

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**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 19-G-0309

**Proceeding on Motion of the Commission as to the Rates,
Charges, Rules and Regulations of KeySpan Gas East
Corp. d/b/a National Grid for Gas Service**

Case 19-G-0310

**Petition for Approval Pursuant to Public Service Law Section
113(2), of a Proposed Allocation of Certain Tax Refunds
Between KeySpan Gas East Corporation d/b/a National Grid
and Ratepayers**

Case 18-M-0270

**CITY OF NEW YORK
STATEMENT IN OPPOSITION OF JOINT PROPOSAL**

Dated: June 2, 2021

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PRELIMINARY STATEMENT

The City of New York (“City”), one of the largest customers on the KeySpan Gas East Corporation d/b/a National Grid (“KEDLI”) and Brooklyn Union Gas Company d/b/a National Grid NY (“KEDNY”; collectively “the Companies”) gas systems, hereby submits this Statement in Opposition of the Joint Proposal (“JP”) filed with the New York State Public Service Commission (“Commission”) on May 14, 2021, in Cases 19-G-0309, 19-G-0310, and 18-M-0270.

The City and State share firm commitments to equitable and expeditious decarbonization. The City has taken unprecedented steps to achieve its objectives of creating a clean and resilient energy supply, improving air quality, and achieving carbon neutrality by 2050, as set forth in *OneNYC 2050: Building a Strong and Fair City*.¹ The City’s actions and commitments include an expeditious transition from fossil fuel infrastructure, as illustrated by Mayor Bill de Blasio’s announcement of a proposed ban on fossil fuel connections for new construction buildings by 2030 and the signing of Executive Order 52.² As Mayor de Blasio has stressed, “we’ve got to move off fossil fuels consistently, purposefully, and intentionally in every way we can.” As long as gas service remains available, however, it must be affordable: approximately a half million families in New York City are energy cost burdened today, and not all will have the resources to proactively transition from gas service.³ Moreover, remaining gas service must be safe and reliable.

¹ See generally *OneNYC 2050: Building a Strong and Fair City*, Vol. 7: “A Livable Climate” (issued April 2019) at 10, available at <http://onenyc.cityofnewyork.us/strategies/a-livable-climate/>.

² State of the City 2021: Mayor de Blasio Announces A Recovery for All of Us (issued January 28, 2021), available at: <https://www1.nyc.gov/office-of-the-mayor/news/062-21/state-the-city-2021-mayor-de-blasio-recovery-all-us>; Executive Order No. 52 (February 6, 2020).

³ OneNYC, *supra*, at 13.

The City acknowledges that the JP contains provisions that could provide positive benefits to customers. That notwithstanding, however, the JP also includes specific provisions that, if adopted, would miss a critical opportunity to accelerate the transition off fossil fuels while potentially subjecting customers to significant rate increases in the year after the three-year rate plan. In particular, the JP introduces a new, non-transparent process by which the Commission's and Department of Public Service Staff's ("Staff") roles in evaluating and approving important, long-term gas infrastructure projects would be delegated to a third-party. The City has significant concerns about the negative impacts that such a process may have on how infrastructure project evaluations, and utility gas planning in general, will be handled in the future. In addition, the City has concerns about the potential for significant rate increases that will occur in the rate year beginning April 1, 2023, if there is no affirmative action taken to mitigate those increases.⁴

Given the foregoing, the City respectfully recommends that the Commission reject the JP.

PROCEDURAL HISTORY

The Companies made their initial filings for new rates on April 30, 2019.⁵ The Initial Filings sought gas rate increases of \$237 million for KEDNY (a 19.3% increase in delivery revenues) and \$49 million for KEDLI (a 6.0% increase in delivery revenues) to be effective April

⁴ The City's Statement focuses on the issues of greatest importance to the City. The omission herein of any other issues resolved in the JP should not be construed as supporting or opposing same.

⁵ Case 19-G-0309, 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, KEDNY 2019 Rate Case Filings (filed April 30, 2019) ("KEDNY Filing"); Case 19-G-0310, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corp. d/b/a National Grid for Gas Service, KEDLI 2019 Rate Case Filings (filed April 30, 2019) ("KEDLI Filing" and together with the KEDNY Filing, the "Initial Filings").

1, 2020. The Companies' Initial Filings reflected an assumption that the Northeast Supply Enhancement ("NESE") pipeline project would be constructed by winter 2020/2021 and would supply natural gas into New York City.

On May 15, 2019, the New York State Department of Environmental Conservation ("NYSDEC") refused to grant a water certificate needed for the NESE project to proceed. On May 16, 2019, in response to NYSDEC's rejection, the Companies announced a moratorium on new or additional firm gas service ("Gas Moratorium"). On June 11, 2019, the Companies filed supplemental testimony illustrating the potential revenue requirement impacts to the Companies' rate filings in the event the NESE project is not available during the proposed rate plan period. Notably, other than quantifying the impact on revenue requirements, the supplemental testimony did not offer alternative plans that the Companies would pursue if the NESE pipeline was not built.

Thereafter, on July 3, 2019, the Companies filed updated testimony and exhibits modifying their revenue requirements to approximately \$196 million and \$61 million for KEDNY and KEDLI, respectively. The Companies again did not provide alternatives to the NESE pipeline as part of their updated testimony and exhibits.

On August 30, 2019, the City submitted pre-filed direct testimony in response to the Companies' Initial Filings and subsequent updates. The City's direct testimony specifically addressed the need to develop alternatives to the NESE pipeline, as well as problems associated with the implementation of the Gas Moratorium. In addition, the City's direct testimony highlighted various other issues with the Companies' proposals, including with respect to rate design, low income discount levels, energy efficiency incentives, demand response programs, depreciation, storm hardening and resiliency, greenhouse gas emissions reductions and other

efforts to achieve City and State clean energy policies, coordination of infrastructure projects between the Companies and the City, and long-term gas planning.

Nine other parties submitted direct testimony, including: Staff, the Public Utility Law Project, Environmental Defense Fund (“EDF”), SANE Energy Project, the Utility Intervention Unit of the New York Department of State’s Division of Consumer Protection, the Long Island Power Authority (“LIPA”), Estates NY Real Estate Services LLC (“Estates”), the New York State Laborers’ Organizing Fund, and Mr. Bob Wyman (“Mr. Wyman”). Rebuttal testimony was filed on September 18, 2019, by the City, the Companies, Staff, Estates, and Mr. Wyman.

The Companies filed a Notice of Impending Settlement Negotiations on September 10, 2019, and settlement negotiations commenced shortly thereafter. While negotiations were ongoing, the Companies submitted further supplemental testimony on December 19, 2019, related to the impacts of a settlement agreement between the Companies and Staff in Case 19-G-0678, concerning the Gas Moratorium and gas supply constraints in New York City.⁶ The Companies filed further supplemental testimony on January 20, 2020, related to energy efficiency issues.

While numerous negotiating sessions were convened, a settlement resolving all parties’ concerns could not be reached. As such, evidentiary hearings were held from February 10-25, 2020, that included cross-examination of witnesses produced by the Companies, Staff, and other parties. Following the conclusion of the evidentiary hearings, initial and reply briefs were submitted to the administrative law judges (“ALJs”) presiding over these proceedings.

Thereafter, in a letter dated June 5, 2020, the Companies advised the Commission, the ALJs, and the parties that settlement negotiations would resume. Those settlement discussions

⁶ See Case 19-G-0678, Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid (“Show Cause Proceeding”).

occurred over the next twelve months, and culminated in the filing of the JP on May 14, 2021. The following parties are the only signatories to the JP: the Companies, Staff, EDF, Estates, NY-GEO, Mr. Wyman, and LIPA.

ARGUMENT

THE JP IS NOT IN THE PUBLIC INTEREST AND SHOULD BE REJECTED

The City is opposed to the following aspects of the JP: (1) the JP does not demonstrate a clear and rapid transition off fossil fuels; (2) the JP appears to remove the Commission’s decision-making authority on important gas infrastructure investments and instead, gives this authority to a third-party consultant with limited transparency, time and input from stakeholders, raising questions about how utility infrastructure projects will be evaluated in the future; and (3) the projected rate impacts for Rate Year 4 are unconstrained and significant, but the JP does not provide any incentives for the Companies to file for new rates for the period from April 1, 2023 through March 30, 2024 (referred to in the JP as the “Stayout Period”) nor does it provide for any venue to examine and potentially ameliorate those impacts. These issues result in a settlement that does not strike a fair balance between customer and shareholder interests, is inconsistent with law and public policy and should not be approved as submitted.⁷

Notwithstanding the foregoing, the City acknowledges that the JP generally includes a number of provisions that would provide positive benefits to the customers in the KEDNY and KEDLI service territories, as compared to the Companies’ originally-proposed rate plans. These

⁷ The Commission has established the following criteria for evaluating a joint proposal: (a) the extent to which a joint proposal is supported by adverse parties; (b) whether the record for decision is adequate; and (c) whether the settlement is consistent with law and public policy, has a rational basis, balances the interests of customers and shareholders, and compares favorably with the probable outcome of litigation. Case 90-M-0255, Proceeding on Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992) at 30.

benefits include: avoidance of a rate increase in Rate Year 1 (*i.e.*, the period from April 1, 2020 through March 30, 2021), and moderate rate increases in Rate Year 2 (*i.e.*, the period from April 1, 2021 through March 30, 2022) and Rate Year 3 (*i.e.*, the period from April 1, 2022 through March 30, 2023); reductions to planned capital investments; improvements in methane leak detection protocols; increased support for geothermal deployments, including a pilot program to identify instances where shared geothermal loops or heat pumps can be deployed as an alternative to traditional leak-prone pipe replacements; reduced rates for non-firm accounts; and the promise of improved coordination between the Companies and the City on municipal capital projects and Green Infrastructure assets.

A. Transition Off Fossil Fuels

The City is committed to an accelerated transition from fossil fuels. The City is concerned that elements of the JP will continue reliance on fossil fuels without an aggressive enough examination of the alternatives to new natural gas infrastructure. In particular, Section 5.3 of the JP establishes a process by which the Companies may recover the revenue requirement associated with various “Long-Term Capital Capacity Projects” contingent on review by an independent consultant (discussed below) and the achievement of various capacity demand metrics (“CDMs”)—performance targets relating to energy efficiency, demand response, non-pipe and third-party solutions, electrification, and leak-prone pipe non-pipe alternatives (“NPAs”).

While the City is generally supportive of the strategies described in the CDMs, the CDM performance targets set out in the JP are insufficiently ambitious, and miss an opportunity to promote a rapid transition off fossil fuels. Specific areas where the CDMs fall short include:

- **Energy Efficiency.** The Companies can satisfy the Energy Efficiency CDM simply by complying with NE:NY. The JP mentions that incremental energy efficiency targets and programs will be “approved by the Commission as part of the Demand Side Management Filings” (JP at 48), however the JP is not clear if such incremental targets will factor into

the Energy Efficiency CDM. The clean energy transition will require the Companies to maximize the contributions from energy efficiency. Thus, at a minimum, to the extent the Commission adopts incremental energy efficiency targets during the rate plan, those incremental targets should govern for purposes of the Energy Efficiency CDM.

- Demand Response. The Demand Response CDM sets a peak demand reduction baseline of 17,790 Dth, based on Winter 2020-2021 participation, and escalates this baseline by 10 percent each year of the Rate Plan. The proposed escalation rate is not ambitious enough. Results from KEDNY’s recent Demand Response Demonstration (“DRD”) project were encouraging enough that KEDNY planned to expand the DRD project’s peak demand reduction targets from 80 to 1,000 Dth per hour – an increase of 1,150 percent – suggesting there is significant untapped potential for expanding demand response in KEDNY’s territory.⁸ The 10 percent year-over-year escalation rate does not sufficiently incentivize KEDNY to capture this potential.
- Electrification. The Electrification CDM includes a relatively small number referrals each year (e.g. 160 to Con Edison in 2022) and only increases by 10 customers per year. Electrification efforts must become and remain a high priority if New York City is to achieve an accelerated transition from fossil fuels. The JP, however, requires only limited effort on the part of the Companies to enhance the electrification referrals within its service territories during the Rate Plan.

More stringent targets, in particular on the demand-side CDMs described above, will provide a stronger foundation for expediting the ongoing decarbonization efforts.

The City’s concerns set forth above are heightened by the lack of a definitive, established framework from the Commission for measuring and then meeting future gas supply in a manner consistent with City and State clean energy policies. These concerns are related to the Companies’ imposition of a Gas Moratorium on May 16, 2019, and the Commission’s subsequent Show Cause Proceeding to address moratorium-related issues. Specifically, the City notes that no Commission decision has yet been made on the Companies’ Natural Gas Long-Term Capacity Report (“Report”) submitted on February 24, 2020 in the Show Cause Proceeding, regarding potential

⁸ Cases 19-G-0309 *et al.*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service, Direct Testimony of the New York City Energy Efficiency Panel (submitted August 30, 2019) at 24.

options to meet a projected future gap in design day gas demand compared to available supply. As the City noted in its May 1, 2020 Comments on the Report, given existing City and State clean energy and decarbonization objectives, in order to address any identified supply and demand gaps the Companies should focus on solutions that do not require an increase to the supply of fossil fuels into New York City.

The City remains firmly committed to the equitable and expeditious decarbonization of energy supply, and will continue to push strongly for non-infrastructure alternatives that would replace traditional gas infrastructure investments. The JP does not provide incentives that are aggressive enough to spur an expeditious transition away from fossil fuel reliance.

B. Evaluation of Long-Term Capital Capacity Projects

Section 5.3 of the JP provides that the Companies will be afforded the opportunity to recover the revenue requirement associated with various “Long-Term Capital Capacity Projects” that are “intended to be options where other solutions cannot timely, reliably or economically meet forecast demand.” (JP at 43). Importantly, the JP also calls for an independent assessment of the need for the Long-Term Capital Capacity Projects over the term of the rate plans. (JP at 42). This third-party assessment would be performed by a “qualified independent consultant” selected by Staff, who would evaluate whether such capital project is needed to meet reasonably forecast peak customer demand, and whether alternatives exist to meet that demand at lower cost. (JP at 44-46). Where the independent consultant determines that a Long-Term Capital Capacity Project is not needed at the time it is proposed by the Companies (*i.e.*, there was a lower-cost alternative available), no cost recovery would be permitted. (JP at 47).

The City opposes Section 5.3 of the JP to the extent that it recommends a new process through which the Commission’s authority to review and approve controversial gas infrastructure

investments would be delegated to a to-be-determined “independent consultant.” The process outlined in the JP appears to remove Staff and the Commission from decision-making over such projects and provides little transparency and limited opportunities for stakeholder involvement in the review of important gas infrastructure proposals.

Initially, the JP states that the Long-Term Capital Capacity Projects have been subject to a “traditional review” in this rate case and that the independent consultant review will be “[i]n addition” to this review. (JP at 42). The City interprets this provision to mean that Staff has already determined these projects are needed from a safety and reliability standpoint, and that the independent consultant’s review will be incremental to Staff’s determination (and not in place of it). The JP, however, is not entirely clear on this point and the JP does not define what is meant by a “traditional review.” At the outset, therefore, the Commission should confirm that Staff has vetted these projects as it would any other utility capital project and that the independent consultant’s review will be incremental to Staff’s review.

The JP further recommends that “if, upon consideration of the Companies’ reports and any public comments received, the independent consultant’s assessment finds that [a] Long-Term Capital Capacity Project is not needed at the time proposed by the Companies, the Companies shall not be permitted to recover the costs of the project through the Demand Capacity Surcharge Mechanism.” (JP at 47). The JP further states that while the Companies may seek reconsideration of such an assessment in a future rate case, “the independent consultant’s assessment of need will not be subject to review during the term of the Companies’ rate plans.” (*Id.*) These provisions appear to delegate the Commission’s final authority on the Companies’ Long-Term Capital Capacity Projects to a third-party. The JP does not otherwise explain how such a delegation of the

Commission's authority is justified, or provide any details on how to resolve situations where the independent consultant's conclusions might differ from that of Staff or the Commission as to need.

Regarding timing and public/stakeholder participation, the JP provides that the process to recover costs of each Long-Term Capital Capacity Project would be initiated when the Companies file an individual report with the Commission identifying their assessment of need for the project to ensure continued reliable service, and demonstrating the Companies' performance under specific Capacity Demand Metrics. (JP at 43-44; *see also* JP at 47-50). The public then would have a single, thirty-day period to submit comments on the utility filing. (JP at 44). The City notes that a thirty-day timeframe is substantially shorter than the sixty-day period generally provided under the State Administrative Procedure Act for stakeholder feedback on regulatory actions. The JP also is vague as to what opportunities are available for stakeholder involvement in the review of such projects, for example, whether a formal discovery process would be in place.

Importantly, the JP also calls for the independent consultant to complete its review of the specific Long-Term Capital Capacity Project(s) in question within forty-five days of the Companies' filing, which includes consideration of any public comments therein. (*Id.*) In other words, there only would be a window of fifteen days between the deadline for public comments, and the completion of the independent consultant's final assessment. This raises questions about whether the independent consultant would have adequate time to consider and incorporate public feedback in its final review.

Finally, the JP is unclear as to what oversight (if any) the Commission and/or Staff would have over the proposed independent consultant. The JP only states that "[t]he Companies shall retain a qualified independent consultant to be selected by Staff that will work at the direction of Staff to review the need for Long-Term Capital Capacity Projects." (JP at 45). The JP lacks

further details on Staff's exact role in the independent consultant's analysis, including, for example, whether the consultant's findings would be subject to some form of internal review by Staff prior to being submitted to the Commission.

Given all the foregoing, the proposed Section 5.3 of the JP arguably removes the Commission and Staff from their decision-making roles, and imbues a third-party with broad regulatory authority to approve or deny cost recovery of such important gas infrastructure investments. The lack of transparency and limited opportunities for stakeholder participation also are antithetical to established State regulatory processes and are not in the public interest. Accordingly, at a minimum, the Commission must reserve to itself the authority to review and approve the independent consultant's determination of need on the Long-Term Capital Capacity Projects, which should only be made following meaningful opportunity for stakeholder review and comment.

C. Unconstrained Rate Year 4 Bill Impacts Need To Be Addressed

The JP recommends revenue increases of: (a) 0.0%, 2.0%, and 2.0% in Rate Years 1, 2, and 3, respectively for KEDNY; and (b) 0.0%, 1.8%, and 1.8% for KEDLI. (JP at 9-10). The JP states that the overall revenue increases for the Companies have been levelized across the three Rate Years in recognition of the financial impacts of the COVID-19 pandemic on the Companies' customers. (JP at 14). To achieve these results, KEDNY and KEDLI utilize \$94.873 million and \$4.835 million, of deferred customer credits, respectively. (JP at 14). The JP also includes a make-whole provision designed to ensure that the Companies are restored to the same financial position they would have been in had rates gone into effect on April 1, 2020. (JP at 15-16).

As shown in Schedule 4.3 of Appendix 3 of the JP, pages 2 and 7, however, there are significant bill increases for KEDNY customers projected for Rate Year 4 (*e.g.*, the average

KEDNY Residential and Non-Residential Heat customer's bills increase by 7.50% and 7.76%, respectively). These increases result primarily because the customer credits used to moderate the rate increases in Rate Years 2 and 3 are no longer utilized in Rate Year 4 (See JP Appendix 3, Schedule 3 and Appendix 4, Schedule 3). With no rate filing prior to Rate Year 4, these large increases would occur as a matter of course.

The rate increases projected for Rate Year 4 should not go forward without examination. For example, a rate filing for Rate Year 4 would provide a venue to re-examine factors that will affect projected bills at that time, and consider measures, such as the use of additional customer credits or the imposition of additional cost management, that could partially or fully offset those projected bill increases. As noted earlier, the use of customer credits substantially reduced the bill increases resulting from the pending JP. The JP erred by not including provisions that would encourage the Companies to file for new rates prior to Rate Year 4 so that the use of customer credits, or other rate moderators or cost reduction actions that would ameliorate projected Rate Year 4 bill impacts, could be examined. Conversely, allowing the projected rate increases to occur without such an examination is a significant flaw in the JP.

Moreover, there is precedent for providing the Companies with incentives to file rates and avoid the Stayout Period. For example, the Joint Proposal approved in Cases 16-G-0058 and 16-G-0059 contained two key provisions that encouraged the Companies to file for new rates at the end of the rate plan: (i) adjusting the earnings sharing mechanism such that 100 percent of earnings in excess of the approved return on equity would be deferred for customer benefit; and (2) changing the property tax reconciliation mechanism to downward-only.⁹ Accordingly, the Commission

⁹ See Cases 16-G-0058 and 16-G-0059, et al., KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid NY – Gas Service, Joint Proposal (September 7, 2016) at 129.

should reject the JP because of its failure to provide a mechanism to examine ways to ameliorate projected Rate Year 4 increases.

CONCLUSION

For the reasons set forth in this Statement, the City respectfully recommends that the Commission reject the JP as submitted.

Respectfully Submitted,

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