

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case 16-G-0058 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service**

**Case 16-G-0059 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service**

**Case 14-G-0091 – In the Matter of the Acts and Practices of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid Regarding Billing of Each Company’s SC No. 2 Customers from March 2008 to March 2014**

**Case 14-G-0503 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds Between KeySpan Gas East Corporation d/b/a National Grid and Ratepayers**

**Case 13-G-0498 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds Between KeySpan Gas East Corporation d/b/a National Grid and Ratepayers**

**Case 12-G-0544 – In the Matter of the Commission’s Examination of The Brooklyn Union Gas Company d/b/a National Grid NY’s Earnings Computation Provisions and Other Continuing Elements of the Applicable Rate Plan**

**Case 11-G-0601 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds Between KeySpan Gas East Corporation d/b/a National Grid and Ratepayers**

**Reply Statement Of  
The Brooklyn Union Gas Company d/b/a National Grid NY  
And KeySpan Gas East Corporation d/b/a National Grid**

**Dated: September 23, 2016**

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**Reply Statement Of  
The Brooklyn Union Gas Company d/b/a National Grid NY and  
KeySpan Gas East Corporation d/b/a National Grid**

In accordance with the *Ruling on Schedule for Consideration of Joint Proposal* issued September 13, 2016 in these proceedings, 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”) submit this Reply Statement in Support

of the Joint Proposal (“JP”)<sup>1</sup> dated September 7, 2016. As discussed more fully below, the JP is overwhelmingly supported by normally adversarial parties having diverse interests and there is nothing in any of the parties’ statements opposing or questioning certain provisions of the JP that provides any reasonable or persuasive basis to modify the JP or decline to adopt it in accordance with its terms.<sup>2</sup>

**PULP’s Opposition To The JP Is Not Supported By Applicable Precedent, Relevant Policy Or The Record**

PULP’s opposition to the JP is limited to five of its provisions. Specifically, PULP objects to the provisions of the JP that provide for:

- (i) the reconciliation of SIR costs and cost recoveries;<sup>3</sup>
- (ii) a 9.0 percent return on equity (“ROE”);<sup>4</sup>
- (iii) the establishment of a positive incentive for the Companies to reduce the number of residential service terminations for nonpayment, while decreasing or maintaining the level of bad debts for residential accounts (hereinafter “the service termination incentive”);<sup>5</sup>

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<sup>1</sup> Ex. 506.

<sup>2</sup> The Companies have received statements expressing unqualified support for the JP from (i) the New York State Department of Public Service Staff (“Staff”), Consumer Power Advocates, Environmental Defense Fund, Estates NY Real Estate Services LLC, Great Eastern Energy and Spring Creek Towers. The City of New York (“CNY”) generally supports the JP but takes exception to certain of its provisions concerning the Companies’ low income programs. The Public Utility Law Project of New York, Inc. (“PULP”) and URAC Corp. (“URAC”) more generally oppose the JP, while the Utility Intervention Unit (“UIU”) neither supports nor opposes the JP, but expresses concern about the impact of Site Investigation and Remediation (“SIR”) costs on future rate plans. Finally, the Companies have belatedly received statements in opposition to the JP from Potomac Economics, Ltd. (“Potomac”) and the Town of Brookhaven.

<sup>3</sup> PULP Statement at 9-13.

<sup>4</sup> *Id.* at 13-18.

<sup>5</sup> *Id.* at 19-21.

(iv) declining as opposed to inclining block rates;<sup>6</sup> and

(v) earnings sharing “deadbands” in which the Companies will retain 100 percent of annual earnings of up to 50 basis points in excess of a 9.0 percent ROE.<sup>7</sup>

As discussed more fully *infra*, PULP’s position on these issues is at odds with applicable precedent and policy and the record of this proceeding. PULP’s opposition provides no basis for the Commission to modify any provision of the JP.

**PULP Has Provided No Meaningful Reason Why The Companies Should Be Required To Absorb Additional SIR Costs**

While PULP “firmly believes that the circumstances of this rate case proceeding should compel the Commission to require shareholders to bear a portion of SIR costs,”<sup>8</sup> it offers no basis for its position other than the fact that the Companies’ SIR costs are likely to be significant.<sup>9</sup> PULP does not contest the fact that current Commission policy, as set forth most recently in Case 11-M-0034,<sup>10</sup> does not require shareholders to absorb SIR

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<sup>6</sup> *Id.* at 21-22.

<sup>7</sup> *Id.* at 22-24.

<sup>8</sup> *Id.* at 11.

<sup>9</sup> It should be noted that PULP (Statement at 12) significantly overstates KEDNY’s forecast of SIR costs at the end of 2019. As set forth in Section IV.6.1.4 of the JP, KEDNY’s forecast deferral balance as of December 31, 2016 is \$185.21 million. One-tenth of this amount will be amortized in rates over ten years and collected over the three year term of the rate plan, resulting in a forecast deferral balance of \$129.6 million at December 31, 2019, not \$528 million as alleged by PULP.

<sup>10</sup> Case 11-M-0034, *Proceeding on Motion of the Commission to Commence Review and Evaluation of the Treatment of the State’s Regulatory Utilities’ Site Investigation and Remediation (SIR) Costs*, “Order Concerning Costs for Site Investigation and Remediation” at 31 (Issued and Effective November 28, 2012) (“Case 11-M-0034 Order”). While PULP cites the Commission’s decision in *Niagara Mohawk Power Corporation – Case 10-E-0050* – in support of its position that utility shareholders should be required to absorb a portion of SIR costs, it fails to acknowledge either that the Commission’s order in Case 10-E-0050 was issued prior to its further consideration of its SIR policy in the Case 11-M-0034 Order or the fact that the Commission’s Case 10-E-0050 Order was based on a concern that the company may have lacked an “effective deterrent to excessive costs in the design and/or implementation of [SIR] projects.” There is no basis in the record of these proceedings for the Commission to conclude that KEDNY and KEDLI have failed to manage their SIR activities in a cost effective and prudent manner or

costs absent some demonstration that a particular utility may require an incentive to carry out SIR activities in a cost effective manner. In the Case 11-M-0034 Order, the Commission identified two instances where sharing as an incentive would be appropriate (i) the utility's cost controls were inadequate, or (ii) the utility strayed from the adopted best practices.<sup>11</sup> The record demonstrates that neither of these circumstances is present here. Moreover, in essentially arguing that the Companies should absorb a portion of SIR costs for equitable reasons, PULP ignores the fact that the Commission has already weighed the equities of requiring utility shareholders to bear a portion of SIR costs and rejected that notion, stating:

On balance, these competing equity concerns have been weighed and resolved by Congress, the State Legislature, and the courts, in the construction and enforcement of the fabric of hazardous waste law apportioning the primary burden to potentially responsible parties, as broadly defined. The utilities are required by law to incur these expenses, and they should therefore be treated as normal costs of doing business in today's society. If the balance of equities creates unfairness, it can best be resolved by other branches of State government, using avenues such as enlarging the State Superfund.

Case 11-M-0034 Order at 13-14.

More importantly, PULP cites no evidence either from its own expert or any other witness<sup>12</sup> in these cases that contends, much less demonstrates, that the Companies require an incentive in the form of a SIR cost disallowance to encourage them to hold SIR costs to the lowest reasonable levels. To the contrary, the Companies presented

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that they have indicated in any way that they require an incentive to deter them from incurring excessive SIR costs.

<sup>11</sup> Case 11-M-0034 Order at 21-22.

<sup>12</sup> UIU, which presented no testimony in this case concerning SIR costs, expresses the view that the Commission should consider tools to help reduce the customer burden of SIR costs in future rate plans. *See* UIU Statement at 5. The Companies note that their future rate plans are not before the Commission in these cases. Nonetheless, the Companies will continue to take all reasonable steps to manage their SIR activities in a cost-effective and prudent manner so as to minimize the burden of SIR costs to their customers to the maximum extent practical.

substantial evidence describing their efforts to control SIR expenses and liabilities,<sup>13</sup> and the Staff SIR Panel also submitted testimony describing the Companies' SIR cost control efforts and their compliance with the Case 11-M-0034 Order.<sup>14</sup> This testimony was unrefuted. Moreover, in 2012 in Cases 06-G-1185 and 1186, the Commission examined KEDNY and KEDLI's SIR costs and concluded that the Companies' SIR activities were cost effective and its SIR costs were prudently incurred.<sup>15</sup> Similarly, in 2015 in Case 15-G-0323, the Commission reviewed KEDNY's SIR activities and found that they appear to be reasonable.<sup>16</sup> Given these findings and the evidence presented in these cases, there is no basis for the Commission to conclude that KEDNY and KEDLI's shareholders should be required to absorb SIR costs. Indeed, PULP's suggestion that the Companies be required to absorb 15 percent of SIR costs would amount to nothing more than a significant confiscation of the Companies' future equity returns. PULP has provided no justification for its confiscatory proposal.

**PULP's Position Concerning The ROE Reflected In The JP Is Not Supported By Applicable Precedent Or The Record**

In contending that there is no rational basis for the ROE of 9.0 percent reflected in the JP, PULP relies on *New York Telephone Co. v. Public Service Commission*, 64 A.D. 2d 232 (3<sup>rd</sup> Dept. 1982), *lv. denied*, 46 NY 2d 710 (1979) ("*New York Telephone*") for the proposition that the Commission is required to base its ROE findings on evidence that

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<sup>13</sup> See Ex. 32, Testimony of Charles F. Willard at 26-27, and Appendix A.

<sup>14</sup> See Ex. 318, Testimony of Staff SIR Panel.

<sup>15</sup> Cases 06-G-1185, *et al.* – *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service*, "Order Authorizing Recovery of Deferred Balances" at 6-7 (Issued and Effective November 28, 2012).

<sup>16</sup> Case 15-G-0323 – *Petition of the Brooklyn Union Gas Company d/b/a National Grid NY to Increase its SIR Recovery Surcharge*, "Order Approving SIR Recovery Surcharge" at 10 (Issued and Effective October 19, 2015).

supports the precise 9.0 percent figure included in the JP. PULP's argument mischaracterizes the precedent on which it purports to rely.

In *New York Telephone*, the court held that “the Commission is not bound to entertain or ignore any particular factor in discharging its primary responsibility to determine that rates are just and reasonable” (citation omitted) and that the scope of judicial review of the Commission's ROE decisions is “very limited.” *New York Telephone*, 64 A.D. 2d at 239. The relevant question is whether there is a rational basis for the Commission's finding that the rates are just and reasonable. *Id.*

Contrary to PULP's claim, *New York Telephone* and other applicable judicial decisions clearly hold that as long as a Commission's ROE decision falls within the range of returns supported by the experts submitting testimony in the proceedings in which the ROE is established, it will be found to have the requisite “rational basis.” As the Court stated (and PULP ignores):

However, since the result reached by the Commission, 11.5% as the required return on common equity, falls within the range of expert testimony, it cannot be said that the alleged errors have resulted in a determination unsupported by the record or without a rational basis. As noted above the Commission's determination need not be wholly free from error in process, and in its brief petitioner admits that rate of return ‘is the most elusive, the most difficult to test against objective standards.’ Accordingly, in light of the very limited scope of judicial review in these matters, we conclude that the Commission's determination of the rate of return on common equity required by petitioner should not be disturbed.

*Id.* at 240; *see also Consolidated Edison Co. of N.Y. Inc. v. Public Service Commission of State of N.Y.*, 74 A.D. 2d 384, 387 (3<sup>rd</sup> Dept. 1980), *lv. denied*, 51 N.Y. 2d 705 (N.Y. 1980); *and see National Fuel Gas Distribution Corp. v. Public Service Commission of State of N.Y.*, 71 A.D. 3d 62, 65 (3<sup>rd</sup> Dept. 2009), *lv. granted* 14 N.Y.3d 709 (N.Y. 2010), *aff'd* 16 N.Y.3d 360 (N.Y. 2011) (“when respondent's computation of a rate of return

falls within the range of expert testimony, it has record support, and we will treat respondent's resolution of the differences among the experts as within its own expertise and outside the scope of our limited review"). As PULP itself acknowledges, the 9.0 percent ROE reflected in the JP falls between the 8.6 percent ROE recommended by Staff and the 9.94 percent ROE proposed by the Companies.<sup>17</sup> Thus, there is no question that, under applicable judicial precedent, there is a rational basis for the JP's ROE.

The 9.0 percent ROE reflected in the JP is also supported by applicable Commission precedent. In this regard, a 9.0 percent ROE is consistent with ROEs recently adopted by the Commission under multi-year rate plans for similar gas and/or electric utilities.<sup>18</sup> Moreover, even assuming that there were some legal basis – and there is none – for PULP's assertion that the Commission is required to support its decision to adopt a ROE different from what Staff recommended -- 8.6 percent -- for a one year rate case, such support is found in long-standing Commission practices. The Commission has consistently adopted higher ROEs under multi-year rate plans to compensate utilities for

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<sup>17</sup> See PULP Statement at 16.

<sup>18</sup> See Case 15-G-0382 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of St. Lawrence Gas Co., Inc. for Gas Service*, "Order Establishing Multi-Year Rate Plan" at 23-25 (Issued and Effective July 15, 2016) ("Case 15-G-0382 Order") (adopting 9.0 percent ROE in three-year rate plan); and see Cases 15-E-0283, *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York Electric & Gas Corporation for Electric and Gas Service* and 15-E-0285, *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric and Gas Service*, "Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal" at 32-33 (Issued and Effective June 15, 2016) ("Case 15-E-0283 Order") (adopting 9.0 percent ROE in three-year rate plan); Case 14-E-0493, *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*, "Order Adopting Terms of Joint Proposal and Establishing Electric Rate Plan" at 41-42 (Issued and Effective October 16, 2015) ("Case 14-E-0493 Order") (adopting a 9.0 percent ROE for two-year term of electric plan and 9.0 percent ROE for three-year term of gas plan).

the greater risks assumed by utility investors under such plans.<sup>19</sup> The difference between Staff's recommended 8.6 percent ROE for a one year rate case and the 9.0 percent ROE reflected in the JP is both generally consistent with stay-out premia approved by the Commission in prior rate proceedings<sup>20</sup> and supported in the testimony provided by the Companies in this case.<sup>21</sup>

In sum, there is simply no merit in PULP's claim that the JP's ROE of 9.0 percent lacks a rational basis.

### **Contrary To PULP's Claim, The Earnings Sharing Mechanisms Included In The JP Are Reasonable**

While PULP suggests that the earnings sharing mechanisms provided for under the JP are "overly generous,"<sup>22</sup> the reality is that the JP's earnings sharing mechanisms provide a level of potential benefit to customers that is comparable to or greater than the earnings sharing mechanisms adopted by the Commission as part of other multi-year rate plans for similarly situated utilities.<sup>23</sup> While PULP asserts that the JP's earnings sharing

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<sup>19</sup> The Commission has consistently approved ROE premiums as part of multi-year settlements. See Case 11-E-0408, *Orange and Rockland Utilities, Inc. – Electric Rates*, "Order Adopting Terms of Joint Proposal, With Modifications, And Establishing Electric Rate Plan" at 13 (Issued and Effective June 15, 2012); and see Case 15-E-0283 Order at 33.

<sup>20</sup> See, e.g., Case 15-G-0382 Order at 23-24 (authorizing 9.0% ROE where Staff initially indicated a ROE of 8.6%); and Case 13-G-0136, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the National Fuel Gas Distribution Corp. for Gas Service*, "Order Adopting Terms of Joint Proposal and Establishing Rate Plan" at 6-7 (Issued and Effective May 8, 2014) (authorizing a 9.1% ROE with a 20 basis point premium for a two-year rate plan).

<sup>21</sup> See Ex. 12, Testimony of Ann E. Bulkley at 107.

<sup>22</sup> PULP Statement at 22.

<sup>23</sup> See e.g., Case 15-G-0382 Order at 25 (approving a joint proposal that established rates reflecting a 9.0 percent ROE, with earnings sharing beginning when the ROE exceeded 9.5 percent); Case 15-E-0283 Order at 13-14 (approving a joint proposal that established rates reflecting a 9.0 percent ROE, with escalating earnings sharing beginning in Year One when ROE exceeds 9.5 percent; in Year Two, when ROE exceeds 9.65 percent; and in Year Three, when ROE exceeds 9.75 percent); Case No. 14-E-0493 Order at 12-13 (approving a joint proposal that established rates reflecting a 9.0 percent ROE, and, for gas service, with earnings sharing beginning when the ROE exceeds 9.6 percent); see also Case 08-G-0609, *Niagara Mohawk*

mechanisms' deadband of 50 basis points is nothing more than a compromise among the parties, this is always the case with respect to such mechanisms because they are not litigated in a typical one year rate case. The fact that the JP's earnings sharing mechanisms are the product of a reasonable compromise is not a basis for rejecting or modifying them.

While PULP may be correct that there have been multi-year settlements where the earnings sharing deadband was narrower than that provided for under the JP, such circumstances provide no basis for the Commission to reject the earnings sharing mechanisms here. The earnings sharing mechanisms are one of the many negotiated items included in the JP. The earnings sharing deadband cannot be considered in isolation but must be considered as part of the overall end results of the JP, results that the Commission can and should find to be reasonable based on the diversity of interests of the supporting parties.

In addition, it is clear that, consistent with Commission precedent,<sup>24</sup> the earnings sharing mechanisms will encourage the Companies to find savings that will be reflected in future rates. Moreover, there is no merit in PULP's suggestion<sup>25</sup> that the earnings

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*Power Corporation – Gas Rates*, “Order Adopting The Terms Of A Joint Proposal And Implementing A State Assessment Surcharge” at 5-6 (Issued and Effective May 15, 2009) (approving a joint proposal that established rates reflecting a 10.2 percent ROE, with earnings sharing commencing when the ROE exceeded 11.35 percent); *see* Case 11-G-0280, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corp. for Gas Service*, “Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan” at 11 (Issued and Effective October 19, 2015) (approving a joint proposal with an underlying ROE of 9.5 percent and an earnings sharing mechanism that applies to earnings exceeding 10.25 percent); Case 11-E-0408, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*, “Order Adopting Terms of Joint Proposal, With Modification, and Establishing Electric Rate Plan” at 14 (Issued and Effective June 15, 2012) (earnings sharing begins at 80 basis points above the allowed ROE).

<sup>24</sup> *See* 15-E-0283 Order at 12-14.

<sup>25</sup> PULP Statement at 23-24.

sharing mechanisms will allow the Companies to overrecover during the multi-year rate plan with no incentive to come back for a future rate case. The JP's post-rate plan provisions<sup>26</sup> provide that if the Companies do not file for new rates to be effective on or before July 1, 2020, then the deadband for the earnings sharing mechanism will be eliminated and the Companies' property tax reconciliation will become downward only. These provisions effectively ensure -- contrary to PULP's claim<sup>27</sup> -- that the Companies will have a strong "incentive to come back for a rate case"<sup>28</sup> even if they are able to achieve earnings in excess of their stated ROEs during the term of their rate plans.

### **PULP's Opposition To The JP's Proposed Service Termination Incentive Is Without Merit**

While PULP offers three reasons why the JP's proposed service termination incentive should be rejected,<sup>29</sup> none of these withstands scrutiny. First, PULP's suggestion that the Companies should receive no incentive because another utility -- Central Hudson Gas & Electric Corporation ("Central Hudson") -- has allegedly already achieved success in reducing terminations is both without foundation and irrelevant. PULP's citation to a report prepared by Central Hudson provides no support for its apparent claim that the Companies will be able to achieve their incentive targets simply by copying Central Hudson's innovations. Moreover, even if it were the case that the Companies could reduce terminations by adopting practices implemented by Central Hudson, this would provide no basis to eliminate the incentive. Utilities should be encouraged to study and implement their peers' best practices.

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<sup>26</sup> JP Section VI.17.2, Ex. 506 at 129-130.

<sup>27</sup> PULP Statement at 25-26.

<sup>28</sup> PULP Statement at 24.

<sup>29</sup> PULP Statement at 19-20.

Second, contrary to PULP's claim,<sup>30</sup> there is no basis for the Commission to require the Companies to demonstrate compliance with the Home Energy Fair Practices Act ("HEFPA") as a prerequisite to implementing service termination incentives. PULP has made no credible allegation that the Companies are violating HEFPA or identified a single example where HEFPA has been violated. In this regard, the allegation by PULP<sup>31</sup> that the Companies' Collection Activity Reports show a decline in the number of deferred payment agreements ("DPAs") provides no basis to conclude that the Companies are violating HEFPA. In fact, the record also shows that, compared to other large New York utilities, the Companies have terminated fewer residential customers as a percentage of customers with accounts in arrears over the past five years.<sup>32</sup> PULP's allegations concerning changes in the number of DPAs provide no meaningful evidence that the Companies are violating HEFPA. In the absence of such evidence, PULP's HEFPA-related claim should be ignored.

Third, there is also no basis for the Commission to adopt PULP's position that a positive incentive to reduce service terminations is not appropriate unless it is accompanied by a negative incentive. There is no need to require a negative incentive to discourage increases in customer terminations where the record shows that such terminations are already a last resort in the collection process, and that both KEDNY and KEDLI's service termination levels are below the average percentage for New York utilities.<sup>33</sup> Moreover, the Commission has approved positive termination incentives for a

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<sup>30</sup> PULP Statement at 20.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. 127, Testimony of the Shared Services Panel at 36.

<sup>33</sup> Ex. 265, Rebuttal Testimony Of The Shared Services Panel at 15-16.

number of other utilities without requiring a negative incentive.<sup>34</sup> PULP has provided no compelling reason why the Companies should be penalized if terminations for non-payment increase. Nor has PULP provided any basis for the Commission to reject the proposed service termination incentives.

### **PULP’s Rate Design Concerns Provide No Basis To Disturb The JP**

While PULP criticizes the JP because of its failure to incorporate PULP’s rate design proposal for inclining block rates,<sup>35</sup> PULP’s criticisms ignore the fact that its rate design proposals are at odds with Commission policies that favor a transition to cost-based rates.<sup>36</sup> Inclining block rates are inconsistent with cost causation because they force large customers to subsidize low usage customers. Moreover, in proposing inclining block rates, PULP has not demonstrated that they would accurately reflect the economies of scale associated with gas distribution.<sup>37</sup> While PULP contends that its rate

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<sup>34</sup> See Case 14-E-0318 et al., *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corp. for Electric Service*, “Order Approving Rate Plan” at 28 (Issued and Effective June 17, 2015); Case 14-E-0493 Order at 35, Appendix 17; and Case 15-E-0283 Order at 57.

<sup>35</sup> PULP Statement at 21-22.

<sup>36</sup> As the Commission recognized over twenty years ago, it is “important to continue to move rates in the direction of cost, so efficient, economic decisions may be made by customers as the gas industry continues to become more competitive,” Case 95-G-1095 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Gas Service*, “Opinion and Order Conditionally Approving Settlement Agreement With Changes” at 20 (Issued and Effective December 19, 1996); see also Case 03-E-0640, *Proceeding on Motion of the Commission to Investigate Potential Electric Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Technologies and Distributed Generation*, and Case 06-G-0746, *In the Matter of the Investigation of Potential Gas Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Energy Technologies and Distributed Generation*, “Order Requiring Proposals for Revenue Decoupling Mechanisms” at 10 (Issued and Effective April 20, 2007) (“It is still a worthy long-term objective to continue moving towards more cost-based rates, where appropriate, to provide customers with appropriate price signals.”)

<sup>37</sup> See Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, “Order Instituting Proceeding” at 59 (Issued and Effective April 25, 2014) (expressing the concern that inclining block rates “may not accurately reflect the economies of scale of the product being used.”).

design proposals would benefit low income customers, PULP offers no evidence that supports that contention and ignores the fact that the needs of low income customers are addressed through the JP's provisions that considerably expand the Companies' low income programs.<sup>38</sup> PULP's continued support for its ill-conceived rate design proposal provides no basis to modify or reject the JP.

**The Commission Should Resolve Issues Associated With Compliance With Its Low Income Orders In The Manner Provided For In The JP**

The JP provides that the Companies will conform their Residential Reduced Rate Low Income Discount Programs and benefits to the requirements of the Low Income Order issued in Case 14-M-0565<sup>39</sup> and any orders on rehearing as well as the Implementation Plans filed in Case 14-M-0565, as they may be modified by the Commission.<sup>40</sup> CNY requests that the Commission clarify that the full heating discount required under the Low Income Order will be provided to all newly-identified eligible low income heating customers.<sup>41</sup> The Commission should reject this requested clarification and instead resolve issues raised by the Low Income Order in accordance with the process that has been established in Case 14-M-0565.

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<sup>38</sup> See JP Sections IV.9.1 and V.9.1 and 9.2, Ex. 506 at 56-58, 104-106.

<sup>39</sup> 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 and Effective May 20, 2016) ("Low Income Order").

<sup>40</sup> JP Sections IV.9.1.2 and V.9.1.2, Ex. 506 at 58-89 and 106.

<sup>41</sup> See CNY Statement at 9-10.

**URAC's Claim That It Was Placed On The Sidelines Of Negotiations Has No Basis In Reality And Provides No Basis To Modify Or Reject The JP**

While URAC suggests that it was discouraged from participating in negotiations that led to the JP,<sup>42</sup> this claim has no basis in reality.<sup>43</sup> URAC's claim is belied by the fact that numerous parties with limited interests participated in the negotiations leading up to the JP and these parties' issues are addressed therein. URAC's failure to participate is a self-inflicted wound, and the Commission should reject URAC's effort to unilaterally amend a JP that has been carefully negotiated by the parties that chose to participate in the negotiations. URAC should not be permitted to engage in an end run around the settlement process.

In addition, notwithstanding URAC's unilateral refusal to participate in the settlement process, many of its issues are nonetheless addressed in the JP. For example, URAC's customer service concerns are broadly addressed through the JP's service quality programs, which include metrics that measure both the PSC complaint rate and objective customer service satisfaction standards.<sup>44</sup> Similarly, the JP provides that the Companies will provide information on their website concerning the calculation of their Weather Normalization Adjustments.<sup>45</sup> The JP also resolves issues that arose in Case 14-G-0091 with respect to refunds to Service Classification No. 2 customers.<sup>46</sup> While the resolution of these issues may not be consistent with URAC's litigation positions or its view of the issues, settlements necessarily involve compromise on the part of all parties involved. Moreover, it is unreasonable for URAC to expect that its positions would be

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<sup>42</sup> URAC Statement at 1, 2, 3, 7 and 8.

<sup>43</sup> The Companies note that this view is shared by CNY. *See* CNY's Statement at 2, footnote 5.

<sup>44</sup> *See* JP Sections IV.7 and V.7, Ex. 506 at 42-48 and 91-96.

<sup>45</sup> *See* JP Sections IV.3.8 and V.3.8, Ex. 506 at 24 and 67.

<sup>46</sup> *See* JP Section IV.3.9.

reflected in a settlement that results from negotiations that URAC chose not to participate in. The Commission should reject URAC's efforts to rewrite a settlement it chose not to negotiate.

**Potomac Has Provided No Reason For The Commission To Reject Section VI.9.1 Of The JP**

While Potomac<sup>47</sup> opposes adoption of VI.9.1 of the JP, it fails to recognize that Section VI.9.1 is one of a number of provisions of the JP that apply to the Companies' provision of balancing services to power generation customers. Collectively, these provisions appropriately balance the interests of power generation customers in obtaining access to balancing flexibility and the interests of the Companies, their firm customers and other parties<sup>48</sup> in the continued provision of safe and reliable firm service by discouraging generation customers from incurring large imbalances that could adversely impact system reliability and stress the Companies' gas supply portfolio. In this regard, Section VI.9.1 of the JP provides that the Companies will modify the balancing provisions of their power generation transportation service classification to make clear that (i) surcharges to the daily price applied to a sale of gas to a customer as a result of an underdelivery of gas, and (ii) discounts applied to the price credited to a customer for a sale of gas to the Companies as a result of an overdelivery of gas will be considered penalties (as such term is used in the New York Independent System Operator tariff with respect to unauthorized use of gas). At the same time, Section VI.9.2 of the JP provides for modification of the Companies' balancing provisions such that imbalances equal to or less than 2 percent – which are not subject to the surcharges or discounts discussed in

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<sup>47</sup> The Companies do not object to Potomac's request for party status. However, Potomac's efforts to modify a provision of a JP that it played no part in negotiating should be rejected.

<sup>48</sup> The Staff Gas Policy and Supply Panel proposed to characterize balancing-related discounts and surcharges as penalties. Ex. 353, Testimony of the Staff Gas Policy Panel at 48-49.

Section VI.9.1 – will no longer be subject to a daily cashout, but will instead be subject to a monthly cashout that is more favorable to power generation customers. In addition, under Section VI.9.3 of the JP, a collaborative process is established to consider, *inter alia*, further modifications to the Companies’ balancing provisions. From the Companies’ perspective, Sections VI.9.1, 9.2 and 9.3 appropriately balance the concerns of the parties that participated in the negotiations concerning the JP with respect to the balancing provision that apply to power generation customers. This balance should not be disturbed at the request of a party who did not participate in these negotiations.

In addition, while Potomac claims that Section VI.9.1 of the JP will increase both the imbalances created by power generation customers and costs to electric customers in New York, there is no evidence that supports these claims.<sup>49</sup> Specifically, there is no evidence that electric generation customers cannot maintain daily imbalances within the 2 percent imbalance tolerances that will be permitted under the Companies’ tariffs, and thereby completely avoid the surcharges and discounts that apply to excessive imbalances. Thus, there is no reason to conclude that adoption of Section VI.9.1 will cause either electric customers’ costs or power generation customers’ imbalances to increase. The absence of such evidence provides a further basis to reject Potomac’s objection to Section VI.9.1 of the JP.

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<sup>49</sup> Potomac Statement at 2.

## Conclusion

For all the foregoing reasons, as well as those set forth in the Companies' statement in support, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid respectfully request that the Commission adopt the terms of the JP in full and without modification.

Respectfully submitted,

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