BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

Alliance for a Green Economy (AGREE)
Post Evidentiary Hearing Brief

August 4, 2023

I. Introduction

As we write this post-hearing brief, we reflect on the setting of the evidentiary hearing. Outside the windows of the 19th floor board room, wildfire smoke clouded our view – a third stretch of harmful air to cover New York State this summer. Inside, the air conditioning attempted to keep up with another sweltering day in what would prove to be the hottest month in human history. Throughout this rate case, the change to our climate has demonstrated that it doesn't wait for us. We must make greenhouse gas reductions a priority and act to protect those who face disproportionate harm.

II. The Joint Proposal Does Not Comply With CLCPA 7(2) and Defies Commission Order 22-M-0149

Greenhouse gas emission reductions are at the heart of the Climate Leadership and Community Protection Act ("CLCPA" or "Climate Act"). The CLCPA explicitly calls for greenhouse gas ("GHG") emissions reductions that are "real, permanent, quantifiable, verifiable, and enforceable."[1] Yet, throughout the record of this case it is clear that New York State Electric and Gas ("NYSEG") and Rochester Gas and Electric ("RG&E") (together known as "the Companies") and Department of Public Service Staff ("Staff") did not conduct emissions accounting to support their claims that the joint proposal is CLCPA compliant.

The Companies claimed that "the joint proposal is fully consistent with the CLCPA"[2] In particular, the Companies listed six provisions of the Joint Proposal that they said "take an important step in achieving the GHG emissions reduction target of the CLCPA."[3] When asked if the Companies had quantified reductions associated with any of those six actions in support of their assertion, the companies' witness answered: "we have not undertaken that analysis."[4] The Companies further testified that "calculation of greenhouse gas emissions is an art, not a science."[5] We cannot disagree more. GHG accounting is a scientific endeavor, and the law is clear in its expectation that emissions be quantified. There are various methodologies the company could employ, including the detailed proposal posted for public comment in December

[1] CLCPA Section 75-0109(3)(b),14Id.
[2] Companies' Reply Statement in Support of JP at 21.
[3] Ibid at 23.
[4] Transcript of Evidentiary Hearing, Case No 22-E-0317 et. al at 40:25 (July 17, 2023) ("Transcript").
[5] Transcript at 44:12-13.

2022 in Case 22-M-0149[6] or the methodology already used by state agencies to develop the State Greenhouse Gas Inventory. These responses from the Companies demonstrate their flippant attitude toward GHG reductions requirements and demonstrate a hole in the record regarding GHG emissions. While Staff and the Companies have insisted that the joint proposal is compliant with the CLCPA, scrutiny reveals a profound lack of evidence to support these claims.[7]

The Companies have not undertaken an emissions analysis to support the actions they claim will reduce greenhouse gas emissions, and there is no plan in the current joint proposal to start accounting for emissions going forward. The Companies and Staff repeatedly make references to New York Public Service Commission ("Commission") Case 22-M-0149, describing that they had not and will not be doing greenhouse gas emissions accounting while they wait for a final ruling on a statewide standard for emissions accounting. For example, the Companies' testified, "subject to waiting for that completion of that order, we did not perform the analysis described."[8] This would make more sense, although not absolve the companies, if a ruling on a standard for emissions accounting was imminent and if the joint proposal included a plan for how and when that emissions accounting would begin, but this is not the case. No deadline for the proceeding or for the completion of a standard for emissions accounting has been posted, as Judge Bergen summarized when Staff were asked about the timelines for the proceeding: "Deadlines for Commission proceedings are not public information. Staff can't answer that question."[9] As such, Staff and Companies are submitting that they have not and will not account for greenhouse gas emissions because they wait for the result of a proceeding that has no stated deadline.

In fact, proceeding 22-M-0149, to which the Companies and Staff have referred as justification for *not* conducting GHG emissions accounting, explicitly calls on utilities to do

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[6] JU Proposal for an Annual Greenhouse Gas Emissions Inventory Report, Case No 22-M-0149 (filed December 1, 2022).
[7] AGREE IR-40 also directly asked what emissions analysis the companies had conducted, and the companies' response revealed that no emissions analysis had occurred. As we noted in our reply statement, this lack of GHG emissions analysis was also pointed out by Staff in their CLCPA panel.
[8] Transcript at 39:22-24; *see also* 39:22–50:19 for repeated reference to 22-M-0149 as justification for not undertaking GHG emissions analysis in preparing this joint proposal.
[9] Transcript at 51:11-16.

GHG emissions accounting on every investment, expenditure, program, and initiative in their rate filings:

> [C]onsistent with requirements imposed in recent rate cases the Commission directs all Utilities in future rate filings to include an assessment of the GHG emissions impacts of each specific investment, capital expenditure, program, and initiative included in their rate filings. In the recently decided O&R case, the Commission required O&R in its next rate filing to provide 'an assessment of the impacts that O&R's specific investments, capital expenditures, programs, and initiatives described in its rate flint will have on its [GHG] emissions from its gas network, specifying the potential emissions impacts of each.' The Commission expects the Utilities to undertake the same analysis in all future rate case filings.[10]

This order was published May 12, 2022, providing plenty of time to conduct these assessments. As the passage above demonstrates, this is clearly described in the order as a directive going forward, not a requirement subject to the completion and passage of a unified emissions accounting proposal. The Joint Proposal, which does not include these emission impacts, defies the Commission's direction.

Compared to recent rate cases, the Companies are completely deficient in their GHG emissions accounting. For example, in the recently completed Con Edison case, Con Edison conducted emissions accounting of each of its investments to determine that the joint proposal filed in that case would reduce system-wide emissions by nearly three million metric tons of carbon dioxide equivalent over the term of the rate plans.[11] Their pilot for differentiated gas (called "certified natural gas" by the industry) also includes emissions accounting that is not present in the similar NYSEG/RGE pilot.[12] Furthermore, the Commission's order required them to do additional emissions accounting on their plan for biomethane (called "renewable natural gas" by the industry).[13] The NYSEG/RGE joint proposal contains none of the above. We fear that allowing NYSEG/RGE to carry on without any emissions accounting sets a bad precedent for future rate cases, as utilities have been referencing other cases to define compliance with the CLCPA. NYSEG/RGE's definition of compliance would represent a new low when instead the

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[10] Order on Implementation of the Climate Leadership and Community Protection Act, Case No. 22-M-0149 at 16 (May 12, 2022) ("CLCPA Implementation Order").
[11] Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, Case Nos. 22-E-0064 and 22-G-0065 at 100 (July 20, 2023) ("Con Ed Order").
[12] Ibid at 93-96.
[13] Ibid at 128-129.

bar should be raised with each rate case in order to meet the quickly approaching 2030 deadline for 40% statewide emissions reductions.

It is important to understand the difference between quantifying emissions reductions and the vague "directional compliance" taken by the Companies in this rate case. For example, during the evidentiary hearing the companies noted that replacing leak prone pipe ("LPP") may reduce fugitive greenhouse gas emissions.[14] We do not disagree with this claim. However, an analysis of what CO2e reductions result from those potential leaks is still necessary for a complete record. First, it is necessary so that the Commission can understand how much progress this leak prone pipe replacement will achieve toward the GHG emissions mandates in the CLCPA. Second, it is necessary to understand how investments replacing those pipes compare to other GHG reduction actions because replacing leak prone pipe (and therefore prolonging gas use) instead of fully electrifying customers achieves dramatically different greenhouse gas emissions reductions. The Commission needs this information so as to ensure that ratepayer funds are used effectively toward the lowest cost GHG emission reduction measures and so that the Commission can ensure enough progress is made each year toward the mandates of the CLCPA so as not to jeopardize compliance with the law.

These details have been analyzed in previous rate cases. For example, in the 2020 Niagara Mohawk rate case, the company determined that replacing 150 miles of LPP would result in an estimated 53,600 CO2e emission reduction.[15] This GHG reduction was small when compared to electric energy efficiency, gas energy efficiency, building electrification, and transportation electrification investments in the Joint Proposal, each of which had much higher CO2e reductions.[16] Furthermore, the Natural Resources Defense Council and the Sierra Club analyzed the cost per metric ton of CO2e reduced and found that leak prone pipe replacement was twenty times *less* cost effective in reducing GHG emissions than other approaches.[17] We understand that LPP replacement also has a safety component but use this example to point out the importance of quantifying GHG emissions of the investments made in rate cases.

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[14] Transcript at 115:2-19.
[15] Statement of Niagara Mohawk Power Corporation D/B/A National Grid in Support of Joint Proposal, Case nos. 20-E-0380 and 20-G-0381 at 130 (October 22, 2021).
[16] Ibid at 127.
[17] Reply Statement of Sierra Club and Natural Resources Defense Council, Case nos. 20-E-0380 and 20-G-0381 at 3 (Nov. 5, 2021).

The purpose of the CLCPA is to mitigate the impacts of climate change by reducing greenhouse gas emissions, 40% by 2030 and 85% by 2050. The burden is on the signatories of the Joint Proposal to demonstrate that the Joint Proposal is in compliance with the CLCPA. Evidence developed in the previous rate case demonstrates the Companies are not on track to meet the CLCPA mandates.[18] In the NYSEG-RGE Natural Gas and Grid Modernization Special Study, the Companies noted that the "scale of the transition" is much greater than current programs and that "immediate action is required" for both of the CLCPA compliant scenarios the Companies modeled.[19] The supporting parties to the Joint Proposal have provided no evidence that the few provisions of the Joint Proposal related to the CLCPA will change that trajectory. The Companies have simply claimed that they are taking actions "directionally consistent" with the CLCPA, but stumbling toward unspecified emissions reductions should not be confused with compliance.[20]

We recommend that the Commission require greenhouse gas emissions accounting for all the investments and programs included in the Joint Proposal and a provision by which the Commission can further adjust the Companies' investments if the terms of the Joint Proposal are not adequate to achieve significant reductions in line with the CLCPA. During the evidentiary hearing, one of the companies' witnesses described that greenhouse gas quantification is time intensive and "costs our customers"[21] As we have been concerned with the costs rate payers are burdened with already, and as the companies have defied the Commission's directive in not conducting these analyses, we suggest that the cost of the GHG emission accounting be borne by the shareholders in recognition that shareholders have benefited greatly from the investments that are driving climate change. Alternatively, we suggest the Commission reject the ill-designed "Certified National Gas" Pilot and reappropriate the money for emissions accounting. Another possible source of funds would be the reappropriation of the money earmarked for the "Roc the Riverway" plaza project, which has nothing to do with safety, reliability, or compliance with the

[18] *See* NYSEG-RGE Natural Gas and Grid Modernization Special Study, Cases 19-E-0378, 19-G-0379, 19-E-0380, 19-G-0381 at 4-5 (May 17, 2022) ("NYSEG-RGE Special Study"); *see also* AGREE et. al Statement of Opposition Case 22-E-0318 at 12-14 (June 27, 2023) ("AGREE et. al Opposition"). Important to note in the Special Study is that the Companies say the "scale of the transition is much greater than current programs and to achieve the scale needed, immediate action is required" for both of the CLCPA compliant scenarios.
[19] NYSEG-RGE Special Study at 5.
[20]Importantly, the CLCPA requires both quantifiable GHG reduction mandates and deadlines. Unspecified, "directional compliance" provides nothing for quantified reductions or the timeline to achieve the mandated goals.
[21] Transcript at 53:12.

laws and policies of that state; it is instead a public relations tactic paid for by customers for the benefit of the Companies.[22]

III. The Record Supporting the Joint Proposal is Deficient in Terms of Disproportionate Burdens or Driving Benefits to Disadvantaged Communities

When conducting analysis under Section 7(3) of the Climate Act, the Commission must consider whether the Joint Proposal has impacts that will disproportionately burden Disadvantaged Communities ("DACs") and must ensure that its decisions do not disproportionately burden DACs.[23]

The supporting parties to the Joint Proposal have not met their obligation to develop the record in this regard by conducting analysis as to the impacts of the Joint Proposal (both positive and negative) on DACs. "Staff would like to emphasize the fact that the Climate Justice Working Group did not finalize its final list of criteria and definitions of disadvantaged communities until March 27th of this year. Which I think was about 10 months to the day after the companies filed their rate plan, leaving very little time -- well, no time for us to - - to reassess things in the course of this proceeding."[24]

While it is true that final DAC criteria were published in March 2023, interim criteria for DACs were released on March 9, 2022.[25] In fact, the Companies' and Staff's own testimony demonstrate their ability to identify DACs during the course of this proceeding. They have developed a list of projects located in DACs,[26] and the Companies' EV make ready program already includes additional incentives for projects located in DACs.[27]

Nevertheless, both Staff and the Companies stated that they have performed no analysis of impacts of the investments in the Joint Proposal on DACs as compared to other

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[22] Joint Proposal, Case No 22-E-0318 et. al at 39 (June 14, 2023) ("Joint Proposal").
[23] Section 7(3) of the CLCPA states: In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, pursuant to article 75 of the environmental conservation law, all state agencies, offices, authorities, and divisions ***shall not disproportionately burden disadvantaged communities*** as identified pursuant to subdivision 5 of section 75-0101 of the environmental conservation law. All state agencies, offices, authorities, and divisions ***shall also prioritize reductions of greenhouse gas emissions and co-pollutants*** in disadvantaged communities as identified pursuant to such subdivision 5 of section 75-0101 of the environmental conservation law." (emphasis added).
[24] Transcript 61:23–62:8.
[25] New York State Releases Draft Disadvantaged Communities Criteria to Advance Climate Justice - NYSERDA
[26] Staff Reply Statement at 27.
[27] Transcript at 108:3.

communities.[28] Without this comparison, there is no record upon which to claim there are no disproportionate impacts. Proportionality requires, by definition, quantification.

IV. Disadvantaged Communities Are Not Prioritized for Reductions in Pollution in Accordance with requirements of the CLCPA

The signatories to the Joint Proposal disregard the law by failing to even attempt to prioritize pollution reductions in DACs. The intent of the Climate Act is clear: to mitigate climate change and to address the unjust pollution burdens borne by communities of color and poor communities for decades due to racism and classism.[29] There is no way to address the fact that certain communities' health is being sacrificed for our current energy system other than by changing the status quo; the law demands remedies and change to the status quo so that the burdens that DACs disproportionately bear today are reduced. This requires a proactive approach to investments in clean energy and a careful consideration of where fossil fuel investments are made. The Climate Act clearly requires all state agencies to do both of these. The Joint Proposal provides neither, and this omission undermines the plain and clear intent of the law.

The Companies' testified that "parts of some of the programs that are offered in the joint proposals, such as the non-pipes alternatives" have a number of decision-making factors including how they would impact disadvantaged communities.[30] This is not a fully accurate representation of the requirements in the Joint Proposal, which includes *reporting* requirements on various investments and outreach in DACs,[31] and includes a line stating that "to the extent applicable, through the NPA solicitation process, the Companies will collect information on how a prospective NPA developer's proposal will benefit customers located within disadvantaged communities."[32] These reporting requirements are not the same as decision-making criteria that would drive fossil fuel pollution away from disadvantaged communities or clean energy benefits into disadvantaged communities.

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[28] Transcript at 63:6.
[29] Final Scoping Plan issued by the Climate Action Council at 5: "A fundamental objective of New York's nation-leading climate and energy agenda is to ensure that New York's transition to a clean energy economy addresses health, environmental, and energy burdens that have disproportionately impacted underrepresented or underserved communities (including people of color, indigenous populations, low-income individuals, and women) and to remedy the structural causes that underpin these burdens." Accessed at: https://climate.ny.gov/resources/scoping-plan/.
[30] Transcript 66:6-12.
[31] Joint Proposal at 6.
[32] Joint Proposal Appendix HH at 5.

When pressed whether there are any other provisions of the Joint Proposal that would prioritize reductions in disadvantaged communities, Staff responded: "But there is no prioritization of where those projects will take place, at least as far as staff is concerned and more generic policy implementation, regarding non-wires alternatives and non-pipes alternatives and energy efficiency. Those -- those activities take place over the entire State of New York and also within each of the company's service territories."[33] As we have described in our Reply Statement, the lack of differentiation between DACs and other communities is inconsistent with the CLCPA.[34]

V. The "Certified Natural Gas" Pilot is Redundant and Inferior and Not a Prudent Use of Rate-Payer Funds

The signatory parties to the Joint Proposal describe the "certified natural gas" ("CNG," a contested term as we will describe below) pilot as an action aligned with the CLCPA because it will reduce greenhouse gas emissions. Yet, no evidence has been provided to support the claim that the CNG pilot will reduce greenhouse gas emissions.

Recent comments by PSC Chair Rory Christian indicate a desire for a more holistic approach to PSC proceedings concerning the CLCPA.[35] This holistic approach must include using knowledge gathered from recently completed rate cases when assessing similar proposals in the rate case currently before the Commission. This approach applies in two ways to assessing the companies' certified natural gas pilot proposal. First, the Commission should assess whether or not repetitive pilots in multiple utilities are necessary. The burden of proof is on the utilities to provide evidence that their pilots align with the CLCPA and are a prudent use of rate payer money. Second, a holistic approach across rate cases would make use of the expert testimony and evidence in recent rate cases to assess the CNG pilot in this rate case. Multiple expert witnesses testified to the shortcomings in the CNG business during the 2022 Con Edison rate case, and Con Edison ultimately revised their pilot to address some of these shortcomings. Here, we aid the Commission by comparing the Con Edison and NYSEG/RGE CNG pilots and by summarizing the relevant expert testimony and evidence provided through the Con Edison case.

[33] Transcript at 68:8.
[34] AGREE et. al Reply Statement Regarding the NYSEG/RG&E Electric and Gas Joint Proposal at 3 (July 7, 2023).
[35] On July 20, 2023, Public Service Commission Chair Rory Christian, responding to a report on building efficiency, praised the Department of Public Service Staff for "aligning our current efforts by moving away from what we previously looked at as individual utility level goals toward a focus on more statewide outcomes."

We will start by describing why the term “certified natural gas” is used by the industry but otherwise contested. As Maureen Lackner’s expert testimony from the recently completed Con Edison case describes, “Given the variability and the subjectivity of existing programs, we do not feel it is appropriate at this time to use terms that suggest improved performance standards have been implemented and verified.”[36] This begins to reveal the many unanswered questions within the differentiated gas business, including the lack of government oversight and the absence of standard assessment. As a more accurate term, we will be using “differentiated gas” in this brief when not quoting from Staff or the Companies.

Staff noted in their Gas Supply and Reliability testimony that “certified natural gas” is a “relatively new market and there are potential issues,” but the only remedy offered by Staff was to move the annual review date forward.[37] Staff also noted concern that “the volume of natural gas being certified by the Companies is not also being claimed by another entity.”[38] However, the most fundamental question for differentiated gas at this stage is whether or not it will have any greenhouse gas impact. As described in Lackner’s expert testimony: “Participating companies may choose to only certify gas from facilities that already have good emissions performance. This would imply minimal or even zero additional emission reductions from certification programs.”[39] This concern with the differentiated gas industry cherry-picking only the best-performing facilities is well-documented, as is the concern that emissions reductions will be minimal at best. New York City’s policy panel in the Con Edison rate case said of certified natural gas: “While this strategy may reduce greenhouse gas emissions on the margin, such reductions are speculative, and more importantly, this strategy does not contribute to the clean energy transition”[40]

When asked how much greenhouse gas emissions would be reduced by NYSEG/RGE’s CNG pilot, Staff responded “We have not had a calculation of – of quantifying that amount at this time.”[41] Nothing in the record of the case cures this problem. The NYSEG/RGE pilot, when compared to the very similar pilot proposed and adopted through the Con Edison Joint Proposal,

[36] Direct Testimony of Maureen Lackner on Behalf of Environmental Defense Fund, Case Nos. 22-E-0064 and 22-G-0065 at 3 (May 20, 2022) (“Lackner Testimony”).
[37] Riebel (Gas Supply and Reliability) Testimony, Case 22-E-0317 et. al at 23 (Sept. 26, 2022).
[38] Ibid at 24.
[39] Lackner Testimony at 11.
[40] NYC Policy Panel Testimony, Case Nos. 22-E-0064 and 22-G-0065 at 18 (May 5, 2022).
[41] Transcript at 75:5-7.

further exposes these deficiencies. The Con-Edison pilot will include an annual report that will contain “the methane emissions intensity of the differentiated gas purchased, the volume of upstream and midstream methane emissions associated with the differentiated gas purchased, and an estimated volume of methane emissions reductions attributed to the purchase of differentiated gas over methane emissions attributed to Con Edison's purchase of normal natural gas.”[42] There is no such information required in the NYSEG/RGE CNG pilot. In fact, the NYSEG/RG&E pilot lacks any requirement for greenhouse gas emissions accounting.

The Companies’ have provided no sound reason as to why NYSEG/RGE needs to run their own pilot. The Companies “submit it’s the company’s experience that there’s nothing like running a pilot in your own service territory to and especially on a pilot basis to really test the propositions of the value to your customers, the company’s team’s own internal ability to effectuate on the pilot.”[43] While the operational experience of running a pilot has merit, the threshold question of whether or not differentiated gas verifiably reduces greenhouse gas emissions must be answered first before any utility in New York needs to gain operational experience with differentiated gas.[44] This pilot is not designed to answer that most fundamental question, as such the pilot is not a prudent investment and the commission must remove it from the Joint Proposal.[45]

VI. **Conclusion**

For the reasons stated above, the Commission cannot find that the Joint Proposal meets the Standard of Review. The Joint Proposal is not consistent with the Climate Act, which is law in New York State and just as valid as other aspects of Public Service Law that the Commission upholds. The Joint Proposal is not supported by a complete record, and the burden to provide that record is on the parties supporting the Joint Proposal, an obligation made even more stringent given the lack of support for the Joint Proposal.[46]

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[42] Con Ed Order at 96.
[43] Transcript at 77:16-22.
[44] The value to the customer is moot. Differentiated gas at the point of combustion is no different than typical natural gas – it has the exact same pollution and detrimental health impacts.
[45] The commission should be very careful to not set a precedent wherein any action that a company claims will reduce greenhouse gas emissions is allowed without scrutiny if it is described as a “pilot.” The program’s status as a “pilot” is not self-justifying.
[46] *See* Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2. March 24, 1992.