614]

> The Joint Proposal will allow the Companies to continue to implement this program without burden to ratepayers. The program will provide significant benefits to low-income customers and customers in Disadvantaged Communities, both through health and safety improvements achieved through the program itself, and by enabling customers to access the Companies' energy efficiency and weatherization programs and the comfort and bill-savings benefits they can provide.

Furthermore, the Joint Proposal positions the Companies' Weatherization Health and Safety Program to inform any consideration of the remediation of health and safety barriers to energy efficiency on a statewide basis. The detailed planning and reporting requirements will provide Staff, the Commission, and stakeholders with useful information about the scope and nature of barriers and the costs to address them, while the required annual conference will provide a venue for public discussion of lessons learned in implementation. Given the vast improvements in residential energy efficiency that will be required to meet the CLCPA's GHG reduction mandates, as well as the CLCPA's directive to prioritize emissions reductions in Disadvantaged Communities, these provisions of the Joint Proposal are clearly in the public

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609 Id., p. 9, lines 2 - 9.
610 Joint Proposal, p. 92.
611 Id., p. 93.
612 Id., p. 93.
613 Id.
614 Id., p. 94.

interest. As such, these provisions regarding the Weatherization Health and Safety program are reasonable and should be adopted.

11.10.7 Energy Efficiency Proposals Not Included in Joint Proposal:

11.10.7.1 Language Access Pilot

In their initial filings, the Companies requested $125,000 for KEDLI and $125,000 for KEDNY to implement a Language Access Pilot focused on communications related to energy efficiency.[615] The Companies noted that language access is a barrier to participation in the Companies' energy efficiency programs, especially for LMI customers and customers in Disadvantaged Communities. While the Companies' in-house websites have translation capabilities, many of the external implementation vendors who administer the Companies' energy efficiency programs do not offer translation services. The program would provide a mix of language accessibility services for energy efficiency-related written materials. In testimony, Staff strongly agreed that the Companies should improve access to energy efficiency programs, particularly for LMI and Disadvantaged Community customers, by ensuring that all materials are accessible in multiple languages.[616] However, Staff did not support allowing additional funding for language access outside the Companies' NE:NY budgets. Staff testified that language access is in fact being addressed within the NE:NY proceeding; the Commission's July 2023 Order Directing Proposals directed the utilities to comprehensively review their energy efficiency program materials and create a plan for addressing any deficiencies related to language access.[617]

In its initial testimony, CNY proposed that the Companies should translate their program materials into the ten most commonly spoken non-English languages in New York City, especially in order to improve access to programs in Disadvantaged Communities.[618] CNY reiterated this position in its rebuttal testimony, adding that the Companies' proposal for an energy efficiency Language Access Pilot was not sufficiently detailed.[619] The Language Access

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615 KEDNY & KEDLI Customer Panel Testimony Exhibit__(CP-6).
616 Staff Efficiency Panel Testimony, p. 40, lines 5 - 10.
617 Id., p. 40, lines 10-17, (citing Case 18-M-0084, supra, Order Directing Energy Efficiency and Building Electrification Proposals (issued July 20, 2023), pp. 29 - 30).
618 CNY Policy Panel, pp. 14-15.
619 Id., p. 11, lines 8-11.

Pilot as proposed by the Companies not adopted as part of the Joint Proposal, however, the Joint Proposal includes broader language access provisions under Customer Initiatives, discussed in the Language Access section above. Among these provisions is an affirmation that the Companies will translate key energy efficiency materials in accordance with the Energy Efficiency and Building Electrification Language Access filing in Case 18-M-0084. This agreement is consistent with Staff's testimonial position.

12. Energy Services Company Issues

12.1 Demand Response Notifications

In direct testimony, NRG's witness argued that the lack of notification of customer enrollment in a demand response program is financially detrimental to NRG. NRG's witness stated that a participating customers projected usage would be below anticipated levels thus causing monetary risk to NRG. As NRG has been unsuccessful in obtaining this information from their customers, NRG recommended the Companies' tariffs be amended to establish a separate rate class for customers participating in demand response programs. Also demand response customers should be required to specify the volumetric level they have selected to participate. Further, NRG recommends the tariffs be amended to require the Companies to provide specific details about demand response events as soon as practicable once a customer agrees to participate in demand response events.[620]

In rebuttal testimony, Staff disagreed with the NRG's recommendation because there are no significant cost of service differences anticipated that would justify a new rate class for demand response participants. Further, Staff stated that the administrative burden is unwarranted as the proposed amendments are only a benefit to the ESCO's. Staff argues that the event performance information provided to program participants could be furnished to NRG without the expenditure of further ratepayer funds.[621]

The Joint Proposal provides that the Companies will furnish ESCOs with information related to program participants performance, provided the participant has authorized the ESCO to receive such information, and provides that the Companies will establish a way for

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[620] Case 23-G-0225 et al., supra, NRG Witness Direct Testimony of Christopher Reyes on behalf of NRG (filed September 1, 2023), pp. 2-4.

[621] Case 23-G-0225 et al., supra, Staff Efficiency Panel Rebuttal Testimony (filed September 22, 2023) (Staff Efficiency Panel Rebuttal Testimony), pp. 11-12.

the ESCOs and other interested parties to receive notifications of demand response events within 24 hours after the occurrence of demand response events.[622] These provisions allow the ESCOs to obtain the information necessary to more accurately determine program participants usage, thereby reducing the ESCOs financial risk when determining customer charges that are based on estimated usage.

13. Filing for New Rates

13.1 During the Term of the Rate Plans

The Companies' commit to not file for new base delivery rates to be effective prior to April 1, 2027. This provision includes a number of standard exceptions, which allow for consideration of modifications that result in de minimis impact on rates, to address new services, or should the Commission determine that unforeseen circumstances have had a substantial impact on the Companies' rates of return so as to render the return unreasonable, unnecessary or inadequate for the provision of safe and adequate service. This provision is a standard provision of rate proceeding joint proposals, is reasonable and should be adopted.

14. Miscellaneous Provisions

14.1 Corporate Structure and Affiliate Rules

This section refers to Appendix 10 to the Joint Proposal, which includes the Companies corporate structure and affiliate rules. Appendix 10 to the Joint Proposal, includes the clarification, that all regulated company management employees shall receive training on competitive conduct. This section ensures that these provisions remain in force and are easily accessible. Accordingly, this section is reasonable and should be adopted.

14.2 KEDNY Sales Tax Refund Case – Case 23-G-0200

As filed in Case 23-G-0200, KEDNY provided a notice of a New York State sales tax refund (Refund) received from the New York State Department of Taxation and Finance in the amount of $4.358 million, inclusive of interest in the amount of $0.131 million. The Refund results from a tax overpayment of monthly sales and use tax identified by a comprehensive

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[622] Joint Proposal, p. 94.

internal reverse audit initiated by National Grid shortly after its tax department commenced a routine state tax audit.

The Joint Proposal provides that the refund, minus KEDNY's costs to achieve, will be shared between customers and shareholders on a 90 percent/10 percent basis, respectively. KEDNY will set up a regulatory liability for the customers share of the refund received to date as adjusted for carrying costs. Allowing shareholders to retain a share of the proceeds of the sales and use tax refund provides an incentive to utilities to aggressively audit, and seek sales and use tax refunds, with customers being the primary beneficiaries of these efforts. Accordingly, this provision is reasonable and should be adopted.

VI. OTHER PROVISIONS

This section contains standard provisions common to all rate proceeding joint proposals. The provisions include a request that the Commission adopt the Joint Proposal without modification, a statement that the parties may pursue their own interests if the Commission does not adopt the Joint Proposal's terms, the Joint Proposal's lack of precedential value, an agreement to cooperate on future actions necessary to effectuate the Joint Proposal, and a statement of which elements will continue beyond the term of the Joint Proposal's rate plan. These terms are standard, non-controversial elements of the Joint Proposal that do not affect the interests of ratepayers.

VII. CONCLUSION

For the reasons stated in Staff's Statement in Support of the Joint Proposal, Staff recommends that the Commission adopt the terms of the Joint Proposal without modification.

Respectfully submitted,

Nicholas Forst
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Molly Magnis
Staff Counsel

Dated: Albany, New York
May 1, 2024