STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service	**Case 20-M-0266**

COMMENTS OF MULTIPLE INTERVENORS

Dated: July 13, 2020

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments pursuant to the *Order Establishing Proceeding* ("Order") issued by the New York State Public Service Commission ("Commission") on June 11, 2020 in Case 20-M-0266, *Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service*. In these Comments, Multiple Intervenors responds to selected questions posed in the Order, addresses the compelling need for rate relief for all electric and gas customers due to the economic devastation caused by the COVID-19 pandemic, and urges that such relief be material, expeditious, and implemented equitably.

In response to the then-emerging pandemic, Governor Cuomo issued Executive Order 202.8 on March 20, 2020, which required, with very limited exceptions, that all businesses in the State reduce in-person workforces at all locations by 100 percent.[1] Essentially, Governor Cuomo's Executive Order required all businesses deemed non-essential to close effective March 22, 2020, and placed the State on "pause" to slow the spread of COVID-19.[2] The economic consequences of the State's necessary public health response have been of a magnitude not seen since the Great Depression. To slow the transmission of COVID-19, business largely crawled to a standstill due to a sidelined workforce and drastically-reduced demand. Factories were idled,

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[1] Exec. Order No. 202.8, *Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency* (Mar. 20, 2020). Exceptions were limited to businesses and services that were deemed essential by the State.

[2] *See* Press Release, *Governor Cuomo Signs the 'New York State on PAUSE' Executive Order* (Mar. 20, 2020), available at https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order#top.

retail establishments closed, and new capital investments largely stopped. The stock market plummeted, and unemployment rose to exorbitant levels throughout the State.[3] Even as regions of the State have entered a phased reopening,[4] economic recovery only is just beginning, and will take considerable time. Moreover, given worsening conditions in many other states, there is a real risk that infections in New York could rise anew, resulting in increased public health and economic harms statewide.

On April 10, 2020, Multiple Intervenors filed a Petition with the Commission seeking material, expedited rate relief for all electric and gas customers in response to the pandemic's economic devastation.[5] In the Petition, Multiple Intervenors indicated that it was open to any strategy or sources of funds that would provide the requested relief in an equitable manner.[6] Multiple Intervenors did, however, advance two potential funding sources capable of providing immediate and material relief to customers in a manner that would not jeopardize the safe and reliable provision of electric and gas service.

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[3] *See, e.g.*, Press Release, *State Labor Department Releases Preliminary April 2020 Area Unemployment Rates* (May 27, 2020), available at https://www.labor.ny.gov/pressreleases/2020/may-27-2020.shtm; *see also* Press Release, NYS Economy Loses More Than 1.7 Million Private Sector Jobs in April 2020 (May 21, 2020), available at https://www.labor.ny.gov/pressreleases/2020/may-21-2020.shtm.

[4] *See, e.g.*, Exec. Order No. 202.34, *Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency* (May 28, 2020).

[5] Case 20-M-0187, *Petition of Multiple Intervenors Seeking Immediate, Material Rate Relief for Electric and Gas Customers, Including a Pause in Surcharges and Collections for Projects and Programs Delayed as a Result of the COVID-19 Pandemic*, Petition of Multiple Intervenors Seeking Immediate, Material Rate Relief for Electric and Gas Customers, Including a Pause in Surcharges and Collections for Projects and Programs Delayed as a Result of the COVID-19 Pandemic (filed April 10, 2020) ("Petition").

[6] *Id.* at 9.

First, the Petition noted that work had slowed or effectively stopped in customer-funded programs promoting, *inter alia*, energy efficiency, heat pump, large-scale and distributed renewable energy, energy storage, and electric vehicle charging infrastructure projects.[7] Consequently, customer collections for such programs and projects – which have yet to be adjusted in light of the pandemic and previously-uncontemplated economic conditions – are likely to far outpace actual expenditures in 2020, and possibly well beyond.

Second, Multiple Intervenors noted that there potentially were surplus customer collections for those programs that had not been allocated for any specific project, which could be returned to customers in the form of credits, thereby providing near-term rate relief.[8] In support thereof, in a supplemental filing to the Petition, Multiple Intervenors pointed out that as of December 31, 2019, the amounts approved for collection exceeded funds spent or committed by the State's electric and gas utilities and the New York State Energy Research and Development Authority ("NYSERDA") by over $1.1 billion.[9]

Accordingly, the Petition recommended, *inter alia*, pausing or reducing collections for these programs until activities resumed, and returning previously-collected but unspent and uncommitted funds to all customers.[10] Such approach would provide immediate and material relief to customers without impacting approved clean energy projects that are able to proceed now

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[7] *Id.* at 4-6.

[8] *Id.* at 6.

[9] *See* Case 20-M-0187, *supra*, Supplemental Filing (dated April 15, 2020) ("Supplement") at 2 (citing a NYSERDA report dated March 2020).

[10] Petition at 6-7.

under the aforementioned programs.[11] Multiple Intervenors' Petition now has been pending with the Commission for over three months without any action thereon; meanwhile, customers of all types continue to struggle economically.

From Multiple Intervenors' perspective, notwithstanding the importance and relative benefits of customer-funded clean energy programs, now is not the time to be collecting funds from customers at levels well in excess of what reasonably can be utilized in the near-term. Additionally, neither the State's utilities nor NYSERDA should be allowed to retain a large amount of previously-collected but unallocated customer funds for possible use well into the future. It is worth emphasizing that Multiple Intervenors does not seek to reduce or forestall the flow of clean energy funds to projects that were, or are, unaffected by the pandemic, or otherwise are able to proceed at this time. Given the current economic recession or depression caused by a global pandemic, however, the Commission should not continue to authorize customer collections far in excess of amounts needed in the near-term, and/or the retention of hundreds of millions of dollars, or more, of customer funds that remain unallocated.

The Commission initiated the above-captioned proceeding to address the impacts of COVID-19 on all entities subject to its jurisdiction and permitting authority, as well as Commission-adopted programs, and customers.[12] The Order seeks comments on a series of questions related to customer collections, Commission priorities, and rate and financial aspects of

[11] *Id.* at 6, 9.

[12] Order at 5-6.

the pandemic and possible relief therefrom.[13] Multiple Intervenors addresses herein those questions pertinent to its members' interests.

COMMENTS

Collections and Termination of Service

- **How should the Commission direct the regulated entities (electric utilities, gas and steam distribution utilities, private water supply companies, and telecommunications companies) to address the post-crisis resumption of collections and terminations, in a manner that provides appropriate consideration in cases of hardship while preserving the entities' ability to continue to serve all customers safely, reliably and cost-effectively?**
- **How should the Commission direct the regulated entities to account for and manage the financial ramifications of such policies, so as to preserve financial integrity?**
- **How will terminations of service, if any, be affected by utility staffing levels?**
- **Should down payments be waived for deferred payment agreements (DPA)?**
- **Should the terms of DPAs be adjusted to reflect ratepayers' ability to pay?**
- **Should utilities be required to write off debt from HEAP qualified ratepayers?**
- **Should late fees be prohibited for COVID-19 related overdue payments?**

Multiple Intervenors takes no positions on the group of questions reproduced above, other than to note that customers of all types have been impacted tremendously by the COVID-19 pandemic, and the Commission should endeavor to provide material and expeditious rate relief to customers in a manner that: (a) does not jeopardize the provision of safe and reliable electric and gas service; and (b) avoids creating or exacerbating interclass and/or intraclass subsidies.

Commission Priorities in Serving the Public Interest

- **What should the Commission consider in determining whether and how rate relief should be provided for ratepayers?**

[13] *Id.* at Appendix. The positions advocated in these Comments pertain solely to the provision of electric and gas service; Multiple Intervenors advocates no positions herein with respect to steam, water, or telecommunications service.

The Commission should recognize that customers of all types – residential, small non-residential, large non-residential – have suffered significant economic harm as a result of the COVID-19 pandemic. Thus, the need for customer rate relief exists today, and has existed for several months while Multiple Intervenors' Petition has remained pending. Moreover, while New York generally has responded admirably in response to the pandemic, much economic damage has been done, and the threat of a recurrence is all too real. Accordingly, there should be little or no question regarding whether customers need immediate rate relief. The focus of this proceeding should be on how best to implement such relief.

From Multiple Intervenors' perspective, the requested rate relief should satisfy the following five principles: (a) benefit customers expeditiously; (b) be meaningful and material in magnitude; (c) not jeopardize or impair the provision of safe and reliable electric and gas service; (d) not impair utilities' credit ratings, thereby resulting in higher borrowing costs to customers in the long-term; and (e) be implemented in a manner consistent with cost-of-service principles (*e.g.*, by returning previously-collected funds and/or reducing existing collections in a manner consistent with how such funds were recovered and/or are being recovered).[14]

[14] The need for rate relief to be implemented in a manner consistent with cost-of-service principles is compelling and should be self-evident. Doing so avoids the creation or exacerbation of interclass and intraclass subsidies, and is equitable to all types of customers. Importantly, following these principles relies upon an evaluation of the funding sources ultimately utilized to provide customer rate relief. For instance, if outstanding tax credits are utilized, they should be returned to customers in a manner consistent with how the underlying taxes were recovered. Similarly, if prior program collections are returned to customers, such crediting should reflect how the underlying collections were implemented. Alternatively, if transmission-related expenses are reduced, the savings should be shared with all customers consistent with each utility's transmission system allocator(s). On the other hand, if distribution-related expenses are reduced, the savings only should be shared with customers that are served off of and fund the distribution systems, consistent with each utility's distribution system allocator(s). In other words, Multiple Intervenors' endorsement of cost-of-service principles in this context is not to benefit any type or class of customers disproportionately, but rather to ensure that equity is maintained irrespective of the source or sources of rate relief ultimately selected by the Commission for such purpose.

As detailed, *supra*, in its Petition, Multiple Intervenors identified two potential funding sources for customer rate relief. It advanced those potential funding sources because use of one or both of them could provide rate relief to customers in a manner that meets the five principles set forth above. Importantly, such funding sources need not impede Commission-approved projects that are able to move forward now, despite the current economic circumstances.

That noted, as of December 31, 2019, there was over $1.1 billion in customer funds that had been approved for collection and yet remained unspent and uncommitted.[15] That amount strikes Multiple Intervenors as extraordinary – even utilizing only a portion thereof seemingly should be sufficient to provide meaningful rate relief to customers. Additionally, it appears incontrovertible that 2020 customer collections for the various programs will far outstrip actual expenditures considering that: (a) the current level of collections are based on the "normal" economic conditions that existed prior to the pandemic; (b) economic activity in New York largely was halted for a period of several months, which by itself should cause actual program expenditures to be well below projected levels; (c) due to the economic recession (or depression) resulting from the pandemic, customers' ability to access discretionary funds to use toward future projects almost certainly will remain impaired for some period of time; and (d) the Commission has yet to approve modifications to previously-established collection levels.

Importantly, while Multiple Intervenors continues to contend that the two funding sources identified in the Petition warrant serious consideration by the Commission, there are other funding sources that could be used in addition to or instead of those recommended in the Petition. Multiple Intervenors previously emphasized that its primary concern was on the need for

[15] *See* Supplement at 2.

meaningful, expeditious rate relief for all customers in response to the COVID-19 pandemic, as opposed to the funding sources ultimately utilized to provide such relief.[16] That focus remains true today, some three-plus months later.

- **What should the Commission consider in determining whether and how measures other than rate relief can provide benefit to different classes of customers, including large and small business, residential, and low-income?**

For the reasons set forth in its Petition and above, Multiple Intervenors contends that there is a compelling need to provide all customers with meaningful, expeditious rate relief. Upon information and belief, there also may be measures other than rate relief that provide benefits to different classes of customers, although the Order fails to identify any under consideration. From Multiple Intervenors' perspective, given the economic devastation caused by the COVID-19 pandemic, the Commission's focus should be on providing customers with much-needed rate relief. That noted, there are several principles that should be considered in evaluating alternative measures for possible implementation.

Initially, Multiple Intervenors' fairness principles, as identified in response to the preceding question, also apply with respect to potential non-rate-relief measures. To reiterate, any non-rate-relief measures should: (a) benefit customers expeditiously; (b) be meaningful and material in magnitude; (c) not jeopardize or impair the provision of safe and reliable electric and gas service; (d) not impair utilities' credit ratings, thereby resulting in higher borrowing costs and/or increased costs to customers in the long-term; and (e) be implemented in a manner consistent with cost-of-service principles, so as to avoid the creation or exacerbation of interclass or intraclass subsidies.

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[16] *See* Petition at 9.

For instance, as a result of an unusually warm winter and reduced electric demand related to the COVID-19 pandemic, it appears very likely that customers will owe utilities substantial funds under Revenue Decoupling Mechanisms ("RDMs") approved by the Commission.[17] Depending upon the magnitude and the timing of RDM-related revenue "shortfalls," it would be particularly inopportune to add to customers' burdens now by enforcing material RDM reconciliation collections in the near-term. Extending those obligations over a longer period of time could provide some measure of relief to customers.

The Commission also should consider whether now is an optimal time to continue requiring customers to potentially pay tens of millions of dollars in financial incentives to utility shareholders in the form of Earnings Adjustment Mechanisms ("EAMs") above and beyond the level of revenues demonstrated to be needed for the provision of safe and reliable electric and gas service. Given the amount of customer collections to fund various programs, the continued implementation of positive-only incentives that simply add to customers' burdens should be reconsidered.

There may be other non-rate measures available to benefit different types of customers. Importantly, in assessing such measures, the Commission should avoid the creation of interclass subsidies – benefits to one type of customer should not be funded by other types of customers. Inasmuch as utility customers of all types are not responsible for the COVID-19 pandemic or the necessary public health measures implemented in response thereto, and all customer types have suffered material economic harm, there is no justification for subsidizing "relief" across different customer types.

[17] For numerous reasons not relevant in this specific context, Multiple Intervenors has long opposed RDMs and does not believe that they are in the public interest or benefit customers over the long-term.

- **In addition to program modifications under consideration in Case 14-M-0565, <u>Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Customers</u>; are temporary changes to the Commission's low-income programs warranted, including approaches to streamlining enrollment and similar actions?**

Multiple Intervenors takes no position in response to the above question.

- **What approaches can utilities take to eliminate or defer spending without compromising safe and adequate service and should these actions be reflected in customer rates?**

Initially, Multiple Intervenors asserts that the focus should be on eliminating and/or deferring spending in a manner that would be reflected in customer rates (or surcharges) in the near-term. From Multiple Intervenors' perspective, the primary need for rate relief is now, if not several months ago. While efforts to constrain utility costs and rates should be ongoing, this proceeding examining the impacts of the pandemic should focus on measures that can fund immediate customer rate relief.

Additionally, Multiple Intervenors agrees with the presumption in the question posed that any measures taken should not impact the safe and reliable provision of utility service. Generally speaking, proposed expenditures needed for safety and reliability purposes should be assigned the highest priority.[18] All potential expenditures not related directly to the continued provision of safe and reliable service should be evaluated as potential means to reduce rates to customers.

- **What types of utility expenditures and outlays are most beneficial and valuable?**

[18] The Commission adopted this very approach when directing the State's utilities to develop austerity programs in response to the Great Recession. Case 09-M-0435, *Proceeding on Motion of the Commission Regarding the Development of Utility Austerity Programs,* Order Approving Ratepayer Credits (issued December 22, 2009), at 2-3 (holding that "[t]he purpose of the Austerity Notice … was to assist utility customers during the current recession with modest bill reductions without jeopardizing safety and reliability...").

Utility expenditures on safe and reliable service are the most beneficial. Expenditures that reduce customer rates over the long-term also are particularly beneficial. Identifying generic "types" of utility expenditures in isolation is risky, however; in Multiple Intervenors' experience, the benefits and costs of certain expenditures tend to very fact-specific and, oftentimes, utility-specific. For instance, some energy efficiency programs are extremely beneficial and result in lower rates for all customers, including non-participants, while other efficiency programs are much less beneficial and result in higher rates for all but a small minority of participating customers. With respect to utility capital expenditures, while certain expenditures are mandatory and/or indisputably needed in the near-term, other expenditures are planned to address long-term needs and potentially can be delayed without impacting safety and reliability. Decisions on such matters require more analysis.

- **Should utilities be required to develop economic stimulus programs and, if so, how should the impact of those actions be reflected in customer rates?**

No, utilities should not be required to develop and implement economic stimulus programs. Initially, the rate relief Multiple Intervenors has sought and continues to seek is itself an economic stimulus program. Customer refunds/credits and/or decreased electric and gas rates would place more money in the hands of customers in the near term, allowing them to utilize such funds as they best see fit in their own individual capacities. This result is far preferable to creating and administering utility-sponsored stimulus programs.

In Cases 00-E-1273 and 00-G-1274, a prior Central Hudson Gas & Electric Corporation electric and gas rate proceeding, the parties and the Commission addressed the most appropriate treatment of a large amount of customer credits stemming from, *inter alia*, the sale of generation assets above book value. The parties to that proceeding proposed a combination of customer refunds and rate base reductions. In recommending the rejection of one party's arguments for a larger rate base reduction in lieu of customer refunds, the presiding Administrative Law Judge concluded that "dollar for dollar from the customer's perspective, a rate base offset provides only the weak semblance of a direct refund, because the customer benefit realized through the rate base offset is drastically diluted by the tax allowance built into the allowed return; and because *only the refund can be spent pursuant to consumer preferences in the marketplace, rather than commandeered administratively for monopoly utility service*."[19] The Commission agreed, finding that "*the customer benefit from a refund may be just as permanent as the benefit from a rate base offset, because any refund is a potential earnings source for the customer*."[20]

The Commission should follow the same approach now. Placing refunds/credits directly in the hands of customers and/or reducing rates would allow each individual customer to utilize such funds as that customer best sees fit, which should lead to activities that stimulate the state and local economies. Utilizing scarce customer resources to create brand new utility-administered economic stimulus programs – which utilities arguably have no present expertise in implementing save for existing economic development programs – likely would be far less beneficial for customers as well as economic activity in the region. Even if, *arguendo*, utilities could implement economic stimulus programs competently with existing staff, the design and commencement of such programs would take considerable time, and the programs themselves probably would benefit only participating customers as opposed to all customers. In contrast, credits and/or reduced rates can be implemented very quickly, and provide benefits to all customers

[19] Cases 00-E-1273 and 00-G-1274, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service*, Recommended Decision (issued April 24, 2001) at 6 (emphasis added).

[20] Cases 00-E-1273 and 00-G-1274, *supra*, Order Establishing Rates (issued October 25, 2001) at 10 (emphasis added).

in the very near-term, when such assistance incontrovertibly is most needed due to the lengthy economic downturn.

- **Should investments in and collections for clean energy programs be modified during the pandemic and, if so, how should these actions be reflected in customer rates?**

Yes, as Multiple Intervenors recommended in the Petition, customer collections toward clean energy programs are an appropriate source for emergency rate relief. As detailed, *supra*, as of December 31, 2019, there was over $1.1 billion in funds approved for collection that were unspent and unallocated. While there may be some present use for such funds, there indisputably are surplus funds that could be utilized to provide much-needed rate relief now, as opposed to being retained indefinitely. Additionally, between several months of an economic shutdown and the lingering effects of the same on customers of all types, there can be no serious doubt that actual 2020 spending on clean energy programs will be far less than projected levels. Importantly, however, there have been no adjustments to collections levels during this period of extreme inactivity.

Multiple Intervenors is not challenging the clean energy programs approved by the Commission here, nor is it advocating that funds that realistically can be used on projects now, or at any time this year, be diverted as a source of customer refunds or rate reductions. Rather, Multiple Intervenors is advocating that the Commission balance the need to implement clean energy programs at current funding levels (which have been rising) – as well as other utility expenditures – with the pressing need for immediate, material rate relief for all customers in the midst of a global pandemic and economic recession or depression. To the extent surplus funds can be identified and returned to customers and/or current collections reduced without impacting the near-term level of activity in these programs, the Commission should consider doing so. If, *arguendo*, the Commission is able to identify alternate funding sources to provide meaningful customer rate relief, that, too, would be acceptable to Multiple Intervenors.

- **What Commission actions (if any) are necessary to implement, or to maximize the value of, federal assistance to utilities and/or utility customers?**

Multiple Intervenors has no specific knowledge of federal assistance as to whether any of the State's electric and gas utilities received federal assistance in response to the COVID-19 pandemic. If, *arguendo*, such assistance was received (*e.g.*, Paycheck Protection Program loans that subsequently become grants), then Multiple Intervenors contends that the benefits thereof should inure to customers, not shareholders.

Rate and Financial Aspects

- **How should previously authorized rate increases and revenue adjustment mechanisms for regulated entities (electric utilities, gas and steam distribution utilities, private water supply companies, and telecommunications companies) be addressed?**

Ideally, under normal circumstances, the Commission should strive to avoid or minimize material changes to previously-adopted rate plans. That preference stated, the Commission possesses the requisite authority to modify rate plans during extreme situations when in the public interest. Here, there can be little doubt that a global pandemic and economic recession or depression constitute extraordinary circumstances compelling the adoption of measures to protect and benefit customers. In particular, the Commission should seek to ensure that customers are not exposed to increased costs in 2020 due to reconciliations, revenue decoupling mechanisms, EAMs, *etc.*, that can lead to much higher percentage rate increases than what the Commission had adopted with respect to base rates.

- **What has been the impact of COVID-19 on earnings, liquidity, cash flow, and access to capital?**

- **What long-term impacts due to COVID-19 are forecasted at this time in relation to earnings, liquidity, cash flow, other credit quality metrics and access to capital?**

Multiple Intervenors takes no position in response to the above questions.

- **Should the Commission consider passing back net regulatory liabilities outside of traditional rate-setting?**

Yes, accelerating the return of net regulatory liabilities certainly could be part of a plan to provide customers with much-needed rate relief. Where utilities owe money to customers in the form of regulatory liabilities that exceed regulatory assets, the Commission generally should seek to reduce those liabilities by returning such amounts to customers in the form of refunds, credits, and/or rate reductions. In potentially implementing such an approach, two important considerations should be followed by the Commission.

First, the return of net regulatory liabilities should be evaluated on a utility-specific basis. While returning all or most existing net regulatory liabilities to customers as expeditiously as possible may be desirable, doing so could have detrimental impacts on utility financial conditions and credit ratings in certain circumstances. Returning too much in net regulatory liabilities to customers, or returning them too soon, potentially could lead to rating downgrades and higher future borrowing costs. Therefore, utility-specific analyses are warranted to ensure that a measured and ultimately beneficial approach to net regulatory liabilities is implemented.

Second, the return of net regulatory liabilities, if implemented, should adhere to cost-of-service principles as much as possible. In other words, if net regulatory liabilities were accumulated due to one or more primary reasons, then those reasons should govern how the liabilities are returned to customers. For instance, if net regulatory liabilities exist primarily due to tax refunds, than those refunds should be returned to customers in a manner consistent with how the underlying taxes were collected in the first place. Accordingly, to the extent the Commission elects to provide rate relief to customers via the return of net regulatory liabilities, the source(s) of those liabilities should be reflected in how they are returned so as to avoid, or minimize, the creation or exacerbation of interclass and/or intraclass subsidies.

- **Should revenue decoupling mechanisms be modified to address the impact of current economic conditions on different rate classes?**

RDMs, which have the effect of shifting business- and weather-related risks from shareholders to customers, may be particularly problematic in the near-future. Coming off a warmer-than-usual winter period, followed by an extended period of economic inactivity, it is likely that customers will owe utilities considerable amounts of money under RDMs. Moreover, RDMs probably will have different impacts on various rate classes, depending upon how the RDMs are designed. Irrespective of the classes involved, the Commission should be seeking to find ways to minimize detrimental rate impacts resulting from the operation of RDMs, particularly in 2020.

- **Should reconciliation or deferral of any expenses related to COVID-19 be permitted and, if so, with what guidance?**

Utility expenses related to COVID-19 should be subject to possible reconciliation or deferral pursuant to the terms and conditions of each individual utility's Commission-adopted rate plan. To the extent any utility is operating without such a rate plan, it is eligible to file a petition seeking deferral of unanticipated expenses, and there is a long line of Commission decisions evaluating such petitions and establishing certain tests or prongs that must be satisfied.[21]

[21] *See, e.g.*, Case 07-G-1411, *Petition of Central Hudson Gas & Electric Corporation for Authority to Defer Certain Gas Expenses That Are Beyond the Company's Ability to Control For the Rate Year Ended June 30, 2007*, Order Denying Deferral (issued March 27, 2008) (noting that "[t]o qualify for deferred accounting treatment, an item must be incremental to the related amount for the item reflected in current rates, must be an amount material to the utility's earnings and extraordinary in nature, and the utility cannot be over-earning"); *see also* Case 07-G-1411, *supra*, Order Denying Rehearing (issued October 20, 2008).

Importantly, reconciliation or deferral requests should be evaluated on a case-by-case basis, and the Commission should refrain from "pre-approving" any such requests. For one thing, utilities may be subject to different rate plan treatments of this issue. Additionally, COVID-19 expenses should not be evaluated in a vacuum; for instance, it seemingly would be unfair to customers if, hypothetically, utilities were allowed to routinely defer expenses related to COVID-19 for future recovery without consideration of cost savings, if any, related to the pandemic.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to take action expeditiously, consistent with these Comments, to provide immediate, material, and equitable rate relief to electric and gas customers of all types. Such relief is needed urgently as a result of the COVID-19 pandemic and the response thereto. As set forth herein, such relief can be accomplished without jeopardizing the provision of safe and reliable service by utilities or the long-term success of the State's customer-funded clean energy programs and projects.

Dated: Albany, New York
July 13, 2020

Respectfully submitted,

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