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

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The Brooklyn Union Gas Company d/b/a National Grid NY
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In Support Of Joint Proposal

Dated: September 16, 2016

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Statement Of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid <u>In Support Of Joint Proposal</u>

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 Statement in Support of the

Joint Proposal ("JP")[1] by and among KEDNY, KEDLI, New York State Department of Public Service Staff ("Staff"), the City of New York ("CNY"), Environmental Defense Fund ("EDF"), BBPC, LLC d/b/a Great Eastern Energy, Direct Energy Services, LLC, Consumer Power Advocates, Estates NY Real Estate Services LLC ("Estates"), and Spring Creek Towers, dated September 7, 2016. The JP is the product of negotiations among the Companies, Staff and other parties and either resolves, or provides a framework for resolving, all issues raised in these proceedings. The JP provides significant benefits to the Companies and their customers by providing, *inter alia*, rate relief necessary to support significant infrastructure investments to modernize the Companies' gas distribution networks and enhance the safety and reliability of gas service, larger discounts and other benefits for low income customers, demanding gas safety and customer service performance targets, and programs to promote economic development through the expansion of gas service in New York. For the reasons more fully discussed below, the Companies request that the New York State Public Service Commission ("Commission") adopt the JP without modification.

I. <u>Summary Of The JP</u>

The JP sets forth the comprehensive terms and conditions of a three-year rate plan for KEDNY and KEDLI, beginning January 1, 2017 and ending December 31, 2019. For KEDNY, the JP provides for a revenue requirement increase of $272.090 million in Rate Year One,[2] $41.022 million in Rate Year Two,[3] and $48.915 million in Rate Year Three.[4] For KEDLI, the JP provides for a revenue requirement increase of $112.002 million in

[1] Ex. 506.
[2] Rate Year One is January 1, 2017 through December 31, 2017.
[3] Rate Year Two is January 1, 2018 through December 31, 2018.
[4] Rate Year Three is January 1, 2019 through December 31, 2019.

Rate Year One, $19.594 million in Rate Year Two, and $26.973 million in Rate Year Three. The base rate increases would be the first for KEDNY and KEDLI customers in almost a decade.[5]

To provide rate stability and mitigate bill impacts to customers, the JP proposes to levelize the rate increases on an equal percentage basis in each Rate Year.[6] If Commission approval of the JP occurs after January 1, 2017,[7] the JP contains make whole provisions for each Company and describes the manner in which they will be calculated.[8]

KEDNY and KEDLI's revenue requirements are based on a return on equity ("ROE") of 9.0 percent and a capital structure that includes a 48 percent common equity component.[9] The rate bases used to establish rates during the term of the rate plans are as follows:

	KEDNY (Billions $)	**KEDLI (Billions $)**
Rate Year One	**$2.952**	**$2.303**
Rate Year Two	**$3.307**	**$2.490**
Rate Year Three	**$3.731**	**$2.694**

[5] KEDNY and KEDLI last filed for base rate increases in 2006. Under the rate plans approved by the Commission in Cases 06-M-0878, 06-G-1185, and 06-G-1186, KEDNY received no base rate increase and KEDLI received a base rate increase of $60 million in 2008 only, the first year of the rate plan, followed by a base rate freeze. For a decade prior to the 2006 merger case, both KEDNY and KEDLI customers had base rate decreases only. Thus, except for the one-time increase in KEDLI's base rates in 2008, KEDNY and KEDLI customers have had two decades of decreasing or stable base delivery rates. *See* Ex. 1, Testimony of Kenneth D. Daly at 8-9.

[6] JP Sections IV.2.2 and V.2.2.

[7] To facilitate settlement discussions and allow time to finalize the JP, on June 17 and July 21, 2016, KEDNY and KEDLI filed proposals to extend the suspension period through February 28, 2017.

[8] JP Sections IV.2.3 and V.2.3.

[9] JP Sections IV.2.1 and V.2.1. KEDNY's weighted pre-tax cost of capital set forth in the JP is 9.08 percent for all three Rate Years. KEDLI's weighted pre-tax cost of capital is 9.35 percent in Rate Years One and Two and 9.33 percent in Rate Year Three.

The JP also provides for updated gas transmission, distribution, and general plant depreciation rates,[10] which, as discussed below, reflect significant compromise on the part of KEDNY and KEDLI to arrive at a negotiated settlement.

With respect to revenue allocation and rate design, the JP provides, *inter alia*, for:

(i) An allocation of the revenue increase to all firm service classifications except distributed generation and seasonal (KEDNY only) customers on a pro rata basis proportionate to delivery revenues;[11]

(ii) Within each firm service classification, an allocation of an equal percentage revenue increase to each rate block;[12]

(iii) Temperature-Controlled ("TC") and Interruptible Transportation ("IT") rates that include volumetric delivery rates set at the otherwise applicable firm rate class tailblock rate;[13] and

(iv) Revised Merchant Function Charges ("MFCs").[14]

The JP provides for earnings sharing for KEDNY and KEDLI to the extent that earnings for either Company exceed 9.5 percent in any Rate Year.[15] Earnings will be calculated using a capital structure that includes an equity component equal to 48 percent[16] and by excluding the effects of discrete incentives and negative and positive revenue adjustments.[17]

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[10] The revised depreciation rates are set forth in JP Appendix 1, Schedule 2 and Appendix 2, Schedule 2 for KEDNY and KEDLI, respectively.
[11] JP Sections IV.3.2 and V.3.2.
[12] JP Sections IV.3.3 and V.3.3.
[13] JP Sections IV.3.4 and V.3.4.
[14] JP Sections IV.3.5 and V.3.5.
[15] JP Sections IV.4.3 and V.4.3.
[16] JP Sections IV.4.1 and V.4.1.
[17] JP Sections IV.4.2 and V.4.2.

The capital investment levels underlying the proposed revenue requirements during the term of the rate plans are as follows:[18]

	KEDNY (Millions $)	KEDLI (Millions $)
Rate Year One	**$602.892**	**$322.438**
Rate Year Two	**$653.618**	**$377.446**
Rate Year Three	**$649.660**	**$395.958**

The JP proposes rates that provide support for replacing at least 585 miles of leak prone pipe ("LPP") by KEDNY and KEDLI over the three-year term of the rate plans, as well as:

(i) programs to deploy the Cast Iron Joint Sealing Robot to seal joints on cast iron mains (KEDNY only) and to utilize cured-in-place pipe lining to recondition large diameter cast iron and steel mains;[19]

(ii) a LPP productivity incentive that will encourage KEDNY and KEDLI to reduce the unit of cost of LPP replacements;[20]

(iii) a provision for a gas safety and reliability surcharge to recover the costs to replace incremental LPP above stated threshold levels, the costs to repair additional Type 3 leaks above target levels, and any positive revenue adjustments earned through the LPP productivity, incremental LPP removal, and leak repair incentives.[21]

[18] JP Sections IV.5.1 and V.5.1.
[19] JP Sections IV.5.3 and V.5.3.
[20] JP Sections IV.5.4 and V.5.4.
[21] JP Sections IV.5.5 and V.5.5.

The JP further provides that:

(i) KEDNY will continue to develop the Newtown Creek biogas purification project;[22]

(ii) KEDNY and KEDLI will reduce methane emissions by eliminating at least 900 total leaks from their leak backlogs each year, prioritizing LPP segments for removal based on methane emission flow data, implementing a new incentive to prioritize leak repairs based on methane emissions, and collaborating with EDF to develop additional methane reduction pilot programs;[23]

(iii) KEDNY and KEDLI will enhance the resiliency of their distribution systems against future weather events by deploying remote valves with flood sensors,[24] prioritizing the removal of LPP in designated flood zones, and facilitating a collaborative to consider potential storm hardening and climate resiliency improvements;[25]

(iv) beginning in Rate Year Two, KEDNY and KEDLI will, subject to certain identified exceptions, relocate gas meters located inside premises to outside when replacing service lines;[26]

(v) KEDNY and KEDLI will continue to provide and enhance their first responder training programs;[27] and

[22] JP Section IV.5.6. The costs for this facility are not included in the revenue requirement because they are not fully known at this time. Once the project is in service, the revenue requirement will be subject to a $1.6 million annual exclusion. CNY agrees to support KEDNY's reasonable efforts to mitigate the effects of this revenue requirement exclusion.
[23] JP Sections IV.5.2, 5.8 and 8.2.2 and V.5.2, 5.7 and 8.2.2.
[24] *See* Ex. 48, Gas Infrastructure and Operations Panel ("GIOP") Testimony at 34 (KEDNY) and Ex. 55, GIOP Testimony at 33 (KEDLI).
[25] JP Sections IV.5.2, V.5.2 and VI.23.
[26] JP Sections IV.5.10 and V.5.8.
[27] JP Sections IV.5.11 and V.5.9.

(vi) KEDNY will implement a residential methane detector pilot program targeting the deployment of approximately 10,000 detectors; a pilot program to convert residential, non-heat customers with room set meters to a building meter; and a damage prevention ticket management system that will utilize an algorithm to prioritize one call tickets based on the probability of damage to KEDNY's underground facilities.[28]

With respect to deferral rights, the JP provides for the continuation of existing deferral rights, in either their current or modified form, for expenses such as pension and other post-employment benefits expense, low income discount program expenses, exogenous costs, site investigation and remediation ("SIR") expenses,[29] property and special franchise taxes, negative or positive revenue adjustments, TC and IT services revenues, electric generation revenues, economic development grant costs, revenue decoupling mechanism revenues, and various gas cost-related reconciliations that do not affect base rates.[30] KEDNY and KEDLI will also implement new utility plant and depreciation expense reconciliation mechanisms as well as new deferrals of: city/state construction expenditures (net of reimbursements); costs associated with automatic uploads to the EPA portfolio manager website; room set meter pilot program costs (KEDNY only); variable pay costs; customer conversion rebate program costs; third party payment center processing fees (KEDNY only); variable interest rate debt costs and costs associated with the difference between interest rates on long term debt issuances of

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[28] JP Sections IV.5.11.2, 11.3 and 11.4.

[29] As discussed more fully infra, the provisions of the JP addressing KEDNY's deferral and recovery of SIR costs provide that, beginning in Rate Year Two, to the extent the difference between actual SIR expense (inclusive of costs associated with the Gowanus Canal and Newtown Creek Superfund sites) and the Forecast Rate Allowance (which does not include costs associated with the Gowanus Canal and Newtown Creek Superfund sites) exceeds $25 million on a cumulative basis, KEDNY will utilize a SIR surcharge that will be calculated annually and will be no greater than two percent of KEDNY's prior year's aggregate revenues.

[30] JP Sections IV.6.1.1-11 and V.6.1-11.

ten and thirty years (KEDNY only); and a downward only deferral of the costs associated with newly hired employees reflected in the Companies' revenue requirements.[31] Deferred balances, net of deferred taxes, will generally accrue carrying costs using the pre-tax weighted average cost of capital for the particular Rate Year.[32]

The JP provides for customer service quality programs that provide for potential negative revenue adjustments of $11.7 million per year for KEDNY and $9.9 million per year for KEDLI.[33] The service quality program measures the Companies' performance with respect to PSC complaints, customer satisfaction, adjusted customer bills and telephone answer response within 30 seconds.[34] Through positive incentives, the JP also encourages KEDNY and KEDLI to identify and implement new measures to reduce residential service terminations for non-payment while decreasing or maintaining the level of bad debt from residential accounts.[35]

The JP provides funding for a number of new and expanded gas safety programs, including enhanced gas safety public outreach and education, increased pipeline safety inspections, additional compliance and quality assurance personnel, and an independent gas safety compliance assessment.[36] The JP also proposes gas safety performance metrics under which KEDNY and KEDLI will each be at risk for up to 150 pre-tax basis points of negative revenue adjustments.[37] The safety performance metrics establish aggressive targets for LPP removal, leak backlog repair, damage prevention, emergency

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[31] JP Sections IV.6.2.1 -10 and V.6.2.1-6.
[32] JP Sections IV.6.1 and V.6.1.
[33] JP Sections IV.7 and V.7.
[34] *Id*.
[35] JP Sections IV.7.8 and V.7.8.
[36] *See* Ex. 96, Testimony of the Companies' Gas Safety Panel at pp. 11-35.
[37] JP Sections IV.8 and V.8.

response and gas safety regulations compliance.[38] The JP also establishes positive incentives for reducing the cost to remove LPP and for performing additional LPP removal and leak repairs beyond specified targets.[39]

The JP provides for enhanced low income discount programs for both Companies.[40] With respect to eligibility, the JP provides that KEDNY and KEDLI will undertake a file match process with CNY's Human Resources Administration ("HRA") to identify and enroll additional low income customers.[41] The JP reflects the following low income rate allowances.[42]

	KEDNY (Millions $)	KEDLI (Million $)
Rate Year One	**$25.0**	**$5.4**
Rate Year Two	**$31.9**	**$6.7**
Rate Year Three	**$31.9**	**$6.7**

The JP also provides for KEDLI to implement an energy efficiency program for low income customers to replace the EmPower New York Program.[43]

The JP provides funding in rates for KEDNY and KEDLI's economic development grant programs, customer conversion rebate programs, neighborhood expansion program (KEDLI only), natural gas vehicle conversions, and a geothermal

[38] JP Sections IV.8.1-5 and V8.1-5.
[39] JP Sections IV.8.1.2 and 2.2 and V.8.1.2 and 2.2.
[40] JP Sections IV.9.1 and V.9.1.
[41] JP Sections IV.9.1.1 and V.9.1.1. KEDLI's obligation to undertake the file match is subject to the Commission authorizing KEDLI to defer the costs of implementation. The treatment of file matching in the JP is different for KEDNY and KEDLI because file matching for KEDLI is not addressed in the Commission's *Order Adopting Low Income Program Modifications and Directing Utility Filings* (Issued and Effective May 20, 2016) in Case 14-M-0565.
[42] JP Sections IV.9.1.3 and V.9.1.3.
[43] JP Section V.9.2.

pilot program (KEDLI only).[44] The JP also provides incentives for KEDNY and KEDLI to promote customer growth.[45]

The JP also contains a number of provisions that relate to and/or clarify aspects of the Companies' relationship with CNY,[46] Energy Services Companies ("ESCO"),[47] power generators,[48] non-firm and TC customers[49] and the Estates.[50] The JP also provides for further collaborative processes that will address ESCO, power generation, and non-firm/TC issues.[51] The JP further contains provisions that address reporting requirements,[52] the Companies' ability to modify their rates during and after the term of the rate plans,[53] and certain requirements that pertain to future rate cases.[54]

Finally, the JP resolves a number of other proceedings including three pending property tax refund petition proceedings in Cases 11-G-0601, 13-G-0498 and 14-G-0503,[55] a proceeding – Case 14-G-0091 – in which the Commission determined that the Companies had improperly implemented provisions in their tariffs for designating Service Class ("SC") 2 non-residential gas customers as heating or non-heating;[56] and a proceeding – Case 12-G-0544 – in which KEDNY proposed to modify its Gas Safety Violations Metric.[57]

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[44] JP Sections IV.9.2, 9.3, 9.5 and V.9.3, 9.4, 9.5, 9.7 and 9.9.
[45] JP Sections IV.9.4 and V.9.6.
[46] JP Sections VI.3.4 and 5.
[47] JP Section VI.8.
[48] JP Section VI.9.
[49] JP Section VI.10.
[50] JP Section VI.18.
[51] JP Sections VI.8.3, 9.3, 10.7, 18 and 23.
[52] *See e.g.* JP Sections VI.11, 14, and 15.
[53] JP Section VI.17
[54] JP Section VI.19.
[55] JP Section V.6.1.5.
[56] JP Section IV.3.9.
[57] JP Section IV.8.6.

II. The JP Is Consistent With The Commission's Guidelines Governing Settlements, Fully Supported By The Testimony Submitted In These Proceedings, And Otherwise In The Public Interest

A. The Standard Of Review

The JP is the result of complex and difficult negotiations among normally adversarial parties. The negotiations fully complied with the Commission's settlement rules[58] and provided all parties the opportunity to participate. The Commission's "Procedural Guidelines for Settlements"[59] set forth the following criteria for determining whether a joint proposal is in the public interest:

> (1) A desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
>
> (2) In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.

As discussed herein, based upon the application of these guidelines, the JP meets the public interest standard. The JP is the result of complex and far-ranging negotiations among parties with diverse interests, including the Companies, Staff, CNY and other interested parties. The Commission should give considerable weight to the fact that the JP is supported by parties that are both normally adverse to one another and were adverse

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[58] 16 NYCRR §3.9(a).

[59] *See* Cases 90-M-0255 and 92-M-0138 - *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C 11175; In the Matter of the Rules and Regulations of the Public Service Commission Contained in 16 NYCRR, Chapter 1, Rules of Procedure – Proposed Amendments to Subchapter A, General Part 2, Hearing and Rehearings by the Addition of a New Section 2.6, Settlement Procedures, filed in C 11175,* Opinion No. 92-2 , at Appendix B (Issued and Effective March 24, 1992); *and see, e.g.*, Case 15-G-0382, *et al.*, *Petition 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 5, n.16 (Issued and Effective July 15, 2016) ("Case 15-G-0382 Order").

in these proceedings. In addition, as demonstrated below, the compromises memorialized in the JP produce results that are both objectively reasonable and within the range of results that would likely have arisen from litigation of these proceedings.

B. The JP Proposes Results That Are Within The Range Of Results That Likely Would Have Resulted From A Commission Decision In Litigated Proceedings

The rates set forth in the JP are the product of significant compromises among adversarial parties. The Companies' filings in these proceedings, after updates, changes in MFC revenues, the addition of low income discount program costs in base rates and a shift of SIR deferral amortizations from surcharges to base rates, proposed increases in Rate Year One revenues of $321 million for KEDNY and $191 million for KEDLI.[60] Staff, the only other party to propose in testimony a comprehensive cost of service, recommended annual base rate increases of $263 million for KEDNY and $116 million for KEDLI.[61] The Rate Year One revenue requirement increases of $272 million for KEDNY and $112 million for KEDLI provided for under the JP reflect substantial movement towards Staff's position as well as the positions of other parties presenting evidence.

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[60] *See* Ex. 299, Staff Policy Panel Testimony at 5-8.
[61] *Id*.

Specifically, the Rate Year One revenue requirements reflect recognition of a number of adjustments proposed by Staff, CNY and other parties and opposed by the Companies, including:

(1) Adjustments to depreciation rates;[62]

(2) Adjustments to a variety of operations and maintenance expenses;[63]

(3) Adjustments to rate base;[64] and

(4) Adjustments to the cost of debt reflected in KEDNY's capital structure.[65]

The JP reflects significant revenue requirement related compromises that are well within the range of results that would likely have resulted from litigation. For example, the stipulated ROE of 9.0 percent is far closer to the 8.6 percent ROE recommended by Staff for a traditional one-year rate case than the 9.94 percent proposed by the Companies.[66] Moreover, the JP's 9.0 percent ROE is consistent with the ROEs recently adopted by the Commission under multi-year rate plans for similar gas and/or electric utilities.[67] While the Companies have concerns that the Commission's methodology for establishing ROE results in returns that are among the lowest in the country for gas and

[62] JP Appendix 1, Schedule 1, Page 9, and Appendix 2, Schedule 1, Page 9.
[63] JP Appendix 1, Schedule 1, Page 2, and Appendix 2, Schedule 1, Page 2.
[64] JP Appendix 1, Schedule 1, Page 4, and Appendix 2, Schedule 1, Page 4.
[65] JP Section IV.6.2.9. The cost of debt used to determine the revenue requirements for Rate Year One assumes that forecast issuances of long term debt are split equally between 10 and 30 year bonds.
[66] *See* Ex. 357, Prepared Testimony of Abdul Qadir at 5.
[67] *See* Case 15-G-0382 Order at 23-25 (adopting 9.0 percent ROE in three-year rate plan); *and see* Case 15-E-0283, *et al.*, *Proceeding on Motion of the Commission as to Rates, Charges, Rules and Regulations of New York State Electric & Gas Corp. for Electric 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); *and see* 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).

electric utilities, the Companies are willing to accept this result in these proceedings as part of the overall settlement.

The revenue requirement increases in Rate Years Two and Three are also supported by the pre-filed testimony and applicable Commission policy and precedent. The Companies' filings in these proceedings included data not only for a traditional "one year" rate proceeding but also provided detailed financial information for "Data Years" ending December 1, 2018 and December 31, 2019 – Rate Years Two and Three under the JP.[68] The revenue requirements included in the JP for Rate Years Two and Three were generally determined (i) by carrying forward adjustments reflected in the JP for Rate Year One to Rate Years Two and Three, (ii) as a result of Staff's and other parties' thorough review of the Companies' proposed capital expenditures, and/or (iii) through the application of general inflation factors that were determined in accordance with well-established Commission policies.[69] In sum, the Rate Year Two and Rate Year Three revenue requirements are the product of reasonable compromises among normally adverse parties that comport with applicable Commission policy.

In addition, the benefits to customers of a three year rate plan are augmented by the earnings sharing provisions that provide that customers will share in any annual

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[68] *See* Ex. 143, Testimony of the Revenue Requirements Panel at 8-9.

[69] *See* JP, Appendix 1, Schedule 1, Pages 13-32, Appendix 2, Schedule 1, Pages 13-32. The Commission has long approved multi-year rate plans that employ general inflation factors to escalate the majority of operation and maintenance expenses to the additional rate years covered under the plans. *See* e.g. Case 90-G-0981, *The Brooklyn Union Gas Company – Gas Rates*, "Opinion and Order Determining Revenue Requirement And Rate Design" (October 9, 1991); Cases 91-W-0724, *Saratoga Water Services, Inc. – Water Rates*, "Opinion and Order Adopting Stipulation and Determining Revenue Requirement" (May 12, 1992); *see also* Case 15-G-0382 Order at 16, 20; *see also* Case 13-W-0539, *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New Rochelle Inc. for Water Service*, "Order Approving Merger and Adopting Multi-Year Rate Plan" at 35-36 (Issued and Effective November 14, 2014).

earnings that exceed 9.5 percent during the term of the rate plan. In recent cases, earnings sharing mechanisms associated with multi-year rate plans have provided for a band of 50 or more basis points above the ROE underlying the stipulated rates for gas service before earnings sharing begins.[70] The earnings sharing provisions set forth in the JP provide a level of potential benefit to customers that is comparable to or greater than the earnings sharing provisions approved in other multi-year rate plans for similarly situated utilities.

With respect to revenue allocation and rate design, the applicable provisions of the JP reflect reasonable compromises of the competing positions advanced by the Company, Staff and other Parties concerning both revenue allocation and rate design issues. From the Companies' perspective, the various revenue allocation and rate design changes move the Companies closer to achieving cost-based rates that are consistent with the Commission's policy goals.[71]

Finally, the provisions of the JP that provide relief for lower income customers are also the product of significant compromises among the Companies, Staff and other parties.[72] These provisions are consistent with the Commission's longstanding

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[70] *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); *and see* 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); and see 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).

[71] Case 15-G-0382 Order at 30; Case 15-E-0283 Order at 26-27, 44-45; Case 14-E-0493 Order at 40-41; Case 10-E-0362, *Orange and Rockland Utilities, Inc. – Electric Service*, "Order Establishing Rates for Electric Service" at 88-91 (Issued and Effective June 17, 2011). *See* also Case 95-G-1095 *et al*. – *Niagara Mohawk Power Corporation – Gas Rates*, "Opinion and Order Conditionally Approving Settlement Agreement With Changes" at 20 (Issued and Effective December 17, 1996).

[72] *See e.g.* Ex. 265, Rebuttal Testimony of Shared Services Panel at 23-29.

commitment to providing assistance to lower income customers without imposing undue burdens on other customer classes.[73]

C. The Capital Investment Levels Of The JP Will Enhance The Safety And Reliability Of The Companies' Gas Networks

As discussed *supra*, the capital investment levels underlying the JP are approximately $1.9 billion for KEDNY and $1.1 billion for KEDLI over the three-year term of the Companies' rate plans. These capital investments will enable the Companies to significantly enhance the safety, reliability and resiliency of their distribution systems and permit continued cost effective customer growth. While the costs of these investments are one of the largest drivers of the rate increases proposed in the JP, these costs are being incurred in a manner that is fully consistent with the Commission's policy of encouraging the modernization of aging infrastructure.[74] Moreover, these investments

[73] *See* 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); *and see e.g.*, Case 06-G-1185 *et al*, *The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island*, "Order Approving Disbursement of Funds From Low Income Programs Balancing Accounts" at 9 (Issued and Effective October 15, 2010) wherein the Commission stated:

> We have approved low income programs at every major electric and gas utility in this state. Such programs primarily serve to ensure that energy services remain available and accessible for households with low incomes, but can also benefit utilities and the general body of rate payers. By helping customers maintain service, these programs reduce the fixed costs of delivery service that would otherwise need to be paid by the general body of ratepayers. Low-income programs also help reduce utility costs associated with credit and collection, arrears and bad debt, deposit maintenance, regulatory expenses, repeated payment plan negotiations, and credit agency fees.

[74] *See* Case 12-G-0544, *In the Matter of the Commission's Examination of The Brooklyn Union Gas Co. d/b/a National Grid NY's Earnings Computation Provisions and Other Continuing Elements of the Applicable Rate Plan*, "Order Adopting Terms of a Joint Proposal" at 17-18 (Issued and Effective June 13, 2013); *and see* Case 14-G-0214, *Petition of KeySpan Gas East Corp. d/b/a National Grid for Authority to Defer Costs Associated with Incremental Capital Expenditures and Other Related Relief*, "Order Directing Investments and Allowing, in Part, Deferral Authority for Costs Associated with Incremental Capital Expenditures and Establishing a Surcharge" at 20 (Issued and Effective December 15, 2014).

are being undertaken during a period in which capital costs and gas costs are relatively low compared to historical levels, and are projected to stay at those levels during the term of the rate plans. The capital spending commitments reflected in the JP are clearly in the public interest.

KEDNY will replace at least 50 miles of LPP in Rate Year 1, an increase of more than 17 percent over its 2016 target, and KEDLI will replace at least 115 miles per year, a 21 percent increase over its 2016 target. After Rate Year 1, KEDNY and KEDLI will accelerate their LPP replacements by five and twenty miles, respectively, each year of the rate plans in support of the Commission's goal of replacing all LPP in New York within the next 20 years.[75] The Companies are also expanding their pipeline integrity management programs, installing new transmission mains to meet growing demand and enhance reliability, upgrading their liquefied natural gas facilities to ensure adequate on-system supply, and deploying automated meter reading ("AMR") devices in KEDNY's service territory.[76]

The JP's provisions governing capital spending are not the only provisions that will ensure that the Companies will continue to provide safe, reliable and cost effective gas distribution service. The JP also contains provisions designed to (i) encourage the Companies to effectuate the replacement of aging infrastructure as efficiently as possible and replace even more LPP than what is contemplated in the Companies' capital plans,[77] (ii) incent the Companies to manage their system in a safe and reliable manner by

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[75] *See* Case 15-G-0151, *Proceeding on Motion of the Commission to Consider Implementation of a Recovery Mechanism to Support the Accelerated Replacement of Infrastructure on the Natural Gas System*, "Order Instituting Proceeding for a Recovery Mechanism to Accelerate The Replacement of Leak Prone Pipe" at 6 (Issued and Effective April 17, 2015).
[76] *See* Ex. 48, GIOP Testimony at pp. 35-40 and 78-86 (KEDNY) and Ex. 55, GIOP Testimony at pp. 35-40 and 77-82 (KEDLI).
[77] JP Sections IV.5.4, 5.5 and 8.1.2 and V.5.4, 5.5 and 8.1.2.

imposing negative revenue adjustments for a failure to achieve aggressive targets for LPP removal, leak repairs, damage prevention, emergency response and compliance with gas safety regulations,[78] and (iii) ensure that customers will not be required to compensate the Companies for capital costs and depreciation expense that are not incurred because capital projects are not completed and placed in service in a manner consistent with the Companies' capital forecasts.[79] The comprehensive approach to maintaining and enhancing the safety and reliability of the Companies' distribution systems embodied in the JP is clearly consistent with the public interest and supports adoption of the JP.

D. The Provisions Of The JP Governing The Deferral And Recovery Of SIR Expenses Are Fully Consistent With Commission Policy And Precedent And Will Ensure That Current And Future Customers Are Treated Fairly

As discussed *supra*, subject to a single exception, the JP provides that the Companies will be permitted to defer for future refund or recovery the difference between the SIR expenses recovered in rates and the Companies' actual SIR costs.[80] This result is consistent with Commission policy that was most recently confirmed in Case 11-M-0034,[81] a proceeding in which all affected stakeholders were given the opportunity to express their views.

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[78] JP Sections IV.8.1.1, 8.2, 8.3, 8.4, 8.5 and V.8.1.1, 8.2, 8.3, 8.4 and 8.5.

[79] JP Sections IV.6.2.1 and V.6.2.1.

[80] The JP provides that KEDNY will continue to absorb ten percent of the SIR investigation costs associated with its Citizen manufactured gas plant site in accordance with the Commission's 1996 order in Case 95-G-0761.

[81] 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 and Effective November 23, 2012); *see also*, 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 Increase" (Issued and Effective October 19, 2015)(Case 15-G-0323 Order").

In addition, the JP notes that SIR costs reflected in KEDNY's rates do not reflect any forecast costs associated with the Gowanus Canal and Newtown Creek sites.[82] This is consistent with the testimony in this case that indicates that the forecast of SIR costs for these sites is uncertain.[83] To address this uncertainty, the JP provides that beginning in Rate Year Two, to the extent the difference between actual SIR expense and the amount reflected in rates exceeds $25 million on a cumulative basis, KEDNY will utilize its SIR Recovery Surcharge to recover SIR costs in an amount no greater than two percent of its prior year aggregate revenues.[84] The use of a surcharge to recover SIR costs that are difficult to forecast is consistent with Commission precedent[85] and otherwise in the public interest. In this case, the use of the surcharge – if required – will ensure that (i) future customers will not be required to bear a disproportionate portion of costs that may be incurred for SIR activities at Gowanus Canal and Newtown Creek, and (ii) current customers' exposure to additional SIR costs will be capped at a reasonable level. The SIR-related provisions of the JP provide for a reasonable balancing of the interests of current and future customers and should be approved by the Commission.

[82] JP Section IV.6.1.4(a).
[83] Ex. 62, Testimony of Charles F. Willard at 21-23.
[84] JP Section IV.6.1.4(b).
[85] *See e.g.*, Case 15-G-0323 Order; *and see* Case 06-G-1185 *et al.*, *Brooklyn Union Gas Company - Gas Service*, "Order Authorizing Recovery of Deferred Balances" (Issued and Effective November 28, 2012).

E. The Provisions Of The JP That Provide For An Increase In The Low Income Program Discounts And Enhancements To the Companies' Low Income Programs Provide Additional Support For The Commission To Find That The JP Is In the Public Interest

KEDNY and KEDLI have long been committed to low income programs and the JP reflects the continuation of the Companies' commitment to work proactively to protect their most vulnerable customers. In this regard, the JP provides for substantial increases in benefit levels and program costs for the Companies' low income programs.[86] Under the JP, KEDNY's low income program costs would increase by more than 140 percent in Rate Year One (from $10.4 million to $25 million) and more than 200 percent in Rate Years Two and Three (from $10.4 million to $31.9 million). The JP also reflects the Companies' expanded commitment to identify additional eligible customers for its low income programs by undertaking a file match with NYC's HRA. Finally, the JP includes a commitment by KEDLI to implement an energy efficiency program for low income customers to replace the EmPower New York Program. The Companies submit that the considerable expansion of the low income benefits provided for under the JP will ameliorate the impact of the proposed revenue requirement increases and provides significant benefits to low income customers that would not be obtained as expeditiously if these proceedings were litigated. These substantial benefits provide further support for adoption of the JP without modification.

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[86] JP Sections IV.9.2 and 9.1.3 and V.9.1.2 and 9.1.3. *Cf.* 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*, "Order Adopting Terms Of A Joint Proposal" at 8-9 (Issued and Effective June 13, 2013) (KEDNY low-income benefit levels); *and cf.* Case 06-G-1185 *et al., Brooklyn Union Gas Company - Gas Service*, "Order Adopting Gas Rate Plans For KeySpan Energy Delivery New York And KeySpan Energy Delivery Long Island" at 21 (Issued and Effective December 21, 2007) (KEDLI low-income benefit levels). The level of low income spending provided for the Companies' current rate plans is $10.4 million for KEDNY and $4.8 million for KEDLI.

F. The JP Includes Various Programs Designed To Enhance Customer Service

The JP reflects the Signatory Parties' agreement to a number of proposals and programs that were included in the Companies' initial filings in these proceedings. These programs include economic development grant programs,[87] customer rebate programs[88] for KEDLI, a natural gas vehicle conversion program for KEDNY,[89] and proposals for three Reforming the Energy Vision demonstration projects.[90] In addition, the JP reflects the Companies' agreement to implement programs and proposals proposed by Staff and other parties. These proposals/programs include a program to relocate gas meters located inside premises to outside the premises,[91] a geothermal pilot program for KEDLI,[92] a pilot program for KEDNY to convert residential, non-heat customers with room set meters to a building meter,[93] a customer conversion rebate program for KEDNY,[94] an automated process whereby energy consumption data for buildings located in CNY will be automatically uploaded to the EPA's Portfolio Manager website,[95] a program to convert certain CNY accounts to AMI-adaptable AMR meters,[96] the development of a standard interconnection agreement to be used by owner/operators/developers of renewable resources to set forth the terms on which gas may be delivered to the Companies' systems,[97] and process enhancements for dealing with inactive accounts.[98]

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[87] JP Sections IV.9.3 and V.9.3.
[88] JP Section V.9.4.
[89] JP Section IV.9.5.
[90] JP Section VI.13.
[91] JP Sections IV.5.10 and V.5.8.
[92] JP Section V.9.9.
[93] JP Section IV.5.11.3.
[94] JP Section IV.9.3.
[95] JP Section VI.3.
[96] JP Section VI.4.
[97] JP Section VI.12.

Absent the JP, it is uncertain whether and to what extent any of these programs/proposals would have been implemented by the Companies. The inclusion of these programs and proposals in the JP will benefit customers and provides additional support for adoption of the JP by the Commission.

The JP also addresses concerns raised by parties opposing or not supporting the JP. Sections VI.6 and VI.7 of the JP provide for expansion of the currently acceptable forms of identification required to initiate service[99] and bi-annual meetings with the Public Utility Law Project, the Utility Intervention Unit of the New York State Department of State's Division of Consumer Protection ("UIU"), and other interested parties to discuss the Companies' credit and collections outreach and education efforts.[100] These provisions are designed to assist customers and help educate the parties as to the Companies' practices. Additionally, to address an issue raised by UIU, the JP provides[101] that the Companies will submit an illustrative embedded cost of service study in their next base rate cases classifying the costs of mains as 100 percent demand-related.[102] These provisions provide further support for the adoption of the JP.

G. The Resolution Of The Additional Proceedings Provided For Under The JP Is Clearly In The Public Interest

As discussed *supra*, the JP not only either resolves or provides a framework for resolving all of the issues in the Companies' base rate cases, it also resolves (i) issues raised by long pending KEDLI property tax refund petitions, (ii) issues associated with refunds owed to SC 2 customers by KEDNY and (iii) issues associated with the

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98 JP Section VI.16.
99 Ex. 431, Direct Testimony of Gregg C. Collar at 22-23.
100 Ex. 441, Direct Testimony of William D. Yates at 30-36 (KEDNY) and Ex. 457, Direct Testimony of William D. Yates at 26-30 (KEDLI).
101 JP, Section VI.19.
102 Ex. 433, Direct Testimony of UIU Rate Panel at 26-33.

assessment of negative revenue adjustments resulting from the operation of KEDNY's gas safety violation metric in calendar years 2013-2014. The resolution of these proceedings not only avoids the need for further litigation in these cases, it also provides substantial rate offsets for customers. For example, under the JP, KEDLI will credit to customers 90 percent of net refunds at issue in Cases 11-G-0601 and 13-G-0498 and 100 percent of the net refund at issue in Case 14-G-0503, plus associated carrying costs.[103] These credits are greater than the percentage amounts proposed by KEDLI in its petitions in Cases 11-G-0601 and 13-G-0498,[104] and approved by the Commission in other cases.[105] In addition, the resolution of Case 14-G-0091 will result in a $6 million refund to KEDNY's SC 2 customers,[106] an amount that exceeds the refunds that KEDNY would have proposed to provide in litigation. These refunds represent incremental benefits of the JP. The JP's resolution of these additional proceedings is in the public interest.

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[103] JP Section V.6.1.5. The precise amount of the refunds will be determined based on a calculation of, *inter alia*, carrying costs applied to the net refunds. However, the refunds will exceed $20 million.

[104] In its petitions in these cases, KEDLI sought to retain 25 percent of the net refunds. Under the JP, KEDLI will retain only 10 percent of the net refunds.

[105] Case 02-M-0917, *Petition filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Approval, Pursuant To Public Service Law Section 113(2) Of The Proposed Allocation of a $5,107,476.84 Tax Refund for the County of Nassau*, "Order Allocating Property Tax Refund" (May 12, 2004); Cases 07-E-0927 and 08-M-0281, *Petition for Approval, Pursuant To Section 113(2) of a Proposed Allocation of Certain Tax Refunds Between Consolidated Edison Company of New York, Inc. and Ratepayers et al.*, "Order Concerning Two Property Tax Refunds" (Issued and Effective June 23, 2008).

[106] JP Section IV.3.9.

H. The Testimony And Exhibits Relating To The Recent Audits Support A Finding Of Compliance With Public Service Law Section 66(19)

Public Service Law Section 66(19) requires the Commission to review a utility's compliance with the recommendations from its most recently completed management and operations audit in a major rate proceeding. In these proceedings, KEDNY and KEDLI submitted testimony and exhibits describing their progress in implementing the recommendations from the recently concluded Comprehensive Management and Operations Audit ("Management Audit")[107] of National Grid's New York gas business, and supporting the costs and savings reflected in the revenue requirements from implementing certain Management Audit recommendations.[108] Staff submitted testimony and exhibits that reviewed the status of the Companies' implementation progress, noting that KEDNY and KEDLI are progressing towards implementing the recommendations.[109] In addition, Staff's review resulted in proposed adjustments to the costs and savings included in the Companies' revenue requirements, including adjustments to remove certain full time equivalent employees ("FTEs") and to reflect additional productivity savings.[110] The revenue requirements reflected in the JP include these adjustments.[111]

With respect to the Data Audit,[112] the Commission's Order releasing the audit report, which modified many recommendations, was not issued until after the

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[107] Case 13-G-0009, *Comprehensive Management and Operations Audit of National Grid USA's New York Gas Companies*.
[108] Ex. 30, Direct Testimony of Keri Sweet Zavaglia.
[109] Ex. 320, Testimony of Jeremy Routhier-James at 8-9.
[110] *Id.* 19-22.
[111] JP Appendix 1, Schedule 1, page 6 of 36, and Appendix 2, Schedule 1, page 6 of 36.
[112] Case 13-M-0314, *Issue a Request for Proposal for an Independent Third-Party Consultant to Conduct a Review of the Accuracy and Effectiveness of Certain Reliability and Customer Service Systems at all Gas and Combination Gas and Electric Utilities in New York State that Provide Statistics to the Commission on the Services They Provide Customers* ("Data Audit").

Companies' Corrections and Updates filings.[113] Additionally, the Commission remanded a number of the customer service recommendations to a new proceeding (Case 15-M-0566) for further consideration.[114] Notwithstanding, the gas safety performance and customer service quality metrics in the JP incorporate many of the Data Audit recommendations including the damage prevention gas safety metric[115] and the adjusted bills customer service quality metric.[116] As to the Staffing Audit,[117] the JP recognizes that the audit is ongoing and contains a commitment by the Companies to further develop their workforce management plans to assure the effective management and utilization of the incremental FTEs included in these cases.[118]

For these reasons, the testimony and exhibits in these proceedings support a finding of compliance with Public Service Law Section 66(19).

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[113] Cases 13-M-0314 and 15-M-0566, "Order Releasing Report and Providing Guidance on Response" (issued and effective April 20, 2016).
[114] *Id.* at 34.
[115] Ex. 96, Testimony of Gas Safety Panel at 54; Ex. 274, Rebuttal Testimony of Gas Safety Panel at 27-28.
[116] Ex. 127, Testimony of Shared Services Panel at 45-46; Joint Proposal at Sections IV.7.4 and V.7.4.
[117] Case 13-M-0449, *In the Matter of Focused Operations Audit of the Internal Staffing Levels and the Use of Contractors for Selected Core Utility Functions at Major New York Energy Utilities* ("Staffing Audit").
[118] JP at VI.1.

III. Conclusion

For all the foregoing reasons, 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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Dated: September 16, 2016