MULTIPLE INTERVENORS
REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

August 28, 2020

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-M-0266 – Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service – 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 Soliciting Reply Comments* issued by the New York State Public Service Commission ("Commission") on July 29, 2020 in the above-referenced proceeding.

Upon reviewing the comments of other interested parties herein, Multiple Intervenors continues to support immediate, material rate relief for customers of all types. Multiple Intervenors' rationale in support of such rate relief is set forth in its prior submissions in Case 20-M-0187 and the above-referenced proceeding.[1] Multiple Intervenors hereby limits these Reply Comments to addressing selected positions and arguments advanced by other parties. Importantly, a failure to respond to an argument by another party should not be construed as support therefor or acquiescence therewith.

Initially, in Case 20-M-0187 and herein, the relief sought by Multiple Intervenors has been misconstrued by certain parties.[2] On April 10, 2020, Multiple Intervenors filed a petition with the

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[1] *See* Case 20-M-0187, *Petition of Multiple Intervenors Seeking Immediate, Material Rate Relief for Electric and Gas Customers, Including a Pause in Surcharges and Collections for Projects and Programs Delayed as a Result of the COVID-19 Pandemic.*

[2] *E.g.*, Case 20-M-0266 – *Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service*, Comments by the New York Energy Democracy Alliance on the June 11 Commission Order Establishing a Proceeding Regarding the Effects of COVID-19 on Utility Service (filed July 13, 2020) at 10 (characterizing Multiple Intervenors' requested relief as a request "to defund renewable energy and energy efficiency programs").

540 Broadway • P.O. Box 22222 • Albany, New York 12201 • 518-426-4600
www.multipleintervenors.com

Commission seeking material, expedited rate relief for all electric and gas customers in response to the pandemic's economic devastation.[3] Therein, and again in its Initial Comments in this proceeding,[4] Multiple Intervenors urged the Commission to provide expeditious and material relief for customers due to COVID-19, and identified two potential sources of relief, neither of which was intended to exclude potential additional or alternate sources of relief.

The first potential source of relief identified by Multiple Intervenors are customer-funded programs promoting energy efficiency, heat pumps, storage, renewable energy, and electric vehicle charging station infrastructure.[5] Due to the pandemic and the public health response thereto, activity in these programs essentially was paused for many months, presumably resulting in far less expenditures of customer funds than had been projected. Although the economy has since reopened slowly in New York, activity in these customer-funded programs likely will remain well below projected levels due to the pandemic and customers' reduced ability to fund certain projects due to impaired economic circumstances. Therefore, collections for such programs could be reduced commensurately with their halted or reduced pace, and unneeded funds collected for such programs could be returned to customers, at least until such programs resume at historic participation levels.[6] Indeed, one of the identified benefits of such an approach is that it would avoid impacting such programs, and allow funding to resume as program activities accelerate.[7] Thus, Multiple Intervenors sought – and continues to seek – to have current collections adjusted to better align with current expenditures in such programs. Such alignment would continue to fund programs and projects that are able to move forward. Consideration of this potential source of relief raises the issue of whether (i) customers should be forced to fund a myriad of programs at levels well in excess of current expenditures at this time, or (ii) the Commission should take steps to ensure that collections are better matched with expenditures so as to avoid continuing and exacerbating surplus collections during an economic depression.

The second potential source of customer relief identified by Multiple Intervenors are unused and uncommitted Clean Energy Fund ("CEF") balances collected previously from

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

[4] Case 20-M-0266, *supra*, Comments of Multiple Intervenors (filed July 13, 2020) (hereinafter, "Initial Comments").

[5] Petition at 5-6; Initial Comments at 3-4.

[6] Petition at 7-8 ("to the extent certain activities are continuing during the pandemic necessitating a need for limited funding, collections up to such need could continue, while still benefitting customers by pausing collections that are not needed in the near-term"); Initial Comments at 3-4.

[7] Petition at 8-9 ("the specific approach recommended herein is intended to be temporary in nature, and not interfere with the above-referenced (and similarly-situated) programs and projects when circumstances allow previously-contemplated activities therein to resume in earnest"); Initial Comments at 3-4.

customers.[8] These are funds that were collected from customers and not only remain unspent, but also are uncommitted to specific projects. Absent some action by the Commission, these funds presumably would be retained indefinitely by the New York State Energy Research and Development Authority ("NYSERDA") and/or the State's electric and gas utilities until some future time when current spending exceeds current collections, thereby necessitating that such funds be utilized. Alternatively, the Commission could rule that all or a portion of these surplus collections be returned to customers expeditiously, either in the form of bill credits or reduced future collections. Importantly, the amount of surplus customer collections continues to grow. Multiple Intervenors noted previously in Case 20-M-0187 that such surplus customer collections exceeded $1.15 billion as of the end of 2019.[9] Approximately three months later, collected but unspent and uncommitted CEF funds totaled $1.36 billion as of March 31, 2020.[10] Inasmuch as current collections from customers exceed current spending in the ongoing programs, does it make sense for NYSERDA and/or the State's utilities to continue retaining $1.36 billion, or more, of unspent and uncommitted customer collections during an economic depression? It appears that the public interest may be better served returning such funds to customers in the form of bill credits and/or reduced future collections.[11]

Importantly, while Multiple Intervenors advanced two potential sources of customer relief during this extraordinary time (neither of which would impact utility earnings), its primary interest is in ensuring that material customer relief is granted expeditiously. Thus, Multiple Intervenors is not necessarily opposed to the consideration and/or the ultimate utilization of additional or alternate sources of customer relief. Moreover, if one or both of the sources identified by Multiple Intervenors are utilized, such relief can be provided without affecting any projects that are able to move forward at this time. Thus, projects able to move forward would continue to receive ongoing financial support from customers. What Multiple Intervenors is attempting to address is the current practice of requiring customers to support collections far in excess of projected expenditures. For instance, collections for all of the existing programs theoretically could be paused for six months – or even a year – and upon information and belief a material portion of the recent $1.36 billion surplus still would remain even after funding whatever projects are able to move forward during that period. Such an approach would lower energy costs for all customers during an economic depression, and also stimulate the economy by putting more money in the hands of customers to spend how they best see fit.

Next, utility requests to defer COVID-related expenses should be treated like any other deferral request. The Commission traditionally applies a three-prong test to determine whether

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8 Case 20-M-0187, *supra*, Supplemental Filing (dated April 15, 2020) ("Supplement") at 2 (citing a NYSERDA report dated March 2020); Initial Comments at 3-4.

9 Case 20-M-0187, *supra*, Supplemental at 2 (citing to a NYSERDA report dated March 2020).

10 Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Clean Energy Fund Quarterly Performance Report through March 31, 2020 (filed June 1, 2020) at 11.

11 To preserve interclass and intraclass equity, any return of previously-collected CEF amounts should be implemented in a manner reflective of how such surplus collections were recovered in the first place.

costs are eligible for deferral: (1) the utility may not be overearning; (2) the costs must be incremental to those allowed in rates; and (3) the amount must be material and extraordinary.[12] In their comments, the Joint Utilities' request Commission authorization for "full deferral of COVID-19 related costs that are not addressed in their current rate orders without first requiring the application of the customary three-part test."[13] The Joint Utilities justify their request on the grounds that "the current health emergency is outside the control of the Joint Utilities and is a non-recurring event."[14] Multiple Intervenors opposes this request. Multiple Intervenors concedes that any COVID-related expenses very likely are extraordinary, given that they are due to a global pandemic. Significantly, however, that is only part of one prong of the Commission's longstanding deferral test. Partial satisfaction of one prong should not cause the other prongs to be ignored. The test is important, requiring that a utility fully account for and justify the additional expenses to protect customers from unjustified costs. For example, the expenses net of savings may not be material enough to justify recovery, or the utility could be overearning, allowing it to absorb certain costs instead of imposing them on customers at this difficult time. Therefore, Multiple Intervenors asserts that the Commission should apply the traditional three-prong test to any utility request to defer COVID-related expenses for future recovery from customers.

Multiple Intervenors also recommends that the Commission's treatment of utility expenses due to COVID-19 be addressed in a transparent manner. Utilities should be required to disclose, in detail and with supporting justification, all increased expenses related to the pandemic for which they seek deferral treatment. Additionally, transparency is needed with respect to potential cost savings related to the pandemic. For instance, utilities should not be allowed to defer, for future recovery from customers, some or all increased costs due to the pandemic without also reflecting costs that were avoided or postponed as a result of the pandemic. Such potential one-sided regulatory treatment, if implemented, would be highly inequitable to customers.

Similarly, the Joint Utilities request that the Commission waive negative revenue adjustments ("NRAs") on a case-by-case basis if the NRA is incurred due to COVID-19.[15] There is precedent for waiving NRAs due to extraordinary circumstances – for example, customer outage metrics usually exclude major storms. Such a request is reasonable, with caveats. First, a utility should be required to demonstrate that but for the pandemic, the metric(s) in question would have been satisfied. Second, any such waiver must be symmetrical, and include positive revenue adjustments ("PRAs") and/or Earnings Adjustment Mechanisms ("EAMs"). For instance, if a utility's obligation under an NRA is waived because the penalty was triggered due solely or primarily to the pandemic, then equity demands that customers' obligations under a PRA or an EAM similarly be waived if the reward was triggered due solely or primarily to the pandemic. Due to the pandemic, pause in economic activity, and related depression, it is possible that COVID-19 will be responsible for utilities realizing certain EAMs and/or PRAs. One such example is an

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[12] *E.g.*, Case 15-G-0711 – *Petition of St. Lawrence Gas, Inc. for Authority to Defer Incremental Expenses Related To Risk Assessment*, Order Approving Deferral (issued February 24, 2017) at 1-2.

[13] Case 20-M-0266, *supra*, Joint Utilities Comments Regarding the Commission Questions Related to The Effects of COVID-19 on Utility Service (filed July 13, 2020) at 40-41.

[14] *Id.* at 40.

[15] *Id.* at 41-42.

EAM focused on peak demand reductions – customers should not be forced to reward utilities because the pandemic led to reductions in peak demand.

Multiple Intervenors agrees with the Joint Utilities insofar as utilities should not be penalized under an NRA if such failure was due entirely or primarily to COVID-19, which clearly is an extraordinary circumstance. That noted, the converse also is true; to wit: customers should not be required to fund a PRA or an EAM where a reward was triggered due entirely or primarily to the pandemic. The Commission should treat NRAs, PRAs, and EAMs in a manner that is fair and equitable to utilities and their customers. Financial penalties and rewards that are triggered entirely or primarily due to the pandemic should be excused or disregarded – the purpose of such penalties and rewards is to incentivize utility performance.

Finally, certain Energy Service Companies ("ESCOs") request that the Commission provide financial support to ESCOs, including diverting uncommitted customer funds from the CEF to ESCOs.[16] Customer funds should not be used to provide ESCOs with financial assistance. If and where appropriate, ESCOs should rely on state or federal relief programs instead. The idea that every perceived "gap" in federal or State funding can be solved simply by collecting even more money from customers should be quashed. Customers pay ESCOs for rendering service at a contracted price; they are not insurers of ESCOs' financial well-being.

For the foregoing reasons, Multiple respectfully requests the Commission to adopt the recommendations set forth herein.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

Michael B. Mager, Esq.
Russell W. King, Esq.
Counsel to Multiple Intervenors

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cc: Active Parties (via e-mail)
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[16] *E.g.*, Case 20-M-0266, *supra*, Comments of Aggressive Energy, LLC (filed July 13, 2020) at 5.