MULTIPLE INTERVENORS
REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

June 4, 2021

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 20-G-0131 – Proceeding on Motion of the Commission in Regard to Gas Planning Procedures **– Reply Comments of Multiple Intervenors**

Dear Secretary Phillips:

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Reply Comments pursuant to the *Notice of Stakeholder Forum and Soliciting Comments* ("Notice") issued by the New York State Public Service Commission ("Commission") on February 12, 2021, in Case 20-G-0131.[1]

Consistent with the Notice, on May 3, 2021, Multiple Intervenors submitted its Initial Comments addressing the Gas System Planning Process Proposal ("Planning Proposal") and the Gas Moratorium Management Proposal ("Moratorium Proposal"; collectively with the Planning Proposal, the "Proposals") that were issued herein by New York State Department of Public Service Staff ("Staff"). In its Initial Comments, Multiple Intervenors mostly commended Staff on its proposals to reasonably reform gas planning and moratorium management by the State's gas local distribution companies ("LDCs"). Multiple Intervenors recognizes that New York will need to transition gradually from natural gas, and asserts that such transition needs to be implemented in a manner that preserves safe, reliable, and economic gas service for at least the near-term future, especially for customers with no practical alternatives to gas service. For instance, there are many manufacturing processes for which viable alternatives to natural gas simply do not exist, at least at the present time. Accordingly, Multiple Intervenors did recommend selected changes to the Planning Proposal that would ensure safe and reliable service and help control costs to customers, and generally supported the Moratorium Proposal.[2]

In these Reply Comments, Multiple Intervenors responds to selected arguments contained in other parties' submissions; specifically, those by the Environmental Defense Fund ("EDF"), the

1 Case 20-G-0131, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*.

2 Case 20-G-0131, *supra*, Initial Comments of Multiple Intervenors (filed May 3, 2021).

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Joint Local Distribution Companies ("Joint LDCs"), the Institute for Policy Integrity at NYU School of Law ("IPIP"), the Public Interest Organizations ("PIOs"), and Renewable Heat Now ("RHN"). Multiple Intervenors does not address all arguments raised by those and other parties, and silence on any particular argument or topic should not be construed as support or opposition thereto. Rather, these Reply Comments first address the issue of "scope creep," and then respond to the following two substantive matters: (a) the proposed increased reliance on customer-funded incentives for LDC shareholders; and (b) the Joint LDCs' positions with respect to the Staff Moratorium Proposal.

A. The Commission Should Not Rule Upon or Address Substantively Arguments by Parties That Are Beyond the Scope of Issues Noticed for Comment

Initially, the Commission's Notice in this proceeding, as well as its notices of Proposed Rule Making published in the *New York State Register*, solicited comments specifically and only on the Planning Proposal and the Moratorium Proposal.[3] Comments within the scope of the Planning Proposal address, *inter alia*, the contents of the proposed long-term plans, how LDC supply and demand side solutions are evaluated, and stakeholder participation in the planning process.[4] Comments within the scope of the Moratorium Proposal address, *inter alia*, the metrics and process for identifying, implementing, and lifting a moratorium, and communications with customers concerning the same.[5] Multiple Intervenors observes that notwithstanding the foregoing, the Initial Comments submitted by a number of parties raise an assortment of issues and concerns that are well beyond the scope of Staff's various recommendations contained in the Proposals and those noticed for comment (*e.g.*, gas generator pricing issues, perceived tensions in statutory provisions, and a proposed reexamination of the BCA Framework Order). (*See*, *e.g.*, EDF at 75; IPIP at 7; RHN at 3-4.)[6]

Multiple Intervenors purposefully chooses not to respond to arguments that are outside the scope of what the Commission expressly has noticed for comment in this proceeding. Staff prepared the Proposals and that is the full extent of what currently is before the Commission. Indeed, based on the Notice, it would be inappropriate and prejudicial for the Commission to substantively consider extraneous matters at this time. If and when gas-related issues beyond the Proposals are ripe for consideration, all parties should be accorded an equal and fair opportunity to address such issues upon reasonable notice. Merely because some parties choose to raise arguments on issues beyond the scope of the Proposals and the Commission's Notice does not mean that those arguments should be addressed on the merits at this time. Instead, the Commission should avoid – and discourage – "scope creep." It can do so by ruling in due course on the issues noticed for comment that properly are before it, and by disregarding – at least for the time being – parties' arguments that extend beyond the scope of Staff's Proposals.

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[3] XLIII N.Y. Reg. 20-22 (March 3, 2021).

[4] *Id.* at 22.

[5] *Id.* at 20.

[6] Some of these parties recognized that their arguments were outside the scope of the Proposals. (*See*, *e.g.*, IPIP at 4-8.)

B. The Commission Should Reject Proposals to Increase Reliance on Customer-Funded Incentives for LDC Shareholders

Several parties (including Multiple Intervenors) commented on customer-funded, LDC shareholder incentives in the context of gas planning. The Joint LDCs support shareholder incentives for furthering State policy objectives. (Joint LDCs at 21-22.) The Joint LDCs recommend non-pipe alternative ("NPA") incentives, Earnings Adjustment Mechanisms ("EAMs"), and "other utility incentive mechanisms." (*Id.* at 22.) The PIOs identify issues with EAMs, notably the risk of over-rewarding shareholders several times over through "numerous and potentially overlapping EAMs." (PIOs at 40.) To that end, the PIOs offer recommendations for EAMs, including a "core set of EAMs" applicable to all LDCs developed on a statewide basis, with additional utility-specific EAMs "if warranted to address specific performance issues." (*Id.* at 41.) Multiple Intervenors already has raised many of its concerns with EAMs and shareholder incentives generally in its Initial Comments, and responds here to arguments and proposals raised in the Joint LDCs and the PIOs' submissions.

First, the Joint LDCs and PIOs suggest there should be increased reliance on shareholder incentives. Multiple Intervenors opposes the proliferation of shareholder incentives because of the high potential for negative consequences to customers. Each shareholder incentive adds a potential cost to customers above those in base rates and already-existing surcharges, with potential reliance on more incentives adding incrementally more costs that customers may be required to bear. That noted, Multiple Intervenors appreciates the PIOs' observation regarding the overlap among EAMs. The more shareholder incentives that are available, the more opportunities there are for shareholders to earn duplicative rewards.[7] Accordingly, Multiple Intervenors recommends that the Commission limit the number of individual shareholder incentives to constrain customer impacts and avoid unduly rewarding LDC shareholders. The current regulatory cost model already ensures that LDCs receive adequate compensation for investments through existing rate recovery mechanisms.[8]

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7 For example, for at least some utilities, a single heat pump installation currently can be triple-counted and contribute to shareholder incentives (at customers' expense) under (i) the Heat Pump Share-the-Savings EAM, (ii) the Beneficial Electrification EAM, and (iii) the Gas Heating Load Peak Reduction EAM. *See, e.g.*, Cases 19-E-0378 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Joint Proposal (filed May 21, 2020) at Appendix X.

8 It is not clear to Multiple Intervenors why LDCs purportedly need to be incentivized, at customer expense, for engaging in necessary gas planning of the type that the Commission can and should mandate. Financial incentives, if deemed necessary, should be: (a) focused on rewarding performance that truly is superior (the payment of base rates should at least entitle customers to satisfactory performance); and (b) symmetrical in nature, such that if superior performance is rewarded, unsatisfactory performance is penalized. To the extent the Commission deems it undesirable to penalize shareholders for outcomes arguably beyond an LDC's control, then forcing customers to fund incentives using the same outcome-based criteria similarly should be undesirable. Moreover, the Commission should recognize at least three recurring risks associated with EAMs: (a) that performance targets negotiated in rate

Second, Multiple Intervenors opposes offering EAMs "to address specific performance issues," as the PIOs recommend. The rationale behind EAMs is to offer financial rewards to encourage specific, favored outcomes.[9] If positive-only EAMs were to become available when an LDC failed to meet expectations, that could create a perverse incentive for LDCs to *not* meet expectations so as to then become eligible for an opportunity to earn a new shareholder incentive. EAMs should be limited to rewarding exemplary performance and to encourage actions the Commission could not otherwise order LDCs to take. The easiest and best way to address unsatisfactory performance is via negative incentives (*i.e.*, financial penalties paid to customers). Rather than offering LDCs greater incentives at customer expense, it would be more equitable to utilize penalties for such purpose because if the unsatisfactory performance exists, the penalties would compensate customers for a level of service paid for in base rates but which was not realized.[10]

C. Multiple Intervenors' Response to the Joint LDCs' Proposed Modifications to the Moratorium Proposal

The Joint LDCs recommend modifying the process in the Moratorium Proposal in two relevant respects. Regarding identifying and implementing a moratorium, the Joint LDCs propose to notify the Commission, Staff, customers, and stakeholders up to five years in advance of a potential moratorium. (Joint LDCs at 28.)[11] In contrast, the Moratorium Proposal recommends a

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proceedings will be too easy to achieve due to informational advantages possessed by utilities; (b) that by focusing management attention on specific EAM criteria, less attention may be devoted to other aspects of performance that are not rewarded explicitly; and (c) that the current reliance on EAMs has created an expectation on the part of utilities that achievement of important State or Commission objectives or the assumption of any new or modified responsibility somehow necessitates an opportunity for additional financial rewards.

9 Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting A Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) at 53 (describing EAMs as an approach "to aligning utility financial interests with the Commission's REV objectives").

10 If, *arguendo*, the Commission elects to continue reliance on customer-funded shareholder incentives, Multiple Intervenors does not oppose establishment of the incentive "types" on a generic, statewide basis, with the actual rewards (and, preferably, penalties) and the specific performance criteria established on a utility-specific basis in rate proceedings. The resolution of issues related to the type of incentives to be utilized on a generic basis, at a minimum, could promote regulatory efficiency and eliminate the litigation and/or the negotiation of such issues in every single rate proceeding. Contrary to the PIOs' position, however, if a set of incentive "types" are established on a statewide basis, they should not be subject to potential supplement in rate proceedings, as that would negate or undermine any benefits associated with resolving such issue generically.

11 *See also* Case 20-G-0131, *supra*, Modernized Gas Planning Process: Standards for Reliance on Peaking Services and Moratorium Management (filed July 17, 2020) at 21 ("Joint LDC

notification at least two years in advance of a potential moratorium. (Moratorium Proposal at 11.) To lift a moratorium, the Joint LDCs propose that a "permanent solution" be in place to meet supply-demand imbalances for the next five winter seasons. (Joint LDCs at 34.) The LDCs' Initial Comments do not define "permanent solution," but the Joint LDC Proposal suggested that for natural gas alternatives, "permanent" would require diminished demand for 20 years or more.[12] Staff does not provide a more specific metric for lifting a moratorium other than the ability of an LDC to provide safe and reliable service. (Moratorium Proposal at 15-16.)

Multiple Intervenors does not necessarily oppose the Joint LDCs' recommendations, but is concerned that, depending on their possible interpretation and implementation, they could lead to moratoria being declared earlier and lasting longer than necessary. Multiple Intervenors agrees that customers should be accorded as much forewarning of potential moratoria as possible, and five years appears sufficient for such purpose. Importantly, however, the gas system is changing rapidly, impacting the accuracy of long-term forecasts. (*See*, *e.g.*, Joint LDCs at 7.) Identifying system issues that far in advance also could lead to moratoria being declared prematurely, before any supply-demand imbalance is reasonably certain or demand-side or other solutions have been implemented. This is especially true in light of the ambiguity of a "permanent solution" to supply-demand imbalances. If "permanent" is used in the same manner as in the Joint LDC Proposal, potential solutions to system needs may not appear feasible, rendering a moratorium more likely. Relatedly, such a definition of "permanent" could restrict otherwise viable solutions to system needs, artificially requiring a moratorium to be in place longer than necessary. In short, moratoria cause substantial hardship to customers and the State's economy. Accordingly, moratorium management should be designed carefully to: (a) prevent moratoria to the greatest extent possible; and (b) to the extent that a particular moratorium cannot be avoided, to limit its duration and impact as much as possible.

For the reasons set forth above, Multiple Intervenors urges the Commission to adopt the positions set forth herein and in Multiple Intervenors' Initial Comments.

Respectfully submitted,

MULTIPLE INTERVENORS

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Proposal"). The Joint LDCs incorporated aspects of this filing into their Initial Comments by reference.

12 *Id.* at 28.