STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 23-G-0225 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service.

CASE 23-G-0226 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service.

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

ORDER APPROVING TERMS OF JOINT PROPOSAL AND ESTABLISHING GAS RATE PLANS, WITH MINOR MODIFICATION AND CORRECTIONS

Issued and Effective: August 15, 2024

TABLE OF CONTENTS

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At a session of the Public Service Commission held in the City of Albany on August 15, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova, concurring

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BY THE COMMISSION:

I. INTRODUCTION

This Order adopts, with three corrections, the terms of the attached Joint Proposal, filed on April 9, 2024, establishing three-year gas rate plans for The Brooklyn Union Gas Company (KEDNY) and KeySpan Gas East Corporation (KEDLI) (collectively, the Companies) during the period from April 1, 2024, through March 31, 2027 (Rate Plans). One correction, discussed below, is necessary to clarify the timing of adjustments to energy burden and benefit levels used pursuant to the Commission's Energy Affordability Program (EAP) policies. The remaining two corrections are needed to address typographical errors and add certain language to conform the Joint Proposal to the intent of Signatory Parties.

The Companies, trial staff of the Department of Public Service (DPS Staff or Staff), the City of New York (CNY), the Environmental Defense Fund (EDF), and NRG Energy, Inc. (NRG) signed the Joint Proposal. The Utility Intervention Unit of the New York State Department of State (UIU) does not oppose the Joint Proposal. Public Utility Law Project of New York, Inc. (PULP), Alliance for a Green Economy (AGREE), WE ACT for Environmental Justice (WE ACT), Sane Energy Project (Sane Energy), National Resources Defense Council (NRDC), Margot Spindelman, and Mary T. Finneran oppose the Joint Proposal.

For the reasons stated below, we approve and adopt the terms of the Joint Proposal and supporting schedules, with minor modification and corrections, as in the public interest. The terms of the Joint Proposal ensure the Companies' continued provision of safe and reliable service at just and reasonable rates while preserving their financial and operational stability; fall within the range of potential litigated outcomes or otherwise provide benefits to ratepayers that would not have been achieved in a fully litigated proceedings; and are consistent with the environmental, social, and economic policies of the Commission and the State, including the Climate Leadership and Community Protection Act (CLCPA).

II. BACKGROUND

The Companies currently operate under plans establishing gas rates over the three-year period from April 1, 2020, through March 31, 2023, followed by a one-year Stayout Period.[1] On April 28, 2023, the Companies filed tariff amendments pursuant to Public Service Law (PSL) §66(12), proposing increases in gas delivery rates and charges for the rate year beginning April 1, 2024, and ending March 31, 2025.[2] KEDNY proposed to increase its annual gas delivery revenues by approximately $414 million (a 28 percent increase in delivery revenues and a 17 percent increase in total revenues), and KEDLI proposed to increase its annual gas delivery revenues by approximately $228 million (a 24 percent increase in delivery revenues and a 14 percent increase in total revenues).

KEDNY's requested increase in delivery revenues would have resulted in an average monthly bill increase of $30.95 (26.1 percent on the delivery bill and 17.2 percent on the total bill) for an average residential heating customer. KEDLI's requested increase in delivery revenues would have resulted in

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[1] Cases 19-G-0309 et al., KeySpan Gas East Corporation and The Brooklyn Union Gas Company, d/b/a National Grid NY for Gas Service – Rates, Order Approving Joint Proposal (issued August 12, 2021) (2021 Rate Order). Under the terms of the Joint Proposal, the Companies' revenue requirements were not changed for the Stayout Period.

[2] The tariff leaves that accompanied the Company's rate filings listed an initial effective date of June 3, 2023. On May 10, 2023, the Secretary issued a Notice of Suspension of Effective Date of Major Rate Changes and Initiation of Proceedings, which suspended the effective date of the tariff leaves through September 30, 2023. On September 6, 2023, the Secretary issued a Notice of Further Suspension of Effective Date of Major Rate Changes, which further suspended the effective date of the tariff leaves to implement the rate increases sought by the Companies in their initial filing through March 31, 2024.

an average monthly bill increase of $28.52 (25.1 percent on the delivery bill and 16.3 percent on the total bill) for an average residential heating customer.[3] In their filings, the Companies assert that the proposed bill increases are largely driven by a combination of inflation and cost factors, on subject areas such as core business costs, safety and compliance mandates, property taxes (which alone account for nearly 37 percent of KEDLI's requested increase), environmental remediation, energy efficiency, and market conditions (return and interest rates), that are beyond their control.

On June 14, 2023, the assigned Administrative Law Judges (ALJs) held a virtual procedural conference to identify interested parties and major issues, and to establish a procedural schedule. By ruling issued June 21, 2023, the ALJs established a schedule requiring the Companies to file updates and corrections to their initial filings by June 30, 2023, DPS Staff and intervenors to file their direct testimony and exhibits by September 1, 2023, and rebuttal testimony to be filed by September 22, 2023.

On June 30, 2023, the Companies filed corrected and updated testimony. KEDNY sought a further increase to its proposed revenue requirement of $36 million, bringing its requested revenue requirement increase to approximately $450 million. KEDLI requested a further increase to its proposed revenue requirement of $44 million, bringing its requested revenue requirement increase to approximately $272 million.

On August 31, 2023, PULP filed direct testimony. On September 1, 2023, the following parties filed direct testimony: DPS Staff, CNY, NRG and its affiliates, EDF, AGREE, UIU, WE ACT,

[3] The Companies also included financial information for three additional years to facilitate consideration and negotiation of potential multi-year rate plans.

NRDC, Margot Spindelman, and Mary T. Finneran. On September 5, 2023, Sane Energy filed direct testimony. On September 19, 2023, PULP filed corrected direct testimony.

In its direct testimony, DPS Staff recommended a base delivery revenue requirement increase of approximately $390 million for KEDNY, which is approximately $60 million less than KEDNY's updated proposal. DPS Staff also recommended a base delivery revenue requirement increase of approximately $220 million for KEDLI, approximately $52 million less than KEDLI's updated proposal.

On September 22, 2023, the Companies, DPS Staff, PULP, CNY, WE ACT, and UIU filed rebuttal testimony. Sane Energy filed rebuttal testimony on September 25, 2023. In their rebuttal testimony, the Companies agreed to certain revenue adjustments recommended by DPS Staff, disagreed with various other recommended adjustments, and updated their respective revenue requirements. As updated on rebuttal, KEDNY requested a revenue requirement increase of $504.3 million and KEDLI requested an increase of $314.3 million.

The Companies filed a Notice of Impending Settlement Negotiations on September 26, 2023. To facilitate the continuation of settlement discussions, the Companies consented to several extensions of the suspension period. The Commission has extended the maximum suspension period through August 31, 2024.[4]

On April 9, 2024, a Joint Proposal signed by the Companies, DPS Staff, CNY, EDF and NRG was filed in these proceedings. The Joint Proposal, with attached appendices, is 867 pages. As levelized to moderate rate impacts on customers, the Joint Proposal would result in increases in gas delivery

[4] Order on Extension of Maximum Suspension Period of Major Rate Filing (issued March 15, 2024).

revenues for KEDNY of approximately $256.88 million in Rate Year 1 (RY1), $287.52 million in Rate Year 2 (RY2), and $320.06 million in Rate Year 3 (RY3). The Joint Proposal would result in levelized gas delivery revenue increases for KEDLI of approximately $147.09 million in RY1, $161.14 million in RY2, and $180.43 million in RY3. The proposed revenue requirements for both KEDNY and KEDLI reflect a common equity ratio of 48 percent and a return on equity (ROE) of 9.35 percent.

In May 2024, DPS Staff, CNY, the Companies, and EDF filed Statements in Support of the Joint Proposal. Margot Spindelman, Mary T. Finneran, WE ACT, PULP, the Newtown Creek Alliance, AGREE, All Our Energy, NRDC, and Sane Energy filed Statements in Opposition to the Joint Proposal. DPS Staff, CNY, and the Companies filed Reply Statements in Support of the Joint Proposal. WE ACT and PULP filed Reply Statements in Opposition to the Joint Proposal.

On May 20, 2024, the ALJs conducted an evidentiary hearing on the Joint Proposal, admitting into evidence testimony of the parties and over 700 exhibits, and allowing cross examination of a joint panel consisting of witnesses from the Companies and DPS Staff in support of the Joint Proposal. Thereafter, DPS Staff and WE ACT filed post-hearing briefs. The Companies, DPS Staff, and CNY filed post-hearing reply briefs. The ALJs issued rulings on May 29, 2024, and July 26, 2024, admitting additional record evidence adduced at the hearing and in response to ALJ Questions.

III. NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking were published in the State Register on May 10, 2023 [SAPA No. 23-G-0200SP1] and July 12, 2023 [SAPA Nos. 23-G-0225SP1 and 23-G-0226SP1]. The

60-day time period for submission of comments pursuant to those notices has expired.

In addition, in a Notice of Public Statement Hearings, comments were solicited with a request that such comments be filed by August 4, 2023. Subsequently, Notices Soliciting Public Comment and Announcing Public Statement Hearings were issued on October 16, 2023.

A total of four virtual and five in-person public statement hearings were held on August 1, 2023, August 2, 2023, November 14, 2023, and November 15, 2023. The hearings were well attended by the public, with a total of 55 people providing comments at the virtual hearings and 73 commenting at the in-person hearings.

The comments largely were in opposition to the requested rate increases, with concerns primarily related to affordability. Comments, including those of elected officials, also addressed the need to reduce rather than expand National Grid's gas infrastructure, to eliminate fossil fuel use, and to aid the disadvantaged communities located in the Companies' service territories, which are dealing with both climate change and health issues resulting from emissions. Several speakers discussed the $300 million in profits that the Companies and their parent corporation have realized in the last year, despite failing to complete projects such as the renewable natural gas pilot at the Newtown Creek Wastewater Treatment plant. Commenters also suggested reducing executive salaries and bonuses as a way to decrease the burden on ratepayers. Other speakers opposed funding for National Grid's Greenpoint Energy Center and called for closure of the facility based on age and environmental contamination. Union and labor representatives, charities and business groups expressed support for the Companies' rate filings and the proposed capital improvement projects necessary to continue the provision of safe and reliable gas service while advancing CLCPA goals. Those speakers also commented about KEDLI's support for local communities on Long Island and both Companies' strong corporate citizenship and support for workers, while speakers in opposition contended that the Companies use ratepayer dollars to fund grants to community groups in exchange for their support of the rate filings. Although the tenor of the public statement hearings was generally respectful, one hearing held in Brooklyn involved speakers cursing the Companies, hissing, and screaming into the microphone, as well as other forms of performance protest.

More than 1,000 comments have been filed on the Commission's document and matter management (DMM) system, including several by elected representatives in the Companies' service territories. The majority of the comments are in opposition to the requested rate increases. Commenters are mainly concerned with overall affordability, proposed spending on natural gas infrastructure, continued natural gas use contributing to climate change, and investments in the Greenpoint Energy Center. Members of the Laborers' International Union of North America, the United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada, and the Long Island Federation of Labor, AFL-CIO, International Brotherhood of Electrical Workers, Local 3 and Local 1049, filed comments in support of the Companies' requested revenue increases on the ground that the Companies will help New York meet its clean energy goals, increase employment, keep communities safer and improve reliability. Charitable, business, scientific research and educational organizations submitted comments extolling the Companies as exemplary corporate citizens that need the requested revenue increases in order to continue delivering reliable service while investing in projects that make the communities they serve better places to live, work, and play.

IV. DISCUSSION

In establishing utility rates, the Commission may consider any factor and assign whatever weight it deems appropriate.[5] We are specifically called upon to regulate electric and gas rates to ensure that all charges are just and reasonable and that they produce sufficient revenue for the utility to provide safe and adequate service.[6] We are also required to make specific findings under the Climate Leadership and Community Protection Act (CLCPA) that our determination here is consistent with the State’s emission reduction objectives and will not disproportionately burden disadvantaged communities. In cases, such as these, where the terms of a Joint Proposal have been submitted for Commission consideration, we must determine if such terms, when viewed as a whole, produce a result that is in the public interest. In doing so, we follow our Settlement Guidelines and consider whether the terms of the Joint Proposal appropriately balance protection of consumers, fairness to investors, and the long-term viability of the utility.[7] In addition, any negotiated proposal must be consistent with the environmental, social, and economic policies

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5 Matter of Abrams v. Public Service Com., 67 N.Y.2d 205, 212; 501 N.Y.S.2d 777, 779-780; 492 N.E.2d 1193, 1195-1196 (1986).

6 Public Service Law §65(1).

7 Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) (Settlement Guidelines), p. 30; Appendix B, pp. 7-9.

of the Commission and the State, and produce reasonable results that are within the range of those that would have likely arisen from a Commission decision in a litigated proceeding. We also consider the completeness of the record, whether a settlement reflects an agreement by normally adversarial parties, and whether the settlement is contested.

Based on our review of the Joint Proposal, the record, and the parties' arguments, we conclude that the Joint Proposal meets the criteria set forth in the Commission's Settlement Guidelines and that the terms of the Joint Proposal are adopted and incorporated into gas rate plans for the Companies, with corrections discussed below.

A total of nine public statement hearings were held in these proceedings to receive comments on the Companies' rate filings. Settlement negotiations commenced after the parties had the opportunity to submit testimony and the Companies issued to all potential participants the required notice of impending settlement negotiations. The Joint Proposal states that settlement conferences were held between October 2023 and March 2024, in either a virtual or hybrid setting, including options to participate via in-person meeting, video conference, and telephone.[8] The Commission solicited comments on the Joint Proposal from members of the public in writing or by telephone. In addition, the ALJs provided the parties the opportunity to file statements of their respective positions on the Joint Proposal, participate in an evidentiary hearing, and file post-hearing briefs. We therefore find that all interested parties had a full opportunity to participate in these proceedings and address the provisions of the Joint Proposal.

[8] Joint Proposal, p. 5.

The Joint Proposal is either supported or not opposed by parties who often have competing interests. Specifically, the Joint Proposal is supported by the Companies, DPS Staff, EDF, NRG and CNY, and is not opposed by UIU, reflecting an exceptional effort to build consensus on various complex topics. The signatory parties' efforts and willingness to compromise are demonstrated in their ability to craft resolutions that address their various interests while also furthering important Commission and State policies, including those underlying the CLCPA.

Moreover, the voluminous record before us includes the litigation positions of the parties entered as exhibits in these proceedings. These exhibits clearly establish the broad range of outcomes that could have been pursued in litigation had the parties not entered into the Joint Proposal now before us. The terms of the Joint Proposal are a product of consensus and fall well within the range of outcomes that could have resulted from a fully litigated proceeding. Certain provisions of the Joint Proposal reflect the positions taken by parties in pre-filed testimony, while other provisions are the result of compromise between the parties' competing positions.

In determining whether the terms of the Joint Proposal are in the public interest, we do not disturb the interrelated compromises negotiated by the parties in the absence of a demonstration that a provision of the agreement is inconsistent with sound policy, outside the range of likely litigated outcomes, or contrary to the protection of ratepayers, fairness to investors and the long-term viability of the Companies.[9] Although several parties oppose the Joint Proposal on various grounds, we conclude that the arguments they raise do not

[9] Settlement Guidelines, p. 8.

warrant disturbing the series of complex agreements reached in the Joint Proposal. Rather, we determine that the terms of the Joint Proposal, taken as a whole, reflect a fair balance between the interests of consumers, investors, and the long-term viability of the Companies.

For ratepayers, the plans provide a higher degree of predictability and stability, as well as moderation of customer impacts through levelized rate increases that will occur over a three-year period. The Joint Proposal enhances various customer service and gas safety performance metrics, includes an earnings-sharing mechanism, expands the Companies' EAPs, requires additional marketing and outreach to low- to moderate-income (LMI) customers, strengthens customer protections during adverse or extreme weather, and provides for the further development of the Companies' language access efforts. Moreover, the Joint Proposal improves the processes to access deferred payment agreements (DPAs), providing additional relief to those customers in the most need.

For the Companies' investors, the plans provide the opportunity to earn a reasonable return on investment. For the Companies, the Joint Proposal provides sufficient revenues to support necessary gas projects and operate their respective systems in a safe and reliable manner, while maintaining or enhancing the Companies' credit ratings and addressing State climate goals in accordance with the CLCPA. Although rates are increasing, the record demonstrates that those increases are needed to fund programs and capital investments that will ensure the provision of safe, adequate, and reliable gas service, as required under PSL §66, while advancing Commission and State clean energy and other policy objectives, and funding customer programs, business needs like information technology, and mandatory obligations such as taxes.

The Joint Proposal contains numerous provisions related to the CLCPA. Among other things, the Joint Proposal requires the Companies to file a CLCPA and Disadvantaged Communities Report, which will include data on energy efficiency spending, demand response, main replacements, leak repairs, customer operation, and clean energy jobs in both disadvantaged and non-disadvantaged communities. The Joint Proposal requires the Companies to expand both their promotion of non-pipes alternatives (NPAs) and the number of NPA programs, including promotion of NPAs in place of Leak Prone Pipe (LPP) replacement, system reinforcement, main extensions and service line installations and replacements. Finally, the Joint Proposal requires the Companies to establish a shareholder-funded program of up to $6 million over the term of the rate plans to provide weatherization, health, and safety measures to LMI customers and those located in disadvantaged communities.

Accordingly, we approve the terms of the Joint Proposal, with corrections, as in the public interest. This Order implements rate plans that correct the Joint Proposal to (1) clarify that adjustments to energy burden and benefit levels used pursuant to the Commission’s EAP policies will occur on December 1 each year, (2) include a greater-than-or-equal-to sign at the top tier of the damage prevention metrics in Section 10.3 of the Joint Proposal, and (3) add to Appendix 9 an Emergency Response Exclusion Procedure as recommended by DPS Staff in its Statement in Support.[10] We discuss several key aspects of the Joint Proposal and address the arguments made by parties opposing the Joint Proposal below.

[10] Exhibit 728 (Companies Response to ALJ-3); Staff Statement in Support, p. 108.

A. Term and Effective Dates of the Rate Plan

The Joint Proposal would establish three-year gas rate plans for the Companies running from April 1, 2024, through March 31, 2027.[11] RY1 would be the 12-month period beginning April 1, 2024, and ending March 31, 2025; RY2 would be the 12-month period beginning April 1, 2025, and ending March 31, 2026; and RY3 would be the 12-month period beginning April 1, 2026, and ending March 31, 2027. The Joint Proposal states that its provisions generally will continue unless changed by the Commission, but certain provisions terminate as explicitly stated in the Joint Proposal.[12]

B. Revenue Requirements

As noted above, the Companies initially proposed one-year revenue requirement increases of approximately $414 million for KEDNY and $228 million for KEDLI.[13] The Companies revised their initial filing requests twice during these proceedings, resulting in proposed one-year revenue requirements of approximately $504 million for KEDNY and $314 million for KEDLI.[14] The Joint Proposal includes unlevelized increases to KEDNY's revenue requirements of approximately $444.0 million in RY1, $172.1 million in RY2, and $132.0 million in RY3; and

[11] Joint Proposal, p. 7.

[12] Id.

[13] Exhibit 132 (KEDNY/Revenue Requirements Panel), p. 14; Exhibit 146 (KEDLI/Revenue Requirements Panel), p. 14.

[14] Exhibit 313 (KEDNY/Revenue Requirements Panel Corrections and Updates Testimony), p. 3; Exhibit 324 (KEDLI/Revenue Requirements Panel Corrections and Updates Testimony), p. 3; Exhibit 373 (KEDNY/Revenue Requirements Panel Rebuttal Testimony), p. 4; Exhibit 378 (KEDLI/Revenue Requirements Panel Rebuttal Testimony), p. 4.

increases to KEDLI's revenue requirements by $246.5 million in RY1, $116.5 million in RY2, and $75.7 million in RY3 for KEDLI.[15]

After levelizing the rate increases to provide stability over the term of the rate plans, the revenue requirement increases and associated impacts for each Company are as follows:

	Rate Year 1 (million)	**Rate Year 2 (million)**	**Rate Year 3 (million)**
KEDNY Revenue Requirement Increase	$256.9	$287.5	$320.1
Delivery Bill Percent Increase	17.7%	14.8%	14.9%
Total Bill Percent Increase	10.5%	10.5%	10.5%
KEDLI Revenue Requirement Increase	$147.1	$163.1	$180.4
Delivery Bill Percent Increase	16.0%	13.7%	13.6%
Total Bill Percent Increase	9.4%	9.4%	9.4%

15 Joint Proposal, pp. 8-9. If the proposed revenue increases were not levelized, total bill percent increases in RY1 would have been 15.9 percent for KEDNY and 12.7 percent for KEDLI. Because levelization creates a deferral of the revenues the Companies otherwise would have recovered in RY1 and those revenues are subject to interest at the pre-tax weighted average cost of capital, the Companies' rates will be higher at the end of RY3 then they would otherwise be absent levelization. Staff Statement in Support, p. 22. Nevertheless, overall, levelization benefits ratepayers by moderating the bill impacts resulting from the rate increases over the term of the rate plans.

For a typical residential heating customer,[16] the approximate total monthly bill dollar and percentage increases under the terms of the Joint Proposal, including the revenue requirement recovery associated with the extension of the suspension period through August 31, 2024, are:

	Rate Year 1	**Rate Year 2**	**Rate Year 3**
KEDNY Total Typical Residential Bill Increase	$30.18	$9.61	$22.09
Total Typical Residential Bill Percent Increase	19.36%	5.06%	11.13%
KEDLI Total Typical Bill Increase	$33.35	$8.19	$18.81
Total Typical Residential Bill Percent Increase	22.29%	4.39%	9.70%

1. Depreciation Rates

[16] The typical residential customer refers to KEDNY and KEDLI residential heating customers using 83 therms per month served in the standard heating service classification. Actual bill impacts will vary within the service class as well as by customer class based on the revenue allocation and rate design proposed in the Joint Proposal. Exhibit 729 (Response to ALJ-4). In response to ALJ Question 4, the Companies clarified that the average usage, which is shown in Appendices 3 and 4, Schedules 4.1 through 4.4 to the Joint Proposal, represents the monthly average use based on all residential heating customers. Id.

The Joint Proposal contains amortizations and revised depreciation rates that reflect (1) the commencement of the amortization of LPP for KEDNY and the continuation of the amortization of LPP authorized for KEDLI in the 2021 Rate Order; (2) the phase-in of revised depreciation rates over four years for KEDNY and two years for KEDLI; and (3) the amortization of depreciation reserve deficiencies of approximately $131.25 million for KEDNY and $337.88 million for KEDLI over 20 years beginning in RY2.[17] The Joint Proposal notes that, to mitigate potential bill impacts in this case, KEDNY's revenue requirement reflects a three year phase-in of revised depreciation rates.[18] No parties oppose the Joint Proposal's provisions regarding depreciation.

The Joint Proposal provides a reasonable compromise between the positions advocated by the Companies, Staff, and CNY in testimony, all of which agreed that the Companies' depreciation rates needed to be increased.[19] As Staff states, the recommended depreciation rates move toward the average service lives and net salvage factors indicated by the depreciation study and are reasonably implemented through a phased-in approach that allows a gradual transition to mitigates bill impacts.[20] We also agree with Staff that the Joint Proposal's amortization of the theoretical reserve deficiencies in excess of 10 percent of the book value over a 20-year period, is reasonable.[21] Finally, as Staff states, beginning

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[17] Joint Proposal, pp. 9-10.

[18] Joint Proposal, p. 10, n. 6.

[19] Exhibit 28 (Companies/Allis Rebuttal Testimony), p. 2; Exhibit 463 (Staff/Darmetko Testimony), pp. 10-13; Exhibit 502 (CNY/Garrett Testimony), pp. 2-10.

[20] Staff Statement in Support, pp. 21-22.

[21] Id., p. 22.

amortization of LPP in RY1 for KEDNY and continuing the amortization for KEDLI is reasonable because "it will reduce intergenerational inequity associated with the removal of these assets prior to their normal expected end of useful life due to safety concerns."[22]

2. Rate Drivers

KEDNY's RY1 increase is largely driven by increases in net plant and depreciation expense ($166 million), operations and maintenance (O&M) expenses ($90 million), the overall rate of return ($68 million), property taxes ($57 million), and the amortization of regulatory deferrals ($47 million). A substantial portion of the increase associated with the amortization of regulatory deferrals is the result of the actions taken in the prior rate plan in an effort to keep rates as low as possible to mitigate the economic impact to ratepayers of the previous rate plan's adoption during the COVID-19 pandemic. The RY2 increase is driven by increases in net plant and depreciation ($96 Million), O&M expense ($38 million) and property taxes ($35 million). Those cost increases are partially offset by higher forecasted sales revenues, which reduces the revenue requirement increase by $39 million. The RY3 increase is driven by increases in net plant and depreciation ($109 million) and property taxes ($35 million). As with RY2, the RY3 increases are partially offset by higher forecast sales revenues, which reduce the revenue requirement by $25 million.

KEDLI's RY1 increase is driven largely by increases in net plant and depreciation expense ($92 million), property taxes ($75 million), O&M expenses ($60 million) and the overall rate of return ($40 million). These increases are partially offset by $20 million in reductions to the revenue requirements due to the

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[22] Id., p. 22.

higher sales forecast ($8 million), the increase of amortization of excess ADIT ($7 million), and the amortization of regulatory deferred liabilities ($5 million). The RY2 increase is driven by increases in net plant and deprecation ($87 million), O&M expenses ($28 million), and property taxes ($16 million). These increases are partially offset by higher forecasted sales revenues, which reduce the revenue requirement by $23 million. The RY3 increase is driven by increases in net plant and depreciation ($59 million), an increase in the long-term debt rate ($19 million) and property taxes ($16 million). As with RY2, the RY3 increases are partially offset by higher forecast sales revenues, which reduce the revenue requirement by $20 million.

For KEDNY, the O&M increases in each of the Rate Years are due to increases in funding of programs related to advanced leak detection, leak backlogs, operator qualifications, and information technology (IT). For KEDLI, the O&M increases in each of the Rate Years is due to increases in funding of programs related to leak backlogs, damage prevention and pipeline integrity, and IT. O&M increases for both Companies are also attributable to increased costs associated with a number of new hires in several areas, including gas safety and customer service.

3. Make Whole Provision

The Commission issued an order extending the maximum extension period (of the effective date of the tariffs filed with the Companies' rate filings) to August 31, 2024.[23] The order also grants the Companies' request that the extension be subject to a "make whole" provision to restore them to the same

[23] Order on Extension of Maximum Suspension Period of Major Rate Filings (issued March 15, 2024).

financial position they would have been in had there been no extension and rates were effective beginning April 1, 2024. Under the Joint Proposal's make whole provision, the Companies would calculate any revenue adjustments "as the difference between revenues the Companies would have received during the extension of the suspension period and the actual revenues received."[24] The revenue adjustments will include all applicable surcharges and carrying charges and be subject to reconciliation in accordance with all applicable adjustment mechanisms. The financial true-up targets established in these proceedings, as well as depreciation and amortization expenses, will be applied to the extension of the suspension period. As is typical in multi-year rate cases containing a make-whole provision, the make-whole amount will be recovered over the remainder of RY1.

Various parties oppose the Joint Proposal on the ground that the resulting rate impacts are too high. PULP states that the bill impacts under the Joint Proposal would exacerbate the issue of affordability and decrease access to energy services to low-income New Yorkers.[25] Although PULP recognizes that low-income customers enrolled in the Companies' Energy Affordability Programs "will be shielded from some of the burdens associated with the potential rate increases," it maintains that low-income customers who are not enrolled, as well as moderate income customers, will experience unaffordable bill increases.[26]

AGREE disapproves of the overall rate increases, noting that the bill increases in RY1 recommended in the Joint Proposal are not much lower than the bill increases that would

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[24] Joint Proposal, p. 11.

[25] PULP Statement in Opposition, pp. 3-5.

[26] Id., pp. 4-11.

have resulted under the Companies' initial rate filings.[27] All Our Energy opposes what it characterizes as the Joint Proposal's "unrestrained" rate increases.[28] Although CNY supports the Joint Proposal, and maintains that we should find that the terms and conditions of service and rates are reasonable, it also notes its concern with the rate impact especially with respect to LMI customers.[29]

The Companies assert that the revenue requirements in the Joint Proposal reflect significant compromises as compared to the initial filings and result in rates that are just, reasonable, and consistent with the public interest and any outcome that likely would have resulted from litigation.[30] Although the Companies recognize that the rate increases are significantly larger than those provided in the 2021 Rate Plans, they emphasize that those rate plans were negotiated during the COVID-19 Pandemic and "went to extraordinary lengths to minimize the impacts of any rate increases during that period."[31] The Companies state that many of those efforts – which involved reducing the scale of proposed investments and programs, deferring recovery of certain costs of providing service, and using substantial customer credits to offset costs - are no longer available to further moderate the rate increases here.[32] In addition, the Companies state that many of the cost pressures driving the proposed revenue requirements are due to factors largely beyond their control, including greater-than-normal inflation, increases in the cost of capital that are due in part

[27] AGREE Statement in Opposition, pp. 1-2.

[28] All Our Energy Statement in Opposition, p. 1.

[29] CNY Statement in Support, pp. 4-5.

[30] Companies Statement in Support, p. 23.

[31] Id., p. 22.

[32] Id., pp. 22-23.

to the Federal Reserve's efforts to contain inflation, supply chain disruptions, federal and state pipeline safety mandates, property tax increases, and costs to deliver expanded energy efficiency and other demand reduction offerings.[33] Finally, the Companies point out that the levelization of rates over the three-year term of the proposed rate plans, which mitigates customer bill impacts and provides rate stability, would not have been possible in a litigated case.[34]

Staff states that it is sensitive to the concerns raised by parties about the recommended rate increases and notes that the levelization of rates would ease the impact on customers over the term of the proposed rate plans.[35] Staff also asserts that the recommended rate increases are necessary for the Companies to continue to provide safe and reliable gas service, while advancing Commission and State clean energy and other policy objectives, including compliance with the CLCPA, and that the Joint Proposal would allow the Companies to do so at just and reasonable rates.[36]

CNY indicates that, despite its concerns about the impact of the recommended rate increases on customers, the Joint Proposal represents a better outcome than that likely to have resulted if these cases were litigated.[37] CNY states that key to its support of the Joint Proposal is that it includes rate increases that are meaningfully reduced from the Companies' initial requests.[38] CNY posits that if these cases "had been litigated, the rate increases would have been higher; customers

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[33] Id., p. 23 & nn. 69-70.

[34] Companies' Reply Statement in Support, p. 4.

[35] Staff Reply Statement in Support, p. 2.

[36] Id., pp. 2-4.

[37] CNY Statement in Support, p. 1.

[38] Id., pp. 1-2.

would not have been protected by a three-year rate plan and therefore would have been at greater risk for future rate increases; and the benefits included in the Joint Proposal, such as a heightened emphasis on gas safety, an increased focus on reducing or avoiding capital investments, and increased customer protections, may not have been achieved."[39] CNY additionally asserts that the proposed rate plans provide sufficient funding to ensure that the Companies can maintain and enhance the reliability and safety of the gas systems, which are of paramount importance to CNY.[40]

To the extent PULP and CNY indicate that the Companies and the Commission should provide additional resources for moderate-income customers whose income levels place them just above the threshold to qualify for EAP, they have not provided in these proceedings any proposals as to how such customers can be identified, where funds should be reallocated to provide such assistance, and how the proposals would impact other ratepayers. As CNY recognizes, the Commission has authorized budgets and established energy savings targets for robust energy efficiency initiatives that can reduce those customers' gas use, resulting in lower utility bills, and the Companies are pursuing federal funding for such programs.[41] The Commission will continue to take advantage of funding sources for programs serving LMI customers. Finally, we refer to our discussion of the Companies' customer initiatives and EAP programs, which further address programs targeted to low- and moderate-income customers in these rate plans.

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[39] Id., pp. 1-2.

[40] Id., p. 2.

[41] CNY Statement in Support, pp. 10-11.

The revenue requirement increases contained in the Joint Proposal, while significant, are meaningfully reduced from the Companies' proposals as updated through the proceedings, compare favorably to the likely results of a litigated outcome and are the reasonable product of compromise between the parties. The revenue requirements reflect various adjustments to remove discretionary spending and non-essential programs to mitigate bill impacts.[42] They also reflect efficiency savings over the term of the rate plans in excess of $70 million due to the Companies' ongoing efforts, as well as the traditional one percent productivity adjustment applied to labor and payroll taxes.[43] The revenue requirements have been thoroughly scrutinized by DPS Staff and other parties and have been deemed by those parties to be reasonable to provide sufficient funding for the Companies to continue to maintain their systems, operate them safely, and deliver reliable service to customers.

Among other things, the revenues will fund capital projects, customer initiatives, improvements to information technology and gas safety programs (including advanced leak detection and aggressive targets to address leak backlogs). In addition, part of the revenue requirement increase is due to residual rate pressure resulting from rate moderation efforts approved in the 2021 Rate Order to help ameliorate the bill impacts to ratepayers during the economic crises caused by the COVID pandemic. As a result of those rate moderation efforts, certain regulatory assets were not collected and, because those costs cannot continue to be deferred indefinitely, the Joint Proposal provides for their partial recovery in the proposed three-year rate plan.

[42] Exhibits 723 and 724 (Companies' Response to ALJ-1 and Attachment 1).

[43] Id.

We recognize that for some ratepayers the rate increases will represent a hardship. We find that the manner in which revenues will be collected – by levelizing the amounts over the three-year term of the rate plan and by collecting the revenues associated with the make-whole over the balance of RY1 – will serve to ameliorate the rate impacts reasonably, given the increases required.

CNY argues that the parties did not reasonably levelize rate impacts in RY1. We disagree. Through levelization, the $444 million revenue increase for KEDNY in RY1 was lowered to $256.9 million, and the $246.5 million revenue increase for KEDLI in RY1 was lowered to $147.1 million. As CNY notes, the bill impacts in RY1 are increased by the collection of revenues pursuant to the make-whole provision over the remainder of RY1. However, that is the typical manner in which make-whole revenues are collected in multi-year rate plans, and CNY offers no analysis showing how collection of the make-whole over a longer period would affect the projects and programs funded through the rate plans.

The levelization of the rate impacts over the three-year term of the proposed rate plans would not have been possible in a litigated rate case and is in the public interest. Accordingly, we find that the proposed revenue increases are necessary for the Companies to continue to provide safe and adequate service and will result in just and reasonable rates, and further State and Commission policies and State laws, including the CLCPA.

C. Capital Structure, Cost of Capital, and Disposition of Excess Earnings

The Joint Proposal includes an allowed ROE of 9.35 percent and a capital structure with a common equity ratio of 48 percent for each of the Companies.[44] The Joint Proposal also includes an earnings-sharing mechanism (ESM) pursuant to which ratepayers will share in a portion of the Companies' annual earnings that exceed 9.85 percent.[45] Under the ESM, earnings above 9.85 percent, but less than or equal to 10.35 percent, would be shared equally between ratepayers and the respective Company. Earnings above 10.35 percent, but less than or equal to 10.85 percent, would be shared 75 percent/25 percent between ratepayers and the affected Company, respectively. Earnings above 10.85 percent would be shared 90 percent/10 percent between ratepayers and the affected Company, respectively. The Companies will defer the ratepayers' share of excess earnings for the benefit of ratepayers. For earnings above 10.35 percent, the Companies would use 50 percent of their retained earnings to reduce regulatory asset balances associated with Site Investigation and Remediation (SIR) activities.

The Joint Proposal adopts the 48 percent common equity ratio as requested by the Companies and recommended by DPS Staff in pre-filed testimony.[46] This is the same common equity ratio under which the Companies currently operate and is identical to the common equity ratios applied to other major utilities. The proposed capital structure will support the Companies' credit ratings and allow them to access capital on reasonable terms to fund ongoing operations and investments necessary to maintain and improve the safety and reliability of their gas distribution systems. No party opposes the capital structure set forth in the Joint Proposal, which we adopt as in the public interest.

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[44] Joint Proposal, p. 8.

[45] Id., p. 22.

[46] Exhibit 14 (KEDNY/Capital Structure Panel Testimony), p. 6; Exhibit 16 (KEDLI/Capital Structure Panel Testimony), p. 5; Exhibit 390 (Staff/Duah Testimony), pp. 33-34.

The opportunity for a utility to earn a fair return on its prudently incurred infrastructure investments used to serve the public is a fundamental requirement of a rate order. The 9.35 percent ROE in the Joint Proposal is the product of compromise and falls within the bounds of the 10.3 percent ROE proposed by the Companies for a multi-year settlement and the 9.1 percent ROE recommended by Staff for a one-year rate case.[47] It also is comparable to the latest returns authorized in multi-year rate plans for gas-only utilities.[48] Finally, as Staff states, the proposed ROE is reasonable given the current economic environment.[49] Equity return requirements have generally increased in recent months, as reflected in the 9.5 percent ROE recently adopted for Central Hudson Gas & Electric Company in a litigated rate order.[50]

PULP argues that the Joint Proposal's 9.35 percent ROE is not in the public interest because it is "fixed" over the three-year term of the rate plan.[51] It posits that, in practice, such a fixed ROE has the potential to harm ratepayers, and

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[47] Exhibit 123 (Companies/Nowak Testimony), p. 73; Exhibit 390 Staff/Duah Testimony), p. 10.

[48] Case 21-G-0577, Liberty Utilities (St. Lawrence Gas) Corp. - Rates, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plan (issued June 22, 2023) (adopting a proposed 9.20% ROE on a three-year rate plan); Cases 21-G-0394 et al., Corning Natural Gas Corp. – Rates, Order Adopting Terms of Joint Proposal Establishing Rate Plan and Approving Merger (issued June 16, 2022) (adopting a proposed 9.25% ROE on a three-year rate plan).

[49] Staff Statement in Support, p. 44.

[50] Cases 23-E-0418, et al., Central Hudson Gas & Electric Corp. – Rates, Order (issued July 18, 2024); see also Case 23-G-0627, National Fuel Gas Distribution Corp. – Rates, Testimony of David P. Warnock (filed 3-1-24; DMM No. 36)(Staff witness recommending a 9.25% ROE in a one-year rate case for a gas-only utility).

[51] PULP Statement in Opposition, p. 5.

asserts that the use of a fixed ROE in the Companies' last three rate plans "suggest[s] that the Companies' ratepayers incurred up to $481 million more in the cost of their gas service" than they would have if the ROE had been updated annually for changing economic factors using the Commission's generic financing methodology. PULP maintains that, absent a mechanism for recalculating the ROE for this case on an annual basis, the Commission should modify the Joint Proposal to include an ROE set at the lower of (i) 9.35 percent or (ii) the result of Staff's ROE model run with the most recent available data.[52]

We disagree with PULP's position, which the Commission has rejected twice already.[53] PULP's arguments essentially assume that utilities are guaranteed to earn at least the ROE approved in rates. That is not so. While the Commission establishes an allowed ROE in rate orders, the allowed rates do not provide a guarantee that such return will be obtained. Rather, the established rate requires a utility to adhere to its cost forecasts and operate with efficiency to enable it to attain the allowed return.[54] Indeed, during the Companies' last three gas rate plans referenced by PULP, KEDNY earned under the allowed ROE in 10 of the 15 rate years involved, while KEDLI earned under the allowed ROE in eight of those years. For

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52 Id.

53 Cases 22-E-0317, NYSEG and RG&E – Rates, Order Adopting Joint Proposal (issued October 12, 2023), pp. 27-29; Cases 22-E-0064 et al., Consolidated Edison Company – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023), pp. 76-77.

54 Matter of New Rochelle Water Co. v Public Serv. Commn., 31 N.Y.2d 397, 407 (1972); Cases 22-E-0317 et al., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation – Electric and Gas Rates, Order Adopting Joint Proposal (issued October 12, 2023), pp. 30-31.

example, in Case 16-G-0059, KEDNY earned ROEs of 7.56 percent, 4.77 percent, and 5.56 percent for the years 2017 through 2019, respectively, despite its allowed ROE of 9.0 percent for each of the years noted.[55]

The information about the Companies' earned ROEs over their last three rate cases undermines PULP's position that, in practice, utilities bear no financial risk during multi-year rate plans. The Commission has consistently recognized that the extended term of a Joint Proposal carries more financial risk as investors are subject to additional risk that economic conditions may change and the actual cost of capital could change during the extended term of the rate plan. Because the Joint Proposal locks in forecasted amounts for numerous significant elements of expense for the three-year term, the Companies are exposed to the business risk that their actual operating costs will turn out to be greater than those allowed for in the Companies' rates. ROEs appropriately reflecting such risks are not guarantees that the risks will actually occur and should not be considered inappropriate on a retroactive basis if those risks ultimately do not materialize during the course of a multi-year rate plan.

A fixed ROE in a multi-year rate plan promotes the public interest by providing predictability and stability that protects ratepayer interests. Specifically, the use of a fixed ROE allows rates to be set over multiple years without fluctuations that would result if the ROE were to be changed every year. In addition, the stability of a fixed ROE supports

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[55] Case 16-G-0059, Brooklyn Union Gas Company d/b/a/ National Grid NY – Rates, KEDNY 2017, 2018 and 2019 Earnings Reports (filed May 31, 2018, May 31, 2019, and June 1, 2020, respectively).

the Companies' credit ratings, allowing the Companies to borrow money on more favorable terms and, in turn, keep rates lower.

PULP's position also does not appreciate that, given fluctuations in the financial markets, an annual ROE reset is just as likely to result in a higher ROE rather than a lower one, which is particularly evident in the current economic climate.[56] That is, PULP seemingly fails to recognize that an annual update changing an element as essential as the ROE severely hampers the ability of the parties to negotiate a multi-year settlement given that each rate year's expected rates are an unknown quantity. Moreover, even should the parties present a Joint Proposal, given the possibility that the ROE will increase substantially year-over-year, PULP's position might frustrate the Commission's authority and obligation to protect consumers from excessive rates. The Public Service Law requires both that utility rates be just and reasonable, and that the Commission take corrective action when it suspects that any previously allowed rate is no longer reasonable. To the extent the Commission suspects that a utility is collecting excessive rates from customers, the Commission must require that utility to demonstrate why its rates are reasonable and should not be reduced.[57] The implementation of an ESM can avoid the conflict between these two principles - encouraging multi-year

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[56] Cases 22-E-0317 et al., NYSEG and RG&E – Rates, Order Adopting Joint Proposal, p. 28; Cases 22-E-0064 et al., Consolidated Edison Company – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, p. 77.

[57] See Case 13-G-0136, National Fuel Gas – Rates, Order Instituting Proceeding and to Show Cause (issued April 19, 2013) (requiring National Fuel Gas to show cause why the company's rates should not be made temporary subject to refund while the Commission conducted a rate proceeding because it was suspected of achieving earnings in excess of a reasonable return).

rate plans where feasible and taking action where a utility's rates appear to be excessive.

We find that the Joint Proposal's 9.35 percent ROE is reasonable given the current financial market conditions as well as the increased financial and business risks inherent in setting rates over a multi-year period. The Joint Proposal adopts a fair return that is expected to allow the Companies to attract adequate capital to fund their anticipated investments, ensuring the continued provision of safe and reliable service in the Companies' service territories. Given the extensive evidence presented regarding the issue of a fair return, it cannot be said that the Joint Proposal's negotiated provisions establishing an ROE of 9.35 percent, fixed over a three-year rate plan, are contrary to the public interest.

Moreover, ratepayers are protected from possible over-earning through the ESM summarized earlier. Due to the difficulties in forecasting revenue and expenses years into the future, the sharing of additional earnings is an important safeguard in multi-year rate plans to protect customers from paying rates that result in windfalls for shareholders. The Joint Proposal's earnings sharing provisions strike a reasonable balance between providing an incentive to the Companies to minimize costs and improve efficiencies and protecting customers against unforeseen events that might otherwise inure to the sole benefit of the Companies' shareholders.

PULP argues that the ESM unfairly prioritizes the interests of shareholders over those of ratepayers. PULP notes that all of the earnings shared with ratepayers will be deferred to pay down future costs, while shareholders would be required to use only 50 percent of their retained earnings above 10.35 percent to reduce regulatory asset balances associated with SIR activities.[58] Noting what it refers to as the "extraordinary and unprecedented" $1.675 billion amount that KEDNY estimates it will need to spend on future environmental cleanup costs, PULP maintains that the Commission should exercise the flexibility it retained in its 2012 Order in Case 11-M-0034[59] by modifying the terms of the Joint Proposal to require both KEDNY's and its customers' share of excess earnings be used to pay down deferred SIR costs.

The SIR Order does not preclude sharing of SIR expenses between ratepayers and shareholders "under specific company and rate case circumstances," stating that "some stockholder responsibility for SIR costs could be included as part of the negotiation for rate plans where an earnings sharing mechanism is contemplated."[60] However, as stated by Staff, the earnings sharing mechanism in the Joint Proposal, which allows for some portion of shareholder excess earnings to be allocated to SIR costs, is consistent with the SIR Order and with other joint proposals recently approved by the Commission.[61] Moreover, adoption of PULP's position to require all of KEDNY's excess earnings to be applied to SIR cost deferrals could disincentivize the Companies from achieving cost efficiencies and the corresponding productivity gains that ultimately benefit ratepayers in subsequent rate filings.

D. Revenue Allocation and Rate Design

The Joint Proposal includes gas revenue forecasts,

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[58] PULP Statement in Opposition, pp. 7-8.

[59] Case 11-M-0034, Review and Evaluation of the Treatment of the State's Regulated Utilities' SIR Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012)(SIR Order).

[60] Id., p. 3.

[61] Staff Statement in Support, p. 16 & n. 76.

revenue allocation and rate design for service classes as agreed among the Signatory Parties, which are detailed below.

1. Revenue Forecasts

The Joint Proposal's revenue forecasts over the three-year rate plans for KEDNY are $2.101 billion in RY1, $2.173 billion in RY2, and $2.196 billion in RY3; and for KEDLI are $1.406 billion in RY1, $1.457 billion in RY2, and $1.476 billion in RY3.[62]

The Companies and DPS Staff each developed their own revenue forecasts.[63] The Companies' corrected and updated testimony projected total operating revenues of $2.217 billion for KEDNY and $1.466 billion for KEDLI, assuming one-year rate plans.[64] The forecasted revenues are based on rates set under the Companies' previous rate plans, using a 30-year weather-normalized sales forecast. The Companies' testimony explains that they developed their revenue forecasts using the average number of customers and deliveries for firm and non-firm sales and transportation service classification and allocated forecasted usage into rate blocks using the three-year historical average of actual billed block percentages.[65]

In its testimony, DPS Staff projected total operating revenues of $2.123 billion for KEDNY and $1.407 billion for

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[62] Joint Proposal, Appendix 3, Schedules 1, 2, and 3 (KEDNY) and Appendix 4, Schedules 1, 2, and 3 (KEDLI).

[63] Exhibit 160 (KEDNY/Rate Design Panel), pp. 13-15; Exhibit 176 (KEDLI/Rate Design Panel), pp. 13-15; Exhibit 455 (Staff/Gas Rates Panel), pp. 12-13; Exhibit 471 (Staff/Forecasting and Inflation Panel), pp. 23-46.

[64] Exhibit 298 (KEDNY Exhibit RDP-2CU); Exhibit 302 (KEDLI Exhibit RDP-2CU).

[65] Companies Statement in Support, p. 25; Exhibit 160 (KEDNY/Rate Design Panel Testimony), pp. 13-15, 73; Exhibit 176 (KEDLI/Rate Design Panel Testimony), pp. 13-15, 72.

KEDLI, assuming one-year rate plans and using a 10-year, rather than a 30-year, weather-normalized sales forecast.[66] Staff supported the Companies' forecast methodology of allocating block usage based on a three-year historical average of actual usage. Staff recommended adjusting the revenue forecasts to exclude Net Utility Plant (NUP) surcharge revenues and, for KEDLI only, the Demand Capacity Surcharge Mechanism (DCSM) because both sources of revenues were included in base rates. Staff further recommended including revenues associated with the Revenue Adjustment Clause (RAC).[67]

In rebuttal testimony, the Companies agreed to remove the NUP and DCSM revenues, and to include RAC revenues in the forecast.[68] The Joint Proposal reflects this agreement.

In their Statement in Support, the Companies assert that the forecasts adopted in the Joint Proposal are based on the use of the historical price-out methodology.[69] In its Statement in Support, DPS Staff asserts that the Joint Proposal reflects a compromise related to forecasted revenues, given customers' gas usage and applying 10-year rather than a 30-year average weather-normalization. Staff also notes that the Joint proposal properly includes the RAC surcharge revenues as an offsetting component of delivery revenue, and excludes the NUP and DCSM revenues, explaining that exclusion of both was

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[66] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 7-8, 12-13; Exhibit 471 (Staff/Forecasting and Inflation Panel Testimony), pp. 14-15. Staff testified that it did not contest the Companies' forecasted customer count of usage for the reported classes.

[67] Exhibit 455 (Staff/Gas Rates Panel), pp. 7, 12-15; Staff Statement in Support, p. 24.

[68] Exhibit 364 (Companies/Rebuttal Rate Design Panel), pp. 2-3.

[69] Companies Statement in Support, p. 25.

necessary to avoid overstating the incremental revenue requirement.[70]

The Joint Proposal's revenue forecasts reflect a reasonable negotiated compromise among the parties. They use a 10-year, rather than 30-year, average weather normalization forecast, which reasonably reflects anticipated weather trends over a shorter term than had been proposed by the Companies. We find that the revenue forecasts properly include the RAC surcharge because it is a component of delivery revenue that will offset the revenue requirement. They also properly exclude NUP and DCSM surcharge revenues because those revenues are now included in base rates and their inclusion would result in an overstatement of the incremental revenue requirement needed.[71] We agree with the Signatory Parties that the Joint Proposal's gas sales and revenue forecasts represent a reasonable compromise.

2. Revenue Allocation

The Joint Proposal contains the revenue allocations for both KEDNY and KEDLI in all service classes.[72] Similar to the Companies' last rate cases, the revenue allocation in the Joint Proposal is largely based on the pro forma Embedded Cost of Service (ECOS) studies the Companies submitted, which allocate operating costs to customer classes using forecasted rate base data, operating expenses, and revenues from each

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70 Staff Statement in Support, p. 25.

71 Staff Statement in Support, p. 25.

72 Joint Proposal, Appendix 3, Schedule 2.1 (KEDNY); Appendix 4, Schedule 2.1 (KEDLI).

class.[73]

While DPS Staff's testimony generally supported the use of pro forma ECOS studies, Staff advocated for the use of foundational historic test-year data in addition to the pro forma ECOS studies submitted and favored by the Companies.[74] The Joint Proposal provides that the revenue allocations "are not intended to be used as precedent in support of any embedded cost of service methodology in any future rate proceeding."[75] The pro forma ECOS studies underlying the Joint Proposal will be discussed in detail below.

The Companies' ECOS studies allocated operating costs to service classes based on an analysis of the forecasted rate year rate base, operating expenses, and revenues associated with each service class. The costs associated with distribution mains were allocated using customer and demand components using data developed in these rate cases and in their two prior cases.[76] The Companies applied a "tolerance band" to identify both those service classes that are over-contributing or under-contributing relative to the cost of services provided and to identify a range of allowable rates of return per customer classes. Under the Companies' methodology, the resulting list

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[73] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 27; Exhibit 176 (KEDLI/Rate Design Panel Testimony), p. 26. The Companies filed updated ECOS studies with revised revenue requirements. KEDNY/KEDLI Exhibits 291 and 302.

[74] Exhibit 455 (Staff/Gas Rates Panel), pp. 24-26.

[75] Joint Proposal, p. 12. A similar statement of an intent not to establish precedent is included in other sections of the Joint Proposal. See Joint Proposal, pp. 13-14 (referring to firm customer rate design); Joint Proposal, pp. 20-21 (referring to ECOS studies required in the Companies' next rate filings).

[76] Staff Statement in Support, p. 25 (citing KEDNY/Rate Design Panel, p. 26; KEDLI/Rate Design Panel, p. 27).

of service classes that are over-contributing or under-contributing relative to their respective costs of service will receive commensurate percentage increases to rates, with larger rate increases allocated to classes under-contributing and smaller increases allocated to classes over-contributing.

In its testimony, Staff reviewed the Companies' revenue allocation methodology and, while expressing no disagreement with it, changed the percent increase that the Companies assigned to each service class.[77] Staff recommended simplifying the Companies' methodology to determine over-contributing or under-contributing customers by dividing customer classes into those classes that are "greatly," "moderately," or "slightly" over-contributing or under-contributing.[78] Staff adjusted the average allocation percentage increases across the simplified categories and compared its results with the Companies' proposed allocation, determining that both methods produced generally similar outcomes.[79]

Staff testified that it applied the relative rate of return for each service class in the last rate cases to the Companies' respective tolerance bands from this case. Staff found that the majority of service classes did not shift in contribution level between rate cases, stating that it would be reasonable to assume that the differences would not materially affect each service class's contribution toward total revenues. Staff also agreed to the Companies' use of the three-study

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[77] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 33-34.

[78] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 30-32.

[79] Id. CNY objected in its rebuttal testimony that Staff had not provided its rationale or methodology for this adjustment, arguing that there is insufficient information in the record to evaluate the approach for purposes of determining whether it materially differs from the Companies' allocation.

average of minimum system study results for determining the ratio of customer-related versus demand-related shares of distribution mains.[80]

Staff asserts that the Joint Proposal's revenue allocations produce just and reasonable rates while allowing the Companies to collect an appropriate level of revenues.[81] Staff points to the Joint Proposal's requirement for the Companies to submit in their next rate cases "various historic and pro-forma ECOS Studies for informational purposes" only.[82]

In its testimony, CNY supported the use of a minimum system study to determine the customer ratio but advocated for the use of only the most recent study, disagreeing that averaging the three most recent minimum system studies was appropriate.[83] CNY's testimony indicated that the Companies' revenue allocation factors reasonably reflect the underlying cost drivers.[84] CNY supported the Companies' proposal to allocate the customer portion of the distribution mains based on the number of customers and allocating the demand portion based on design-day demand.[85] CNY did not oppose the Companies' use of manual adjustments and tolerance bands in its allocation methodology.[86] In its Statement in Support, CNY asserts that the Commission should approve the Companies' ECOS studies incorporated in the Joint Proposal, including the minimum system study for allocating the cost of distribution mains.[87] CNY

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[80] Exhibit 455 (Staff/Gas Rates Panel Testimony), p. 23.

[81] Staff Statement in Support, p. 27.

[82] Joint Proposal, pp. 20-21.

[83] Exhibit 532 (CNY/Chait Testimony), pp. 3, 11.

[84] Exhibit 532 (CNY/Chait Testimony), p. 7.

[85] Exhibit 532 (CNY/Chait Testimony), p. 12.

[86] Exhibit 532 (CNY/Chait Testimony), pp. 18-19.

[87] CNY Statement in Support, pp. 37-38.

argues that the minimum system study recognizes that distribution mains serve two purposes: connecting customers to the gas distribution system and providing capacity to meet customer demand. CNY asserts that this methodology is consistent with the NARUC Rate Design Manual and was used in the Companies' prior rate cases and in the Consolidated Edison rate case.

In its testimony, UIU argued in favor of using ECOS studies that allocate 100 percent of the distribution mains to demand rather than sharing between customers and demand.[88] UIU also argued in favor of assigning uniform increases to all service classes rather than relying on the ECOS studies.

In reviewing revenue allocation in rate proceedings, the Commission's objective is to achieve a level of fairness to ratepayers by matching customer rates in a given rate class with a utility's costs to operate and maintain the distribution system serving customers in the respective rate class, allowing for deviations from strict alignment based on competing policy considerations. To account for the imprecision inherent in ECOS studies, the Companies and DSP Staff applied a tolerance band to identify customers considered under-contributing or over-contributing to their assignment of costs responsibility to create a range of allowable rates of return.[89] The Joint Proposal's approach provides a level of fairness among ratepayers consistent with the goals of moving service classes closer to the cost of service, reducing disparities in relative rates of return, and achieving rate moderation.

Accordingly, we find that the revenue allocation in the Joint Proposal is supported by the ECOS studies and the

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[88] Exhibit 585 (UIU/Panko Testimony), pp. 18-19.

[89] Exhibit 455 (DPS Staff Gas Rates Panel Testimony), pp. 26-27.

record as a whole. The methodology the Companies and Staff used to evaluate the allocation among customers, including careful application of tolerance bands, is sound. The Joint Proposal's resulting revenue allocation balances the goal of bringing service classes closer to a system average rate of return without imposing undue impacts on any one class. We agree with DPS Staff that the Joint Proposal produces just and reasonable rates and allows the collection of revenues that are supported by the Companies' filings. The revenue allocation falls within the range of litigated results that may have been achieved in the absence of the Joint Proposal.

In its testimony, DPS Staff expressed concerns about the use of the Companies' pro forma ECOS studies and the accuracy of the results.[90] As the Companies noted in their testimony, ECOS studies form the foundation for apportioning the proposed total revenue requirement and rate of return fairly among service classes.[91] Staff's testimony recommended that the Commission require the Companies to provide historic ECOS studies in their next rate cases for comparison purposes because such studies "rely on known values for rate base, operating expenses, and revenues which will help to eliminate some of the uncertainty surrounding the accuracy of the forecast rate base, operating expenses and revenues."[92] UIU's testimony also recommended the use of several kinds of ECOS studies in negotiated multi-year rate plans on the grounds that they would provide "more insight into the impact of key judgments" and

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[90] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 23-26; Staff Statement in Support, p. 26.

[91] Exhibits 291 and 302 (Companies/Rate Design Panel Corrected-Updated Testimony), p. 21.

[92] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 25-26.

assist the Commission in making a more informed decision.[93] The Joint Proposal implements the requirement for the Companies to submit both historic and pro forma ECOS studies in their next rate filings, which we find would provide a more thorough review of revenue allocation and rate design.[94]

As we noted in Central Hudson's recent rate case, both historical and pro forma ECOS studies provide "useful information for allocating revenues and may better inform costs than looking at either study in isolation" even though both have strengths and weaknesses.[95] We also noted that pro forma ECOS studies are subject to errors because certain assumptions are used to determine values and that the benefit of historical studies is their foundation in actual data. We cautioned, however, that historic studies alone may not represent what could occur in a forecasted rate year. We noted in Central Hudson our preference that utilities in major rate proceedings should file at a minimum historical ECOS studies based on actual data without requiring the use of same to determine a proposed revenue allocation and rate design.[96]

3. Rate Design

As detailed below, the Joint Proposal includes the rate design for firm and non-firm service classes and identifies the resulting bill impacts, with levelization adjustments to mitigate impacts on customers over the three-year rate plans.[97]

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[93] Exhibit 585 (UIU/Panko Testimony), pp. 13-14.

[94] Joint Proposal, pp. 20-21.

[95] Case 23-E-0418/23-G-0419, Central Hudson Gas & Electric Corporation – Rates (issued July 18, 2024), pp. 99-100.

[96] Id. Notably, we did not require Central Hudson's use of any specific ECOS studies in proposing its revenue allocation and rate design.

[97] Joint Proposal, Appendix 3, Schedule 3 (KEDNY); Appendix 4, Schedule 3 (KEDLI).

Again, we note that the Joint Proposal provides that the rate designs adopted are not intended to establish precedent in support of any design methodology in future rate cases.[98]

The Joint Proposal provides that, if the Companies do not have new rates in effect by April 1, 2027, the unlevelized revenue requirement for RY3 will apply and the Companies will submit a tariff filing 30 days prior to that date.[99] The rate design for the Companies' firm and non-firm service classes are detailed below.

4. Firm Service Classes.

KEDNY initially proposed increases to minimum customer charges for all firm service classes, including residential heat (SC 1B), non-heat (SC 1A), distributed generation (SC 1B-DG); and non-residential heat (SC 2-2) and non-heat (SC 2-1), multi-family (SC 3), high load factor (SC 4A), compressed natural gas (SC4A-CNG), year round air conditioning (SC 4B), seasonal (SC 7), and distributed generation (SC 21).[100] KEDLI provided a similar initial proposal in terms of minimum charges but included a class dedicated to wholesale natural gas vehicles.[101] Both Companies designed the volumetric rates, when feasible, so that tail blocks are increased by a greater percentage than the mid-block rates. The Companies claimed that their rate design

[98] Joint Proposal, p. 13.

[99] Joint Proposal, p. 12. The RY3 revenue requirement is set forth in Appendix 3, Schedule 3 (KEDNY) and Appendix 4, Schedule 3 (KEDLI).

[100] Exhibit 160 (KEDNY/Rate Design Panel Testimony), pp. 38-42.

[101] Exhibit 176 (KEDLI/Rate Design Panel Testimony), pp. 39-43.

moved away from (or "flattened") the declining block rate structure and fosters CLCPA goals.[102]

In its testimony, DPS Staff agreed with the Companies' minimum customer charge increases on the ground that they are supported by the marginal cost-of-service studies.[103] Staff initially opposed the continued flattening and phase out of declining block rates for a one-year rate plan in light of the magnitude of the proposed rate increases and bill impacts.[104] Staff's testimony left open whether it would support the continued flattening of declining block rates in a multi-year rate plan.[105] In its Statement in Support, DPS Staff asserts that moving away from declining block rates as provided in the Joint Proposal will send the desired price signals that will encourage conservation, while moderating bill impacts for high gas usage customers through levelization.[106] Staff also asserts that the Joint Proposal represents a reasonable compromise, given the concerns expressed in its testimony.

UIU supported the Companies' movement away from declining block rates where feasible because of the potential to encourage greater energy efficiency through price signals.[107] UIU pointed out that there are several service classes whose declining block rates will continue without change, including

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[102] Exhibit 160 (KEDNY/Rate Design Panel, p. 38; Exhibit 176 (KEDLI/Rate Design Panel), p. 38. Declining block rates by their nature mean that the more gas used by a customer, the lower the rate, as evident in the Companies' rate structures for General service heating and non-heating rate classes (SC 2) and in KEDLI's multi-family rate class (SC 3).

[103] Staff Statement in Support, p. 28.

[104] Exhibit 455 (DPS Staff Gas Rates Panel Testimony), p. 7.

[105] Exhibit 455 (DPS Staff Gas Rates Panel Testimony), pp. 44-42.

[106] Staff Statement in Support, p. 29.

[107] Exhibit 585 (UIU/Panko Testimony), pp. 27-29.

the Companies' residential distributed generation service classes (SC 1B-DG and SC 1-DG).[108] UIU recommended making further incremental movement towards the elimination of declining block rates.[109]

In its testimony, PULP stated that conservation-oriented rates "are compelling considering CLCPA goals" and would also benefit disadvantaged communities.[110] CNY testified that the Companies should undertake an additional class-by-class rate design analysis to balance bill impacts across usage levels and that a "more nuanced" rate design would move toward achieving the CLCPA's policy goals.[111]

The Joint Proposal's rate design flattens declining block rates for certain customer classes and represents a reasonable compromise among the Signatory Parties. DPS Staff opposed the Companies' initial proposed flattening for higher usage customers in light of the resulting level of the rate increase for some classes since block flattening will result in varied intra class impacts. UIU supported the Companies' initial proposed movement away from declining block rates. CNY notes that the Joint Proposal delays the elimination of declining block rates and thereby protects high-usage firm gas customers from significant rate increases, allowing them to pay

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[108] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 39; Exhibit 176 (KEDLI/Rate Design Panel Testimony), p. 40; Hearing Exhibit 585 (UIU/Panko Testimony), pp. 29-30.

[109] Exhibit 585 (UIU/Panko Testimony), pp. 29-30.

[110] Exhibit 559 (PULP/Corrected Yates Testimony), p. 17.

[111] Exhibit 532 (CNY/Chait Rebuttal Testimony), p. 5.

less the more gas used, which does not send an appropriate price signal.[112]

The Companies' previous 2019 rate cases generally flattened declining block rates for certain firm service customers, allocating an increase to the tail block, although at least one service class (SC 1A) remained unchanged.[113] In those cases, Staff stated that the shift toward flattening was expected to produce price signals for conservation and a reduction in overall gas usage, to create environmental benefits, and to ease capacity constraints.[114]

The Companies' intention to address declining block rates with flattening is evident in this record based on their initial testimony.[115] DPS Staff in its testimony asserted that

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[112] CNY Statement in Support, pp. 39-40. For example, under the Joint Proposal, declining block rates remain in place for several KEDNY and KEDLI service classes during the three-year rate term, including KEDNY's residential heating customers (SC-1B); non-residential heating customers (SC2-2) who will pay in Rate Year 1 $41.33 for the first three therms; $0.90 per therm for the next 87 therms; $0.84 per therm for the next 2,910 therms; and $0.61 per therm for more than 3,000 therms. The more gas usage, the less the cost per them. KEDNY's high load factor service class (SC 4A) will pay $279 for the first ten therms; $0.35 per therm for the next 990 therms; and $0.35 per therm for over 1,000 therms. There is no incentive in this service class to limit gas usage between 990 therms and more than 1,000 therms because customers will pay the same ($0.35 per therm) regardless of the therms used. KEDLI's declining block rates for its customer classes are similarly structured, with declining block rates persisting over the three-year rate plan.

[113] The Companies' previous rate case left the existing declining block rates unchanged for all service classes. Case 16-G-0058/16-G-0059, KEDNY/KEDLI – Rates, Order Adopting Terms of Joint Proposal and Establishing Rate Plans (issued December 16, 2016), p. 45.

[114] 2021 Rate Order, p. 90.

[115] Exhibit 160 (KEDNY/Rate Design Panel), pp. 37-43; Exhibit 176 (KEDLI/Rate Design Panel), pp. 38-44.

it supported the concept of flattening as consistent with the CLCPA's goals because it sends "appropriate price signals to encourage energy efficiency and beneficial electrification by increasing the price per therm associated with higher usage." [116] Staff nevertheless opposed the extent of flattening the Companies proposed because of the magnitude of the rate increases in these cases, stating that the rate design "would shift the revenue requirement to high use customers and further exacerbate the bill impacts to those higher use customers."[117] DPS Staff recommended in testimony that, in furtherance of the CLCPA's goals, the Commission require the Companies to file an analysis of flattening declining block rates in their next rate cases.[118]

Declining block rates represent a rate structure that is inconsistent with sending meaningful price signals to customers to conserve gas usage and thereby foster the CLCPA's greenhouse gas emission reduction objectives and move toward electrification. As we noted in our April 2022 Rate Order approving the Joint Proposal for Orange and Rockland's three-year rate plan, the Commission favors elimination of declining block rates.[119]

We agree with DPS Staff's position that the Companies should submit an analysis in its next rate cases to flatten and eliminate declining block rates. We also agree with UIU that

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[116] Exhibit 455 (Staff/Gas Rates Panel), pp. 39-40 ("block flattening has a greater rate impact for customers of higher usage").

[117] Id., p. 40-41.

[118] Id., p. 41.

[119] Cases 21-E-0074 et al., Orange & Rockland Utilities, Inc. – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, with Additional Requirements (issued April 14, 2022), pp. 81-82.

more movement toward eliminating declining block rates is required in view of the Commission's stated policy on this issue and is consistent with the CLCPA's goal to ultimately reduce greenhouse gas emissions by 85 percent by 2050.[120] The pace of the overall movement away from declining block rates by New York's utilities should be prioritized in view of the CLCPA's deadlines.

We leave to DPS Staff's discretion in the Companies' next rate cases to consider the Companies' proposed rate design in the context of the CLCPA's aggressive emission reduction goals and assess the environmental benefits realized from the level of flattening. DPS Staff may propose to moderate bill impacts as it deems appropriate.

5. Non-Firm Demand Response

Under the prior rate plans, the Companies' two-tiered, non-firm demand-response (NFDR) rates were based on discounted rates for firm heat (SC 1) and non-heat (SC 2) and multi-family (SC 3) classes, with NFDR Tier 1 given a 50 percent discount and NFDR Tier 2 given a 60 percent discount for volumetric rates. The Companies' testimony proposed to increase the discounts for both Tiers from those levels to 55 and 65 percent, respectively, for purposes of incentivizing non-firm service customers to remain non-firm.[121] In testimony, DPS Staff agreed to the Companies' proposed percentage discount increases for the purpose of discouraging migration of non-firm customers to firm service.[122] CNY similarly supported the Companies' proposal.

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[120] Environmental Conservation Law (ECL) §75-0107(1)(b).

[121] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 42; Exhibit 176 (KEDLI/Rate Design Panel Testimony), p. 43.

[122] Staff Statement in Support, p. 29 (citing Staff Gas Rates Panel Testimony, p. 44).

The Joint Proposal recommends continuation of Tier 1 and Tier 2 interruptible services, which will have service interruption temperatures set annually and volumetric delivery rates set at discounts of approximately 55 percent and 65 percent, respectively, below the tail block volumetric rate of otherwise applicable firm service class.[123] Applicable customer charges will remain the same. The Joint Proposal contains revenue targets for each Tier's blocks in each rate year.[124]

The Joint Proposal also requires implementation of a NFDR gas cost reconciliation by September 1, 2024, which will discontinue the current process of removing commodity revenues from actual gas expenses. Instead, the Companies' annual Gas Adjustment Clause (GAC) reconciliation filing will include penalties as a refund for firm customers through a separate annual reconciliation filing.[125] The penalty refund volumetric rate will be included in the adjustment portion of the Companies' reconciliation filing. Any GAC imbalance will be surcharged or credited to firm and non-firm customers through a volumetric rate noted in the filing.

No objections were asserted with respect to this aspect of the Joint Proposal. We find that the Joint Proposal's increased discounts will provide a further incentive to customers to remain on demand response classes and thereby foster reduced gas usage during peak hours and eliminating the need to build infrastructure to serve large firm loads. We also find that this measure is consistent with the CLCPA's reduced

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[123] Joint Proposal, p. 13. The Joint Proposal notes that the methodologies used to derive the non-firm rate design are not intended to establish precedent for any future rate proceeding.

[124] Joint Proposal, Appendix 3, Schedule 5; Appendix 4, Schedule 5.

[125] Joint Proposal, pp. 13-14.

emission objectives and is in the public interest. Nevertheless, if the Companies seek to increase these discounts in their next rate cases, they should provide quantitative evidence of the number of non-firm customers who have migrated to firm service over the course of these rate plans or other evidence supporting any further proposed discount increases.

6. Non-Firm Demand Response Reconciliation

The Joint Proposal adopts the Companies' proposal to include revenues from NFDR customers in the GAC and System Performance Adjustment (SPA) calculations.[126] The Commission's 2021 Rate Order required the Companies to propose in these rate proceedings a mechanism to reconcile the NFDR gas costs.[127] The Companies claimed that they have a combined firm and non-firm gas supply portfolio and could not separately reconcile gas supply costs for NFDR customers. Consequently, the Companies proposed to include gas supply costs for NFDR customers in their respective annual GAC filings, with a corresponding change to the SPA to include all firm and NFDR sales and transportation customers.[128] Staff supported the Companies' proposal for the GAC filings and the SPA to account for the addition of the NFDR customers, terming it "the best solution" to allow the Companies

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[126] Id.

[127] 2021 Rate Order, Attachment A, Joint Proposal, pp. 20-21; Exhibit 455 (Staff/Gas Rates Panel), p. 54. Under the prior rate plans, the Companies' annual GAC reconciliation is adjusted to exclude NFDR revenues from the actual gas purchase expense, with the difference between the total adjusted GAC revenue and the total purchased gas expense representing an over or under collection from customers. The over/under collection is divided by firm customer annual sales to derive the annual cost of gas imbalance surcharge or refund, which is reported on the Companies Statement of Monthly Cost of Gas and Adjustments.

[128] Exhibit 160 (KEDNY/Rate Design Panel Testimony), pp. 59-60; Exhibit 176 (KEDLI/Rate Design Panel Testimony), pp. 58-59.

to reconcile these gas costs and comply with the 2021 Rate Order's reconciliation requirement.[129]

The Joint Proposal adopts the Companies' proposal to include NFDR customers to the GAC and SPA calculations. We agree with Staff's position that, because the Companies cannot separate the NFDR gas costs from their total portfolio, the addition of the NFDR gas costs to the annual GAC and SPA is the best solution to allow the Companies to reconcile these gas costs and otherwise comply with the 2021 Rate Order.

7. Minimum System Study

The Joint Proposal provides that in their next rate filing, the Companies will submit "for informational purposes" (1) an ECOS study that classifies distribution main costs as 100 percent demand-related and (2) one or more ECOS studies that classifies distribution main costs as both customer-related and demand-related by using a minimum system study.[130] The Companies' use of a minimum system study that split the costs of distribution mains between customer and demand components[131] was a contested issues during these proceedings. In its testimony, DPS Staff supported the use of this study but recommended that the Companies reassess the minimum system ratios, using updated data and information.[132] CNY supported the use of the Companies' minimum system study methodology, which classifies shares of gas

[129] Exhibit 455 (Staff/Gas Rates Panel), p. 58.

[130] Joint Proposal, pp. 40-41.

[131] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 25. The Companies explain that the distribution mains connect customers and also provide capacity to meet demand and the costs are therefore properly split between the two components.

[132] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 23, 26.

distribution main costs as customer-related and demand-related, but also urged the use of more updated data.[133]

UIU's objected through testimony to the minimum system study's allocation and recommended that distribution main costs be allocated entirely (that is, 100 percent) to demand.[134] UIU recommended that the Companies be required to include in their next rate filing multiple gas ECOS studies, including a minimum system study allocating 100 percent of distribution main costs to demand.

The Joint Proposal provides that the Companies in their next rate filings will submit an ECOS study that classifies distribution main costs as 100 percent demand-related in addition to one or more ECOS studies that classify such costs as customer-related and demand-related by using a minimum system study utilizing the most recent year and multi-year data to calculate the customer-related portion of the system.[135] These provisions address UIU's recommendation and are consistent with similar provisions in the Commissions previous 2021 Rate Order. Moreover, the Commission accepted the use of the minimum-system methodology to classify distribution costs in the Companies' previous rate cases and, more recently, in Consolidated Edison's gas rate case.[136]

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[133] CNY Statement, p. 38; Exhibit 532 (CNY/Chait Testimony), pp. 3, 7-11.

[134] Exhibit 585 (UIU/Panko Testimony), p. 18. UIU did not file a Statement in Support of, or Opposition to, the Joint Proposal.

[135] Joint Proposal, pp. 20-21.

[136] See Cases 22-E-0064 et al., Consolidated Edison Company – Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements.

The Joint Proposal reflects a reasonable agreement among the Signatory Parties to require relevant information in the next rate filing, which will enable a comparison between main costs as 100 percent attributable to the demand component and such costs as shared by customers. This provision of the Joint Proposal assures that the record on this issue will be fully developed in the Companies' next rate cases to inform the Commission with respect to the appropriate approach.

8. Lost and Unaccounted for (LAUF) Gas and Computation.

The Companies' testimony proposed to update LAUF gas targets and dead bands based on the most recent five years of LAUF gas data and to include NFDR customers in the SPA reconciliation that compares actual system LAUF gas to established targets.[137] The targets were based on data from September 2018 to August 2023. DPS Staff supported the Companies' proposal, including the SPA reconciliation changes and NFDR gas cost reconciliation approved in the last rate case and continued here.[138]

The Joint Proposal recites the Companies' proposal, as agreed by the Signatory Parties, and establishes new LAUF gas targets and dead bands, effective September 1, 2024, as follows:

	KEDNY	KEDLI
LAUF Gas Target	1.919%	2.029%
Upper Band	2.919%	2.613%
Lower Band	0.919%	1.444%[139]

137 Exhibit 160 (KEDNY Exhibit RDP-5), pp. 1, 60; Exhibit 176 (KEDLI Exhibit RDP-5).

138 Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 51, 58.

139 Joint Proposal, p. 14.

These targets and dead bands will be effective at the beginning of the new GAC cycle on September 1, 2024, and reconciled annually for the GAC year ending August 31.

The Joint Proposal also includes a loss percentage calculation formula, which is computed by subtracting total metered system deliveries from total metered system receipts and dividing that difference by total metered system receipts, applying "any necessary adjustments" (or Factor of Adjustment), and reconciling it annually on August 31 of each year.[140] The Joint Proposal provides that the Companies' will revise their tariff (Leaves 69 and 69.1) to state: "Actual LAUF is computed by subtracting total metered system deliveries from total metered system receipts and dividing that difference by total metered system receipts."[141]

We find these provisions of the Joint Proposal to represent a reasonably negotiated resolution to LAUF gas and its calculation that is unopposed and falls within the range of expected litigated results.

9. Revenue Decoupling Mechanism

The Companies' current rate plans include Revenue Decoupling Mechanism (RDM) targets that are intended to reconcile base delivery revenue by class, and reflect changes in gas delivery rates and service fees based on the total revenue requirement.[142] Under the existing RDM, for certain customer classes (SC 1A, SC 1B, SC 2, and SC 3), actual revenues are annually trued up against the revenue per class targets.

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140 Joint Proposal, Appendix 3, Schedule 8 (KEDNY); Appendix 4, Schedule 8 (KEDLI).

141 Joint Proposal, p. 15.

142 Joint Proposal, p. 15; Appendix 3, Schedule 7 (KEDNY); Appendix 4, Schedule 7 (KEDLI).

In testimony, both the Companies and DPS Staff agreed to update the RDM targets but used their own respective revenue requirements.[143] The Joint Proposal contains the final revenue requirements for each service class during each rate year based on customers, volume, base delivery revenue and billing fees.[144] No party opposed this provision.

The Joint Proposal is consistent with the Companies' and DPS Staff's positions in testimony.[145] The updated RDM targets will ensure that the Companies will collect revenues based on the updated revenue requirement. In the absence of updating, the Companies would return revenue increases approved in these rate cases to customers each year. We find that this aspect of the Joint Proposal is supported by the record and will result in the continuation of the RDM that has previously been approved by the Commission.

10. Merchant Function Charge (MFC)

The Joint Proposal continues, with modifications, the Merchant Function Charge (MFC), which is intended to allow the Companies to recover from firm and non-firm demand response customers the costs associated with gas supply procurement, commodity-related credit collection and uncollectible expenses, the return requirement on gas purchase-related working capital and gas storage inventory, and commodity-related working capital

[143] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 52; Exhibit 176 (KEDLI/Rate Design Panel Testimony), p. 53; Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 50-51.

[144] Joint Proposal, pp. 29-30; Appendix 3, Schedule 7 (KEDNY) and Appendix 4, Schedule 7 (KEDLI).

[145] Exhibit 160 (KEDNY/Gas Rates Panel Testimony), p. 53; Exhibit 176 (KEDLI/Gas Rates Panel Testimony), p. 53; Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 50-51.

expenses.[146] The MFC is also designed to recover costs from firm transportation customers for gas storage inventory that the Companies manage for those customers.

In line with their updated/corrected revenue requirement testimony, the Companies updated the MFC expenses to reflect the cost of service in the following areas: gas supply procurement expenses; commodity-related credit and collection expenses; commodity-related uncollectible expenses; and gas storage inventory targets (based on the latest storage cost forecasts and the pre-tax weighted average cost of capital).[147] The Companies also recommended updates to gas purchase-related working capital based on updated pre-tax weighted average cost of capital.[148]

DPS Staff asserts in its Statement that the final MFC targets provided in the Joint Proposal are based on corrections to the revenue requirement, reflect the cost of service, and should be adopted.[149] Staff further asserts that if the MFC was not updated, costs would be shifted to base delivery rates thereby creating an inequitable cost recovery mechanism because not all of the Companies' customers are subject to all MFC components.

We find that the Joint Proposal's updated MFC reflects the cost of service and is equitable to customers because it

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[146] Joint Proposal, p. 15; Appendix 3, Schedule 6 (KEDNY); Appendix 4, Schedule 6 (KEDLI); Exhibit 160 (KEDNY Rate Design Panel), pp. 46-47; Exhibit 176 (KEDLI Rate Design Panel), pp. 47-48.

[147] Exhibit 298 (KEDNY/Rate Design Panel Corrections and Updates Testimony), p. 7; Exhibit 302 (KEDLI/Rate Design Panel Corrections and Updates Testimony), p. 6.

[148] Exhibit 160 (KEDNY/Rate Design Panel Testimony), p. 51; Exhibit 176 (KEDLI/Rate Design Panel Testimony), p. 52.

[149] Staff Statement in Support, p. 40

will result in a cost recovery mechanism whereby certain targeted customers will be subject to the MFC only when they are subject to most, if not all, MFC components. This represents a reasonable compromise and is supported by the record.

11. Rate Adjustment Mechanism

The Joint Proposal includes a Rate Adjustment Mechanism (RAM) for firm service customers to recover costs from, or refund credits to, customers on a timely basis.[150] In their testimony, the Companies proposed that, for the first year, the RAM address only existing reconciliations and deferral amounts from January 1, 2023, to March 31, 2024, and in the second year, both existing and new deferrals would be recovered.[151] Although DPS Staff disagreed with the Companies' position, it did so only in the context of a one-year rate plan.[152]

The Joint Proposal provides for consolidation of certain existing deferral balances, known as "Eligible Deferral Accounts" (EDAs), into a single surcharge or credit for customer recovery or deferral. These consolidated EDAs will include costs for: (1) property taxes; (2) the energy affordability program; and (3) compliance with potential new regulations to be promulgated by the federal Pipeline and Hazardous Materials Safety Administration (other than rulemaking costs).[153] The RAM will be subject to an annual cap of two percent of the Companies' actual operating revenues for the prior year, excluding commodity revenues of energy service companies, and

150 Joint Proposal, p. 39.

151 Exhibit 160 (KEDNY/Rate Design Panel Testimony), pp. 63-64; Exhibit 176 (KEDLI/Rate Design Panel Testimony), pp. 62-64.

152 Exhibit 425 (Staff/Policy Panel Testimony), pp. 18-19.

153 Joint Proposal, pp. 12-13, 18-19.

will be recovered or credited from July 1 through June 30 of each rate year.[154] Thirty days before the July 1 surcharge effective dates, the Companies will file a calculation of RAM deferred surcharges and credits by service class with a supporting schedule showing balances and will be subject to Staff's audit. The Companies will adjust the calculation based on Staff's audit determination.[155]

We find that RAM implementation under the Joint Proposal will enable more timely cost recovery or customer credit and reduce deferred balances and associated carrying charges. It will also eliminate to an extent the requirement that regulatory assets and liabilities be addressed in future rate proceedings, which potentially would create ratepayer inequity.

12. Rate Adjustment Clause

This provision of the Joint Proposal discontinues the Rate Adjustment Clause (RAC), which was imposed in the Companies last rate cases due to the federal investigation into bribery and conspiracy charges against five former National Grid managers who steered contracts to certain contractors in exchange for hundreds of thousands of dollars in bribes.[156] The Commission's 2021 Rate Order required $2.5 million of each Companies' revenue requirement to be collected annually during their three-year rate plans through the RAC until the Commission approved or disallowed expenditures related to the managers charged with wrongdoing.[157] The Commission's 2021 Rate Order

[154] The RAM in RY1 is limited to the EDA balances as of March 31, 2024, and is recoverable from July 1, 2024, through June 30, 2025.

[155] Joint Proposal, p. 19.

[156] Joint Proposal, p. 21.

[157] Cases 19-G-0309 and 19-G-0310, 2021 Rate Order, pp. 99-100.

impacted both Companies and was issued pending the Commission's investigation into the Companies' activities.[158] The 2021 Rate Order provided that the Companies were required to satisfy their burden of proof for any expenditures made in conjunction with any programs or projects associated with the five former managers and their illegal activities, or until the Commission issued a disallowance determination and a customer refund implementing that determination was effectuated.

For the three-year rate plans under the Joint Proposal, the RAC will be discontinued while the amounts collected under the prior rate plans will remain subject to DPS Staff audit and Commission disposition.[159] Staff points out that this provision of the Joint Proposal does not limit the Commission's discretion to act in the proceeding that was initiated to investigate the Companies' activities.[160] The Joint Proposal also provides that the Companies' shareholders will be responsible for any amounts owed to customers above the amounts already collected under the RAC and will not be considered retroactive ratemaking.

We find that the RAC provisions are sound because they continue to hold shareholders responsible for additional costs

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[158] Case 21-M-0351, Proceeding on Motion of the Commission to Examine Certain Programs and Related Capital and Operation and Maintenance Expenditures of National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY, and KeySpan Gas East Corporation d/b/a National Grid, Order Commending Proceeding and Requiring Report (issued June 23, 2021) (Investigation Order).

[159] Joint Proposal, p. 21.

[160] Staff Statement in Support, pp. 41-42. The Investigation Order required the Companies to file an Initial Investigative Report, which the Companies submitted on August 3, 2021, but no further action has been taken in this proceeding since its initiation and most of the Companies filings have been afforded confidential treatment.

associated with the activities of the former managers, while leaving intact the Commission's ability to take additional action in the investigation proceeding.

13. KEDNY Newtown Creek Revenue Reconciliation

The Joint Proposal revises KEDNY's revenue reconciliation for the Newtown Creek Project to provide that if actual revenues from the sale of renewable natural gas (RNG) exceed the targets set in rates for each rate year,[161] the Company will defer the difference for customer refund.[162] If, on the other hand, actual revenues are below the targets, KEDNY will defer for future recovery all costs up to $1 million and 90 percent of costs above that amount.

In its Statement, DPS Staff asserts that this provision is reasonable because the Companies' shareholders are responsible for paying a portion of any revenue shortfall above $1 million, in recognition that Newtown Creek produces sufficient revenues to offset or partially offset costs and that the Companies must maintain certain risk if the expected revenue levels are not realized.[163]

We agree with Staff's assessment of this reconciliation provision and find it reasonable. Notably, the record reflects that the Newtown Creek Project is advancing the CLCPA's emissions reduction objective by eliminating flaring

[161] These targets are $4.657 million in Rate Year 1; $5.295 million in Rate Year 2; and $5.705 million in Rate Year 3. KEDNY's current rates reflect revenues of $4.007 million for the sale of renewable natural gas and environmental attributes associated with Newtown Creek.

[162] Joint Proposal, p. 20.

[163] Staff Statement Support, p. 40.

from the facility, while providing a source of renewable biomethane energy for use in KEDNY's service territory.[164]

14. Other Fees, Charges, Surcharges, and Credits

The Joint Proposal reduces KEDNY's and KEDLI's consolidated billing fees from $1.31 and $1.32, respectively, to $1.18, while increasing fees for unproductive field visits, re-establishment, and/or reconnection at either the main distribution point or the customer meter.[165] It also nominally increases the paperless billing credit from $0.43 to $0.48 for KEDNY, and from $0.41 to $0.52 for KEDLI.[166]

On July 1, 2025, the Joint Proposal terminates the Gas Safety and Reliability Surcharge for costs associated with the April 1, 2023, through March 31, 2024 stay out period under the prior Joint Proposal.[167]

The Commission approved a surcharge to recover imputed late payment charge revenues and other tariff fees that were waived during the COVID-19 pandemic. The surcharge will be eliminated on July 1, 2025.

15. Other Tariff Changes

The Joint Proposal addresses other tariff changes, as well. The Economic Development Discount Rates and Electric Generator Delivery Rates will continue, the former during the three-year rate term and the latter until the Commission acts in

[164] Tr. 85-87, 94-97 (flaring activity at Newtown Creek and associated emissions have been reduced by 80 percent in the first year of RNG operations and production, which is expected to improve based on 2024 operational hours).

[165] Joint Proposal, pp. 15-16.

[166] Joint Proposal, p. 15.

[167] Joint Proposal, p. 17.

a separate, State-wide proceeding.[168] The Demand Capacity Surcharge Mechanism will be eliminated effective July 1, 2025, although the Companies will continue to accrue carrying costs on any balances as of June 30, 2024, at the pre-tax weighted average cost of capital.[169] Demand response costs (including true-up portions) will be recovered through the Non-Labor Demand Response Operation and Maintenance Cost Surcharge beginning on April 1, 2024, and annually thereafter.[170]

The Companies also agree to revise and clarify tariff language governing Missed Appointment Fees, the Revenue Tax Surcharge, and Normal Heating Degree Days.[171] In addition, they agree to meet with DPS Staff and stakeholders to address safety concerns and notification issues due to unannounced system-wide testing of dual fuel equipment.[172]

As a whole, the Joint Proposal's revenue allocation, rate design, and associated provisions represent a negotiated resolution that falls within the range of reasonable outcomes under the Commission's Settlement Guidelines, given the litigated positions advanced by the parties and recited above. The Joint Proposal provisions are firmly based on the record and advance fairness in the contributions to be made by each of the

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[168] Joint Proposal, p. 16 (citing Case 17-G-0011, In the Matter of a Review of Tariff Provisions Regarding Natural Gas Service to Electric Generators). The Joint Proposal eliminates the $24 per Dekatherm (Dth) penalty for an electric generator's excess usage during curtailment but continues the $100 per Dth penalty for unauthorized use.

[169] Joint Proposal, pp. 16-17.

[170] Joint Proposal, pp. 16-17. For this and other miscellaneous tariff changes, the Companies are permitted after the effective date to accrue carrying costs on remaining balances at the pre-tax weighted average cost of capital.

[171] Joint Proposal, pp. 17-18.

[172] Joint Proposal, p. 18.

Companies' various customer service classes, while taking into consideration policy, economic, and other factors. Accordingly, we find that these provisions of the Joint Proposal will further the Commission's policy goals and are in the public interest.

E. Reconciliations, Deferrals and True-Ups

The Joint Proposal includes the Companies' deferral accounts and the balances of other regulatory assets and liabilities as of December 31, 2022.[173] The Joint Proposal recites the continuation of existing, and adds certain new, reconciliations. The reconciliations include EAP, exogenous costs, site investigation and remediation expense, property and special franchise tax expenses, negative and positive revenue adjustments, net-plant expenses (including trackers for City-State construction, customer connections, and IT&D projects), variable pay, electric generator revenues, Management Audit costs, uncollectible expense for RY1 and RY2 only, and costs related to the Gas Planning Proceeding (20-G-0131). These provisions of the Joint Proposal were not opposed and, therefore, only the new reconciliations will be briefly discussed below.

Other than those reconciliations noted as discontinued on the effective date of the rate plans, the Joint Proposal allows the Companies to continue using the reconciliation mechanism and/or deferral accounting, as modified, for expenses. With respect to the discontinuance of certain accounts, the Joint Proposal notes that this is not intended to preclude the Companies from returning to, or recovering from, customers the balances as of December 31, 2022, and any applicable carrying

[173] Joint Proposal, pp. 59-67, Appendix 6, Schedule 1 (KEDNY) and Appendix 7, Schedule 1 (KEDLI).

charges.[174] The Joint Proposal notes that the Companies may seek Commission approval for additional reconciliations or deferral mechanisms.[175]

The new reconciliations, deferrals and true-ups are justified, as set forth in the Joint Proposal, including the following:

1. Management and Operations Audit

Costs associated with the future management and operations audits of the Companies have not been included in these rate plans because the timing of such audits is not known. Therefore, the Joint Proposal provides that if the Commission were to initiate a future comprehensive management and operations audit, the Companies will defer the associated costs for future recovery.[176] It is reasonable to allow deferral of these costs because the Commission routinely requires management and operations audits to which the Companies are required to respond.

2. Uncollectible Expense

The Companies will reconcile the actual uncollectible expenses, or net write offs, for RY1 and RY2 and the difference between actual and the rate allowance will be deferred for future recovery or refund to customers. In addition to other uncollectible expenses recovered in base rates, this will include commodity costs recovered through the MFC and amounts recovered from ESCOs through the purchase of receivable discount.[177] Suspension of the Uncollectibles Incentive

[174] Joint Proposal, p. 59, n. 11.

[175] Joint Proposal, p. 67.

[176] Joint Proposal, p. 66.

[177] Joint Proposal, p. 67. Examples of this reconciliation are included in Joint Proposal Appendix 6, Schedule 12 (KEDNY)

Mechanism will continue through the term of the rate plans but the Companies may propose reinstating it in their next rate filings.

3. Gas Planning Proceeding

During the three-year rate plans, the Companies will comply with all Commission directives related to their Long-Term Plans in the Gas Planning Proceeding and defer the associated costs.[178]

F. Capital Investment Levels and Related Reconciliation Provisions

The Joint Proposal's revenue requirements include forecast additions to, and retirement from, plant-in-service, which are derived from the Companies' capital expenditure plans for their respective gas businesses. The capital expenditure forecasts are contained in Appendix 1, Schedule 4 for KEDNY and Appendix 2, Schedule 4 for KEDLI. The Joint Proposal supports planned gas capital budgets for KEDNY of $924.02 million in Fiscal Year (FY) 2025,[179] $960.04 million in FY 2026, and $971.14 million in FY 2027. The Joint Proposal provides for planned gas capital budgets for KEDLI of approximately $645.69 million in FY 2025, $705.26 million in FY 2026, and $729.32 million in FY 2027. These budgets reflect various projects and programs that are required by law and/or are needed to provide and maintain safe and reliable gas service, including customer connections, mandated construction projects, mandated pipeline and

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and Appendix 7, Schedule 12 (KEDLI). The Joint Proposal notes that the Companies' deferral request in Case 14-M-0565, related to uncollectible expense for the period prior to the Rate Plan (March 2020 through March 2024), is not addressed.

[178] Joint Proposal, p. 67.

[179] Fiscal Year means the twelve-month period ending March 31 of a given year. Joint Proposal, p. 7.

transmission integrity projects, gas reliability projects and programs, the Companies' leak prone pipe (LPP) removal program, and an inside meter relocation program.

As is the case with other utility rate plans, the Companies retain the flexibility to substitute, change or modify capital projects or programs and related spending to address evolving situations. This flexibility provides the Companies with the ability to adjust their plans to maintain safe, adequate, and reliable service, especially where situations develop during a rate plan that require a timely shift in resources.

To satisfy the Commission's oversight requirements and ensure that the capital expended is prudent and necessary to serve ratepayers, the Joint Proposal provides for the continuation of the Companies' gas capital reporting requirements outlined in the 2021 Rate Order.[180] Specifically, before RY2 and RY3, the Companies will file LPP prioritization summaries identifying proposed projects and estimated costs, an inventory of Type 3 leaks on each system, and a five-year gas capital investment plan. The Companies will file quarterly variance reports that will include explanations for variances between approved budgets and actual expenditures, details on the progress of LPP retirement mileage and Type 3 leaks repaired, and a summary of the current Type 3 leak inventory. The Companies also will file annual reports including, among other things, a final variance summary of all capital expenditures for all capital projects and programs.

As recommended by Staff in pre-filed testimony, the downward-only net plant and depreciation expense reconciliation mechanism currently in place under the 2021 Rate Order is

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[180] Staff Statement in Support, pp. 59-60; Joint Proposal, pp. 33-34.

continued in the Joint Proposal.[181] Each Rate Year, the Companies will separately reconcile their actual average net plant and depreciation expense revenue requirement to the target average net utility plant and depreciation expense revenue requirement for that Company. The difference will carry forward for each Rate Year and be summed at the end of RY3. Any resulting negative sums will be deferred for the benefit of customers. In addition, the Joint Proposal includes individual reconciliation mechanisms with specific targets for City/State Construction capital expenditures and customer connections capital expenditures.[182]

With respect to customer connections, the Joint Proposal establishes capital budgets of approximately $27.76 million in RY1, $27.81 million in RY2, and $22.66 million in RY3 for KEDNY, and $34.4 million in RY1, $35.19 million in RY2 and $35.96 million in RY3 for KEDLI.[183] To the extent the Companies' actual capital spending for customer connections differs from the forecasted amounts, the Companies will defer the revenue requirement impact for recovery from, or return to, customers. The Joint Proposal also provides that the deferral will be capped at 90 percent of the revenue requirement differences to the extent the Companies' actual capital expenditures exceed approximately $58.54 million in RY1, $58.64 million in RY2, and $51.68 million in RY3 for KEDNY, and $66.25 million in RY1, $67.79 million in RY2, and $69.21 million in RY3 for KEDLI.

Although certain parties advocated for removal of any funding for customer connections, Staff correctly points out that the Companies are legally required to provide service

181 Joint Proposal, pp. 23-24; Exhibit 439, Staff GIOP Testimony, p. 12.

182 Joint Proposal, pp. 25-26.

183 Joint Proposal, p. 26.

pursuant to the Public Service Law and Transportation Corporations Law.[184] Moreover, while CNY notes that Local Laws 154 and 97 are anticipated to reduce new gas customer connections as buildings transition to electric heating, hot water, and appliances to reduce emissions, Staff states that exceptions in those local laws make it likely that the Companies will continue to experience some limited growth in new customer connections over the term of the rate plans.[185]

Additionally, Staff asserts that the Joint Proposal reduces the Companies' proposed customer connection budgets and applies caps and reconciliation mechanisms to incentivize the pursuit of alternatives to gas service to further reduce GHG emissions. CNY, which originally opposed any customer connections budget, now agrees with Staff, stating that the Joint Proposal provides a reasonable compromise by reducing the customer connections budget compared to the Companies' historical spend, while imposing a meaningful incentive for the Companies to avoid growth in spending through the innovative cap on the Companies' deferrals to the extent their actual capital expenditures for customer connections exceed specified thresholds.[186]

With respect to the overall capital budgets, we agree with the Companies and Staff that the proposed budgets are reasonable and appropriately include funding for programs and projects that will ensure system reliability, improve gas safety, satisfy federal and state regulatory requirements, and

184 Staff Statement in Support, p. 52 & n. 236.

185 CNY Statement in Support, pp. 18-19; Staff Statement in Support, p. 52.

186 CNY Statement in Support, p. 19.

advance the CLCPA’s goals.[187] The Joint Proposal excludes funding for various projects initially proposed by the Companies that were determined to be unnecessary to address immediate operational needs, service reliability and public safety.[188] As a result, the proposed capital budgets are, in total, approximately $194.97 million less than KEDNY proposed and $35.17 million less than KEDLI proposed in their Corrections and Updates testimony. Further, the Joint Proposal’s downward-only reconciliation mechanism will protect ratepayers from unnecessary costs by ensuring that the Companies will not benefit from spending less capital than the forecasted amounts. The proposed capital budgets are the product of compromise between parties having adverse interests, fall within the range of reasonable results that could have been expected if these cases were litigated, and are subject to appropriate deferral mechanisms and reporting requirements.

We reject certain parties’ arguments that, in light of the CLCPA, the capital budgets contain excessive levels of funding for investments in traditional gas infrastructure, including new gas connections, the Companies’ LPP programs, and the Greenpoint Energy Center (Greenpoint EC).[189] We recognize that the gas system must transition to other energy sources to

[187] Companies Statement in Support, p. 40; Staff Statement in Support, p. 48.

[188] Joint Proposal, p. 2; Staff Statement in Support, p. 48; Exhibits 723 and 724 (Companies’ Response to ALJ-1 and Attachment 1); Joint Proposal, Appendix 1, Schedule 1, pp. 9-11; Appendix 2, Schedule 1, pp. 8-10.

[189] AGREE Statement in Opposition, p. 2 & nn. 4-8; WE ACT Statement in Opposition, p. 14; All Our Energy Statement in Opposition, pp. 2-3; Newtown Creek Alliance Statement in Opposition, pp. 1-2; Sane Energy Statement in Opposition, pp. 8-9; NRDC Statement in Opposition, pp. 1, 9-14; Finneran Statement in Opposition, p. 2; Spindelman Statement in Opposition, p. 2.

reduce GHG emissions. Nevertheless, the CLCPA does not preclude further investment in the gas system to ensure that the public continues to have safe, adequate, and reliable gas service.

With regard to arguments that further investments in gas infrastructure will result in stranded assets, it is impossible at this time to accurately predict the nature of the Companies' gas business in 2050 and whether any continuing use will be made of the Companies' gas distribution system.[190] In any event, the future use of that system will be addressed in the ongoing long-term Gas Planning Proceeding in Case 20-G-0131. Pursuant to that proceeding, the Companies filed their initial Long Term Gas Plan in Case 24-G-0248 on June 3, 2024, which "illustrates possible future states for National Grid's gas network."[191]

With respect to new customer connections, we note again that the Companies are legally obligated to provide gas service to both residential and non-residential applicants upon request where there is sufficient gas supply and the applicants for such service satisfy certain requirements.[192] Natural gas currently provides energy for people's daily needs, and we cannot simply reject the proposed funding necessary for the Companies to maintain safe and reliable gas service during the transition of the current natural gas distribution system. Moreover, as explained in our discussion of the Companies' gas safety metrics, approving funding of the Companies' LPP programs is consistent with the CLCPA and necessary for public safety.

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[190] See Cases 20-G-0101 et al., Corning Natural Gas Corporation – Rates, Order Establishing Rates and Rate Plan (issued May 19, 2021), pp. 28-29.

[191] Case 24-G-0248, Review of KEDNY/KEDLI Long-Term Gas System Plans, National Grid Gas Long Term Plan (filed June 3, 2024), Executive Summary, Section 1.2.

[192] PSL §31(1), (4); Transportation Corporation Law §12.

The Commission has recognized that the removal or replacement of LPP remains an appropriate way to enhance safety and reduce GHG emissions from the gas delivery system even after enactment of the CLCPA.[193]

Finally, we conclude that the Joint Proposal's provisions regarding the Greenpoint EC, a liquified natural gas facility in KEDNY's service territory, fairly and reasonably balance the parties' competing interests in this case. KEDNY maintains that the Greenpoint EC is a critical component of its gas supply portfolio and operating network, and that it plays a critical role in meeting peak day demand.[194] In pre-filed testimony, KEDNY stated that its LNG Blanket Program provides annual funding for near-term and emergent capital projects needed to maintain safety and reliability at the Greenpoint EC, typically addressing equipment and assets that are at or near the end of their useful life or to address unexpected, emergent needs.[195]

KEDNY initially proposed several capital projects at the Greenpoint EC - projects that CNY supported and that Staff supported with certain cost adjustments and modifications.[196] Staff stated that it generally supported the Companies' proposed capital projects for the Greenpoint EC "due to the very significant amount of peak day supply" that the facility

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[193] See Cases 22-E-0064 et al., Consolidated Edison Company of New York, Inc. - Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, pp. 108-109 & n. 220.

[194] Companies Statement in Support, p. 41.

[195] Exhibit 35 (KEDNY/Gas Infrastructure and Operations Panel Testimony), p. 69.

[196] Exhibit 529 (CNY/Sano Testimony), pp. 30-31, 42; Exhibit 439 (Staff/Gas Reliability and Supply Panel Testimony), pp. 21-22.

provides and because other supply sources cannot be used as substitutes for the facility due to ongoing capacity constraints.[197] Staff concluded that the proposed capital programs for the Greenpoint EC facility would provide necessary improvements to maintain reliability and safety.

Sane Energy recommended retirement of the Greenpoint EC due to its proximity to a disadvantaged community and the total proposed costs in capital projects for the facility. Sane Energy proposed that a plan be established for the complete retirement of all gas infrastructure at the Greenpoint EC by 2030.[198] AGREE opined that potential reductions in customer demand and overall need for the facility going forward could result in stranded costs, and recommended that KEDNY defer the majority of its proposed capital expenditures on Greenpoint EC and conduct studies to see if alternative solutions could render those expenditures unnecessary.[199] All Our Energy expresses its general support for almost all of the opposing parties' positions, particularly with regard to the Greenpoint EC facility.[200] Newtown Creek Alliance raises similar concerns, notes that the Greenpoint EC site is the subject of environmental remediation efforts and still needs a comprehensive cleanup plan, and claims that the Joint Proposal is not well coordinated with the Long-Term Gas Planning Proceeding.[201]

[197] Exhibit 452 (Staff/Gas Reliability and Supply Panel Testimony), pp. 21-22.

[198] Exhibit 569 (Sane Energy Direct Testimony), pp. 7, 12-17; Sane Energy Statement in Opposition, pp. 4-5.

[199] Exhibit 497 (AGREE/Kleinginna Direct Testimony), pp. 21-22.

[200] All Our Energy Statement in Opposition, p. 1.

[201] Newtown Creek Association Statement in Opposition, pp. 1-2.

The Joint Proposal provides for funding of capital projects needed during the term of the rate plans for the continued operation of the Greenpoint EC facility in a safe and reliable manner. The Joint Proposal excludes funding for projects that do not address immediate operational needs and risks to service reliability and public safety, such as the Greenpoint Master Plan.[202] In addition, the Joint Proposal requires the Companies to include in their Long-Term Gas Plan specific information that will permit a comprehensive review of the necessity of the Greenpoint EC facility to continue to support gas system reliability.[203] The information required includes the demand and supply forecasts that justify the need for the facility; an analysis of the gas supply benefits and costs associated with continued use of the facility; an estimated reduction in the number of customers that could be served on a peak demand day if the facility is taken out of service; a safety and reliability analysis; and a comparison of alternatives to continued investment in the Greenpoint EC facility. The Long-Term Gas Plan the Companies filed in Case 24-G-0248 in June 2024 contains a chapter on the Greenpoint EC facility and provides the information required under the Joint Proposal.

The capital costs included in the Joint Proposal are needed to ensure that the Greenpoint EC facility remains reliable, safe, and available to meet peak demand.[204] The Commission will comprehensively assess the continued need for the Greenpoint EC facility and whether there are viable alternatives based on the information provided in the Long-Term

[202] Staff Statement in Support, p. 48.

[203] Joint Proposal, pp. 27-30.

[204] Staff Statement in Support, p. 55.

Gas Planning Proceeding by all interested parties. If the Commission determines that alternatives to the Greenpoint EC facility should be pursued, the Joint Proposal provides that the costs for Greenpoint EC-related projects approved here can thereafter be reduced or avoided.[205] We therefore agree with the Companies, Staff and CNY, that the Joint Proposal strikes an appropriate balance between the concerns raised by the parties opposing continued investment in the Greenpoint EC facility and the need to ensure the Greenpoint EC facility continues to operate safely and reliably while viable alternatives to the facility are identified and considered in the Long-Term Gas Planning Proceeding.

G. Information Technology and Digital

1. Information Technology Capital Investment Level

National Grid USA Service Company, Inc. (Service Company) owns technological assets, ranging from critical gas transmission and distribution support systems to desktop applications, that underpin the safe, reliable and efficient operation of its affiliates' gas systems.[206] The cost of Service Company capital projects, as well as investments that are shared across the operating companies that use or benefit from the investments, are allocated to the operating companies in the form of rent expense.[207] Rent expense includes the return on, and amortization or depreciation of, current Information Technology and Digital (IT&D) capital investments, as well as incremental IT&D investments that are forecast for the Rate

[205] Joint Proposal, p. 30.

[206] Exhibit 113 (Companies/Information Technology & Digital Panel Direct Testimony), pp. 5-7.

[207] Exhibit 113 (Companies/Information Technology & Digital Panel Direct Testimony), p. 9.

Years.[208] The revenue requirements set forth in the Joint Proposal that are associated with IT&D consist of those rent expenses, along with other related capital costs and operating expenses.[209]

The Joint Proposal provides for incremental IT&D capital investments of $240.2 million, $246.6 and $243.8 million in RY1 through RY3, respectively.[210] As both Staff and the Companies note, the proposed level of IT&D capital spending reflects a reasonable compromise of the positions advocated by the Companies and Staff.[211] The IT&D budget is within the range that would likely have resulted from a litigated proceeding and will allow the Companies to invest in IT&D projects that will enhance their ability to provide safe and reliable service.[212]

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[208] Companies Statement in Support, p. 48; Exhibit 113 (Companies/Information Technology & Digital Panel Direct Testimony), p. 9; Exhibit 443 (Staff/Information Technology Panel Direct Testimony), pp. 18-19.

[209] Staff Statement in Support, p. 62.

[210] Joint Proposal, Appendix 1, Schedule 5 (KEDNY) and Appendix 2, Schedule 5 (KEDLI).

[211] Staff Statement in Support, p. 64; Companies Statement in Support, p. 49; Exhibit 113 (Companies/Information Technology & Digital Panel Direct Testimony), p. 42; Exhibit 443 (Staff/Information Technology Panel Direct Testimony), p. 55. For example, the Companies proposed a RY1 IT capital investment amount of $309 million, while Staff proposed that amount be reduced by $191 million to approximately $118 million.

[212] Staff Statement in Support, p. 64; Companies Statement in Support, p. 49.

Thus, this provision supports our conclusion that the Joint Proposal is in the public interest.[213]

2. Net Utility Plant and Depreciation Expense Reconciliation Mechanisms

The 2021 Rate Order adopted an Information Technology and Gas Business Enablement Net Utility Plant and Depreciation Expense Reconciliation Mechanism pursuant to which the Companies were required, for each Rate Year, to reconcile their respective actual average net utility plant and depreciation expense revenue requirements to the forecasted revenue requirements.[214] If, at the end of Rate Year Three, the cumulative actual expenses were less than the cumulative forecasted amount, the Companies were required to defer the revenue requirement impact for the benefit of ratepayers.[215] No deferral was permitted if the cumulative actual average net utility plant and depreciation expense revenue requirements were greater than the forecasted amount.[216]

The Joint Proposal recommends continuing a downward-only IT&D Utility Plant and Depreciation Expense Reconciliation Mechanism that will apply to each Companies' respective aggregate total IT&D net plant and depreciation expense revenue requirements combined, and not to individual IT&D components other than the Core IT and Backoffice Refresh categories, which

[213] We note that, although Staff initially objected to the inclusion in the revenue requirements of capital costs associated with the Green Button Connect and Clean Energy 2.0 projects, Staff indicates that its concerns regarding the absence of sanction papers for these projects have been addressed and the projects are included in the Joint Proposal. Staff Statement in Support, pp. 69-70.

[214] 2021 Rate Order, p. 149.

[215] Id.

[216] Id., pp. 149-150.

have their own separate reconciliation mechanisms.[217] If, at the end of RY3, the cumulative actual IT&D average net utility plant and depreciation expense revenue requirements are negative, the Companies will again defer the revenue requirement impact for the benefit of customers.[218] If, at the end of RY3, the cumulative actual IT&D average net utility plant and depreciation expense revenue requirements are positive, there will be no deferral.[219]

The Joint Proposal further provides that, in conjunction with the aggregate mechanism, the Companies will implement separate downward-only net utility plant and depreciation expense reconciliations for the individual categories of Core IT and Backoffice Refresh IT&D capital investments.[220] These mechanisms will operate in the same manner that the aggregate downward-only reconciliation mechanism does—i.e., if, at the end of RY3, the cumulative actual average net utility plant and depreciation expense revenue requirements for either the Core IT or Backoffice Refresh categories are negative, the Companies will defer the revenue requirement impact for the category (or categories) with negative balances for the benefit of customers.[221] To the extent that a negative balance in the Core IT or Backoffice Refresh categories also creates a negative balance in the aggregate IT&D Net Utility Plant and Depreciation Expense Reconciliation Mechanism, the Companies will defer the revenue requirement impact only one

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[217] Joint Proposal, pp. 35-36; Appendix 6, Schedule 13 (KEDNY) and Appendix 7, Schedule 13 (KEDLI).

[218] Joint Proposal, p. 36.

[219] Id.

[220] Joint Proposal, pp. 36-37.

[221] Joint Proposal, p. 37; Appendix 6, Schedule 13 (KEDNY) and Appendix 7, Schedule 13 (KEDLI).

time to avoid a double count.[222] Nothing in the Joint Proposal limits the Companies' flexibility to substitute, change or modify IT&D capital investments within the Core IT or Backoffice Refresh categories.[223]

Such downward-only reconciliation mechanisms protect ratepayers from paying delivery rates higher than necessary to support the IT assets actually implemented by the Companies. We find these mechanisms to be reasonable and in the public interest.

3. IT&D Reporting Requirements

The joint proposal that was approved, as modified, in the 2021 Rate Order recognized that the Companies' IT reports required further development to provide information to facilitate monitoring of the status and progress of any individual IT project and to further Staff's and interested parties' comprehension of the Companies' entire IT portfolios.[224] Thus, the 2021 Rate Order provided that, within 60 days of the issuance of that Order, the Companies and Staff would begin a collaborative process to develop modified and improved IT annual and quarterly reporting requirements.[225] The Companies were required to file with the Secretary a report describing the new reporting requirements no later than 90 days prior to the start of Rate Year 3.[226]

Evidently unsatisfied with the results of the collaborative process, Staff recommended in these proceedings that the Commission again direct the Companies to engage with

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[222] Joint Proposal, p. 37.

[223] Id.

[224] 2021 Rate Order, p. 151.

[225] Id.

[226] 2021 Rate Order, p. 151.

Staff to improve the IT rate case reporting process by providing another proposal of enhancements within 60 days after issuance of a Commission rate order.[227] In pre-filed testimony, the Companies objected that the current process developed through collaboration with Staff provides a comprehensive view of the Companies' IT&D decision-making and should remain unchanged.[228]

The Joint Proposal states that the Companies' IT&D reporting requires further development on a going forward basis and, thus, within 60 days of the issuance of a Commission order adopting the terms of the Joint Proposal, the Companies and Staff will begin another collaborative process to develop modified and further improved IT annual and quarterly reporting requirements.[229] Those further improved IT reporting formats are to be implemented during RY1, and the Companies are required to file a report with the Commission describing the agreed-upon reporting requirements no later than 60 days prior to the end of RY1.[230] The collaborative process is intended to enable the Companies to produce reports to DPS Staff and other parties that contain strategic, actionable, executive-level information concerning the status of major IT projects and initiatives. Both quarterly and annual reports will provide information about various aspects of IT project elements, including schedule, scope, budget, delivery of benefits, reductions in costs, realization of savings, project mapping, a full explanation of

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[227] Exhibit 443 (Staff/Information Technology Panel Direct Testimony), pp. 66-67.

[228] Exhibit 348 (Companies/Information Technology & Digital Panel Rebuttal Testimony), pp. 28-29.

[229] Joint Proposal, p. 38.

[230] Id.

project interdependencies, and the status of project staffing or contractors.[231]

The updated reporting framework that should result from the collaborative process described in the Joint Proposal will enable DPS Staff and other parties to better understand the Companies' IT&D investments and whether the Companies are able to keep their IT projects on schedule and within budget. We encourage both the Companies and Staff to diligently participate in the collaborative process. The Joint Proposal's IT&D Reporting provisions protect ratepayers and are reasonable.

H. Customer Service Performance Indicators

The Joint Proposal includes the following customer service performance indicators (CSPIs) for each Company: PSC Complaint Rate, based on the average number of escalated complaints per 100,000 customers; Residential Customer Satisfaction Survey; Telephone Answer Response, measured by the percent of calls answered within 30 seconds by a customer service representative; and Percent of Adjusted Bills.[232] Specific target levels and associated negative revenue adjustments (NRAs) are listed on pages 70-72 of the Joint Proposal. The Joint Proposal also requires the Companies to file annual CSPI performance reports that will include monthly data on estimated bills and monthly CSPI reports that will include information on excessive hold times and calls rejected

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[231] Id. Further expectations and minimum requirements for the modified quarterly and annual reports are set forth at pages 38-39 of the Joint Proposal.

[232] Joint Proposal, pp. 68-73. We note that both Companies met their respective standard levels of customer service for calendar year 2023. Case 22-M-0057, In the Matter of Utility Customer Service Performance for 2023, 2023 Customer Service Performance Report (issued June 20, 2024), p. 2.

by the Companies' interactive voice recognition systems due to large call volume.[233]

In pre-filed testimony, the Companies proposed to maintain their current CSPI metrics, targets and NRAs, with maximum NRA amounts of $11.7 million for KEDNY and $9.9 million for KEDLI.[234] The Joint Proposal adopts Staff's and UIU's testimonial positions to assess NRAs in pre-tax basis points based on multi-tiered target levels.[235] Although UIU initially recommended more stringent minimum targets for KEDLI's PSC Complaint Rate, the Joint Proposal retains the 1.0 minimum target levels for the PSC Complaint Rate, consistent with other utilities. In addition to adding three target levels and associated NRAs to the PSC Complaint Rate, Customer Satisfaction Survey, and Call Answer Rate metrics, the Joint Proposal continues the four-tier metric for Percent of Adjusted Bills, with modified targets. The Percent of Adjusted Bills metric continues KEDNY's current minimum target level of less than .62 percent and makes KEDLI's current minimum target level more stringent by reducing it to the same level. The Companies will continue to use their current Customer Satisfaction Survey, which Staff proposed be continued rather than switching to the Joint Utility Pilot Statewide Survey because of the lack of sufficient data to ensure target accuracy.

Each Company will be subject to total pre-tax potential NRAs equal to 40 basis points in RY1, 48 basis points in RY2, and 60 basis points in RY3 for failure to achieve specified targets. Any NRAs incurred will earn interest at the

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[233] Joint Proposal, pp. 72-73.

[234] Exhibit 18 (Companies/Customer Panel Testimony), pp. 40-42.

[235] Exhibit 488 (Staff/Consumer Services Panel Testimony), p. 76; Exhibit 582 (UIU/Collar Testimony), p. 8.

pre-tax rate of return until the Commission rules on the disposition of the revenue adjustments.

The Joint Proposal's metric target levels, NRAs, and continued use of the Companies' Customer Satisfaction Survey are products of compromise between the testimonial positions taken by the Companies, Staff and UIU. The proposed CSPIs provide appropriate targets and more stringent earnings consequences to improve the experience of the Companies' customers. No party objects to these provisions, which fall within the range of results that could have been expected if these cases were litigated. We find that that the CSPI provisions, including the reporting requirements discussed earlier, are reasonable and in the public interest.

I. Gas Safety Performance Metrics and Provisions

The Joint Proposal provides that the Companies' gas safety performance will be measured against performance metrics for leak prone pipe (LPP) removal, leak backlog management, damage prevention, emergency response time, and compliance with gas safety regulations and procedures.[236] Each Company will be exposed to a risk of incurring total NRAs of 150 basis points per calendar year (CY) for failing to meet the agreed-upon performance standards and have the opportunity to earn a maximum of 16 basis points in positive revenue adjustments (PRAs) annually for exceeding target levels.[237] The Joint Proposal requires each Company to file with the Secretary, no later than March 15 of the following CY, an annual report on their gas safety performance.[238]

[236] Joint Proposal, p. 74 and Appendix 9.

[237] Joint Proposal, pp. 73-74, 78-79.

[238] Joint Proposal, p. 82.

1. Leak Prone Pipe Program

Under the proposed LPP metric, KEDNY will remove from service or retire a minimum of 40 miles of LPP in CY24, 46 miles in CY25, and 51 miles in CY26, with a cumulative minimum target of 152 miles over the three-year period.[239] KEDLI will remove or retire a minimum of 114 miles in CY24, 121 miles in CY25 and 129 miles in CY26, with a cumulative minimum target of 379 miles over the three-year period.[240] The Companies will be subject to NRAs equal to 15 pre-tax basis points each year if they do not meet the targets in each of the three rate years and an additional 15 pre-tax basis points if they do not meet the cumulative target by the end of CY26.[241] Although LPP programs traditionally addressed only repair or replacement, any LPP abandoned or retired as a result of implementing NPAs would also count toward the minimum target goals.[242]

The targets in the Joint Proposal are only slightly more stringent than the Companies' current targets, and they are closer to those initially proposed by the Companies than those proposed by Staff.[243] However, in light of Staff's public safety concerns, the Joint Proposal contains several additional programs designed to prioritize the removal of higher risk pipeline segments. If the Companies achieve their annual minimum removal targets in a given CY, they are further subject to high-risk mileage targets providing that KEDNY must complete

239 Joint Proposal, p. 75.

240 Id.

241 Joint Proposal, p. 74.

242 Joint Proposal, pp. 53-54; Staff Reply Statement in Support, p. 24.

243 Staff Statement in Support, p. 104; CNY Statement in Support, p. 31; Exhibit 479 (Staff/Pipeline Safety Panel Direct Testimony), pp. 26-29; Exhibit 107 (Companies/Gas Safety Panel Direct Testimony), p. 39.

80 percent and KEDLI must complete 70 percent of proactive LPP removals from the high risk (Tier 1 and Tier 2) inventory in that CY; if the Companies fail to meet these high risk targets, they will be subject to an NRA of five basis points for that year.[244] If KEDNY meets its annual LPP removal target in a CY, KEDNY is further subject to an annual cast iron removal target that will result in an NRA of five basis points if 80 percent of the LPP removed is not cast iron pipe.[245] Such pipe is highly susceptible to crack failures capable of causing the release of large volumes of gas and potentially resulting in explosions with little or no warning and, thus, prioritizing the removal of KEDNY's in-service cast iron pipe will enhance public safety.[246]

Finally, the Companies are required to perform annual supplemental leak surveys to locate high-emitting leaks and repair them within 180 days of discovery; to file with the Commission a plan for enhanced gas safety outreach to ensure that landlords have sufficient gas safety outreach materials to provide to their tenants regarding the reporting of suspected gas leaks, as required by New York City Local Law 153 of 2016 (NYC Admin. Code §27-2005 [f]); implement a connected Remote Methane Detection Pilot Program to install devices that use cellular technology to provide continuous and up-to-date information on gas leaks and the presence of methane on customer premises, thereby increasing public safety while reducing annual inspection costs; and implement, for pipeline facilities operating at greater than 125 pounds per square inch gauge but below the specified minimum yield strength of 20 percent, a voluntary integrity management program pursuant to which each

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[244] Joint Proposal, p. 75.

[245] Id.

[246] Staff Statement in Support, p. 105.

Company will inspect five miles of higher pressure pipeline meeting these criteria in each CY.[247]

WE ACT, AGREE, NRDC, and Sane Energy oppose the LPP provisions of the Joint Proposal. Essentially, these parties assert that the LPP provisions violate the CLCPA because they are not part of a comprehensively planned and strategic downsizing of the gas system, lack any binding commitment to retire a specific percentage of LPP, jeopardize an equitable, affordable and orderly transition of the gas system by limiting the quantity and types of NPAs that the Companies should pursue in seeking to retire LPP, and incentivize the Companies to make imprudent investments in assets likely to become stranded and underinvest in NPAs.[248] They maintain that we should direct the Companies to dramatically reduce the target levels of functioning LPP to be replaced and limit replacement to LPP that is actively leaking or considered high risk in anticipation of a likely reduction in the use of natural gas.

In addition, WE ACT argues that the Companies have not developed any concrete NPA projects focused on gas service line replacements, the Companies must be required to conduct an analysis of whether LPP could be replaced by NPAs, and the Companies must make binding commitments to scale up NPA programs and to increase education about the benefits of electrification.[249] AGREE contends that "gas infrastructure investments based on growing gas demand forecasts and safety

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[247] Joint Proposal, pp. 32-34; Exhibit 107 (Companies/Gas Safety Panel Direct Testimony), p. 27; CNY Statement in Support, pp. 33-34.

[248] WE ACT Statement in Opposition, pp. 12-20; AGREE Statement in Opposition, pp. 2-7; NRDC Statement in Opposition, pp. 10-15; Sane Energy Statement in Opposition, pp. 4-8.

[249] WE ACT Statement in Opposition, pp. 12-20; WE ACT Post-Evidentiary Hearing Brief, p. 9.

needs" are in "obvious contradiction to the greenhouse gas reduction mandates in the [CLCPA]."[250] NRDC asserts that the gas rate increases are driven primarily by the cost of proactively replacing LPP and that functioning pipe made of leak-prone materials that are not actually leaking does not represent an imminent safety and reliability risk.[251] Sane Energy states that the failure to require the Companies to retire gas infrastructure perpetuates the risks of leaks and explosions and that the Joint Proposal should mandate more innovative solutions such as thermal energy networks.[252]

We have previously rejected many of these same arguments[253] and we do so again now. The record does not support the assertions that the Joint Proposal's LPP removal requirements are the primary driver of the gas revenue requirement increases and that functioning LPP does not present imminent safety or reliability risks. The primary cost pressures that are driving the revenue requirement increases are the end of cost deferral measures instituted during the COVID-19 pandemic, inflationary pressures, supply chain shortages, pipeline safety mandates, property tax increases and costs associated with demand-reduction offerings.[254] Regarding public safety, even functional LPP presents a risk in light of its

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[250] AGREE Statement in Opposition, p. 3.

[251] NRDC Statement in Opposition, pp. 10-11

[252] Sane Energy Statement in Opposition, p. 8.

[253] Cases 22-E-0064 et al., Con Edison – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, pp. 107-111.

[254] Companies Statement in Support, pp. 22-23; Exhibit 425 (Staff/Policy Panel Direct Testimony), pp. 6-7, 11-12; Exhibit 121 (Companies/Policy Panel Direct Testimony, pp. 20-21).

increased potential for leaks and pipe failure, which may result in dangerous and hazardous conditions such as fires or explosions.[255] Thus, as we have previously explained, public safety considerations prevent us from directing utilities to defer replacement or removal of LPP in favor of addressing only identified leaks.[256] Moreover, the Companies prioritize retirement of LPP segments according to risk[257] and the Joint Proposal provides a high-risk mileage target incentive for the Companies to focus on retirement or replacement of their riskiest pipe over the term of the rate plan, as noted above.[258] Based on public safety considerations alone, retirement or replacement of LPP in the manner set forth in the Joint Proposal cannot be deemed to be contrary to the public interest. In addition, as we have consistently explained, the purported conflict between CLCPA mandates and public safety needs is illusory because the removal or replacement of LPP both enhances

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[255] Exhibit 479 (Staff/Pipeline Safety Panel Direct Testimony), pp. 23-25.

[256] Cases 22-E-0064 et al., supra, p. 111.

[257] Exhibit 35 (KEDNY/Gas Infrastructure and Operations Panel Direct Testimony), pp. 31-32; Exhibit 47 (KEDLI/ Gas Infrastructure and Operations Panel Direct Testimony), p. 31.

[258] CNY Statement in Support, pp. 31-32. As CNY notes in supporting the Joint Proposal, the incorporation of these additional metrics prioritizing higher-risk LLP would not be achieved in a litigated outcome.

public safety and reduces actual and potential GHG emissions from the gas delivery system.[259]

Nor does the Joint Proposal disincentivize investment in NPAs or lack binding commitments to promote NPAs over traditional infrastructure investments. The Joint Proposal provides that retirements or abandonment of LPP will count towards the targets associated with this metric.[260] That is, the Joint Proposal does not require Companies to replace LPP but permits abandonment in favor of NPAs and employment of programs such as weatherization and demand response, along with electrification.[261] Moreover, the Joint Proposal requires the Companies to make evaluations of possible NPAs before proceeding with the construction of infrastructure,[262] expand the types of projects where NPAs will be considered,[263] identify at least five segments of LPP in each Companies' service territory that could be abandoned in favor of NPAs,[264] prioritize the greatest concentration of LPP miles that can be addressed through an

[259] See, e.g., 2023 Con Edison Rate Order, pp. 108-109; Cases 21-E-0074 et al., Orange and Rockland Utilities – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, with Additional Requirements (issued April 14, 2022), p. 77; Cases 21-G-0394 et al., Corning Natural Gas Corporation – Rates, Order Adopting Terms of Joint Proposal, Establishing Rate Plan and Approving Merger (issued June 16, 2022), p. 34; Cases 20-E-0428 et al., Central Hudson Gas & Electric Corporation – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued November 18, 2021), p. 51.

[260] Joint Proposal, p. 74.

[261] Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Adopting Gas System Planning Process (Gas Planning Proceeding), p. 39.

[262] Joint Proposal, p. 39.

[263] Joint Proposal, p. 40.

[264] Id.

NPA,[265] replicate successful methodologies to target customers willing to participate in NPAs,[266] work with the New York City Housing Authority to develop a large-scale NPA,[267] operate their NPA program for the duration of the LPP removal program,[268] assess NPAs over a five-year cycle,[269] create NPA implementation plans and subject those plans to public comment,[270] enhance NPA promotion through the use of internal resources and implementation contractors,[271] and make annual reports to the Commission on their efforts to pursue NPAs in connection with, among other things, LPP replacement.[272] We conclude that these requirements in the Joint Proposal focused on implementation of NPAs by the Companies are appropriately designed to increase, and even potentially favor, NPAs as replacement for retired LPP,[273] and, together with the LPP targets, are reasonable and in the public interest.

2. Other Safety Metrics

The remaining metrics are not opposed by any of the parties. As explained below, the provisions of the Joint Proposal that address these metrics are also reasonable and in the public interest.

Under the Joint Proposal, the Companies will incur NRAs if they fail to meet annual leak backlog targets for all leaks and workable or repairable leaks (Types 1, 2, and 2A).

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265 Joint Proposal, p. 41.

266 Id.

267 Id.

268 Id.

269 Id.

270 Joint Proposal, p. 42.

271 Joint Proposal, p. 44.

272 Joint Proposal, p. 45.

273 EDF Statement in Support, pp. 7-9.

For workable leaks, each Company will incur an annual NRA of 10 basis points unless it maintains a backlog of 10 leaks or less at the end of each calendar year.[274] For KEDNY, the Joint Proposal establishes a total leak backlog target of 1,200 in CY24, 1,000 in CY25, and 800 in CY26. For KEDLI, the total leak backlog targets are 3,150 in CY24, 2,250 in CY25, and 1,250 in CY26. Failure to meet the total leak targets each year would result in a five-basis point NRA.[275] The Joint Proposal includes no PRAs associated with this metric. This leak management program is more aggressive than either the current program or that proposed by the Companies in their testimony.[276] The targets and associated NRAs for this metric that, as set forth in the Joint Proposal, will improve public safety and support the CLCPA goal of reducing methane emissions.

Turning to the damage prevention metric, the Companies proposed no changes to the current target in their initial testimony. This metric is measured as a ratio of the total damages per 1,000 one-call tickets and is designed to prevent the uncontrolled release of natural gas caused by excavation

[274] Joint Proposal, pp. 76-77. The Joint Proposal provides that, at the end of RY3, the workable leak backlog target will continue, unless modified by the Commission, at less than 10 leaks with a 10-basis-point NRA adjustment liability.

[275] Id. Following CY26 and until modified by the Commission, the total leak backlog target will decrease at an annual rate of 200 leaks for KEDNY and 750 leaks for KEDLI until the backlog is reduced to less than 100 leaks. Failure to meet these targets would continue to carry a five-basis-point NRA liability.

[276] Exhibit 479 (Staff/Pipeline Safety Panel Direct Testimony), pp. 15-19; Exhibit 107 (Companies/Gas Safety Panel Direct Testimony), pp. 39-43.

damage to natural gas pipes.[277] The Joint Proposal incorporates Staff's more stringent recommended targets, with the Companies required to reach those levels by CY26.[278] The Companies' current and proposed targets combine all damage prevention categories in a single measure and result in NRAs of up to 20 basis points or PRAs of up to 10 basis points for damage prevention performance, per 1,000 one-call tickets. The targets, which have been modified to correct typographical errors in the Joint Proposal,[279] are as follows:

Current	**CY24**	**CY25**	**CY26**	**NRA BPs**	**PRA BPs**
≥3.50	≥2.95	≥2.85	≥2.75	20	-
3.25 - <3.50	2.76 - <2.95	2.64 - <2.85	2.51 - <2.75	10	-
3.00 - <3.25	2.51 - <2.76	2.39 - <2.64	2.26 - <2.51	5	-
1.50 - <3.00	1.76 - <2.51	1.64 - <2.39	1.51 - <2.26	-	-
1.26 - <1.50	1.35 - <1.76	1.23 - <1.64	1.10 - <1.51	-	5
<1.26	<1.35	<1.23	<1.10	-	10

The far more stringent targets for the overall damage rate set forth in the Joint Proposal will lead to reduced damages, thereby increasing the safety of the Companies' employees and the general public.

The proposed emergency response performance mechanism maintains the current targets and associated revenue

[277] Exhibit 479 (Staff/Pipeline Safety Panel Direct Testimony), pp. 36-42, 45-46; Exhibit 107 (Companies/Gas Safety Panel Direct Testimony), pp. 44-45.

[278] Joint Proposal, p. 78; Exhibit 479 (Staff/Pipeline Safety Panel Direct Testimony), p. 46.

[279] Exhibit 728 (Companies' Response to ALJ-3).

adjustments.[280] The Companies each must respond to a minimum of 75 percent of calls reporting leaks or odors within 30 minutes, 90 percent within 45 minutes, and 95 percent within 60 minutes.[281] The mechanism includes NRAs of 12, eight and five basis points, respectively, for failure to achieve those targets.[282] In addition, the Joint Proposal provides for the continuation of PRAs, up to a maximum of 6 basis points annually for if percentage targets for responding to calls within 30 minutes are met.[283] The proposed mechanism promotes public safety by incentivizing the Companies to respond quickly to emergency reports.

The Joint Proposal provides for the exclusion from this metric of instances of 20 or more odor calls in a two-hour period resulting from certain emergency reports that are not caused by the Companies and that relate to mass area odor issues, major weather events and major equipment failures.[284] The Joint Proposal indicates that the Emergency Response Exclusion Procedure is included in Appendix 9 of the Joint Proposal.[285] However, Appendix 9 omits any mention of the exclusion process for this metric.[286] Staff recommends that the Commission adopt the following exclusion procedures, which Staff believes to reflect the Signatory Parties' understanding of the

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[280] Joint Proposal, pp. 78-79; Staff Statement in Support, p. 108.

[281] Joint Proposal, p. 79.

[282] Id.

[283] Id.

[284] Id.

[285] Id.

[286] Joint Proposal, Appendix 9; Staff Statement in Support, p. 108.

procedures that were to be included in the Joint Proposal:

> Instances of 20 or more emergency reports within a 2-hour period resulting from mass area odor complaints, major weather-related events, or major equipment failure that is not caused by the Company may be excluded from the emergency response measure provided an informational filing is made within the respective case number. All emergency reports from an event shall be included in the exclusion filing. The exclusion filing shall: (1) be filed within 2 weeks, or 10 working days from the conclusion of such an event; (2) detail how and why the event met the prescribed exclusion criteria; (3) detail the number of emergency reports to be excluded; (4) detail the Company's response time for each of the emergency reports; and (5) detail any classified leaks, their respective Company identification numbers, and their respective dispositions, that resulted from the emergency reports. This exclusion, as well as the right to petition the Commission as discussed below, applies to the 30-Minute Response Time, 45-Minute Response Time and 60-Minute Response Time measures.
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> The Companies will each report their emergency response time annual performance to the Secretary to the Commission no later than March 15 of the following calendar year. If a performance metric is not met, the associated negative revenue adjustment will be excused when the Companies can demonstrate to the Commission extenuating circumstance that prevented the Company from meeting such performance metric. The determination of whether such circumstances exist will be made on a case-by-case basis by the Commission.[287]

This provision is approved inasmuch as no party has objected and it sets forth a defined process to address qualifying

[287] Staff Statement in Support, p. 109.

exclusionary events when they occur if the Companies fail to meet NRA targets through no fault of their own.

Finally, the gas regulations performance metric provides that the Companies will incur up to a maximum of 75 NRAs for non-compliance with certain gas safety regulations, as identified by Staff field and records audits.[288] Any NRAs incurred will be deferred for future use to fund gas safety and compliance improvement programs.[289] Instances of noncompliance that are subject to separate penalty proceedings are not included in this metric and, should the number of occurrences of noncompliance with a regulation exceed 10, a mutually agreeable mitigation plan will be developed.[290] The Joint Proposal further identifies procedures for the Companies to cure record deficiencies and dispute or appeal Staff's conclusions as to non-compliance.[291] The provisions of the Joint Proposal addressing this metric adopt Staff's stringent NRA brackets, putting the Companies on par with other major investor-owned New York gas companies and providing these Companies with a strong financial incentive to comply with the relevant pipeline safety regulations and improve on the safe delivery of gas.[292]

Other Gas Safety Provisions

In addition to the Gas Safety Metrics and related programs addressed above, the Joint Proposal provides for the relocation of inside gas meters for outside installation. This provision is also unopposed.

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[288] Joint Proposal, pp. 79-80 and Appendix 9.

[289] Joint Proposal, p. 82.

[290] Joint Proposal, pp. 80-81.

[291] Id.

[292] Staff Statement in Support, p. 110; Exhibit 479 (Staff/ Pipeline Safety Panel Direct Testimony), pp. 51-52.

Under two prior rate orders, the Companies performed inside meter relocations in conjunction with their proactive main and services replacement programs, subject to certain exceptions. The Joint Proposal contains a provision that expands the Companies' existing program to provide for meter relocations in conjunction with other types of field work, such as service renewals, regulator replacement, and leak repairs.[293] Customers who refuse to relocate their meters outside will be asked to sign a form explaining the reasons for such refusal and stating that they are aware of the benefits of relocation and that they will be subject to future survey/inspection charges of inside piping in accordance with the Companies' tariff provisions.

The Joint Proposal provides for capital expenditures for the new Meter Relocation Program for KEDNY of approximately $2.77 million in RY1, $5.72 million in RY2, and $11.78 million in RY3.[294] For KEDLI, the revenue requirements are approximately $5.25 million in RY1, $10.81 million in RY2, and $18.57 million in RY3.[295] The Joint proposal also contains reporting requirements to track the Companies' progress in relocating inside meters.[296]

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[293] Joint Proposal, pp. 30-32.

[294] Joint Proposal, p. 27.

[295] Id.

[296] Joint Proposal, pp. 31-32. The Joint Proposal also recognizes, on page 27, that a Commission decision on a pending petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) in Case 22-G-0065 – which seeks to establish whether the Commission has exclusive jurisdiction over gas service lines when indoor gas meters are being relocated outdoors – may impact the Companies' inside meter relocation program. Because a decision on that petition may prevent the Companies from performing the forecasted amount of meter relocation work, the Joint Proposal contains a downward-only reconciliation provision.

These provisions of the Joint Proposal promote public safety. In the event of an emergency, outside meters allow the flow of gas to be shut off without entering a building and locating the curb valve. The use of outside meters also allows the Companies to complete periodic inspections and meter work without needing to coordinate with a customer to provide access. Finally, relocating meters outside also has the safety benefit of reducing the risk of a gas leak migrating in a building.[297]

J. Joint Proposal's CLCPA-Related Provisions

The Joint Proposal includes several CLCPA-related programs designed to achieve emissions reductions, with some that are specific to disadvantaged communities. The Companies term these their "Future of Heat" programs. Each is discussed below and, collectively, they support a finding that the Joint Proposal is consistent with the CLCPA. Some programs garnered significant opposition, which will also be discussed below.

1. Non-Pipe Alternatives

The Joint Proposal reflects the Companies' continuing commitment to NPAs and continues NPA aspects of the 2021 Rate Order, including a framework for the Companies to follow in evaluating NPAs, such as screening criteria, eligibility requirements, project cost, an incentive cost recovery mechanism, customer outreach, and reporting requirements.[298] The 2021 Rate Order required the Companies to develop and propose NPAs for at least five segments of LPP during each year of their rate plans and to offer NPA solutions instead of new customer connections greater than 500 feet.[299] The Joint Proposal continues this framework and requires the Companies to identify

[297] Staff Statement in Support, p. 57.

[298] 2021 Rate Order, pp. 175-176.

[299] Joint Proposal, pp. 39-46.

annually five segments of LPP that could be abandoned if customer load is met with NPAs.[300] In addition, the Joint Proposal requires the Companies to prioritize NPAs in disadvantaged communities.

The Joint Proposal also includes NPA program enhancements and details in connection with LPP replacements, such as deploying thermal energy networks or ground/air source heat pumps based on pilots by other utilities and identification of five LPP segments annually for abandonment if NPAs were implemented. The Joint Proposal calls for NPAs that reduce demand and avoid system reinforcements; an NPA feasibility analysis of service requests requiring main extensions; a customer outreach and education plan focused on new service line installation and replacement, with stakeholder engagement; and annual reporting to evaluate NPA efforts. The Companies agree to issue at least one request for proposals annually for cost-effective NPAs that will meet energy demands in their service territories, on which they will consult with Staff prior to determining whether to reject a proposed NPA. The Joint Proposal requires the Companies to develop an NPA implementation plan that is subject to stakeholder review, incorporation of feedback, and an engagement session to discuss progress.

In the Gas Planning Order, the Commission required New York's gas utilities (including the Companies) to propose NPA screening criteria to assess suitability, feasibility, and cost, along with a shareholder incentive mechanism to allow the Companies to retain the cost difference between traditional solutions and the NPA.[301] The Companies filed their NPA screening criteria and shareholder incentive mechanism, with

[300] Joint Proposal, p. 40.

[301] Case 20-G-0131, Gas Planning Order, pp. 40-43.

proposed cost recovery procedures, in the Gas Planning Proceeding in August 2022.

The Companies' testimony indicates that they intend to incorporate the Commission's future guidance from the Gas Planning Proceeding into their capital planning process and to continue the electrification and heat pump referral program to Consolidated Edison and PSE&G Long Island.[302] The Companies also testified that they referred 800 potential customers to those utilities for heat pump programs.[303]

DPS Staff and the Companies detail the many improvements made to the Companies' NPA process in their respective Statements.[304] DPS Staff characterizes these Joint Proposal provisions as a significant advancement and indicates that it includes provisions that some non-signatory parties sought. Staff also points out that the Commission is considering the Companies' NPA proposals in the Gas Planning Proceeding, which will include a mechanism for reconciling net plant in service balances if an NPA project displaces a project included in the forecast net plant. Staff asserts that the Joint Proposal's provisions are aligned with the CLCPA's decarbonization targets.

Numerous parties filed testimony expressing objections to the Companies' NPA efforts. WE ACT asserted that the Companies did not identify even a single proposed NPA in their capital spending and did not conduct a robust comparison between

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[302] Exhibit 35 (KEDNY/Gas Infrastructure and Operations Panel Testimony), p. 18; Exhibit 45 (KEDLI/Gas Infrastructure and Operations Panel Testimony), p. 18.

[303] Exhibit 3 (Companies/CLCPA Panel Testimony), p. 13. The record does not identify the number of referrals that have actually installed heat pumps.

[304] Staff Statement in Support, pp. 75-77; Companies Statement in Support, pp. 52-58.

NPAs and LPP replacement on a dollar-per-metric ton of carbon dioxide equivalents basis.[305] WE ACT also asserted that the Companies do not consider disadvantaged communities in the NPA screening criteria and have not analyzed electrification challenges in those communities. WE ACT raised the HyGrid Hydrogen project as a potential NPA, while noting the Companies' broad definition of NPA projects. WE ACT suggested that the Companies should include governmental rebates in their NPA benefit-cost analysis.

Other parties also discussed NPAs in their testimony. NRDC recommended prioritizing NPA implementation with incentives instead of LPP replacement.[306] CNY recommended that NPAs should not be just considered, but should be implemented immediately, with the Commission providing screening criteria in these cases in lieu of infrastructure projects.[307] In rebuttal testimony, the Companies acknowledged that no suitable NPA had been implemented but claimed to be seeking to find and implement NPAs.[308]

We find that the Joint Proposal's continuation of the previously approved NPA mechanisms, and its reference to the ongoing Gas Planning Proceeding, will advance the potential for successful NPA implementation over the three-year rate term. The addition of NPA-related resources will foster the Companies' ability to find NPA opportunities. The requirement that the Companies evaluate NPAs prior to constructing new, or replacing existing, infrastructure assures that NPAs will be prioritized,

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305 Exhibit 590 (WE ACT/Jessel Testimony), pp. 49-54.

306 Exhibit 557 (NRDC/Napoleon Testimony), pp. 35-36, 52.

307 Exhibit 529 (CNY/Sano Testimony), p. 23; Exhibit 536 (CNY/Policy Panel Testimony), pp. 8-9.

308 Exhibit 341 (Companies/Rebuttal Gas Infrastructure and Operations Panel Testimony), p. 51.

especially in disadvantaged communities. Particularly compelling is the Joint Proposal's requirement that the Companies annually issue one RFP and identify five LPP segments that may be abandoned through NPA implementation. It also provides the Companies with a needed level of flexibility in considering NPA projects. The Joint Proposal also imposes accountability on the Companies by requiring annual reporting requirements.

At the evidentiary hearing on the Joint Proposal, both the Companies and DPS Staff explained the difficulty of NPA feasibility and implementation because such projects rely on customer decisions that cannot be unilaterally imposed, including electrification or installation of heat pumps.[309] Customer outreach, educational efforts, and incentives will be more aggressively undertaken. Although this is a challenging area for all utilities, the Joint Proposal's provisions refine the Companies' efforts going forward and improve the potential for NPA implementation. We agree with DPS Staff that these provisions align well with the CLCPA's emission reduction/decarbonization and electrification objectives, while integrating the Commission's ongoing work in the Gas Planning Proceeding.

2. CLCPA Disadvantaged Communities Report and Analysis

The Joint Proposal requires the Companies to annually report the details of their CLCPA activities, performance, and investments in disadvantaged communities (DAC Report), including details associated with energy efficiency spending, demand response programs, main replacement and leak repair, customer operations data, and clean energy jobs.[310] It also requires the

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309 Tr. 104-110.

310 Joint Proposal, pp. 46-51.

Companies to convene a stakeholder meeting after filing the DAC Report.

In addition, the Joint Proposal requires the Companies in their next rate filings to include a DAC Analysis of whether their infrastructure plans and projects will pose a disproportionate burden on DACs in their service territories.[311] For capital projects with estimated costs of $1 million or greater that may impact a disadvantaged community, the Companies' DAC Analysis will identify: (a) emissions projected to be increased or reduced as a result of the investment; (b) the potential contribution of a project to existing pollution in the community; and (c) proposed project design considerations and actions designed to eliminate disproportionate burdens on DACs resulting from both increased emissions and existing pollution.[312]

This provision is based in part on Staff's testimony that questioned whether the Companies' capital and O&M project expenditures were significantly higher in disadvantaged communities when compared with other areas.[313] Staff compared the percent of land area for disadvantaged communities located in the Companies' service territories with the percentage of capital expenditure there and found a slight mismatch for KEDNY, reflecting potential impacts.[314]

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[311] Joint Proposal, pp. 79-82.

[312] The Joint Proposal specifies that any requirements that the Commission may establish in the future regarding the assessment of burdens on Disadvantaged Communities will supersede the requirements of this section of the Joint Proposal.

[313] Exhibit 425 (Staff/Policy Panel Testimony), pp. 53-57.

[314] Id., pp. 62-63. Staff explained that this mismatch may be due to the costs associated with the Greenpoint Energy Facility in Brooklyn.

Although the Companies opposed Staff's methodology in analyzing the Companies' expenditures in disadvantaged communities in proportion to its overall expenditures, arguing that it was an issue better suited for the Gas Planning Proceeding,[315] they agreed to the requirement in the Joint Proposal that they analyze the issue in their next rate case and determine an appropriate methodology for determining whether their expenditures have a disproportionate impact on DACs. WE ACT also criticized DPS Staff's approach because it did not distinguish between the benefits and burdens on disadvantaged communities and conflated the burdens with the CLCPA's investment mandate that 35 percent or more of the benefits of clean energy and energy efficiency spending accrue to those communities.[316]

DPS Staff points to these CLCPA-related provisions of the Joint Proposal as indicative of how the Companies will be providing greater insight into their CLCPA activities and investments in DACs to ensure that each community receives the requisite clean energy benefits.[317] DPS Staff asserts that these provisions are similar to those proposed by WE ACT and go beyond the reporting requirements approved by the Commission in other proceedings.

We agree with Staff's assessment of these Joint Proposal provisions and find that the reporting and analysis requirements will provide valuable information for the Commission, DACs, and stakeholders. We also find that these sections of the Joint Proposal represent significant and meaningful progress in our implementation of the CLCPA in rate

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315 Exhibit 367 (Companies/CLCPA Panel Rebuttal Testimony), pp. 11-12.

316 Exhibit 590 (WE ACT/Jessel Testimony), pp. 4-6.

317 Staff Statement in Support, pp. 79-80, 81-82.

proceedings, while recognizing that there may be future Commission directives to all utilities in other State-wide proceedings.

3. Capacity Demand Metrics

The 2021 Rate Order initiated the Capacity Demand Metrics to determine whether the Companies were taking aggressive actions to promote energy efficiency, demand response, electrification, non-pipe/third-party solutions, and LPP segment identification for abandonment and cost effective NPAs. The Companies initially proposed to discontinue these metrics, claiming that they were established solely to determine whether they could recover costs associated with the Long-Term Capital Capacity Projects approved under the 2021 Rate Order and that they would try to take action to achieve the goals previously set in that case.[318]

DPS Staff opposed discontinuing the Capacity Demand Metrics and recommended in testimony that the Commission update the targets for energy efficiency, demand response, and electrification, and require the Companies to annually report on its activities to determine progress.[319] In rebuttal, the Companies continued to press for discontinuance because cost recovery of Long-Term Capital Capacity Projects are no longer necessary and penalties are no longer applicable.[320]

The Joint Proposal continues five Capacity Demand Metrics (energy efficiency, demand response, electrification, non-pipe/third party solutions, and LPP segment identification

[318] Exhibit 18 (Companies/Customer Panel Testimony), pp. 135-136.

[319] Exhibit 483 (Staff/Efficiency Panel Testimony), pp. 87-91. Under the 2021 Rate Order, the Companies were required to report quarterly on their progress.

[320] Exhibit 337 (Companies/Rebuttal Customer Panel Testimony) pp. 48-49.

for NPAs) and the quarterly reporting requirement.[321] It provides specific details for each metric to guide the Companies activities and efforts. DPS Staff's Statement supports these provisions and the underlying rational for each metric.[322]

We find that the Joint Proposal, which continues five important capacity/demand metrics, will keep the Companies on task to meet established targets associated with important emission reductions. The Companies will also remain accountable through the continuation of the reporting requirements detailing their efforts, including in their annual CLCPA and Disadvantaged Communities Report.

4. Gas Marketing Cessation

Like the 2021 Rate Order, the Joint Proposal requires the Companies to cease gas marketing efforts for new gas connections and conversions and to encourage new customers to consider electrification options by providing information on non-fossil fuel alternatives.[323] As we found in the 2021 Rate Order, this cessation of gas marketing activities reflects the Companies' commitment to reduce gas usage and furthers the CLCPA's objectives.[324]

5. Utility Thermal Energy Network Providers

The Joint Proposal references the Companies' participation in a State-wide proceeding related to Utility Thermal Energy Network (UTEN) Providers and to implement

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

[322] Staff Statement in Support, pp. 82-83.

[323] Joint Proposal, pp. 83-84. The Companies will continue to market their energy efficiency programs for existing and new customers.

[324] 2021 Rate Order, pp. 171-172.

geothermal energy systems as allowed by the Commission.[325] The Companies in their testimony had initially sought funding within base rates for the addition of ten full time equivalent (FTE) employee positions to address UTEN projects.[326] Staff opposed this request because of the ongoing UTEN proceeding. The Joint Proposal reaffirms the Companies' participation in the UTEN proceeding, which Staff notes will allow them to justify the addition of additional employees instead of in these rate cases.[327]

This provision recognizes the appropriate line between the issues being determined in the Commission's UTEN proceeding and these rate proceedings.

6. Gas Transition Changes

The Joint Proposal recites the Companies' ability to petition the Commission pursuant to 16 NYCRR §§230.2 and 230.3 to eliminate the customer incentives in their tariffs governing the costs and entitlements of customers connecting to the gas system.[328] The Companies petition may be filed only in the absence of new legislation or if the Commission does not act in the Gas Planning Proceeding with respect to the cost and entitlement incentives.

DPS Staff refers to the Commission's recognition in the Gas Planning Order that continued entitlements to provide service piping at no cost to customers may be contrary to the

[325] Joint Proposal, p. 84. Case 22-M-0429, Proceeding on Motion of the Commission to Implement the Requirements of the Utility Thermal Energy Network and Jobs Act.

[326] Exhibit 160 (KEDNY/Gas Infrastructure and Operations Panel Testimony), p. 85; Hearing Exhibit 176 (KEDLI/Gas Infrastructure and Operations Panel Testimony), p. 85.

[327] Exhibit 452 (Staff/Gas Reliability and Supply Panel Testimony), p. 25.

[328] Joint Proposal, p. 55.

CLCPA's emission reduction targets.[329] Staff notes that the Companies' petition to eliminate the entitlements would necessarily be limited by PSL §31(4) and Transportation Law §12.

This provision of the Joint Proposal reflects the Companies' ability to petition the Commission for relief on the issue of customer entitlements, which is the subject of substantial discussion among stakeholders and policymakers, specifically with respect to the position advanced by some stakeholders that the 100-foot, no-cost rule improperly subsidizes new customers at the expense of ratepayers. This provision also recognizes the potential for legislation or Commission action to address the issue, but leaves unaffected the Companies' ability to seek relief on the issue from the Commission in the interim.

7. Biomethane Supply Interconnections

The Companies proposed in their rate filings the following three-year budgets beginning in 2025 for new renewable natural gas (RNG) infrastructure enhancements, including interconnections to four potential biomethane projects, two in New York City and two on Long Island.[330] The budgets the Companies proposed were:

KEDNY

FY 2025	$2.161 million
FY 2026	$9.243 million
FY 2027	$1.792 million

KEDLI

FY 2025	$2.664 million
FY 2026	$4.888 million
FY 2027	$2.315 million

329 Staff Statement in Support, pp. 85-86.

330 Exhibits 35, 36 (KEDNY/Gas Infrastructure and Operations Panel Testimony, KEDNY Exhibit GIOP-1); Exhibit 45, 46 (KEDLI/Gas Infrastructure and Operations Panel Testimony, KEDLI Exhibit GIOP-1).

While generally supporting RNG efforts based on the Climate Action Council's (CAC's) Scoping Plan, DPS Staff's testimony opposed any infrastructure or interconnection spending on these potential projects and recommended that the Companies recover the associated costs through a surcharge mechanism subject to the cost cap for projected capital expenditures because of the uncertainties and/or delays in project construction.[331] Staff expressed concerns about the proposed recovery of RNG interconnection costs in base rates, explaining that such costs should be recovered in the same manner as the costs associated with traditional gas supplies – i.e., through the Gas Adjustment Statement Mechanism - and that RNG costs should not be higher than the cost of traditional gas commodities. Staff also stated that the Companies should not be permitted to purchase the related environmental attributes on behalf of customers. Staff recommended removal of proposed FTEs associated with biomethane projects due to the uncertainty of the potential projects being built and the limited number of projects. Staff also recommended strict reporting requirements for the RNG projects.

In rebuttal, the Companies disagreed with the surcharge approach and the cost cap, among other things, but asserted that RNG provided important opportunities to reduce emissions.[332]

In testimony, CNY supported the Companies' interconnection proposals, while recommending inclusion of a dedicated tracker to assure that monies allocated in the rate

[331] Exhibit 439 (Staff/Gas Infrastructure and Operations Panel Testimony), p. 73; Exhibit 452 (Staff/Gas Reliability and Supply Panel Testimony), pp. 12-13, 16.

[332] Exhibit 341 (Companies/Gas Infrastructure and Operations Panel Rebuttal Testimony), pp. 31-32.

plans, but not spent, are returned to ratepayers in the Commission's discretion.[333] EDF questioned the benefits of the projects and recommended that they be held to high air quality and other standards.[334] WE ACT opposed any cost recovery of RNG Interconnections as part of the rate plans.[335]

The Joint Proposal authorizes the Companies to defer for future rate recovery the capital project costs of up to $13.195 million for KEDNY and $9.868 million for KEDLI (revenue requirement impacts, pre-tax ROI and depreciation expense).[336] In addition, the Joint Proposal imposes certain reporting requirements prior to construction of each of the RNG Interconnection projects to allow for an assessment of costs, benefits, materials, and, most importantly, a quantitative accounting of any upstream emissions avoided by the project due to the interconnection. To address concerns that these projects could have disproportionate impacts on Disadvantaged Communities, we make a minor modification to require KEDNY and KEDLI to also include in the reports an analysis of disproportionate impacts for any projects located in a Disadvantaged Community.

It also provides that, to the extent that the Companies purchase biomethane from interconnected facilities, the prices paid must be consistent with the market price of natural gas supplies purchased at similar locations and be consistent with the Companies' existing gas supply portfolio. In other words, the Companies can pay no premium for biomethane or RNG supplies and must purchase them at prices no greater than

[333] Exhibit 529 (CNY/Sano Testimony), p. 39-40.

[334] Exhibit 541 (EDF/Ocko Testimony), p. 48.

[335] Exhibit 590 (WE ACT/Jessel Testimony), p. 81.

[336] Joint Proposal, pp. 55-56.

those paid for other gas supplies purchased at the Companies' city gates.

The Joint Proposal also requires the Companies to engage with the biomethane project developers concerning monetization of the environmental attributes. The environmental attributes must be (1) voluntary and (2) sold only to an entity located in New York State.

In its Statement in Support, the Companies assert that the Joint Proposal's RNG provisions are consistent with the Commission's recent determination in the Consolidated Edison rate case, which found an RNG project beneficial in reducing emissions and therefore approved its funding.[337] The Companies claim that the RNG projects in their service territories will improve reliability and have corresponding emission reduction benefits, which will offset the need for additional upstream pipeline capacity with a localized supply. The Companies also point to the CAC's Scoping Plan, which gives RNG a role to meet reliability needs.

In its Statement in Support, DPS Staff similarly relies on the CAC's Scoping Plan, which recognized the role that RNG may play to meet reliability needs in areas where electrification is not yet feasible and to transition the gas system to decarbonization.[338] Moreover, Staff argues that the Joint Proposal addresses its concerns (also articulated by the CAC) about ensuring that developer led RNG projects are actually completed and result in emission reductions. Staff also points to the requirements for the Companies to engage with developers to discuss environmental attributes and to report details of each RNG project, including the estimated project costs, source

[337] Companies Statement in Support, pp. 63-64.

[338] Staff Statement in Support, pp. 86-87.

materials to be used, benefits to reliability, and an accounting of upstream emissions avoided. Staff asserts that the Companies' ability to pursue these RNG projects is consistent with the CLCPA.

In addition to claiming the Joint Proposal's general inconsistency with the CLCPA, NRDC and WE ACT argued that provisions related to RNG interconnections are not consistent. They opposed provisions of the Joint Proposal that authorized ratepayer funding for RNG interconnections and argued that those costs should be borne by the RNG facility developer.[339] WE ACT asserted that information about RNG is "woefully insufficient" and that an analysis of the interconnections' burdens on DACs is required.[340] NRDC asserts that RNG has harmful impacts associated with feedstock sources and leakage. NRDC also argues that the Joint Proposal's requirement for the Companies to file a report with the Commission about the construction of RNG project interconnections does not address whether the project is in the public interest. NRDC maintains that the Joint Proposal authorizes both construction of the interconnection and the deferral of costs for later ratepayer recovery without information being provided to the Commission, including any cost-benefit analysis.[341]

We find that the Joint Proposal's approach to potential RNG facilities will provide opportunities to the Companies from which both customers and the State will benefit. We also find that customers are adequately protected from the

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[339] See NRDC Statement in Opposition, pp. 15-18; WE ACT Statement in Opposition, pp. 20-35.

[340] WE ACT Statement in Opposition, pp. 32-35. WE ACT claimed that the Newtown Creek RNG Project, which is located in a DAC, provided important lessons about RNG's disproportionate impacts on DACs.

[341] NRDC Statement in Opposition, pp. 15-16.

uncertainties associated with the four RNG projects discussed in the Companies' testimony through the use of a deferral mechanism, a cost cap, and the requirement for the Companies to submit a report to the Commission about project cost estimates and other details within 90 days of the commencement of construction. Developing RNG resources may offer an opportunity for potential emission reductions, like those realized at the Newtown Creek Wastewater Treatment Plant.

8. Newtown Creek Reporting

The Newtown Creek Wastewater Treatment Plant generates RNG and is interconnected to KEDNY's gas pipeline (Newtown Creek Project) within its service territory, resulting in revenues in two parts: those associated with the sale of RNG gas and those associated with the sale of environmental attributes, minus the cost of the vendor selling the credits on KEDNY's behalf.[342] The Newtown Creek Project captures biogas otherwise generated from the Treatment Plant, consisting of 60 percent methane and 40 percent carbon dioxide, and treats it through a "pressure swing adsorption system" before injecting the treated gas into the natural gas distribution system through an interconnection point. The Companies assert that the Newtown Creek Project reduces emissions while promoting RNG as a new long-term supply.[343]

The Joint Proposal imposes new reporting requirements, including for revenues realized from the sale of RNG and associated environmental attributes; the quantity of biomethane produced; the number of days/hours the Project is offline; the

[342] Exhibit 160 (KEDNY/Gas Infrastructure and Operations Panel Testimony), pp. 81-84; Hearing Exhibit 455 (Staff/Gas Rates Panel Testimony), p. 17.

[343] Exhibit 160 (KEDNY/Gas Infrastructure and Operations Panel Testimony), pp. 81-84.

number and value of environmental attributes sold each month; the estimated emission reductions to KEDNY's system; and the nature and number of complaints received regarding the Project.[344] The Joint Proposal also requires KEDNY to engage with Consolidated Edison about the sale of environmental credits; and with the CNY Department of Environmental Protection about negotiating a Service Level Agreement for Project outage notifications.

Staff testified that it reviewed the Companies' estimate of the Newtown Creek Project revenues and found them reasonable compared to a three-year average calculation.[345] Staff's Statement in Support asserts the Joint Proposal's provisions promote transparency surrounding the Project's operations and improves communications to ensure effective operations.[346] Staff maintains that the Joint Proposal will enable areas of concern to be addressed. The Companies agree with Staff's assessment and further asserts that the Joint Proposal will provide the Commission and stakeholders with information into the Newtown Creek Project's operations to evaluate its benefits.

We approve the reporting requirements in the Joint Proposal. The Companies' testimony at the evidentiary hearing made clear the emission reduction benefits of the Newtown Creek Project, assuming nearly full operations. The Plant would otherwise flare off to the atmosphere the biogas produced from operations. Those emissions are now avoided and the resulting RNG is fed into the system for the benefit of customers. We

[344] Joint Proposal, pp. 56-58.

[345] Exhibit 455 (Staff/Gas Rates Panel Testimony), pp. 17-18.

[346] Staff Statement in Support, pp. 88-89.

find these provisions to be consistent with the CLCPA's objectives.

9. Hydrogen Pilot Program

The Companies initially proposed a KEDLI hydrogen blending and injection pilot project (Hydrogen Project) with forecasted spending of $6.752 million for FY 2025 and additional FTEs.[347] CNY supported the Hydrogen Project but recommended a cost tracker and the return of unspent funds to customers. Staff's testimony outlined safety concerns in the delivery of hydrogen gas, proposed delaying the Hydrogen Project, and recommended a cap on spending and removal of the Companies' proposed additional two FTEs.[348] EDF asserted that disadvantaged community burdens would result from the Hydrogen Project and argued against any cost recovery until approved in a State-wide proceeding after hydrogen standards are developed.[349] WE ACT recommended denial of the Hydrogen Project.[350]

The Joint Proposal removes the Hydrogen Project from KEDLI's rate plan, thereby reducing the revenue requirement, and essentially prohibits the Companies from proceeding with any project that would inject hydrogen into the distribution system without further Commission review and approval.[351] In its Statement, DPS Staff asserts that this will allow the Commission to address safety concerns before such a project is undertaken.[352]

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[347] Exhibit 176 (KEDLI/Gas Infrastructure and Operations Panel Testimony), p. 78.

[348] Exhibit 452 (Staff/Gas Reliability and Supply Panel Testimony), pp. 26-30.

[349] Exhibit 541 (EDF/Ocko Testimony, pp. 41, 52-53.

[350] Exhibit 590 (WE ACT/Jessel Testimony), p. 81.

[351] Joint Proposal, p. 58.

[352] Staff Statement in Support, p. 89.

We agree with Staff that the Hydrogen Project is premature. One of the core Commission responsibilities is to assure the delivery of safe service. The safety issues raised by Staff in its testimony and addressed through the Joint Proposal's elimination of the Hydrogen Project must be addressed before initiation of this pilot.

10. System Efficiency EAM for Demand Response

The Joint Proposal adopts the Gas Demand Response earnings adjustment mechanism (EAM) targets that are intended to encourage additional participation in the Companies' demand response programs.[353] The targets are based on the Companies exceeding their historical performance and will escalate annually, thereby providing incentives for the Companies to continually expand customer participation and more effectively perform in demand/response programs.

The Companies initially proposed to continue their Energy Efficiency Share the Savings metric and LMI Energy Efficiency Savings metric and to add new Demand Response and EAP enrollment metrics, with each Company separately eligible except for Demand Response.[354] The Companies initially proposed the opportunity to earn 13.5 basis points (KEDLI) and 14 basis points (KEDNY) annually from 2024 to 2027, as well as 30 percent of energy efficiency savings.

Staff opposed the proposal to continue the Share the Savings and LMI Savings EAMS based on Commission action in a separate State-wide proceeding that provided guidance toward pausing energy efficiency EAMs. Staff recommended rejection of the Demand Response EAM, arguing that there is no need for additional incentives. Staff also asserted that the EAP

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[353] Joint Proposal, p. 58.

[354] Exhibit 3 (Companies/CLCPA Panel Testimony), p. 54.

enrollment EAM could reward the Companies during an economic downturn and lead to increased utility bills and that the Commission had already found in the REV Track Two Order that no general EAM was necessary.[355] UIU also did not support the Companies' EAP Enrollment EAM because it would reward the Companies for required actions.[356]

The Joint Proposal represents a reasonable negotiated agreement that establishes new Demand Response EAM targets, which will reduce capacity constraints on the gas system during peak usage and thereby delay or eliminate the need for growth infrastructure projects, saving ratepayer dollars. These new EAM targets are also designed to incentivize the Companies' encouragement of program participation. We find that the Joint Proposal appropriately addresses environmental and ratepayer interests, while providing the Companies with opportunities to transition and improve their systems.

11. Energy Efficiency and Other Programs

The Companies' energy efficiency program budgets and targets are established in a separate State-wide energy efficiency proceeding.[357] In addition, the Joint Proposal addresses customer related CLCPA programs, such as Green Button Connect/Clean Energy 2.0 information technology[358] and other

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[355] Exhibit 483 (Staff/Efficiency Panel Testimony), pp. 68-69, 76-79, 81-84.

[356] Exhibit 582 (UIU/Collar Testimony), p. 27.

[357] Joint Proposal, pp. 90-92. The Commission approved the Companies' energy efficiency budgets and targets in Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020).

[358] Joint Proposal, Appendix 1, Schedule 5 (KEDNY), Appendix 2, Schedule 5 (KEDLI).

customer initiatives such as the economic development grant programs in disadvantaged communities.[359]

These programs reflect the Companies' efforts over the three-year rate plans to reduce emissions and engage customers in the transition to clean energy, consistent with the CLCPA. These programs support our finding, set forth below, that the Joint Proposal and the rate plans approved in this Order are consistent with the CLCPA.[360]

12. CLCPA Consistency

CLCPA §7(2) requires State agencies to consider whether their administrative approvals and decisions are inconsistent with or will interfere with the attainment of the established statewide greenhouse gas emission limits under ECL Article 75. In addition, CLCPA §7(3) prohibits State agency approvals and decisions from disproportionately burdening disadvantaged communities identified under ECL §75-0101(5) and requires prioritization of the reduction of greenhouse gas emissions and co-pollutants in such communities. Our CLCPA analysis considers the Commission's core statutory obligation to ensure safe and adequate service at just and reasonable rates.[361]

As detailed above, the Joint Proposal's three-year rate plans include CLCPA-related provisions related to NPAs,[362]

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[359] Joint Proposal, pp. 82-83.

[360] Joint Proposal, p. 90. Under the Joint Proposal, the Companies are allowed recovery of only RY1 costs and may present provisional budgets for RYs 2 and 3 to the Commission for approval.

[361] Cases 23-E-0418 et al., Central Hudson Rate Order, pp. 64-65; Cases 22-E-0317 et al., NYSEG and RG&E Rate Order, pp. 55-56; Cases 22-E-0064 et al., Consolidated Edison Rate Order, pp. 94-95.

[362] Joint Proposal, pp. 39-45.

the Newtown Creek Project,[363] potential RNG interconnection capital projects,[364] and other programs and incentives that further the CLCPA's goals and the Companies' transition to cleaner energy.

AGREE, All Our Energy, Newtown Creek Alliance, NRDC, Sane Energy, Spindelman, and WE ACT raise objections to the Joint Proposal and the capital investments in the Companies' system over the three-year rate plans, particularly at the Greenpoint EC and for extensive replacement of LPP. They claim that such investments are contrary to the CLCPA and the CAC's final Scoping Plan.

As noted above in the portion of this Order addressing Gas Safety metrics, NRDC, for example, asserts that infrastructure investments, including those associated with LPP, jeopardize the equitable, affordable and orderly transition of the gas system, will escalate costs, and should not be undertaken before the Commission acts in the State-wide Gas Planning Proceeding.[365] Relying on the CAC's Scoping Plan, NRDC argues that the Companies' system should be strategically downsized and integrated with electrification and transmission/distribution upgrades to meet demand; that LPP repair or replacement should be prioritized based on actively leaking pipes, considering both emissions and safety;

[363] Joint Proposal, pp. 57-58.

[364] Joint Proposal, pp. 55-56.

[365] NRDC Statement in Support, pp. 2-4, 11-15. NRDC acknowledges the Joint Proposal's potential benefits including the use of remote methane detection as a pilot project, continuation of safety performance metrics, and the improved approach to NPAs, while asserting that it still may not position NPA projects for success.

infrastructure decommissioned in the next several years; and upstream emissions reduced or eliminated.[366]

In response, DPS Staff reiterates the Joint Proposal's CLCPA-related provisions and points to Commission action outside of these rate cases to address emissions reductions and impacts to disadvantaged communities. Staff also notes that the Companies have provided emissions estimates, with projected three-year emission reductions of 201,770 (KEDNY) and 216,557 (KEDLI) metric tons of CO_2 from their respective capital projects programs; projected three year emission reductions of 678,770 (KEDNY) and 571,281 metric tons of CO_2 from their respective energy efficiency programs; and projected emission reductions of 140,068 (KEDNY) and 203,614 (KEDLI) metric tons of CO_2 from their respective LPP programs.[367] Staff also disputed arguments related to the CLCPA's mandates regarding disadvantaged communities, citing the Joint Proposal's numerous programs in which such communities are benefited.

With respect to the Greenpoint EC, which we previously addressed in our discussion of capital investment levels, Staff asserts that proposed expenditures were closely scrutinized and the Joint Proposal's $255 million investment is necessary to continue the facility's operations.[368] More importantly, Staff refers to the Commission's pending review of it in the context of the Companies' Long-Term Gas Plan in the Gas Planning Proceeding. Staff also disputes the parties' challenges to the LPP program metrics and asserts that the Joint Proposal for the first time recognizes that pipe retirements and abandonments

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366 Id., pp. 7-8.

367 Staff Reply Statement in Support, pp. 5-6 (citing Companies/ CLCPA Panel Testimony, p. 15 and Exhibits CLCPA-3R and CLCPA-4R).

368 Id., pp. 20-23.

will count toward the Companies' minimum LPP target goals, not just repairs and replacements.[369]

Staff asserts that the Joint Proposal not only complies with the CLCPA but supports the continuation of safe and reliable operation of the Companies' system for the benefit of customers. Finally, Staff argues against certain parties' requests to delay rate increases until the Companies' Long-Term Gas Plan is reviewed in the Gas Planning Proceeding, explaining that such a delay will result in rate compression and have an unquantifiable but definitive impact on ratepayers.[370]

We reject the arguments advanced with the parties opposing the Joint Proposal that its provisions are inconsistent with the CLCPA because on the extensive CLCPA provisions that move the Companies toward emission reductions and investments in DACs, while maintaining safety and reliability. We also note that certain parties raise arguments based on the CLCPA that involve matters not before us in these rate proceedings, including those pending in the State-wide Gas Planning Proceeding or before other governmental entities.[371]

The LPP metrics are a continuation of existing programs that address pipe leaks and address both emissions and safety. While we are sensitive to the issues raised by some parties with respect to Greenpoint EC, the Joint Proposal maintains KEDNY's ability to repair and continue to operate it

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369 Id., p. 24.

370 Id., pp. 7-9.

371 Sane Energy and Finneran raise issues associated with the ExC project and the potential expansion of the Iroquois Pipeline, calling both inconsistent with the CLCPA. The ExC project is not a part of this proceeding and, more importantly, the Federal Energy Regulatory Commission has approval authority over the expansion of interstate pipeline projects like Iroquois. Accordingly, these issues are not properly before the Commission here.

until the Commission acts on the Companies' Long-Term Gas Plan in the Gas Planning Proceeding.

We find that our adoption of the Joint Proposal and our approval of the Companies' rate plans in this Order is consistent with the CLCPA and will not interfere with the attainment of the State-wide greenhouse gas emission limits established in Article 75 of the ECL. We also find that the Joint Proposal properly recognizes the potential impacts of the Companies' operations on disadvantaged communities and seeks to mitigate and address such impacts. The rate plans appropriately promote the CLCPA's electrification and greenhouse gas emission reduction goals and do not result in any disproportionate burden on disadvantaged communities. Indeed, the record supports a finding that the Joint Proposal will have an overall positive impact on such communities.

K. Customer Initiatives

1. Economic Development

The Joint Proposal sets economic development funding for each Rate Year at $1.382 million for KEDNY and $1.160 million for KEDLI.[372] Both firm and non-firm customers will be eligible for the Companies' various economic development programs. During each Rate Year, the Companies will amortize prior economic development deferral credits so that the net revenue requirement for each Company is $0.[373] The Companies will offer the following programs: Economic Development and the Future of Heat; Cooperative Business Recruitment Program; Natural Gas Manufacturing Productivity Program; Brownfield Redevelopment Assistance Program; Clean Tech Incubation;

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[372] Joint Proposal, p. 82.

[373] Id.

Cinderella Program; and Sustainable Gas and Economic Development Program.[374] DPS Staff supported these programs.[375]

The Joint Proposal provides that these programs will be subject to downward-only reconciliation over the term of the rate plans.[376] If there is any difference between the amount of amortized deferred credits and actual program costs in any Rate Year, the difference will be carried forward and reconciled at the end of RY3.[377] Any under-expenditure will be deferred for future use in funding the Companies' economic development programs, or the Companies may petition the Commission to use any deferred balances to fund emergency economic assistance or other economic development programs.[378] If the Companies anticipate any over expenditure, they may petition the Commission for deferral treatment but will not have any obligation to make additional expenditures unless and until the Commission authorizes deferral of amounts in excess of the four-year aggregate rate allowance.[379] The Joint Proposal requires the Companies to file for Staff review and approval an annual report containing details of the prior year's activities and any modifications to existing grant programs.

In their pre-filed testimony, the Companies proposed discontinuing two grant programs and modifying others to better align with the goals of the CLCPA.[380] In its pre-filed

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[374] Joint Proposal, pp. 82-83.

[375] Exhibit 488 (Staff/Consumer Services Panel Direct Testimony), pp. 95-97.

[376] Joint Proposal, p. 83.

[377] Id.

[378] Id.

[379] Id.

[380] Exhibit 18 (Companies/Customer Panel Direct Testimony), pp. 141-143.

testimony, DPS Staff agreed with the Companies' proposed modifications because they would support economic development in disadvantaged communities and align with CLCPA goals.[381] The Companies and Staff also supported the use of a deferral mechanism to ensure that the funds already collected will be used for the purpose intended.[382] WE ACT recommended in its pre-filed testimony that the Companies' economic development investment and grants be focused in disadvantaged communities for purposes of workforce creation, business ownership and sustainable opportunities, and that a tracking mechanism be used.[383]

The Joint Proposal adopts the economic development program budgets and other provisions that the Companies proposed in their initial testimony.[384] No parties opposed these provisions. We find that the proposed modifications to the ongoing economic development programs promote the objectives of attracting, retaining and expanding business, while creating and retaining jobs.[385] Moreover, the modifications will allow the Companies to prioritize energy efficiency and projects in disadvantaged communities and, therefore, will support the CLCPA's goals.[386] The Joint Proposal's reporting requirement will also allow DPS Staff to track the expenditures and monitor the success of these programs. We therefore find the Joint Proposal's economic development provisions and associated

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[381] Exhibit 488 (Staff/Consumer Services Panel Direct Testimony), pp. 95-100.

[382] Id.; Exhibit 18 (Companies/Customer Panel Direct Testimony), pp. 145-146.

[383] Exhibit 590 (WE ACT/Jessel Testimony), pp. 61-63.

[384] Exhibit 24 (Companies Exhibit CP-6, Schedule 2, p. 1).

[385] Staff Statement in Support, pp. 111-112.

[386] Id.

programs, budgets, and reporting requirements to be reasonable and in the public interest.

2. Weather-Related Protections

Pursuant to the Joint Proposal, the Companies will implement several cold weather protections during the "Cold Weather Period," which is defined as the time period between November 1 and April 15.[387] The Companies will accept all Home Energy Assistance Program (HEAP) payments, restore service and suspend full collection for customers that receive a HEAP payment regardless of the amount due or customers' payment status.[388] The Companies will offer DPAs to customers where a HEAP payment is received regardless of whether the customer has previously defaulted on a DPA.[389] The Companies will not terminate residential gas customers on days when the forecast predicts temperatures below 32 degrees Fahrenheit or when the forecast high, with the wind chill, is lower than 32 degrees Fahrenheit for two or more consecutive days.[390] Nor will the Companies terminate service to residential accounts identified as elderly, blind, or disabled.[391]

The Companies have voluntarily implemented cold-weather protections but do not have any mandated cold-weather protections in their current rate plans. The Joint Proposal adopts cold weather protections proposed by PULP, CNY and UIU.[392]

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[387] Joint Proposal, p. 84; 16 NYCRR §11.5 (c)(2).

[388] Joint Proposal, p. 84.

[389] Id.

[390] Id.

[391] Id.

[392] Exhibit 559 (PULP/Yates Corrected Testimony), pp. 72-73; Exhibit 536 (CNY/Policy Panel Direct Testimony), p. 27; Exhibit 582 (UIU/Collar Testimony), p. 29.

Staff supports these provisions.[393] By implementing protections consistent with these parties' concerns, the Joint Proposal reflects a compromise between those parties and the Companies that will result in enhanced public safety protections for ratepayers.[394] This provision of the Joint Proposal is reasonable because it provides protections to the most vulnerable customers during the time of year that poses the biggest health and safety risk.

3. Domestic Violence Policy and Procedure

The Joint Proposal requires that the Companies develop, within six months of the effective date of the Joint Proposal, policies, procedures, and employee training to address those situations in which customers indicate that they may have been victims of domestic violence.[395] In its pre-filed testimony, PULP recommended implementing these policies and procedures, noting that, since the beginning of the pandemic, it has received an increase in the number of calls by customers reporting that they have been victims of domestic violence.[396] We agree with Staff that these measure are reasonable and ensure that customers who have experienced domestic violence are treated appropriately.[397] These measures are in the public interest and support our adoption of the Joint Proposal.

4. DPAs

The Companies will offer non-standard payment terms to customers based on need and make several changes to their

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[393] Staff Statement in Support, p. 114.

[394] CNY Statement in Support, pp. 35-36.

[395] Joint Proposal, p. 84.

[396] Exhibit 559 (PULP/Yates Corrected Testimony), p. 74.

[397] Staff Statement in Support, p. 115.

process for enrolling customers in DPAs.[398] Specifically, within 120 days of the effective date of the Joint Proposal, KEDNY will implement a procedure to allow call center representatives to take financial statements over the phone to determine eligibility for a non-standard DPA.[399] During that same time period, the Companies will allow customers to execute deferred payment agreements verbally over the phone, mail or email a copy of the agreement to the customer requesting it be signed and returned, and instruct customers that a signed copy is required to activate the agreement.[400] The Companies must also implement text messaging to customers when they default on DPAs that allows them to make the missing payment and re-establish their payment agreement.[401] They must also increase awareness about the DPA process through improvements to their Customer Rights and Protections outreach program.[402] On or before December 31, 2024, the Companies must implement web enhancements to permit customers to provide digital signatures.[403]

This provision of the Joint Proposal represents a concession by the Companies to PULP. Although the Joint Proposal does not adopt PULP's recommendation that the Companies be required to achieve a certain percentage of customers enrolled in DPAs as compared to accounts in arrears,[404] it otherwise adopts PULP's recommendations that the Companies implement methods to take customer financial information over the phone to determine if they are eligible for a DPA, and if

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[398] Joint Proposal, p. 85.

[399] Id.

[400] Id.

[401] Id.

[402] Id.

[403] Id.

[404] Exhibit 559 (PULP/Yates Corrected Testimony), p. 67.

they are eligible, issue the DPA with the requirement that documents confirming eligibility be subsequently submitted by the customer.[405] The provision also mandates enhanced text messaging capabilities to help customers avoid disconnection. This provision of the Joint Proposal is in the public interest because it will benefit ratepayers by facilitating customer access to DPAs, allowing the Companies to achieve greater success in executing DPAs and increasing awareness of the application processes.[406]

5. Outreach and Education Reporting

The Joint Proposal requires the Companies to continue to file annual outreach and education reports by April 1 of the following year.[407] The Companies will use a modified budget template and include separate budgets for each Company by program with dollar amounts for each activity line item, including labor.[408] If the Companies identify portions of their outreach and education budgets that are in other sections of the reports, they must identify the page numbers on the document, the name of the program budget and the amount allocated to the program.[409]

The Joint Proposal requires the Companies to use the budget template recommended by Staff, which is designed to promote transparency in the Companies' outreach budget and ensure that Staff can reconcile spending.[410] Consistent with this goal, the Companies also must follow Staff's recommended

[405] Id., p. 14.

[406] Staff Statement in Support, pp. 115-116.

[407] Joint Proposal, p. 86.

[408] Id.

[409] Id.

[410] Exhibit 488 (Staff/Consumer Services Panel Direct Testimony), pp. 27, 30-31.

method of identifying portions of their budget. By requiring these reporting requirements, the Joint Proposal enables the Companies and Staff to work together in an efficient and effective way to ensure that outreach and education programs remain available to customers.

6. Language Access

The Joint Proposal provides that the Companies will expand the number of languages in which their customer assistance materials are available, including those at in-person events and on the Companies' websites.[411] This will be funded by the existing outreach and education budgets.[412] At a minimum, the translated materials will include communications regarding customer rights and responsibilities, safety, and bill assistance, and will be translated into Spanish, Russian, Chinese, Polish, Haitian Creole, Bengali, Yiddish, Urdu, and/or Arabic based on Company and external data regarding language preferences in a given community.[413] Language preferences will be assessed annually and offerings may be adjusted based on the data, but the Companies will not reduce the number of languages into which materials are translated.[414] Additionally, the Companies will translate key energy efficiency materials.[415]

This provision of the Joint Proposal is consistent with a proposal made by CNY, which requested that any outreach materials, including the Companies' website, be provided in the

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[411] Joint Proposal, p. 86.

[412] Id.

[413] Id.

[414] Id.

[415] Id.

10 most common non-English languages spoken in New York City.[416] The Companies currently provide notices only in English and Spanish.[417] Although the Joint Proposal requires the Companies to translate their materials into only nine languages, it will nonetheless ensure that a much broader, diverse audience will have access to important materials that the Companies are required to provide.[418] This provision, which increases access to customer protections and programs, represents a reasonable compromise of the parties' positions and is in the public interest.

7. Special Protection Marketing

Under the Joint Proposal, the Companies will increase promotion of programs for elderly, blind, disabled and life-support customers by making information about the programs more visible on the Companies' website, expanding the availability of program information at in-person events, and enhancing the training of their call center representatives.[419] In addition, the revenue requirements reflect $0.175 million for KEDNY and $0.325 million for KEDLI for LMI Marketing and Outreach and, within 60 days of the issuance of a Commission order adopting the terms of the Joint Proposal, the Companies will file an LMI Marketing and Outreach program plan with the Commission, which will detail specific marketing and outreach activities.[420] The Companies will implement various measures to track the success

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[416] Exhibit 536 (CNY/Policy Panel Direct Testimony), p. 15. CNY recommended that the Companies provide program information and safety materials in Spanish, Chinese, Russian, Bengali, Haitian Creole, Korean, Arabic, Urdu, French, and Polish.

[417] Companies Statement in Support, p. 83.

[418] CNY Statement in Support, pp. 34-35.

[419] Joint Proposal, pp. 86-87.

[420] Id.

of the program, as detailed in the Joint Proposal at pages 87-88.[421] To encourage transparency and collaboration, the Companies will be required to hold annual stakeholder meetings to present their LMI marketing plan and the results of the tracking measures, with the first meeting to be held within 90 days after the issuance of a Commission order adopting the Joint Proposal.[422] The Companies must modify their LMI Marketing and Outreach Plan to address stakeholder concerns within 60 days of each annual meeting.[423]

The Joint Proposal adopts PULP's recommendation to increase the promotion of special protection programs and bolster the training of the Companies' call center services representatives to identify customers who may be eligible for the programs.[424] It also essentially adopts the LMI Marketing and Outreach Program proposed by the Companies in their pre-filed testimony.[425] Although Staff initially recommended, in pre-filed testimony, that the Commission reject the funding requested because the Companies already engage in customer outreach,[426] it now supports the inclusion of funding for the program,[427] noting that the Companies provided rebuttal testimony indicating that there are likely over 300,000 customers who are eligible for HEAP but are either unaware of the program or do

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421 Joint Proposal, pp. 87-88.

422 Joint Proposal, p. 88.

423 Id.

424 Exhibit 559 (PULP/Yates Corrected Testimony), p. 15.

425 Exhibit 18 (Companies/Customer Panel Direct Testimony), pp. 33-35.

426 Exhibit 488 (Staff/Consumer Services Panel Direct Testimony), p. 36.

427 Staff Statement in Support, p. 119.

not know how to enroll.[428] As Staff acknowledges, this provision of the Joint Proposal is reasonable because it raises awareness about special protection and energy affordability programs that are available to eligible customers, which are priorities of the Commission.[429] By improving and developing outreach strategies, the Companies will increase participation in these programs.

8. Customer Service Full Time Equivalents

The Joint Proposal includes funding for 25 field collection FTEs and 10 customer service FTEs.[430] In their pre-filed testimony, the Companies had proposed to add 30 field collection FTEs and 18 customer service FTEs.[431] In its pre-filed testimony, Staff recommended that the Commission reject 10 of the proposed field collection FTEs and eight of the proposed customer service FTEs; UIU urged rejection of all customer service FTEs.[432]

This provision of the Joint Proposal reflects a compromise that will allow the Companies to obtain extra employees to help streamline their processes related to EAP administration, collections and outreach.[433] This will lead to an increase in enrollment in energy efficiency and LMI assistance programs, consistent with the Commission's policies. We find the provision to be reasonable, in the public interest

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428 Exhibit 337 (Companies/Customer Panel Rebuttal Testimony), p. 22.

429 Staff Statement in Support, pp. 118-119.

430 Joint Proposal, pp. 89-90.

431 Exhibit 19 (Companies/Exhibit CP-1, Schedules 1-6); Exhibit 35 (KEDNY/Gas Infrastructure and Operations Panel Direct Testimony, pp. 105-106); Exhibit 18 (Companies/Customer Panel Direct Testimony), pp. 25-32, 35-38.

432 Exhibit 488 (Staff/Consumer Services Panel Testimony), pp. 23, 38-47, 85-89; Exhibit 582 (UIU/Collar Testimony), p. 28.

433 Staff Statement in Support, p. 120.

and within the range of results that would likely have been achieved through litigation.

9. Energy Efficiency

The Joint Proposal sets forth the following revenue requirements for energy efficiency costs for each Company: $34.7 million for KEDNY and $27.8 million for KEDLI in RY1; $42.3 million of non-LMI and $9.1 million of LMI energy costs for KEDNY and $30.5 million of non-LMI and $7.3 million of LMI costs for KEDLI in RY2; $31.5 million of non-LMI and $11.5 million of LMI costs for KEDNY and $23.1 million of non-LMI and $9.8 million of LMI costs for KEDLI in RY3.[434] If the Commission issues an order establishing energy efficiency costs for the post-2025 period prior to the issuance of a final order establishing rates in this proceeding, then the RY2 and RY3 revenue requirements will be revised to reflect the budgets amounts approved by the Commission.[435] These amounts reflect the RY1 base rates proposed by the Company in their pre-filed testimony and, for RY2 and RY3, the provisional budgets in the Commission's July 2023 Order Directing Energy Efficiency and Building Electrification Proposals.[436]

The Companies will establish a separate Incremental Energy Efficiency Surcharge mechanism to permit recovery of any difference between the amount of energy efficiency costs reflected in rates and the energy efficiency budgets approved by the Commission, as well as any incremental energy efficiency

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[434] Joint Proposal, p. 90.

[435] Id.

[436] Staff Statement in Support, p. 122; Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Directing Energy Efficiency and Building Electrification Proposals (issued July 20, 2023).

costs approved by the Commission in the future.[437] The Companies will also implement a downward-only energy efficiency cost reconciliation mechanism to reconcile the energy efficiency costs recovered and their actual energy efficiency expenditures.[438] At the conclusion of RY3, the Companies will defer any cumulative unspent energy efficiency funds.[439] Staff supports the surcharge and reconciliation mechanisms because they will ensure appropriate oversight of any unspent funds and enable the Companies to recover their Commission-authorized budgets.[440]

The Joint Proposal includes revenue requirement funding for 8.5 additional FTEs related to energy efficiency, which reflects an increase of 1.5 FTEs over Staff's initial recommendation.[441] These FTEs were associated with the Companies' Green Button Connect and Clean Energy 2.0 projects, to which Staff initially objected but later agreed.[442] In addition, the Joint Proposal includes funding for two FTEs associated with demand response, 1.5 FTEs with NPAs, and 1.5 FTEs to be hired as strategic account managers intended to assist the Companies' largest customers with functions such as billing and development of Strategic Energy Management Plans.[443] The Companies assert that these employees will allow them to implement their energy efficiency and demand response programs

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[437] Joint Proposal, p. 91.

[438] Id.

[439] Id.

[440] Staff Statement in Support, p. 122.

[441] Joint Proposal, p. 91; Staff Statement in Support, p. 123.

[442] Staff Statement in Support, p. 123.

[443] Joint Proposal, p. 92; Exhibit 18 (Companies/Customer Panel Direct Testimony), p. 121.

in accordance with the goals of the CLCPA.[444] Staff supports these hires, which represent a reduction from the Companies' original request. Staff notes that, among other things, the funding for these FTEs will give the Companies an opportunity to demonstrate the strategic account managers' potential to drive clean energy planning for large customers without asking ratepayers to bear the cost of the Companies' full requested compliment of FTEs.[445]

The Joint Proposal includes in KEDLI's revenue requirements $2.5 million per year for the KEDLI HEAT program through the end of 2025.[446] KEDLI must use reasonable efforts to complete all HEAT projects by the end of 2025, when the project will be transferred to NYSERDA.[447] By January 1, 2025, KEDLI will, with NYSERDA and DPS Staff, develop and file with the Commission a transition plan addressing customer outreach to inform affected customers of the transfer of responsibility for programs equivalent to the HEAT program to NYSERDA, planned periods reporting, processes to limit or avoid gaps in program offerings and a timeframe for completing HEAT projects beyond 2025, if applicable.[448] KEDLI will establish an annual KEDLI HEAT Program target of 7,737 MMBtus.[449] Staff agreed with the proposed plan to continue the KEDLI HEAT program and the subsequent transfer to NYSERDA because it supports the State's goals of increasing efficiency and customer access to energy

[444] Companies Statement in Support, p. 88.

[445] Staff Statement in Support, p. 124.

[446] Joint Proposal, p. 92.

[447] Id.

[448] Id.

[449] Id.

services, while setting an MMBtus target that will increase performance accountability.[450]

Finally, the Joint Proposal states that the Companies will provide a 100 percent shareholder-funded weatherization health and safety (WH&S) program capped at $2 million annually.[451] Any unspent funding in any given Rate Year will be allocated to the following year and, at the close of the term of the Rate Plan, the Companies will perform a reconciliation of program expenditures.[452] This program will allow the Companies to provide non-energy related services to address barriers to energy efficiency in LMI and Disadvantaged Community households. These services include remediation of carbon monoxide hazards, mold, pests, insufficient airing or ventilation, plumbing problems, blocked access to spaces in the home, and unsafe appliances.[453] By June 30 of each Rate Year, the Companies must file an annual implementation plan for the WH&S plan.[454] Beginning in RY2, within 90 days after the end of the prior rate year, the Companies will file an annual WH&S performance report.[455]

Staff and CNY support the WH&S program because it will be implemented using shareholder funds, benefitting LMI customers and customers in Disadvantaged Communities without burden to rate payers.[456] Moreover, the detailed planning and reporting requirements will provide Staff, the Commission and

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450 Staff Statement in Support, p. 126.

451 Joint Proposal, p. 93.

452 Id.

453 Id.

454 Id.

455 Joint Proposal, p. 94.

456 Staff Statement in Support, p. 128; CNY Statement in Support, p. 36.

stakeholders with useful information for consideration of the remediation of health and safety barriers to energy efficiency on a statewide basis.[457] WE ACT supports the program, on the ground that it would improve energy efficiency and reduce the energy burden for low-income customers.[458] CNY neither supports nor opposes the program but suggested in pre-filed testimony that the Companies do more to address barriers to their energy efficiency programs.[459]

The energy efficiency provisions in the Joint Proposal are adopted because they are reasonable and in the public interest. The energy efficiency mechanisms set forth ensure that the Companies can provide efficient services to their customers. This aligns with the goals of the CLCPA and promotes utilities ensuring that they are compliant with the efficiency goals that New York requires companies to follow. Additionally, the energy efficiency provisions of the Joint Proposal reflect compromise between the Companies, DPS Staff, and other parties within the range of results that would likely have been achieved through litigation.

L. Energy Affordability Program

The Joint Proposal establishes the EAP costs for KEDNY and KEDLI.[460] There are two components to the EAP costs, a set annual amount reflected in the revenue requirement of $46.895 million for KEDNY and $8.849 million for KEDLI, and an incremental amount reflecting the change in the EAP discount resulting from the rate increase in each Rate Year, which is addressed in the revenue allocation and rate design provisions

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457 Id.

458 Exhibit 590 (WE ACT/Jessel Testimony), p. 67.

459 Exhibit 536 (CNY/Policy Panel Direct Testimony), pp. 32-33.

460 Joint Proposal, Appendices 6 and 7, Schedule 3.

of the Joint Proposal.[461] Costs associated with the EAP will be fully reconciled and deferred for recovery from, or return to, customers.[462] Deferrals for EAP will be included in the Rate Adjustment Mechanism.[463] The Companies will adjust the energy burden and benefit levels for each calendar year to align the annual rate allowance to the two percent budget cap, if necessary.[464]

In their statements opposing the Joint Proposal, PULP and AGREE take issue with the Joint Proposal's rate impacts, particularly with respect to low-income residential customers. PULP estimates, based on American Community Survey data from 2021, that only 44 and 16 percent of eligible KEDNY and KEDLI customers respectively are enrolled in EAP. It contends that the rate impacts will be felt acutely, especially by those low-income residential customers who are not currently enrolled in the EAP, and that such customers may be at greater risk of falling into arrears or losing service.[465] AGREE observes that the Joint Proposal makes no major changes to the EAP and argues that customers would be better served by an EAP that was more generously funded and accessible, which it asserts is feasible and achievable, but not prioritized.[466]

CNY, although a signatory to the Joint Proposal, is concerned with rate impacts, particularly for KEDNY's residential heating customers participating in the EAP in tiers

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[461] Joint Proposal, p. 60.

[462] Joint Proposal, pp. 60-61.

[463] Joint Proposal, pp. 18, 61, 84.

[464] Joint Proposal, pp. 83-84. See Case 14-M-0565, Energy Affordability Proceeding, Order Adopting Energy Affordability Policy Modifications and Directing Utility Filings (issued August 12, 2021) (2021 EAP Order), pp. 41, 44.

[465] PULP Statement in Opposition, pp. 3-4.

[466] AGREE Statement in Opposition, p. 7.

2-4 in RY1.[467] CNY states that because the EAP discounts are limited to a two percent cap in revenues pursuant to the EAP guidelines,[468] KEDNY EAP discounts will be reduced, and the three percent energy burden will not be maintained for heating customers. CNY requests the Commission take further action to address affordability for these customers and presents three options for the Commission's consideration. First, CNY asserts that the Commission could defer the collection of delivery revenues from EAP Tiers 2-4 customers until RYs 2 and 3, in an amount sufficient to reduce or eliminate RY1 bill impacts. Second, the Commission could authorize KEDNY to make limited revisions to the assumptions used in the EAP workbook calculations to smooth out rate impacts across Tiers 1-4 to reduce impacts to Tiers 2-4 customers without impacting the two percent budget cap. Third, the Commission could authorize a limited waiver to allow KEDNY to exceed the two percent budget cap in RY1.

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[467] The Companies' EAP provides a monthly bill discount that ranges in value based on one of four applicable tiers, which in turn are based on the receipt of the HEAP grant and applicable HEAP add-ons, and whether the customer is a heat or non-heat customer. Households receiving a regular HEAP benefit are enrolled in Tier 1. These customers account for 85 percent of all low-income customers and receive the default discount level. Households receiving one HEAP add-on are enrolled in Tier 2. Households receiving two HEAP add-ons are enrolled in Tier 3 and receive an additional discount. Households in Tier 4 are enrolled in a Utility Guarantee/Direct Voucher program through the City of New York's Human Resources Administration (HRA) and the benefit amount is reduced by the amount HRA pays for their utilities. Exhibit 18 (Testimony of the Companies' Customer Panel), p. 17; CNY Statement in Support, p. 7.

[468] See Case 14-M-0565, Energy Affordability Proceeding, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016) (2016 EAP Order), p. 30.

Both the Companies and Staff state that the EAP provisions in the Joint Proposal are consistent with the Commission's EAP Orders and policy, are reasonable and in the public interest, and should be adopted.[469] In so doing, the Companies acknowledge in their Statement in Support that KEDNY's low-income heating customers in Tiers 2-4 will see relatively higher bill impacts in RY1. They embrace CNY's second proposal to adjust the factors in the discount calculation to produce "a more equal distribution of low-income credits across the tiers" and propose an adjusted methodology.[470] However, in their Reply Statement, the Companies identified and corrected an error in its calculation of bill impacts and, with such correction, state that the resulting estimated bill impacts between the Commission-approved and their proposed adjusted methodology are "more in line" than previously shown.[471]

In response to the EAP enrollment concerns raised by PULP and accessibility concerns raised by AGREE, Staff states that the Joint Proposal includes provisions to enhance EAP outreach and reporting through the establishment of an LMI Marketing and Outreach program.[472] Regarding AGREE's criticism that no major changes to the EAP were proposed in the Joint Proposal and its argument that the EAP should be more generously funded, Staff argues that the Joint Proposal's terms respect both the budget caps established in the Commission's 2016 EAP Order and also the Commission's preference in the 2021 EAP Order to address EAP program changes in the EAP proceeding rather than in individual rate proceedings to ensure any program changes can

[469] Companies Statement in Support, pp. 69-70,78-79. Staff Statement in Support, pp. 39, 93, 112-113.

[470] Companies Statement in Support, pp. 15-16; Appendix 1.

[471] Companies Reply Statement in Support, pp. 5-6; Appendix 1.

[472] Staff Reply Statement in Support, p. 27.

be equitably implemented statewide.[473] For the same reasons, Staff argues that CNY's proposed remedies for addressing billing impacts for KEDNY's low-income heating customers should be rejected and instead be addressed by the EAP Working Group.[474]

The annual amounts included in the Companies' revenue requirements are the proposed allowances included in the Companies' initial testimony that were undisputed by Staff.[475] We find the Joint Proposal's provisions related to EAP are consistent with our EAP Orders and advance our policies. The framework and budget for the EAP during the term of the rate plans are consistent with the Commission's prior orders and will ensure that low-income participants receive a discount to provide some financial relief from their energy bills. Moreover, the Joint Proposal's terms require the Companies to develop and file a LMI Marketing and Outreach plan that will detail marketing and outreach activities, track and monitor EAP enrollment, provide stakeholders an opportunity to review and recommend modifications to such program, and fund three new EAP Administrator positions, to be split between the Companies. We find that these additional provisions will facilitate the Company's efforts to expand participation in the EAP and further our policy interests. Nevertheless, we correct the Joint Proposal's EAP terms in one respect. The Joint Proposal states that the Companies will adjust the energy burden and benefit levels for each calendar year to align the annual rate allowance to the two percent budget cap, if necessary.[476] While the energy

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[473] Staff Reply Statement in Support, pp. 26-27. See 2021 EAP Order, pp. 38-39.

[474] Id.

[475] See Exhibit 18 (Companies/Customer Panel Testimony), p. 23; Staff Statement in Support, p. 112.

[476] Joint Proposal, pp. 83-84.

burden and benefit levels will be adjusted annually, those changes are not made on a calendar year basis, but instead will be implemented December 1 each year, aligning with the beginning of the winter heating season, as described in the 2021 EAP Order.

We are sensitive to the concerns raised by AGREE and CNY regarding affordability. However, as noted by Staff, our preference is to address any issued regarding the EAP in Case 14-M-0565, the Energy Affordability Proceeding, rather than in the context of individual rate proceedings. We find that addressing such issues in that proceeding will ensure standardization and consistency and avoid inequalities among similarly situated customers throughout the State. Therefore, any proposals to further mitigate bill impacts to EAP participants, explore alternate sources of EAP funding, or to consider changes to the budget cap should be addressed in the context of the Energy Affordability Proceeding.

M. Organizational Dues and Policy Activities

WE ACT challenges the incorporation in rates of costs included in the Historic Test Year, or the twelve-months ending December 31, 2022, related to the Companies' organizational dues, testimony and comments submitted to governmental entities, and their website posting and bill inserts.[477] WE ACT asserts that these costs arise from advocacy and political activities that ratepayers should not fund and contends that the costs are inappropriately included the Joint Proposal's revenue requirements. WE ACT urges the Commission to adjust the allowed rate increase to exclude these costs based on its contention that the costs are associated with political activities, advocacy, advertising, and customer communications promoting the

[477] Exhibit 590 (WE ACT/Jessel Testimony), pp. 69-80, 83-85.

continued use of natural gas. WE ACT also recommends that the Commission impose conditions in this Order (1) directing the Companies to properly track and report on these costs to ensure ratepayers are not funding political activities, and (2) setting a maximum percentage of operating revenue that can be devoted to such advertising.[478] WE ACT requests that the Commission require an independent audit funded by the Companies' shareholders of their recording of costs related to political activities because organizational dues were included in the Historic Test Year, "which should cast doubt on the Companies' judgment."[479]

Each of the categories of expenditures WE ACT challenges are discussed below.

1. Organizational Dues

In their Statement in Opposition, WE ACT complains that the Companies have improperly included for rate recovery from customers, organizational dues paid to the National Insurance Crime Bureau (NICB).[480] WE ACT asserts that the NICB is a registered lobbyist before Congress and that PSL §114-a "expressly prohibits recovery of member dues for any entity that engages in legislative lobbying."[481] WE ACT recommends that the

[478] WE ACT Statement in Opposition, p. 49.

[479] Id., p. 50.

[480] WE ACT Statement in Opposition, pp. 39-40; Exhibit 590 (WE ACT/Jessel Testimony), p. 80; Exhibits 669-670 (WE ACT/Jessel Exhibits 79-80). WE ACT claims that KEDNY and KEDLI seek recovery of NICB dues of $2,419 and $2,974, respectively, but does not provide the complete DPS discovery requests and the Companies' responses associated with the cited exhibits.

[481] WE ACT Statement in Opposition, p. 40; Exhibits 671-672 (WE ACT/Jessel Exhibits 81-82). PSL §114-a defines "legislative lobbying" as any attempt to influence passage or defeat of legislation on the State or Federal level.

Commission exclude the NCIB membership costs in their entirety from the Historic Test Year.

In a discovery response, the Companies state that "lobbying costs were inadvertently included in the revenue requirement" but would be corrected in their rebuttal filings.[482] It is unclear whether the Companies made such corrections and their Reply Statement does not make that claim.

In their Reply Statement, the Companies indicate that the NICB is a national organization whose purpose is to combat insurance fraud and that they are members "for the purpose of minimizing claims costs to customers."[483] The Companies claim that they use NICB resources in their insurance fraud and risk management strategy resulting in membership dues that are properly chargeable to customers because the customers receive benefit from the Companies membership in the organization. The Companies attach to their Reply Statement NICB's quarterly invoice identifying the quarterly dues.[484] Based on the NICB's invoice, the Companies' Reply Statement estimates that the percentage of dues attributable to lobbying efforts is 0.412 percent, or $9.97 for KEDNY and $12.25 for KEDLI. The Companies argue that the estimated amounts are therefore "extremely small," resulting in a "de minimus" ratepayer cost when viewed in the context of the rates established under the Joint

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482 Exhibits 647, 649 (WE ACT/Jessel Exhibits 57, 59).

483 Companies' Reply Statement in Support, pp. 20-21.

484 Id., Appendix 2.

Proposal.[485] They also maintain that they are not aware that NICB lobbies "on any issues related to utility operations."[486] The Companies assert that inclusion of such costs "should not impact the Commission's determination" with respect to the Joint Proposal.[487]

DPS Staff asserts that membership dues to organizations that engage in legislative lobbying should not be included in the revenue requirements or in rates.[488] Staff asserts that if the Companies "inadvertently included any charges for association dues for any organization, association, institution, or corporation that participates in legislative lobbying, Staff recommends the Commission direct the Companies to defer such charges, with interest, for future refund to customers."[489]

We note that WE ACT asks the Commission to exclude the entire cost of NICB membership from the Historic Test Year. That information is used by DPS Staff to evaluate the Companies' rate filings going forward. The issue is whether these costs are included in the three-year revenue requirements going forward. The record is insufficiently developed to answer this

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485 Companies' Reply Statement in Support, pp. 20-21, Appendix 2(NICB Quarterly Invoice). The Companies' inclusion in their Reply Statement of the NICB statement estimating the percentage of dues associated with lobbying should have been submitted with their rate filings along with similar statements of all other organizations who perform lobbying functions to which they pay membership dues.

486 Id., p. 21.

487 Companies' Reply Statement in Support, p. 21. Although the Companies claim that they are not aware that NICB lobbies on "any issues related to utility operations," PSL §114-a makes no such distinction and broadly disallows rate recovery for any lobbying activities, regardless of the subject.

488 Staff Reply Statement in Support, p. 29.

489 Id.

question. WE ACT presents no evidence that the dues are included and the Companies do not dispute that they may be. Staff refers to the potential for the Companies to have inadvertently included these costs and recommends a deferral if they were.

PSL §114-a prohibits the Commission's approval of a rate plan that includes as operational costs any membership dues for an organization that engages in legislative lobbying. Therefore, membership dues for any organization that engages in lobbying should not be included in the Companies' operational costs and should be excluded from their revenue requirements.

Although the Companies testified that they undertook a "second review" of membership dues incurred during the Historic Test Year to remove "membership dues associated with organizations engaging in legislative lobbying,"[490] this review apparently did not capture the removal of all such costs, including NICB's, as the Companies appear to concede.

Our approval of the Joint Proposal here is premised on the assumption that no membership organization dues are included in the revenue requirements under the Joint Proposal if the organization engages in lobbying activities. Because we need more to support this assumption, within 60 days after the issuance of this Order, the Companies are directed to confirm in writing that they have again reviewed the organizations in which they are members and have confirmed the exclusion of all membership dues from the revenue requirements for any organizations engaged in or otherwise funding lobbying activities. If any such dues were incorrectly included in the

[490] Exhibits 132, 137 (KEDNY/Revenue Requirements Panel Testimony, p. 28 and Exhibit RRP-3); Exhibits 146, 151 (KEDLI/Revenue Requirements Panel Testimony, p. 28 and Exhibit RRP-3).

revenue requirements in these proceedings, the Companies are directed to defer those amounts for future refund to customers. The deferral shall accrue carrying costs at the pre-tax rate of return.

The Companies are also directed in their next rate filing to include testimony confirming the exclusion of these costs and to identify both the organizational dues excluded and those included in the revenue requirement. This information will enable Staff and the parties to confirm on the record that all membership costs associated with organizations engaged in lobbying have been excluded from the Historic Test Year and the revenue requirements and will avoid a similar challenge being raised in the Companies' future rate cases.[491] With these additional requirements, we see no reason to require the Companies' reporting of membership dues to be audited, as WE ACT requests.

Although we agree with the Companies that the lobbying portion of NICB dues is minor when viewed in the context of the total revenue requirements, we take seriously the Legislature's intent in PSL §114-a to exclude from rates all membership costs for any organizations that engage in lobbying.

3. Testimony/Comments to Governmental Entities

WE ACT next challenges inclusion in the Historic Test Year and the revenue requirements of costs associated with the Companies' activities in appearing before governmental entities and public officials, including preparing and submitting formal comments and/or presenting testimony before: the New York City Council, Committee on Environmental Protection (NYC Council) regarding a law requiring electrification and fossil fuel phase-out in new buildings; the CAC regarding the draft CLCPA Scoping

[491] Companies Statement in Support, p. 21. Membership dues for KEDNY and KEDLI are $2,400 and $3,000, respectively.

Plan; and the New York State Department of Environmental Conservation (DEC) and the New York State Energy and Research and Development Authority (NYSERDA) regarding the proposed CLCPA cap and invest program.[492]

WE ACT asserts that these activities were undertaken for the purpose of influencing the decisions of public officials and advancing the Companies', rather than ratepayers', interests. WE ACT asserts the cost of these activities should have been recorded below the line pursuant to the Uniform System of Accounts,[493] which has a broad reach to protect ratepayers from funding a utility's policy-influencing activities.[494] Relying on the Companies' responses to certain discovery requests, WE ACT asserts that the cost of these activities were improperly recorded "above the line" and should not be paid by ratepayers.[495] Although the Companies asserted objections to WE ACT's discovery requests, they nevertheless confirmed that the

[492] WE ACT Statement in Opposition, pp. 41-43; Exhibit 590 (WE ACT/Jessel Testimony), pp. 72-73; Exhibits 636-638, 640, 654-656 (WE ACT/Jessel Exhibits 46-48, 50, 60-66).

[493] 18 C.F.R. Part 201; 16 NYCRR §312.1. The Uniform System of Accounts is promulgated and administered by the Federal Energy Regulatory Commission (FERC) and defines the expenditures that should be recorded above the line, such as operational expenses recoverable in rates, and those that should be recorded below the line, such as political activities not recoverable in rates.

[494] WE ACT Statement in Opposition, pp. 41-43; Exhibit 590 (WE ACT/Jessel Testimony), pp. 69-73.

[495] Exhibit 590 (WE ACT/Jessel Testimony), pp. 72-73; Exhibits 636-638, 640, 654-656 (WE ACT/Jessel Exhibits 46-48, 50, 64-67). The Companies discovery responses, on which WE ACT relies, state that the costs associated with appearances before the New York City Council, the CAC, DEC, and NYSERDA were not recorded "below the line."

costs associated with appearances before the NYC Council, the CAC, DEC and NYSERDA were not recorded below the line.[496]

WE ACT also challenges the Companies' Clean Energy Vision (CEV) report posted on the National Grid website.[497] WE ACT claims that the CEV Report promotes the Companies' opinions at the center of New York's climate policy debate, including the role of alternative combustion fuels such as RNG and hydrogen, and advances a hybrid gas and electric energy future with the use of both fuel types, rather than the CLCPA's electrification and zero emission objectives.[498] WE ACT claims that the CEV Report is an "advocacy document" representing a policy position used in regulatory lobbying and that the Companies promote it on social media. WE ACT complains that ratepayers should not fund the CEV Report's research, writing and personnel costs.[499]

Relying on the Commission's 1977 Policy Statement on Advertising and Promotional Practices (1977 Policy),[500] WE ACT contends that the Commission should establish a percentage of operating revenues between one-tenth and one quarter of one percent for the Companies to expend on institutional advertising.[501] WE ACT also raises First Amendment concerns associated with the Companies speaking on behalf of ratepayers as a part of their policy advocacy activities.[502]

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496 Exhibits 647, 649, 651, 652 (WE ACT/Jessel Exhibits 57, 59, 61-62).

497 Id., pp. 43-48; Exhibit 5 (Companies/CLCPA Panel Testimony, Exhibit CLCPA-2).

498 Exhibit 590 (WE ACT/Jessel Testimony), pp. 74-76.

499 Exhibit 590 (WE ACT/Jessel Testimony), p. 77.

500 Case 27052, Statement of Policy on Advertising and Promotional Practices of Public Utilities (issued February 25, 1977); 1977 WL 201861.

501 WE ACT Statement in Opposition, p. 52.

502 WE ACT Statement in Opposition, p. 49.

The Companies' argued in rebuttal testimony that their activities before the governmental entities fall outside the definition of lobbying under the New York City Administrative Code §3-211(c)(3)(iii)[503] and New York's Legislative Law §1 c.[504] The Companies assert that these activities are not lobbying because they participated as a witness, attorney, or other representative in a public, on-the-record proceeding "based on direct requests" from those governmental entities.[505]

In their Reply Statement, the Companies claim that the costs of their activities was properly recorded "above the line" as operational costs, rather than "below the line" in Account 426.4, and are therefore properly chargeable to customers.[506] In support of their position, the Companies cite the language in

[503] New York City's Administrative Code §3-211(c)(3)(iii) provides: "The following persons and organizations shall be deemed not to be engaged in "lobbying activities": ... (iii) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation."

[504] Legislative Law §1 c(c) provides that "lobbying" shall not include: "Persons who participate as witnesses, attorneys or other representatives in public proceedings of a state or municipal agency ... which is part of the public record thereof and all preparation by such persons for such participation." This section of New York law also defines "lobbying" and "lobbying activities" to include any attempt to influence the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof; and the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation.

[505] Exhibit 373 (KEDNY/Revenue Requirement Panel Rebuttal Testimony), p. 26; Exhibit 378 (KEDLI/Revenue Requirement Panel Rebuttal Testimony), p. 25.

[506] Companies Reply Statement in Support, p. 22 (citing 18 C.F.R. §426.4).

Account 426.4, which excludes appearances before a regulatory or other governmental body which are "directly related to existing or proposed operations." The Companies argue that appearances before the NYC Council, the CAC, DEC, and NYSERDA fall within this exclusion and should be included in operating expense accounts.[507] The Companies also cite a 1963 Federal Power Commission Order (FPC Order) that they maintain clarifies the expenditures that should be recorded as operating costs and chargeable to ratepayers.[508]

Relying on the FPC Order, the Companies assert that costs recorded in Account 426.4 should include activities such as media advertising to influence the election or appointment of public officials or proposed local, State or Federal legislation; to promote legislation exempting natural gas producers from Federal regulation; or to influence the public or public officials about private versus public power questions.[509] The Companies also assert that the FPC Order requires costs associated with employee time in a house-to-house campaign to influence public opinion about public power or natural gas legislation to be recorded in Account 426.4.[510]

With respect to the CEV Report and their bill inserts, the Companies assert that this is "informational advertising" under the Commission's 1977 Policy statement and are a legitimate cost of doing business that is properly recoverable

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[507] Companies' Reply Statement in Support, pp. 22-23.

[508] Id. (citing In re Expenditures for Political Purposes – Amendment of Account 426, Order No. 276, 30 F.P.C. 1539, 1542 (Dec. 18, 1963) (FPC Order)).

[509] Id., pp. 22-23.

[510] Id.

from ratepayers.[511] The Companies refer to a two-page section of the CEV Report that provides general public policy suggestions for the energy industry, but argue that the majority of the Report is dedicated to providing the Companies' plans for new or improved means of providing service in light of the evolving energy policies. The Companies also reject WE ACT's request that the commission place a limit on such institutional advertising expenditures. The Companies also dispute WE ACT's First Amendment concerns, claiming that it is a "conclusory argument" and that the Joint Proposal's revenue requirements "do not include the costs of any political statements or positions" and therefore are properly included in rates.[512]

WE ACT's position is not convincing. WE ACT fails to identify, quantify, and document the precise expenditures for these activities that are included in the Companies' revenue requirements. Even if it had, WE ACT does not establish that the costs are not properly recoverable from ratepayers.

An examination of the Companies' activities before the NYC Council, the CAC, and DEC/NYSERDA shows no political lobbying of the type that WE ACT alleges. The record demonstrates that before each of these governmental entities, the Companies are properly engaging in a public discussion process about energy relevant issues facing the State. For example, the Companies' comments to the CAC contain information designed to educate and inform, covering multiple issues such as energy affordability, the transition to net zero and decarbonization, the need for a skilled workforce, system reliability, and climate justice, among other issues. This is

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[511] Companies' Reply Statement in Support, pp. 23-24; Commission "Statement of Policy on Advertising and Promotional Practices of Public Utilities (issued February 25, 1977).

[512] Id., pp. 23-24.

also true for the Companies' CEV Report posted to the Companies' website.[513]

As relevant here, Account 426.4 of the Uniform System of Accounts requires utilities to record in a non-operational account any expenditures for certain civic, political, and related activities, which:

> "shall include expenditures for the purpose of influencing public opinion with respect to ... referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances)...; or for the purpose of influencing the decisions of public officials, <u>but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations</u>." (Emphasis added.)[514]

We conclude that the Companies' activities before these governmental entities fall within the exclusion highlighted above insofar as they relate to the Companies' operations and are part of an important State-wide interest. The NYC new building electrification law, the CAC's CLCPA Scoping Plan, and the DEC/NYSERDA cap and invest program have sufficient impacts on the Companies' operations to fall within the exclusion in Account 426.4. To the extent that the Companies rely on the FPC Order, we need not consider it here in light of the Commission's incorporation of the Uniform System of Accounts in 16 NYCRR §312 and the language in Account 426.4.

With respect to the Companies' CEV Report and its inclusion on their web page and social media, as well as their bill inserts, we find that those do not violate the Commission's

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513 Exhibit 5 (Companies/CLCPA Panel Testimony, Exhibit CLCPA-2).

514 18 C.F.R. §426.4(b).

1977 Guidance. As noted above, the CEV Report contains information for customers about the Companies' operations, their CLCPA activities and efforts, energy affordability, the need for system reliability, and their vision for the future of their gas system.

The Companies have a right to engage in political and policy issues.[515] But that right is exercised on behalf of the corporation and its shareholders, not on behalf of customers, and should not be undertaken to influence, advocate and otherwise lobby for a particular result at customer expense, especially with respect to controversial issues. While the Companies cannot expect their customers to pay for such activities, the record does not establish that they are seeking rate recovery of a specified amount for the kind of activities intended to be excluded from rates. The record also does not reflect that the First Amendment is implicated by virtue of the Companies' activities and we reject WE ACT's claims in this regard.

N. Property Tax Refund Petition

In January 2023, KEDNY filed notice, as required by 16 NYCRR §89.3, of a sales tax refund it received.[516] KEDNY received a $4.358 million refund, inclusive of $131,000 interest, from the New York State Department of Taxation and Finance resulting from a routine state tax audit and comprehensive internal reverse audit that identified an

[515] See Citizens United v. Federal Election Commission, 558 U.S. 310, 342 (2010); NAACP v. Button, 371 U.S. 415, 428-429 (1963).

[516] Case 23-G-0200, Brooklyn Union Gas Company d/b/a National Grid – Tax Refund, Notice of Tax Refund and Request for Extension (filed January 27, 2023).

overpayment of monthly sales and use tax.[517] The internal audit commenced in August 2018 and continued through March 2021; KEDNY received payment from the State of New York in November 2022.[518] Because the refund represented sales and use tax incorrectly applied against capital project or operating expenditures that either are included in KEDNY's current rate plan or will be reflected in this rate case, KEDNY proposed to pass the entirety of the refund, less expenses and a 10 percent retention for shareholders, to its ratepayers.[519]

The Joint Proposal adopts KEDNY's proposed disposition and provides that KEDNY will be permitted to retain its costs and to split the remaining balance between ratepayers and shareholders on a 90 percent/10 percent basis, respectively, resulting in $3.135 million deferred for the benefit of ratepayers.[520] Although the Joint Proposal does not so specify, DPS Staff indicates that the Joint Proposal requires KEDNY to create a regulatory liability for the ratepayers' share of the refund received to date, adjusted for carrying costs.[521]

No party has objected to this provision of the Joint Proposal, and we approve it. The proposed distribution of the refund amount is within the allocation range that the Commission previously has approved as reasonable.[522] Moreover, as Staff argues, allowing shareholders to retain a share of the refund

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[517] Case 23-G-200, Petition Seeking Approval of Proposed Disposition of State Sales Tax Refund (filed March 14, 2023), p. 2; Staff's Statement in Support, pp. 131-132.

[518] Case 23-G-0200, Petition, pp. 3-4.

[519] Case 23-G-0200, Petition, pp. 4-6.

[520] Joint Proposal, p. 97.

[521] Staff's Statement in Support, p. 132.

[522] Cases 08-E-0539, et al., Consolidated Edison Company of New York – Rates, Order Setting Electric Rates (issued April 24, 2009), pp. 106-107.

incentivizes utilities to seek tax refunds, while ratepayers remain as the primary beneficiaries of these utility efforts.[523] Thus, we conclude that this provision of the Joint Proposal will produce a just and reasonable result that is in the public interest.

O. Management and Operations Audits

PSL §66(19)(c) requires the Commission, upon the application of a gas or electric corporation for a major change in rates, to review the utility's compliance with Commission directions and recommendations made in the most recently completed management and operations audit. The testimony herein discussed the Companies' most recently completed management and operations audit.[524]

In 2018, the Commission instituted a proceeding for an independent third-party consultant to conduct a comprehensive management and operations audit of the Companies.[525] After Staff terminated the contract with the third-party consultant, Staff completed the final audit report, which was released to the public in November 2020 and included 24 recommendations for improving the Companies' performance.[526] The Companies filed an Implementation Plan in December 2020, the Commission approved the Implementation Plan in an order issued in May 2021,[527] and the Companies thereafter filed written implementation plan

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[523] Staff's Statement in Support, p. 132.

[524] Tr. 20-29.

[525] Case 18-M-0195, National Grid USA's New York Electric and Gas Utilities – Management Audit.

[526] Case 18-M-0195, supra, Order Releasing Audit Report (issued November 19, 2020).

[527] Case 18-M-0195, supra, Order Approving Implementation Plan (issued May 13, 2021).

updates. By letter issued in March 2023, Staff acknowledged that the Companies implemented all audit recommendations.[528]

Accordingly, pursuant to PSL §66(19), we find that the Companies are currently in compliance with the directions and recommendations made in connection with the most recently completed management and operations audit.[529]

VI. CONCLUSION

Based upon the record, and after considering the Statements in Support of and Opposition to the Joint Proposal as well as the post-hearing briefs, we find that the Joint Proposal, as corrected, appropriately balances the interests of ratepayers, the Companies, and their investors. The Joint Proposal contains significant revenue reductions from the Companies' rate requests in testimony, while providing sufficient funding for them to maintain safe and reliable service and attract the necessary capital to ensure their long-term viability. The terms of the Joint Proposal are consistent with our environmental, social and economic policies, as well as those of the State, including the CLCPA. Accordingly, consistent with our discussion in this Order, we find that the rate plans adopted herein provide just and reasonable rates, terms and conditions and are in the public interest.

The Commission orders:

1. The rates, terms, conditions, and provisions of the Joint Proposal dated April 9, 2024, filed in these proceedings

[528] Case 18-M-0195, supra, Audit Close Out Letter (issued March 20, 2023).

[529] As the Joint Proposal provides at page 66, the Companies will be permitted to defer for future recovery the costs of future comprehensive management or operations audits commenced by the Commission.

and attached hereto as Attachment 1 are corrected as described in the Order above and adopted and incorporated consistent with the discussion herein.

2. The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid are directed to file cancellation supplements, effective on not less than one day's notice, on or before August 22, 2024, cancelling the tariff amendments and supplements listed in Attachment 2.

3. The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid are directed to file, on not less than five days' notice, to take effect on September 1, 2024, on a temporary basis, such tariff changes as are necessary to effectuate the terms of this Order for Rate Year 1 beginning April 1, 2024, and are further directed to file all necessary revised Appendices to the Joint Proposal to reflect the rate plans established in this Order, including, but not limited to, Appendices 3, 4 and 9.

4. The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid shall serve copies of their filings on all active parties to these proceedings. Any party wishing to comment on the tariff amendments may do so by electronically filing its comments with the Secretary to the Commission and serving its comments on all active parties within 10 days after service of the tariff amendments. The amendments specified in the compliance filings shall not become effective on a permanent basis until approved by the Commission and will be subject to refund if any showing is made that the revisions are not in compliance with this Order.

5. The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid are directed to file such further tariff changes as are necessary to

effectuate the rates for Rate Year 2 beginning April 1, 2025, and for Rate Year 3 beginning April 1, 2026. Such changes shall be filed on not less than 30 days' notice to be effective on a temporary basis until approved by the Commission.

6. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 that newspaper publication be completed prior to the effective date of the amendments for Rate Year 1 is waived; provided, however that the Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid shall file with the Secretary of the Commission, no later than six weeks following the effective date of the amendments, proof that notice to the public of the changes set forth in the amendments and their effective dates has been published once a week for four consecutive weeks in one or more newspapers having general circulation in the service territory. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 are not waived for tariff changes necessary to implement the rate plans in Rate Years 2 and 3, or with respect to tariff filings in compliance with this Order made in subsequent years.

7. Within 60 days after issuance of this Order, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid are directed to confirm in writing that it has reviewed the organizations in which they are members and have excluded all membership dues from the revenue requirements in the Multi-Year Rate Plan for all organizations that engage in lobbying activities. If any such dues were incorrectly included in the revenue requirements in these proceedings, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp. d/b/a National Grid shall establish a deferral of those amounts for future refund to customers. The deferral shall accrue carrying costs at the pre-tax rate of return.

8. The reporting requirements with respect to the biomethane interconnections are modified to also include in the reports an analysis of disproportionate impacts for any projects located in a Disadvantaged Community.

9. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

10. The proceedings in Cases 23-G-0225, 23-G-0226, and 23-G-0200 are continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary