BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service	Case 22-E-0317
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Gas Service	Case 22-G-0318
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service	Case 22-E-0319
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Gas Service	Case 22-G-0320

NEW YORK STATE ELECTRIC & GAS CORPORATION AND ROCHESTER GAS AND ELECTRIC CORPORATION REPLY STATEMENT IN SUPPORT OF JOINT PROPOSAL

July 7, 2023

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NEW YORK STATE ELECTRIC & GAS CORPORATION AND ROCHESTER GAS AND ELECTRIC CORPORATION REPLY STATEMENT IN SUPPORT OF JOINT PROPOSAL

I. INTRODUCTION / PRELIMINARY STATEMENT

New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E," and together with NYSEG, the "Companies"), hereby submit this Reply Statement in Support of the Joint Proposal ("Reply Statement in Support" or "Reply Statement"). Rather than address the statements filed in support of the Joint Proposal,[1] this Reply Statement primarily addresses the statements filed in opposition to the Joint Proposal, including the statements filed by the Public Utility Law Project ("PULP"), AARP New York ("AARP"), the

[1] In addition to the Companies' Statement in Support filing, Statements in Support of the Joint Proposal were filed by the following parties: New York State Department of Public Service Staff ("Staff"); Nucor Steel Auburn, Inc. ("Nucor"); Walmart Inc ("Walmart"); the Utility Intervention Unit of the Department of State, Division of Consumer Protection, at the Department of State Utility Intervention Unit ("UIU"); the New York Power Authority ("NYPA"); and Convergent Energy and Power, LP ("Convergent"). In addition, Multiple Intervenors ("MI") filed an Initial Statement in Partial Opposition and Partial Support of the Joint Proposal.

Intervenor Coalition,[2] and the portions of MI's statement that oppose the Joint Proposal (collectively, the "Statements in Opposition").[3]

As detailed in the Companies',[4] Staff's and the other Signatory Parties' Statements in Support, the Joint Proposal fully meets the New York State Public Service Commission's ("Commission") public interest standard and should be adopted without modification. The Joint Proposal was the outcome of a lengthy and active settlement process consistent with the Commission's long-standing settlement rules and guidelines. That process resulted in a Joint Proposal that, when taken as a whole, reflects a flexible, fair, and reasonable balancing of mitigating customer rate impacts with the investments required for the Companies' continued provision of safe and adequate service, and thus, meets the public interest standard.

As discussed more fully below, the arguments raised in the Statements in Opposition neither undermine the Joint Proposal nor justify rejecting the Joint Proposal in whole or in part.[5]

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[2] A combined Statement of Opposition of the NYSEG/RG&E Electric and Gas Joint Proposal was filed by the Alliance for a Green Economy (AGREE), Fossil Free Tompkins (FFT), Ratepayer and Community Intervenors, Climate Solutions Accelerator, and Campaign for Renewable Energy (the "Intervenor Coalition").

[3] The Companies note that the Cedar Valley Townhomes Association filed a document in Cases 22-E-0317 and 22-G-0318 purporting to be a statement in opposition to the Joint Proposal. See Cases 22-E-0317, et al., Cedar Valley Townhomes Association Opposition to the Joint Proposal (Jun. 28, 2023). However, this document appears to only be the initial complaint filed by Cedar Valley Townhomes Association on May 3, 2022, in Case 22-E-0298 related to 2022 rates. Because this document was originally filed with the Commission prior to the Companies' initial rate filings, is primarily related to 2022 commodity costs that were outside of the Companies' control, and therefore is not directly related to the Joint Proposal, the Companies do not substantively address it here.

[4] Cases 22-E-0317 et al., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation Statement in Support of Joint Proposal (Jun. 27, 2023) ("Companies' Statement in Support").

[5] Failure by the Companies to address herein a given point in the initial statement of another party does not represent acquiescence by the Companies to any such argument, but rather indicates that the Companies' initial Statement in Support already addressed that point. Moreover, there are myriad baseless characterizations and ad hominem attacks in certain of the statements in opposition regarding the Companies that the Companies flatly reject but will not respond to substantively, such as: "perpetuates poor behavior," "faulty management practices," "demonstrated a blatant disregard for the Companies customers and for the regulation and standards enforced by the [Commission]," "shockingly mismanaged a gas leak emergency," "callously" sent shut off notices to customers, and "past malfeasance." See e.g., Cases 22-E-0317 et al., AARP Initial Statement in Opposition of AARP New York to Joint Proposal at 4, 16 (Jun. 27, 2023) ("AARP Statement in Opposition");

II. DISCUSSION

A. The Settlement Process Utilized in these Rate Cases was Fully Consistent with the Commission's Settlement Rules and Guidelines and Resulted in a Joint Proposal with Broad Support

Before addressing the substantive issues raised in opposition, the Companies are compelled to address the unfounded assertion by the Intervenor Coalition that the settlement negotiation process was "disorganized, rushed, delayed, rigid, at times disparaging and insulting, and overall disconcerting."[6] Failing to address such a baseless assertion would be a disservice to all the other parties who voluntarily expended considerable time and resources, and made a good faith effort to work together so that all involved parties could have a full opportunity to participate and advocate for their respective positions.

Throughout the rate case settlement process, the Companies took numerous actions to include all parties' perspectives. The Initial Notice of Settlement was filed with the Commission's Secretary on October 19, 2022, and provided to all parties on the service list for the rate cases in accordance with the Commission's rules and regulations. All settlement negotiations were subject to the Commission's Settlement Guidelines and 16 NYCRR 3.9, and appropriate notices for all negotiating sessions were provided.[7]

Cases 22-E-0317 et al., Intervenor Coalition Statement of Opposition of the NYSEG/RG&E Electric and Gas Joint Proposal at 23, 27 (Jun. 27, 2023) ("Intervenor Coalition Statement in Opposition").

[6] Intervenor Coalition Statement in Support at 5. To the extent parties to the proceedings felt time pressure or "rushed" toward the end of the process, the pace of settlement was necessary to address concerns, shared by the Companies, Staff, MI, PULP, AARP, and the Intervenor Coalition about minimizing the make-whole period and rate compression. See, e.g., Cases 22-E-0317 et al., Third Opposition to Postponement of Hearing and Make Whole filed by Intervenor Coalition, PULP and AARP (April 12, 2023); Cases 22-E-0317 et al., Motion to Dismiss at 11 (Mar. 1, 2023).

[7] Meeting times and dates were discussed among all parties and agreed to at the end of each negotiation session. In addition, the dates, times, and location were confirmed by e-mail to all parties to the proceeding. Where possible, meeting times and dates were adjusted by group consensus to accommodate scheduling requirements of certain parties. To the extent possible, documents were distributed in advance by e-mail and presented on Microsoft Teams during meeting discussions.

Eleven "all-parties" settlement meetings were duly noticed and convened. The settlement negotiations also included over 50 "working group" meetings on specific issues that were held with the consent of all parties. To facilitate active participation, all negotiation sessions were held either in person, via Microsoft Teams or as hybrid meetings. In addition, several settlement sessions were dedicated to addressing specific issues raised by intervenor parties. At all times, the Companies were courteous and respectful when moderating the meetings, answering questions or responding to comments or proposals raised by parties.

Rate cases by their very nature are data- and time-intensive and encompass multiple complex issues. In addition, they involve complicated modeling and, in the case of a settlement, analysis of extensive multi-year data.[8] As a result, it is common for rate cases to take months to settle as all parties need time to analyze complex issues and develop settlement positions.

Notably, on March 1, 2023, the Intervenor Coalition, PULP, and AARP filed a Motion to Dismiss NYSEG and RG&E's Rate Filings (the "Motion to Dismiss"). The Motion to Dismiss on its face made it abundantly clear that the Intervenor Coalition, PULP, and AARP had no interest in becoming signatories to any settlement reached by the other parties. In fact, Movants to the Motion to Dismiss arguably should not have continued to participate in settlement negotiations because they could no longer do so in good faith, per the Commission's Settlement Guidelines, without informing all parties of their inability to sign on to any agreement.[9]

The Companies, however, continued to welcome their participation and repeatedly invited them and all parties to attend the settlement meetings and orally offer or submit written

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[8] It is precisely for this reason that numerous "all-parties" and dedicated "working group" sessions were held.

[9] 32 NYPSC 71; Case 90-M-0255 et al. - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (Mar. 24, 1992) at Appendix B, p. 2 ("The settlement process can work effectively only if all parties negotiate in good faith.").

proposals for consideration.[10] Unfortunately, some of the parties now complaining about the settlement process did not take advantage of the Companies' offer. In contrast, other parties that did bring forth specific proposals in a timely manner,[11] were able to achieve incorporation of those proposals into the Joint Proposal (see e.g., Appendix N – Battery Storage RFP Process and Appendix O – Street Lighting Dimming Pilot). Moreover, the Joint Proposal reflects specific items advocated by parties in their pre-filed testimony despite those parties ultimately electing to oppose the Joint Proposal.[12] In other words, the Companies and Signatory Parties agreed to include provisions in the Joint Proposal in a further effort to achieve broader consensus even though the proponents of such provisions indicated they were unwilling to execute the Joint Proposal.

The Companies reject any insinuation that the Joint Proposal should be rejected or modified because it is not broadly supported.[13] The fact that the Joint Proposal was signed on to "in part" by some of the Signatory Parties does not undermine the Joint Proposal or detract from the fact that it was executed by parties that often have competing interests, including the Companies, Staff, commercial and residential customers and/or their representatives, other governmental agencies, a labor organization, and an energy storage developer. The lack of signatures on the Joint Proposal from the Intervenor Coalition, AARP, and PULP is not surprising given their early motion seeking to have the Companies' rate case filings dismissed in

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[10] All proposals submitted for consideration were discussed at an "all parties" and/or working group session.

[11] Some parties submitted proposals at the 11th hour, which did not allow the Companies or the other Signatory Parties sufficient time to consider.

[12] See e.g., Joint Proposal at Sections XVI.I (Domestic Violence Training) and XVI.J (Language Access) (incorporating testimonial positions of PULP Witness William D. Yates).

[13] See e.g., Intervenor Coalition Statement in Opposition at 27; Cases 22-E-0317 et al., PULP Statement in Opposition to Approval of the Joint Proposal at 3-4 (Jun. 27, 2023) ("PULP Statement in Opposition").

their entirety.[14] That the Joint Proposal does not include them as signatories, therefore, should be given little or no weight.

The Companies welcomed all parties' participation and acted in good faith throughout the settlement process. The Companies acted in a professional manner, consistent with the Public Service Law, the Commission's rules and regulations and Commission guidance documents. Thus, the Companies reject any assertion or claim that the settlement negotiations were in any way "disorganized," or "disparaging and insulting."

B. The Joint Proposal's Revenue Requirements Are Fully Supported and the Recommended Rate Increases Are Just and Reasonable

AARP, PULP, the Intervenor Coalition, and MI all argue that the Joint Proposal's recommended rate increases are excessive and should not be adopted by the Commission. For the reasons discussed below, the Commission should reject these arguments.

First, the Companies agree with MI that the proposed rate increases should not be evaluated in a vacuum. Rather than evaluate the Joint Proposal's recommended increases within the context of rate increases occurring in generic proceedings as suggested by MI, however, the proposed rate increases should be evaluated against the backdrop of the rate increases authorized in the Companies' last rate cases. Notably absent from any of the statements in opposition is the fact that, as noted in the Companies' and Staff's Statements in Support, the Joint Proposal's recommended rate increases follow rate plans adopted by the Commission in 2020 that took extraordinary measures in response to COVID-19 to ease the rate burden on customers, which resulted in a significant reduction to the rate increases that otherwise would have been necessary in 2020 and the following two years. The artificially low rate increases approved by the

[14] See Motion to Dismiss.

Commission in 2020 pushed critical costs for providing safe and reliable service into the future, and those costs are now due and included in the Joint Proposal's recommended rate increases. Reducing the Joint Proposal's recommended revenue requirement and rate increases in these cases, as recommended by AARP, PULP, the Intervenor Coalition, and MI, is not workable and is against the public interest because it would ultimately result in higher costs for customers and an increased potential for future rate shock. Now is the time to stop kicking the can down the road.

Second, the recommended rate increases are critical to the Companies' ability to maintain their financial integrity. The suppressed rate increases resulting from the Companies' last rate cases significantly deteriorated some of the Companies' key credit metrics. The revenue requirements and rate increases provided for in the current Joint Proposal should provide meaningful support for the Companies' credit metrics and financial integrity. As noted in the Companies' Statement in Support, customers benefit from a financially stable utility through the avoidance of increased debt costs associated with credit rating downgrades.

Third, the Joint Proposal's proposed rate increases are fully supported by the voluminous testimony, exhibits, workpapers, discovery, and other components of the record. Both the Companies and Staff found that the proposed rate increases, which are lower than the increases originally sought by the Companies and recommended by Staff in testimony, are needed to enable the Companies to continue to provide safe and adequate service. Moreover, as further discussed in the Companies' Statement in Support, the Joint Proposal benefits customers in

numerous ways, some of which would not have been possible in a traditional one-year litigated rate case context.[15]

Based on the foregoing, the Commission should avoid reducing the Joint Proposal's recommended revenue requirements and rate increases and should instead adopt them in their entirety, without modification.

1. The Joint Proposal Should Not Be Subject to Piecemeal Modification

In its Initial Statement, MI identifies a number of Joint Proposal provisions that it believes should be modified in an effort to reduce the Companies' overall revenue requirement.[16] The Companies strongly oppose selective modification of the Joint Proposal as advocated for by MI.[17]

Similar to negotiated outcomes in other recent major New York rate cases, the Joint Proposal is presented for adoption as an integrated whole reflecting a careful balance of competing interests in a single comprehensive agreement. The carefully crafted consensus embodied in the Joint Proposal would be undermined by a selective modification of individual provisions. Modifications to the Joint Proposal would disrupt the reasonable and careful balance of the interests of customers and the Signatory Parties set forth therein.

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[15] Companies' Statement in Support at 7 (noting the following benefits of the Joint Proposal: multi-year rate certainty (through April 30, 2026); an opportunity for earnings sharing with customers via an earnings sharing mechanism; a multi-year commitment to capital spending, including investments in aging infrastructure; increased funding for EE and electric heat pump programs; enhanced electric vegetation management to reduce tree-related outages; additional workforce to enhance the customer experience; the continuation of Energy Affordability Programs; continuation of the Companies' electric economic development programs; various downward-only reconciliations; and negative revenue adjustments should the Companies miss established targets for certain customer service, electric reliability and gas safety performance metrics.).

[16] Cases 22-E-0317 et al., Statement of Multiple Intervenors in Partial Opposition and Partial Support of the Joint Proposal at 18-29 (Jun. 27, 2023) ("MI Initial Statement").

[17] Indeed, MI has previously argued against such piecemeal alteration of a Joint Proposal. See Case 13-E-0117 - Petition of New York State Electric & Gas Corporation for Authorization to Implement Full-Cycle Distribution Vegetation Management, Order Denying Petition and Establishing Further Procedures at 6 (Oct. 1, 2013) ("MI

Alteration of the Joint Proposal, moreover, would be contrary to the public interest because not only would any modification jeopardize the Joint Proposal and its many benefits (as noted above), but it would also be detrimental to negotiations in future rate cases involving all New York utilities. As the Commission has previously recognized, modification of a joint proposal's terms "tends to impede future negotiations by making agreements more risky, and therefore less attractive, for parties" and "[the Commission] should not lightly set aside major elements of a negotiated rate plan in circumstances where such action could discourage parties from pursuing other multi-year plans in the future."[18]

Finally, as noted in the Companies' Statement in Support, the Joint Proposal's revenue requirement not only allows the Companies to continue to provide safe and adequate service and meet other State energy goals, but it also helps preserve the financial integrity of the Companies, which maintains access to capital and keeps down borrowing costs. Modifying the Joint Proposal to artificially reduce the Companies' revenue requirement would jeopardize these important benefits. It would also lead to rate shock down the road.

For these reasons, the Commission should reject any requests to selectively modify individual provisions of the Joint Proposal and instead adopt the Joint Proposal in its entirety and without modification.

2. The Size of the Rate Increases Do Not Justify Eliminating the Joint Proposal's Earnings Adjustment Mechanisms

MI argues that the inclusion of earnings adjustment mechanisms ("EAMs") in the Joint Proposal is inappropriate given the size of the rate increases and that the Commission should not

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notes that the Rate Plan is premised upon a Joint Proposal (JP), supported by many parties to the prior rate proceeding, that is an integrated whole. Piecemeal alterations of such a JP, MI asserts, should be avoided.").

require customers facing large delivery rate increases to fund additional shareholder incentives.[19] MI also questions the need to incentivize the Companies to take actions that they are already required to take. The Companies disagree that they should not be eligible for EAMs in this proceeding.

MI's argument ignores the intention behind EAMs. The Commission's current policy is that EAMs should be available as "financially meaningful" incentive opportunities to "encourage enterprise-wide attention" to promote change.[20] EAMs are part of the Commission's effort to create a modern regulatory model that "decisively and substantially" aligns utility financial interest with State policy and consumer interest.[21] As the Commission has explained, "[a]ligning financial incentives with policy goals is the best way to assure the furtherance of these goals."[22]

These policy goals exist regardless of the size of the rate increases because utilities do not earn an EAM for doing what is already reflected in the costs allowed in rates. Rather, they reward the utilities for delivering results significantly beyond spending levels in the rate plan. Thus, it is appropriate that the Joint Proposal includes a set of EAMs that push the Companies above "business as usual" achievement in solar distributed energy resource ("DER") utilization, storage DER Utilization, demand response, and electric vehicles to further advance the Commission's and the State's clean energy goals.

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18 Cases 09-E-0588 et al. - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, Order Establishing Rate Plan at 31 (June 18, 2010).

19 MI Initial Statement at 29-33.

20 Case 14-M-0101, Order Adopting a Ratemaking and Utility Revenue Policy Framework at 59, 68 (May 19, 2016).

21 Id. at 6.

22 Id. at 39.

3. The Joint Proposal's Capital Expenditures Are Fully Supported and Justified

Similar to arguments raised in the Motion to Dismiss, AARP and the Intervenor Coalition erroneously argue that the Joint Proposal is not in the public interest due to a lack of support for the capital projects recommended therein.[23] Their arguments rely almost singularly on select Staff testimony submitted almost ten months ago that will not be adopted on the record by Staff and that has been cherry-picked and quoted out of context to create a false narrative regarding the information the Companies submitted in support of their capital projects. In doing so, these parties glaringly ignore the entirety of the Companies' rebuttal filings and discovery responses relating to capital spending that have been submitted in the intervening time since Staff's testimony was filed, much of which directly addressed Staff's alleged concerns and cured any perceived deficiencies with the rate case filings.[24]

The critical point, however, is that neither Staff's direct testimony nor the Companies' direct testimony and rebuttal testimony are at issue here. The issue is the capital expenditure levels negotiated and provided for in the Joint Proposal. Tellingly, Staff is not arguing that the capital projects recommended by the Joint Proposal lack sufficient support.[25] Quite the contrary, Staff fully supports the capital projects recommended by the Joint Proposal because, among other things, they "allow [the Companies] to continue working towards strengthening the

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[23] AARP Statement in Opposition at 14-16; Intervenor Coalition' Statement in Opposition at 7-8, 27.

[24] The rebuttal testimony and exhibits alone consist of over 4,000 pages, with approximately 54% specifically devoted to addressing Staff's alleged concerns with the Companies' support for the proposed capital projects. The Companies have also submitted approximately 100 supplemental discovery responses since the filing of their rebuttal testimony and continued to provide additional support and clarifications to Staff and other parties upon request.

[25] See e.g., Staff responses to AARP 51-63.

reliability of the system,"[26] "allow the Companies "to continue to provide safe and reliable service,"[27] and "balance ratepayer impacts for customers, with improvements for the Companies' assets and employees while furthering the States's environmental goals."[28]

The Intervenor Coalition also fails to acknowledge the fact that to protect customers, the Joint Proposal also includes a downward-only Net Plant reconciliation for certain individual projects as well as for the overall capital plan – ensuring that the capital funds are utilized as intended. As noted by Staff, "to address Staff's concern with cost estimation for select projects, the Joint Proposal includes individual Net Plant True-up targets for several gas capital projects and details steps for future rate filings to address Staff's concerns going forward."[29] Finally, the Joint Proposal provides for robust capital reporting on a quarterly and annual basis and reflects the Companies' development and submission of five-year capital plans.[30]

The level of capital expenditures set forth in the Joint Proposal are justified and necessary for the provision of safe and reliable service. Reliance on Staff's initial litigation positions is clearly misplaced as Staff no longer supports those positions – a fact that Staff made abundantly clear in its Statement in Support.

4. The Joint Proposal's Funding for Vegetation Management Is Appropriate and Reasonable

Curiously, at the same time the Intervenor Coalition and AARP argue that the Joint Proposal's overall rate increases are too high, they also argue that the level of funding for

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[26] Cases 22-E-0317 et al., Staff Statement in Support of the Joint Proposal at 82 (Jun. 27, 2023) ("Staff Statement in Support").

[27] Id. at 83.

[28] Id. at 85.

[29] Id. at 83.

[30] Id. at 85-86.

vegetation management is insufficient.[31] According to the Intervenor Coalition, the "[Joint Proposal] provides no evidence that a six-year cycle is in the long-term interest of ratepayers, nor any cost-benefit analysis demonstrating that whatever savings might be achieved by a [six-year cycle] instead of a five-year cycle are justified."[32] The Companies disagree.

As indicated in the Companies' Statement in Support, while the Joint Proposal's increase in vegetation management funding is less than the level supported by the Companies in their direct testimony, it reflects a compromise to address parties' concerns about rate impacts and, for NYSEG Electric, allows for significant enhancements to its routine and reclamation programs. As noted by Staff, "adding an additional year would provide adequate time to fully trim the entire NYSEG system and lessen the burden on ratepayers."[33] The enhanced funding at NYSEG Electric will benefit customers because it is expected to reduce tree-related outages, which are the leading cause of service interruptions.[34] Moreover, the Intervenor Coalition ignores the provision of the Joint Proposal that allows NYSEG to accelerate reclamation should it miss its annual System Average Interruption Frequency Index (SAIFI) target in the future. This provision is designed to further enhance available funding for NYSEG's electric distribution vegetation management program.

Based on the foregoing, the Joint Proposal's proposed electric distribution vegetation management funding levels are supported by the record, reasonable and in the public interest. The Commission should adopt these provisions in their entirety and reject any argument that the

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31 Intervenor Coalition Statement in Opposition at 25-27; AARP Statement in Opposition at 12.

32 Intervenor Coalition Statement in Opposition at 26.

33 Staff Statement in Support at 24.

34 Despite arguments to the contrary (Intervenor Coalition Statement in Opposition at 27), the Joint Proposal holds the Companies accountable should they fail to meet their electric reliability metrics. See Joint Proposal at Appendix K.

Joint Proposal is somehow deficient because it does not result in NYSEG Electric implementing a five-year trim cycle.

C. The Joint Proposal's Recommended ROE and Earnings Sharing Provisions Should be Adopted

1. The 9.2% ROE Recommended in the Joint Proposal Is Reasonable and Should Be Adopted

AARP, the Intervenor Coalition, and MI argue that the 9.2% return on equity ("ROE") included in the Joint Proposal is too high. Contrary to these claims, the Joint Proposal's recommended ROE of 9.2% is supported by the record in these proceedings and current market conditions, provides the Companies with the bare minimum required to access debt and equity markets at a reasonable cost, and represents a reasonable compromise of the litigation positions in these proceedings.

The Intervenor Coalition and MI fail to provide any analysis or evidence in support of their arguments that the recommended ROE is too high. Similarly, AARP fails to conduct its own analysis of the ROE, and instead relies on the litigation position of Staff to support an ROE of 8.85%. These arguments ignore the settlement process, the record in these proceedings, and current market conditions.

Further, AARP's reliance on Staff's litigation position demonstrates a fundamental misunderstanding of the Generic Financing Proceeding ("GFP") and dismisses decades of Commission ratemaking decisions. In particular, AARP's recommendation to adopt Staff's litigation position, rather than the ROE negotiated by the Signatory Parties, dismisses, without justification, the expert direct testimony of Company witness Bulkley, which was filed in these proceedings and will be adopted as an exhibit at the evidentiary hearing. In addition, AARP's statement that the ROE calculation methodology from the GFP is "non-negotiable" is patently incorrect, as the GFP methodology was never formally adopted by the Commission, as explained

by Company witness Bulkley.[35] This argument also ignores decades of Commission ratemaking decisions where the Commission adopted the ROE negotiated among settling parties rather than blindly adopting the ROE recommended in Staff's direct testimony calculated using the GFP methodology.

Moreover, AARP's recommendation to adopt the ROE in Staff's direct testimony ignores the significant changes in capital markets between the filing of Staff's testimony in September 2022 and the present day. In fact, the analysis performed by PULP suggests that updating Staff's GFP methodology for market conditions as of May 2023 would result in an ROE of 9.2%.[36] Staff similarly found that the 9.2% ROE is supported by current market conditions, including increased equity return requirements, and recent rate case decisions.[37] Adopting Staff's litigation position would also deny the Companies a risk-based premium that the Commission has repeatedly determined is justified in multi-year rate case settlements.[38]

The Commission should also reject PULP's novel position, argued for the first time in its Statement in Opposition, that the Commission implement an annual ROE update process, including an annual "true-up" of ROEs returned to or recovered from ratepayers through a sur-

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35 See Cases 22-E-0317 et al., Direct Testimony of Ann E. Bulkley at 10 (May 26, 2022).

36 PULP Statement in Opposition at 9 & Appendix 2, at 2.

37 Staff Statement in Support at 21.

38 See e.g., Cases 21-E-0074 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 and Gas Rate Plans, with Additional Requirements at 44-45 (Apr. 14, 2022) (the "Orange and Rockland Rate Order") (stating "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. Further, because the Joint Proposal locks in forecasted amounts for numerous elements of expense for the three-year term, O&R's business risk is also affected by the potential that actual operating costs will be greater than those forecasted.").

credit / surcharge mechanism.[39] Such a broad policy change is contrary to the Commission's decades-old approach to setting ROEs and thus should be evaluated, if at all, in a generic proceeding and not in an individual utility rate case.[40] Moreover, PULP's recommendation should be rejected on procedural grounds as PULP did not make this proposal as part of its direct case, thereby denying parties an appropriate opportunity to conduct discovery or provide rebuttal testimony in response thereto. As such, there is no basis for PULP's ROE update proposal in these proceedings and it should be rejected as an unsupported and arbitrary adjustment to the Joint Proposal.

Based on the foregoing, the recommended ROE of 9.2% is reasonable, provides the Companies with the necessary access to the capital markets, and balances the positions of the parties in this proceeding.

2. The Earnings Sharing Mechanism Appropriately Balances the Companies' and Customers' Interests and Should Be Adopted

PULP's and AARP's opposition to the earnings sharing mechanism ("ESM") recommended in the Joint Proposal is unfounded. ESMs have been employed by the Commission over several decades for the benefit of customers by giving utilities "a financial incentive to control costs and allowing customers to share in any efficiency gains" while providing an "insurance mechanism to preserve just and reasonable rates by creating a safeguard against overearning."[41] Indeed, the Joint Proposal's proposed ESM is intended to provide customers with the majority of the benefits by providing tiered earnings sharing between the

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[39] PULP Statement in Opposition at 9-13.

[40] Evaluating PULP's recommendation in a generic policy proceeding would allow for a sufficient notice and comment period.

[41] See e.g., Cases 21-G-0260 and 21-G-0394, Order Adopting Terms of Joint Proposal, Establishing Rate Plan and Approving Merger at 31 (Jun. 16, 2022).

Companies and customers and requiring the Companies to commit half of their share of any Electric earnings above ESM thresholds to reduce any outstanding interest-bearing storm-related regulatory asset deferral balances.

AARP's and PULP's opposition to the size of the ESM's "dead band" is also misplaced. First, these parties fail to recognize that the ESM provides no protection for the Companies in the event that either Company under-earns its authorized ROE.[42] The Companies bear 100% of the risk that the authorized ROE will not be realized. The ESM dead band provides a small incentive for the Companies to achieve greater efficiency and productivity to balance this risk. As the Commission has stated an "ESM's 50 basis point 'dead band' between the [ ] authorized rate of return and the [ ] level of return, above which sharing begins, is typical of multi-year rate plans that [the Commission] has adopted."[43] Additionally, as previously noted by the Commission, "the reason to include a dead band is to provide an incentive for companies to find cost savings in their operations, which will be captured in future rate cases."[44]

The ESM recommended by the Joint Proposal is consistent with similar mechanisms that have been adopted and employed for the benefit of customers in nearly all recent rate cases. The Joint Proposal's proposed ESM thresholds, including those for the range between 9.20% and 9.70%, strike a fair balance among the interests of customers, investors, and the long-term

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[42] For example, as shown in Appendix 2 to PULP's Statement in Opposition, NYSEG's electric business has under-earned its authorized ROE in 10 of the 11 most recently completed rate years, with the lone exception being Rate Year 2 of the 2009 Rate Plans. NYSEG Gas, RG&E Electric, and RG&E Gas have similarly had multiple years of under-earnings.

[43] Case 16-G-0058 et al. – Proceeding on Motion of the Commission as the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans at 35 (Dec. 16, 2016).

[44] Id. at 30.

soundness of the utilities, represent a likely result of litigation among the parties, and should be approved without modification.

D. The Joint Proposal's Energy Affordability Programs Are Robust

The Joint Proposal continues the Companies' Energy Affordability Programs ("EAP") as established in Case 14-M-0565. PULP and AARP are critical of the EAP-related provisions of the Joint Proposal and argue that perceived deficiencies related to these programs justify rejection of the Joint Proposal.[45] PULP expresses concern about the lack of customer bill impact schedules for EAP customers in the Joint Proposal. In response to a PULP interrogatory, the Companies provided bill impact schedules across various usage levels, the number of customers at each usage level, and the number of low-income customers at each usage level.[46] The response to PULP's interrogatory should address PULP's stated concern.

AARP argues that the Joint Proposal fails to propose meaningful steps to address under-enrollment in the Companies' EAPs.[47] To support this argument, AARP includes excerpts from PULP's initial testimony in these proceedings that purport to use census data to demonstrate this under-enrollment.[48] While the Companies need not address here the veracity of this data, it is enough to note that the Joint Proposal requires the Companies to analyze EAP participation by county in relation to available census information and perform outreach in communities with lower-than-expected EAP enrollment. This requirement in the Joint Proposal represents a meaningful step towards addressing EAP under-enrollment in the Companies' service territories, and therefore, should be adopted.

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45 See PULP Statement in Opposition at 5; AARP Statement in Opposition at 12-14.

46 See Companies' Response to PULP-80, Attachment 1 (Jun. 23, 2023); see also Companies' Response to PULP-81.

47 See AARP Statement in Opposition at 12-14.

AARP also claims that the Joint Proposal demonstrates a "lack of attention" to low-income issues because the section on EAP outreach includes language from the Joint Proposal approved by the Commission in Cases 19-E-0378 et al.[49] However, AARP overlooks language in the Joint Proposal that provides specific new outreach activities related to EAP. For example, the Joint Proposal requires municipal outreach activities including utilizing outreach managers to provide EAP information to municipal contacts, holding "pop-up" events in collaboration with municipal partners, and for RG&E, coordinating with the City of Rochester to have representation at certain community fairs. Contrary to AARP's assertions, the EAP provisions in the Joint Proposal expand outreach activities, which will increase enrollment in the Companies' EAP and provide additional bill assistance to vulnerable customers. Therefore, these provisions are in the public interest, provide significant customer benefits, and provide no basis for rejecting the Joint Proposal.

E. The Joint Proposal Adequately Addresses the Recent Billing Issues

AARP, PULP, and the Intervenor Coalition point to the Commission's ongoing investigation into the Companies' recent billing issues as justification for their argument that the Joint Proposal should be rejected by the Commission.[50] First, it is important to note that the Commission's investigation is currently underway in a separate proceeding and the Joint Proposal does not limit or hinder the Commission from taking action, if any, it deems appropriate following the completion of the investigation in that proceeding. Second, even though the investigation has not yet been completed, the Joint Proposal contains a number of

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48 Id. at 10, 12-13.

49 See id. at 13-14.

50 See AARP Statement in Opposition at 16-17; PULP Statement in Opposition at 1; Intervenor Coalition Statement in Opposition at 23-25.

provisions that directly address the Companies' customer service-related billing issues. For example, the Joint Proposal includes an unprecedented amount of maximum NRA exposure related to the Companies' Customer Service Performance Indicator ("CSPI") metrics, including the continuance of a doubling provision in the event the Companies miss CSPI metrics for two consecutive calendar years.[51] The level of maximum NRA exposure in the Joint Proposal is higher than both the Companies' and Staff's litigation positions and therefore, is a significant customer benefit that could only be achieved via settlement. As Staff notes, this NRA exposure provides incentive for the Companies to improve CSPI performance.[52]

The Joint Proposal also includes provisions that address the Companies' complaint backlog, which increased in 2022 due to the billing-related issues. The Joint Proposal requires the Companies to reduce the current complaint backlog, assemble an internal team to address existing and backlogged complaints, and provide for the utilization of external vendors, at shareholder expense, to augment customer service staffing. Addressing complaint backlogs in a timely and efficient manner provides a benefit to customers and directly addresses the billing-related issues. Further, these provisions would not be possible in a litigated case, as they were not included in the litigation positions of the Companies, Staff, or other parties. The Joint Proposal also addresses the Companies' billing-related issues by increasing outreach related to the estimated bills metric and requiring the Companies to provide bill credits to CDG/value stack customers who do not receive accurate, timely bills at shareholder expense. The CDG/value stack bill credit directly addresses the issues the Companies' CDG/value stack customers were

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51 See Companies' Statement in Support at 49-50. The maximum NRA exposure in the Joint Proposal is more than double the maximum NRA exposure included in the Companies' current rate plan, before taking the doubling provision into account.

52 See Staff Statement in Support at 42.

experiencing with billing delays.[53] The Companies also agreed to waive petitions related to 2021 and 2022 customer service performance and to use the associated NRAs to moderate rates in these proceedings. Given the number of provisions that address billing-related issues, the Companies are perplexed that AARP could look at the entirety of the Joint Proposal and conclude that the Joint Proposal "came up empty" in addressing these issues.[54]

The arguments made by AARP, PULP, and the Intervenor Coalition do not reflect the record in these proceedings and should be rejected, as the Joint Proposal directly addresses customer service billing-related issues and is in the public interest.

F. The Joint Proposal Is Fully Consistent with the CLCPA

1. The Joint Proposal Is Consistent with CLCPA §7(2)

The Joint Proposal includes a number of commitments and provisions that support the greenhouse gas ("GHG") emissions reduction goals of the Climate Leadership and Community Protection Act ("CLCPA").[55] The Intervenor Coalition broadly asserts that the Joint Proposal "does not comply" with the GHG emissions reductions of the CLCPA.[56] To support this assertion, the Intervenor Coalition makes a number of arguments that either mischaracterize the law, mischaracterize the provisions of the Joint Proposal, or ignore the Commission's precedent determining whether a rate case settlement complies with the emissions reduction goals of the CLCPA. As a result, these arguments, which are addressed below, should be rejected in their entirety.

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53 Id. at 48.

54 AARP Statement in Opposition at 16-17.

55 For the full list of commitments and provisions in the Joint Proposal that support the CLCPA, see Companies' Statement in Support at 16-18.

56 Intervenor Coalition Statement in Opposition at 8.

First, the Intervenor Coalition's argument that the CLCPA "does not comply" with the GHG emissions reductions of the CLCPA willfully ignores Commission precedent regarding the application of § 7(2) to a utility rate settlement. Section 7(2) requires the Commission to determine whether a proposed rate settlement is directionally consistent with the State's emissions reduction goals.[57] In making this determination, the Commission considers the extent to which the proposed rate settlement "appropriately balance[s] the interests in reliability, public safety, and reasonable rates with emission reductions and clean energy objectives" and serves as "an important step in the ongoing process of achieving the CLCPA's greenhouse gas limits, one that will be built upon in future rate cases and other Commission proceedings."[58] This balance is necessary as the Commission's determination of CLCPA consistency "is not performed in a vacuum" but made in the context of the Commission's "core responsibility" to ensure that utilities provide safe and reliable service that is just and reasonable in all respects pursuant to the Public Service Law ("PSL").[59]

The Joint Proposal achieves this balance. In particular, the Joint Proposal establishes just and reasonable rates and enables activities that promote reliability, resiliency, and public safety,[60] while at the same time containing a number of provisions and items that take an

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[57] Cases 19-G-0309 et al. – 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, Order Approving Joint Proposal, As Modified, And Imposing Additional Requirements at 69-70 (Aug. 12, 2021) ("KEDNY/KEDLI Rate Order").

[58] Cases 20-E-0380 et al. – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric Service, Order Adopting Terms of Joint Proposal at 83 (Jan. 20, 2022) ("Niagara Mohawk Rate Order"); see also Orange and Rockland Rate Order at 76.

[59] KEDNY/KEDLI Rate Order at 73.

[60] These activities include, but are not limited to: (1) electric system enhancements that will be critical to the Companies' ability to support CLCPA targets; (2) increased funding for improved electric reliability and resiliency; (3) funding for gas reliability; (4) funding to modernize gate and regulator stations; and (5)

important step in achieving the GHG emissions reduction targets of the CLCPA. These provisions and items include, but are not limited to:[61] (1) the commitment to the objective of achieving a net-zero increase in billed gas use; (2) movement towards the flattening of the gas block rate structures for certain service classifications; (3) continued emphasis and encouragement of non-wires alternatives ("NWAs") and non-pipes alternatives ("NPAs"); (4) increased funding for energy efficiency and heat pump programs; (5) funding for two new battery storage projects and for electric vehicle-related studies and working groups; and (6) a commitment to continue efforts to increase the number of electric and hybrid vehicles in the Companies' fleet. The Companies agree with Staff that "[t]aken 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 customers.[62]

The Intervenor Coalition's disregard for Commission precedent is further evident in the arguments made specific to the Companies' gas businesses. They argue that because the gas businesses deliver "potent" natural gas, the Companies are necessitated to "significantly change the trajectory of their businesses in order to comply with the CLCPA."[63] There are numerous flaws in this argument. First, it ignores the Companies' continuing obligation to provide safe and adequate service to its gas customers pursuant to the PSL and Commission precedent regarding CLCPA consistency, as discussed above.[64] Second, the Commission has initiated two

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continuation of a residential methane detection program that will allow for quicker discovery and repair of potentially leaking pipes.

61 A more complete list of these provisions and items is contained in the Companies' Statement in Support at 16-18.

62 Staff Statement in Support at 12.

63 Intervenor Coalition Statement in Opposition at 9.

64 See PSL § 65(1).

generic proceedings to determine what actions will be necessary to transition away from the gas system by all New York utilities.[65] The Companies are participants in the Gas Planning Proceeding and the CLCPA Proceeding, and are supportive of the Commission's efforts in those proceedings implementing the CLCPA. These generic proceedings initiated by the Commission are the appropriate venue for determining significant issues related to the transition of the gas system.[66]

The Intervenor Coalition also criticizes Appendix M of the Joint Proposal, arguing that the Companies have "rescinded [their] commitment not to market gas or promote new gas connections" because language regarding gas marketing/expansion that was included in Appendix M to the 2019 Joint Proposal is not included in this Joint Proposal.[67] This argument is misleading. Appendix M to the 2019 Joint Proposal required the Companies to modify their websites, customer mailings, emails, and marketing materials to remove promotion of natural gas.[68] In addition, the Companies were required to terminate all gas expansion pilot programs and conversion rebate programs and to limit natural gas marketing activities.[69] These

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65 See Case 20-G-0131 – Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Adopting Gas System Planning Process at 4 (May 12, 2022) ("Gas Planning Proceeding"); Case 22-M-0149 – In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act, Order on Implementation of the Climate Leadership and Community Protection Act at 12-16 (May 12, 2022) ("CLCPA Proceeding").

66 The Intervenor Coalition acknowledges the existence of these generic proceedings, yet argue that these proceedings, and the future actions taken therein, do not excuse the Commission from enforcing the "very clear legal requirements in the CLCPA." The Companies agree that the legal requirements of the CLCPA are clear, just not in the way the Intervenor Coalition proclaims. For example, the Intervenor Coalition makes numerous references to the GHG emissions reduction "mandates" of the CLCPA as they relate to the Companies' gas businesses. See Intervenor Coalition Statement in Opposition at 14-15. As the Commission has acknowledged, however, "the CLCPA contains no mandates or guidelines with respect to emissions associated with the State's gas distribution system or gas supplied by utilities." Orange and Rockland Rate Order at 40.

67 Intervenor Coalition Statement in Opposition at 15.

68 Case 19-E-0378 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, With Modifications at Appendix M (Nov. 19, 2020).

69 Id.

requirements have already been completed by the Companies. As a result, including these items in the current Joint Proposal would be redundant. Moreover, the Companies have the continuing obligation to provide outreach and education concerning the services they provide for both gas and electric service. Any suggestion by the Intervenor Coalition that this outreach and education constitutes marketing should be disregarded. Despite the Intervenor Coalition's arguments to the contrary, the Joint Proposal is consistent with the CLCPA and contains a number of gas provisions that the Commission has found to be consistent with the CLCPA in prior rate cases.[70]

The Intervenor Coalition further asserts that the Joint Proposal does not comply with the CLCPA by improperly relying on certain recommendations contained in the Climate Action Council's Final Scoping Plan.[71] The Intervenor Coalition seems to suggest that the Joint Proposal should "comply" with certain recommendations in the Final Scoping Plan.[72] This view seriously mischaracterizes the role of the Final Scoping Plan and the recommendations contained therein. The Companies support the Final Scoping Plan, and the provisions of the Joint Proposal are directionally consistent with the Final Scoping Plan. However, it is important to note that the Final Scoping Plan is not a legally binding document, and the recommendations therein require further implementation by various State agencies, the State legislature and, in some instances, municipalities. As a result, it is inappropriate and misguided for the Intervenor Coalition to use

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70 See e.g., Niagara Mohawk Rate Order at 85-86 (where leak prone pipe replacement program, leak backlog target, requirement to consider NPAs when replacing leak prone pipe, rate design changes to promote the flattening of declining block rates and the commitment to effectively achieve a net-zero increase in billed gas usage were among the provisions found by the Commission to support the determination that the Joint Proposal was fully consistent with the CLCPA); KEDNY/KEDLI Rate Order at 75 (where leak prone pipe replacement program, leak backlog target, and residential methane detection program were among the provisions found by the Commission to support the determination that the Joint Proposal was fully consistent with the CLCPA).

71 Intervenor Coalition Statement in Opposition at 9-11.

72 Id. at 11.

Final Scoping Plan recommendations to support the flawed argument that the Joint Proposal does not comply with § 7(2).[73]

Finally, the Intervenor Coalition uses an excerpt of testimony from the Staff CLCPA Panel in an attempt to demonstrate that the lack of a GHG inventory is a deficiency in this case.[74] However, the Intervenor Coalition appears to misconstrue Staff's testimony. While Staff noted that the Companies' initial filing did not include an inventory of GHG emissions associated with their gas businesses, Staff stated that "NYSEG and RG&E are required to provide emissions reporting according to guidelines established in Case 22-M-0149, as described previously."[75] This reference was to the Commission requirement in Case 22-M-0149 that the Joint Utilities file a proposal for annual GHG emissions reporting.[76] This proposal was filed on December 1, 2022, was supplemented on May 31, 2023, and is awaiting Commission action.

For all the reasons identified above, the Intervenor Coalition completely ignores the framework through which the Commission determines CLCPA consistency pursuant to § 7(2) and their argument that the Joint Proposal "does not comply" with the CLCPA should be rejected in its entirety.

2. The Joint Proposal Is Consistent with CLCPA §7(3)

AARP, PULP, and the Intervenor Coalition assert that the Joint Proposal does not comply with § 7(3) of the CLCPA, which requires the Commission to determine that the Joint Proposal

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[73] Similarly, the Intervenor Coalition points to perceived inconsistencies between the Natural Gas and Grid Modernization Study, filed by the Companies pursuant to the 2019 Joint Proposal, and the Joint Proposal to support the argument that the Joint Proposal does not comply with § 7(2) of the CLCPA. See Intervenor Coalition Statement in Opposition at 12-14. However, perceived inconsistencies between the study and the Joint Proposal do not support a finding that the Joint Proposal does not comply with the CLCPA.

[74] Id.

[75] See Cases 22-E-0317 et al., Prepared Testimony of Staff CLCPA Panel at 57 (Sept. 26, 2022).

[76] Id. at 54.

does not disproportionately burden disadvantaged communities. To support this assertion, these parties posit arguments that either mischaracterize the law, mischaracterize the provisions of the Joint Proposal, or ignore the Commission's precedent determining whether a rate case settlement complies with § 7(3) of the CLCPA. As a result, these arguments, which are addressed below, should be rejected in their entirety.

First, the Intervenor Coalition and PULP mischaracterize the plain language of § 7(3). Section 7(3) prohibits the Commission from approving a utility rate settlement that disproportionately burdens disadvantaged communities. The Intervenor Coalition attempts to alter this standard by removing the "disproportionate" aspect. For example, the Intervenor Coalition states that § 7(3) contains the requirement "to ensure that actions taken by agencies do not worsen the burden on disadvantaged communities…".[77] While the Companies agree that a rate case settlement should not "worsen the burden" on disadvantaged communities, and indeed the Joint Proposal in these proceedings does not do so, this is clearly not the legal standard set forth in § 7(3).[78] Further, PULP suggests that a lack of adequate attention and "specific benefits" to disadvantaged communities is contrary to the CLCPA.[79] Again, while the Companies submit that the Joint Proposal provides adequate attention and "specific benefits" to disadvantaged communities, PULP mischaracterizes the standard set forth in § 7(3).

Second, these parties completely disregard Commission precedent determining whether a rate case settlement complies with § 7(3). The Commission has previously determined that a Joint Proposal that "allow[s] the Companies to continue providing safe and reliable service is

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77 Intervenor Coalition Statement in Opposition at 16.

78 Their mischaracterization of the plain statutory language undercuts the Intervenor Coalition's argument that the Joint Proposal "flagrantly ignores" the requirements of § 7(3).

79 PULP Statement in Opposition at 14.

consistent with the finding that the Joint Proposal also does not disproportionately burden disadvantaged communities."[80] Moreover, the Commission has found that a Joint Proposal that allows for infrastructure projects that ensure that electricity and gas are available for heat and hot water through the winter seasons is consistent with § 7(3).[81] In addressing consistency with § 7(3), the Commission has also looked to see if capital projects or project construction occurs on property or rights-of-way that the utility owns or controls,[82] and if the Joint Proposal contains low income protections.[83] Provisions in the Joint Proposal related to leak prone main and NPAs are also consistent with Commission precedent finding that a rate case settlement complies with § 7(3).[84] As indicated in the Companies' Statement in Support, the Joint Proposal clearly meets Commission precedent regarding consistency with § 7(3).[85] While the Intervenor Coalition, PULP, and AARP each argue that the Joint Proposal violates § 7(3), none of these parties demonstrate that the Joint Proposal is inconsistent with any of the Commission's criteria described above.

In an attempt to support their flawed argument that the Joint Proposal does not comply with § 7(3), the Intervenor Coalition and AARP seek to improperly rely on Staff testimony stating it was unable at present to determine whether the Companies' initial filing was consistent with § 7(3) because the Companies did not provide sufficient information related to the potential burden of capital projects on disadvantaged communities.[86] These parties use this excerpt to

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80 KEDNY/KEDLI Rate Order at 81.

81 Id.

82 KEDNY/KEDLI Rate Order at 81-82; Niagara Mohawk Rate Order at 90.

83 Corning Rate Order at 49.

84 See e.g., Corning Rate Order at 48; Niagara Mohawk Rate Order at 90; KEDNY/KEDLI Rate Order at 82.

85 See Companies' Statement in Support at 19-22.

86 Cases 22-E-0317 et al., Prepared Testimony of Staff CLCPA Panel at 61-62 (Sept. 26, 2022) (emphasis added).

claim that the Joint Proposal does not include the information or analysis necessary for the Commission to make a finding that the capital projects do not "disproportionately burden" disadvantaged communities. Reliance on this excerpt is unavailing and misplaced, however, as subsequent information provided by the Companies on capital projects being constructed or planned in disadvantaged communities led Staff to conclude that the Companies' capital projects either directly benefit or add no burden to disadvantaged communities.[87] The Companies agree with Staff that "there is sufficient information in the record for the Commission to conclude that the provisions contained in the Joint Proposal are consistent with what the Commission has approved with respect to CLCPA section 7(3)."[88]

AARP and PULP also argue that the Joint Proposal is not compliant with § 7(3) because of the potential for disproportionate energy burdens in disadvantaged communities.[89] This argument is flawed. First, the appropriate standard for reviewing rates and charges for all customers in the context of a rate case is the Public Service Law requirement that rates be just and reasonable. Similar to how § 7(2) does not override the Commission's obligation to ensure safe and adequate service, § 7(3) cannot be read to override the Commission's obligation to ensure just and reasonable rates among all customers. Further, the Commission has never applied the disproportionate burden standard in § 7(3) to rates. Second, concerns regarding energy burdens should be focused on low-income customers, consistent with the Commission's

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87 See Response to AARP-8: "[G]as projects in disadvantaged communities consist of regular station work, which generally requires replacements at the current regulator station location, or leak prone main replacements, which would directly benefit the disadvantaged community where the replacement is taking place. Further, the proposed capital budget is comprised of mostly electric and gas projects that replace existing deteriorating assets, and therefore, do not add burdens to the communities in which they are located and serve."

88 Id.

89 AARP Statement in Opposition at 10; PULP Statement in Opposition at 14. It's important to note that these parties do not demonstrate any such disproportionate energy burden.

efforts in Case 14-M-0565,[90] and are more appropriately addressed in that generic proceeding. As discussed previously, the Joint Proposal continues the EAP and provides monthly bill discounts consistent with Commission Orders in Case 14-M-0565. The Joint Proposal provides for annual recalculation of average bills and review of bill discounts to determine if there is a need to change discount amounts to be in line with the six percent energy burden that is consistent with Case 14-M-0565. The Companies note that low-income provisions similar to the provisions included in the Joint Proposal have been found to support a determination that a rate case settlement complies with § 7(3).[91]

Finally, PULP makes a number of arguments related to outreach and reporting that should be flatly rejected. PULP argues, without support, that the lack of specific outreach to disadvantaged communities regarding the rate increases in the Joint Proposal violates § 7(3).[92] PULP does not demonstrate how this constitutes a "disproportionate burden," nor does PULP provide examples where this is an aspect of the Commission's process for making determinations in finding compliance with § 7(3). Further, PULP criticizes the disadvantaged communities reporting requirement in the Joint Proposal because it does not include a stakeholder meeting requirement or use PULP's preferred definition of "disadvantaged communities."[93] These criticisms cannot form a basis for finding that the Joint Proposal does not comply with § 7(3). The reporting requirements in the Joint Proposal exceed the legal requirements of the CLCPA and reflect the Companies' commitment to assess how its operations

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[90] While a disadvantaged community may include low-income customers, it need not be entirely comprised of them. Similarly, a low-income customer could reside in a community that is considered disadvantaged or in a community that is not.

[91] Corning Rate Order at 49.

[92] PULP Statement in Opposition at 14.

[93] Id. at 13.

affect disadvantaged communities. The information developed from this reporting will provide the Commission and interested stakeholders with valuable data to inform ongoing CLCPA implementation. This requirement provides benefits to disadvantaged communities, and therefore it is in the public interest.

For all of the reasons identified above, and as further detailed in the Companies' Statement in Support, the Joint Proposal does not disproportionately burden disadvantaged communities. Because the Intervenor Coalition, AARP, and PULP disregard Commission precedent regarding compliance with § 7(3), their arguments that the Joint Proposal disproportionately burdens disadvantaged communities should be rejected in their entirety.

3. The Intervenor Coalition Misinterpret the Law Regarding Investment of Clean Energy Funds

The Intervenor Coalition asserts that the Joint Proposal does not comply with Environmental Conservation Law ("ECL") § 75-0117, which requires that disadvantaged communities receive at least 35 percent of the overall benefits of spending on clean energy and energy efficiency programs. This assertion is fundamentally flawed, however, because the requirements of this section do not apply to the Joint Proposal.[94] A plain reading of the statutory language demonstrates that the requirements of the statute apply to the development of statewide programs by "[S]tate agencies, authorities and entities." Further, the requirement that a State agency, authority or entity consult with the Environmental Justice Working Group and the Climate Action Council confirms that the intent of the statute is to apply to the development of statewide policy and programs, and not to a utility-specific rate case as consultation with these entities is not part of the Commission's rate case process. Finally, the Commission has never

[94] Intervenor Coalition Statement in Opposition at 16-17.

applied this statute to a utility rate case, and the Intervenor Coalition provides no evidence to support a finding to the contrary. Therefore, the Intervenor Coalition's assertion that the Joint Proposal does not comply with ECL § 75-0117 should be rejected.

4. The Certified Natural Gas Pilot is Supported by the Record and Has a Rational Basis

The Intervenor Coalition asserts that the Certified Natural Gas ("CNG") Pilot included in the Joint Proposal is procedurally not supported by the record in these proceedings and that "[n]o party proposed the [CNG Pilot] in their initial testimony."[95] This assertion grossly misstates the Companies' initial position in these proceedings and is demonstrably false. In direct testimony, the Companies' Electric and Gas Supply and Interconnections Panel proposed a CNG pilot program that is substantially similar to the CNG Pilot included in the Joint Proposal.[96] Further, Staff witness Riebel supported the Companies' proposal in testimony.[97] Therefore, the Intervenor Coalition's argument that the CNG Pilot was not proposed by any party in these proceedings should be rejected.

Substantively, the Intervenor Coalition argues that the purchase of CNG is at odds with the CLCPA's emissions reduction goals. The Intervenor Coalition also questions the certification process associated with the CNG. First, the Companies disagree that the CNG Pilot is at odds with the CLCPA's emissions reduction goals. The sole purpose of the CNG Pilot is to incorporate natural gas that has been produced with reduced GHG emissions and environmental impacts into the Companies' natural gas supply portfolio. The Companies agree with Staff that

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95 Intervenor Coalition Statement in Opposition at 18.

96 See Cases 22-E-0317 et al., Direct Testimony of Electric and Gas Supply and Interconnections Panel at 26 (May 26, 2022); see also Cases 22-E-0317 et al., Rebuttal Testimony of Electric and Gas Supply and Interconnections Panel at 4 (Oct. 18, 2022).

97 See Cases 22-E-0317 et al., Prepared Testimony of Andrew Riebel at 22-24 (Sept. 26, 2022).

the CNG Pilot, which is intended to provide emissions reductions for the Companies' natural gas supply portfolio, "is consistent with the [State's] energy goals and the CLCPA."[98] Further, the Intervenor Coalition's concerns regarding the certification process ignore the fact that the CNG Pilot will allow the Companies to verify whether the CNG market and certification process is an appropriate avenue for reducing the emissions associated with the Companies' natural gas supply portfolio. In addition, the Joint Proposal carefully limits the CNG Pilot to the term of the Rate Plan, imposes a cap on annual costs, and provides for annual reporting and Staff oversight. The Intervenor Coalition conveniently ignores each of these built-in protective measures. Finally, the CNG Pilot is consistent with inclusion of a similar program in Con Edison's pending Joint Proposal.[99]

For the reasons stated above, the CNG Pilot in the Joint Proposal is supported by the record in these proceedings and has a rational basis for adoption. The Intervenor Coalition's arguments to the contrary should be rejected.

III. THE MOTION TO DISMISS SHOULD BE DENIED

AARP, PULP, and the Intervenor Coalition all renew their request that the Companies' rate case filings be dismissed as set forth in the Motion to Dismiss. For the reasons set forth in the Companies' March 9, 2023, Response to the Motion to Dismiss, which is incorporated by reference herein, the Motion to Dismiss is fatally flawed in all respects and should be denied.

IV. CONCLUSION

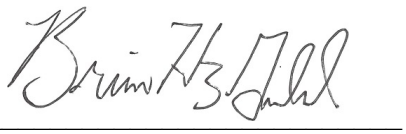
As demonstrated by the statements in support of the Joint Proposal, the Joint Proposal represents a comprehensive, integrated multi-year rate plan that reflects not only

[98] Cases 22-E-0317 et al., Staff Statement in Support of the Joint Proposal at 107 (Jun. 27, 2023).

recommendations and concessions from the Signatory Parties, but also represents a substantial effort to address concerns voiced by all parties. For the reasons discussed above and in the Statements in Support, the Joint Proposal meets the public interest standard of the Settlement Guidelines, produces an overall reasonable balance of often competing interests and should be adopted without modification.

Dated: July 7, 2023

Respectfully submitted,



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[99] See Cases 22-E-0064 et al. – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Joint Proposal at 93 (Feb. 16, 2023).