

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

- 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.
- 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.
- Case 18-M-0270 - 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.

STAFF STATEMENT IN SUPPORT OF THE JOINT PROPOSAL

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STAFF STATEMENT IN SUPPORT OF THE JOINT PROPOSAL

I. INTRODUCTION

On May 14, 2021, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid (KEDLI) (collectively, the Companies); Staff of the New York State Department of Public Service (Staff); Environmental Defense Fund (EDF); Estates NY Real Estate Services LLC (Estates); NY-Geo; Bob Wyman; and the Long Island Power Authority (LIPA), collectively the “Signatory Parties,” submitted a Joint Proposal recommending a comprehensive resolution of all issues raised in the above-captioned proceedings. By this Statement in Support of the Joint Proposal (Initial Statement), Staff recommends that the Commission adopt the provisions of the Joint Proposal and establish three-year gas rate plans for KEDNY and KEDLI to begin as of April 1, 2020.¹

II. PROCEDURAL HISTORY

On April 30, 2019, the Companies filed tariff leaves, initial testimony, and exhibits in support of their request to increase gas delivery rates for the Rate Year ending March 31, 2021, referred to in the context of the proposed three-year rate plans as “RY1.” In May 2019, the New York State Department of Environmental Conservation (DEC) denied

¹ Staff recognizes that the Joint Proposal was submitted after the proposed beginning of the three-year rate plans. In order to allow for settlement negotiations and various procedural steps, the Companies’ consented to extensions of the maximum suspension period for a major rate filing provided in Public Service law (PSL) §66(12)(f). As explained in the Joint Proposal and at various points herein, the Joint Proposal provides for a “make-whole,” placing the Companies and customers in the same position they would have been in had the rate plans been in place on April 1, 2020.

Transcontinental Gas Pipe Line LLC's (Transco) application for water quality certification permits for the Williams Northeast Supply Enhancement (NESE) project.² National Grid contracted to transport gas via the pipeline to serve additional customers and meet anticipated forecast demand.³ After this permit denial, National Grid implemented a moratorium effective May 15, 2019 ceasing to fulfill requests for new firm service connections or additional firm load from existing service customers.⁴ This moratorium affected KEDNY's and KEDLI's service territories in the Boroughs of Brooklyn and Queens, and the Counties of Nassau, and Suffolk.⁵

On May 30, 2019, Administrative Law Judges (ALJs) Maureen F. Leary and James A. Costello presided over a procedural conference and technical conference in these proceedings. Thereafter, the ALJs issued a ruling providing a procedural schedule for these proceedings.⁶ The ruling provided that: the Companies would file corrections and updates on July 3, 2019; Staff and intervenors would file testimony and exhibits on August 30, 2019; all parties would file rebuttal testimony and exhibits on September 18, 2019; and the evidentiary hearings would commence on October 2, 2019.

On June 11, 2019, the Companies filed their first supplemental testimony and exhibits that explained the net impacts to the Companies' proposed revenue requirements in the event that the NESE project was not available during RY1. This adjusted the Companies' RY1 delivery revenue requests to an increase of \$285.9 million for KEDNY and an increase of \$96.9 million for KEDLI.⁷ On July 3, 2019, the Companies filed corrections and updates testimony

² DEC letter to Transco, Re: Notice of Denial of Water Quality Certification (May 15, 2019).

³ Cases 18-G-0709 and 18-G-0711, KEDNY and KEDLI Tariff Filings, KEDNY and KEDLI Letter (filed May 23, 2019).

⁴ Cases 18-G-0709 and 18-G-0711, supra, KEDNY and KEDLI Letter (filed May 23, 2019).

⁵ Cases 18-G-0709 and 18-G-0711, supra, KEDNY and KEDLI Letter (filed May 23, 2019).

⁶ Cases 19-G-0309 and 19-G-0310, KEDNY and KEDLI – Gas Rates, Ruling on Schedule (issued June 5, 2019).

⁷ For KEDNY, the RY1 delivery revenue increase from the first supplemental filing is made up of the revenue requirement increase of \$270.6 million, plus the additional impacts to delivery revenues, or an increase of \$15.4 million for the impact of the elimination of the energy efficiency surcharge, the tax savings sur-credit, and the change in GRT. Similarly, for KEDLI, the RY1 delivery revenue increase of \$96.9 million includes a revenue requirement increase of \$74.9 million, plus the additional impacts to delivery revenues, or an increase of \$22 million to reflect the same impact of the elimination of the energy efficiency surcharge, the tax savings sur-credit, and the change in GRT. Throughout this Initial Statement, the delivery revenue increases referenced reflect the impact of the elimination of the energy efficiency surcharge, the tax savings sur-credit and the change in the GRT, in conjunction with the changes in revenue requirement.

and revised exhibits that reflected total RY1 delivery revenue increases of \$195.7 million for KEDNY and \$61.2 million for KEDLI. These adjustments were based on the assumption that NESE would be in service by the winter spanning 2020 and 2021.

On August 30, 2019, Staff filed initial testimony and exhibits and proposed a RY1 delivery revenue increase for KEDNY of \$ 28.2 million and a RY1 decrease for KEDLI of \$28.7 million.⁸ On or around August 30, 2019, the following intervenors also filed initial testimony and exhibits: Public Utility Law Project of New York, Inc. (PULP), City of New York (NYC), Estates NY Real Estate Services, LLC (Estates), Environmental Defense Fund (EDF), Utility Intervention Unit of the New York Department of State's Division of Consumer Protection (UIU), Sane Energy Project (SEP), Robert Wyman, and New York State Laborers' Organizing Fund. Then, on or about September 18, 2019, Staff, the Companies, Estates, NYC, and Mr. Wyman, filed rebuttal testimony and exhibits. The Companies' rebuttal filings presented updated revenue requirements calculated on the assumption that the NESE project would not be completed by the winter of 2020/2021. At the time they filed their rebuttal testimony, KEDNY requested a total RY1 delivery revenue increase of \$190.5 million and KEDLI requested a total RY1 increase of \$66.5 million.

The parties began settlement discussions that commenced on September 24, 2019 and continued October 10, 15, 16, 23, and 24, 2019. This involved multiple breakout sessions for discrete issues within the rate case. All parties to the rate cases were provided with notice of these meetings and were allowed to participate. On September 25, 2019, the Companies requested an extension for the suspension period of the proceedings in light of facilitating settlement negotiations by the parties.⁹ Terms of the one-month suspension included a request for a make whole provision, supported by Staff. The requested make whole provision addressed the possibility that procedural delays would require that the Commission not issue a rate order in these proceedings until some point after April 1, 2020. The requested make whole provision would put the Companies in the same financial position as if the rates had gone into effect on

⁸ Staff identified errors in the original revenue formula, this resulted in changes to Staff's proposed revenue requirements, which are reflected in Staff's supplemental filing on January 29, 2020.

⁹ Cases 19-G-0309 and 19-G-0310, supra, National Grid Letter (filed September 25, 2019).

April 1, 2019.¹⁰ On September 27, 2019, ALJs Costello and Leary issued a ruling that the evidentiary hearings would be postponed to allow the parties to engage in settlement negotiations.¹¹ In light of the events identified in the ensuing paragraphs, the evidentiary hearings were ultimately postponed until February 2020.¹²

On November 26, 2019 the Commission issued an order in Case 19-G-0678 approving a settlement between the National Grid and the Department of Public Service (DPS) that lifted the moratorium the Companies had imposed in May 2019.¹³ In addition to lifting the moratorium through September 1, 2021, the November 2019 Order provided that the Companies would connect gas service for initial residential and commercial customers within the KEDNY/KEDLI service territories that were denied service when the moratorium was in effect and “provide service to all future customers as soon as practicable.”

The parties recognized that the November 2019 Order would affect the Companies’ revenue requirements for RY1, accordingly, they requested that the ALJs authorize additional process in these proceedings. On December 10, 2019, the ALJs issued a ruling providing for the filing of additional testimony to address the impacts of the November 2019 Order on the Companies’ RY1 revenue requirements. The ruling stated that the Companies would file their second supplemental testimony on December 13, 2019, and Staff and other intervenors would file responsive testimony on January 29, 2020. Further, the ruling scheduled the start of the evidentiary hearing for February 10, 2020.¹⁴

¹⁰ The Companies requested additional one-month extensions on October 31, 2019, November 12, 2019, and December 9, 2019, each time making note of the make whole provision that Staff agreed to support. Additionally, in the November 12, 2019 letter to request an extension, Companies also requested “a Commission grant of a limited waiver of the Commission’s Policy Statement on Test Periods in Major Rate Proceedings, permitting the Companies to use a historic test year consisting of the twelve months ending December 31, 2019 in their next base rate filings,” and an additional make whole provision that would apply to the Companies’ next base rate filings, to put the Companies in the same financial position had the new rates been filed by April 30, 2020.

¹¹ Cases 19-G-0309 and 19-G-0310, supra, Ruling Postponing Hearing and Revising Procedural Schedule (issued September 27, 2019).

¹² Cases 19-G-0309 and 19-G-0310, supra, Notice of Evidentiary Hearing (issued October 25, 2019).

¹³ Cases 19-G-0678, Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, KEDNY and KEDLI, Order Adopting and Approving Settlement (issued November 26, 2019) (November 2019 Order).

¹⁴ Cases 19-G-0309 and 19-G-0310, supra, Ruling Modifying Procedural Schedule (issued December 10, 2019).

On December 13, 2019, the Companies filed second supplemental testimony and exhibits reflecting the impacts of the November 2019 Order. Based on these filings, the Companies requested RY1 delivery revenue increases of \$199.7 million and \$60.7 million for KEDNY and KEDLI, respectively.

On January 16, 2020 the Commission issued an order setting state-wide energy efficiency targets and budgets, referred to as New Efficiency New York (NE:NY).¹⁵ On January 21, 2020 ALJs Costello and Leary issued a ruling, in response to the 2020 NE:NY Order, directing the Companies and Staff to file testimony on January 29, 2020 to reflect their positions in light of the updated targets and budgets set by the Commission.¹⁶ This ruling also provided intervenors with the opportunity to file testimony on the issue as well.

On January 29, 2020, the Companies filed their third supplemental testimony and exhibits that addressed impacts of the Commission's 2020 NE:NY Order. This set forth updated RY1 delivery revenue increases of \$199.6 million increase and \$59.5 million increase for KEDNY and KEDLI, respectively.

On January 29, 2020, Staff also filed supplemental testimony that responded to the Companies second supplemental testimony filed on December 13, 2019, and reflected updates based on the 2020 NE:NY Order. Staff's supplemental filing reflected a recommended RY1 delivery revenue increase of \$54.1million for KEDNY and a recommended RY1 delivery revenue decrease of \$20.0 million for KEDLI. SEP also filed supplemental testimony on January 30, 2020 in response to the 2020 NE:NY Order.

The evidentiary hearing was held on February 10-14, 19, 20, 24, and 25, 2020. On February 12, 2020, at the evidentiary hearing, Staff provided corrected supplemental testimony and exhibits that reflected a recommended RY1 delivery revenue increase of \$56.1 million for KEDNY and a recommended RY1 delivery revenue decrease of \$17.0 million for KEDLI.

On April 6, 2020, Staff, the Companies, NYC, EDF, UIU, PULP, SEP, Estates, the Long Island Power Authority (LIPA), and AARP filed initial briefs. Subsequently, on April

¹⁵ Case 18-M-0084, A Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios through 2025 (issued January 16, 2020) (2020 NE:NY Order).

¹⁶ Cases 19-G-0309 and 19-G-0310, supra, Ruling Requiring Additional Testimony Related to Energy Efficiency Initiative Order (issued January 21, 2019).

21, 2020, Staff, the Companies, NYC, PULP, SEP, and AARP filed reply briefs setting forth their final litigation positions on all issues in Cases 19-G-0309 and 19-G-0310. As of their reply brief, the Companies requested RY1 delivery revenue increases of \$199.6 million for KEDNY and \$59.5 million for KEDLI. As of our reply brief, Staff recommended a RY1 delivery revenue increase of \$56.4 million for KEDNY and a RY1 delivery revenue decrease of \$15.0 million for KEDLI.

On June 5, 2020, the Companies filed a Notice of Continuing Settlement Negotiations in Cases 19-G-0309 and 19-G-0310. Settlement discussions continued via telephonic and other electronic means over the ensuing period. On September 3, 2020, KEDLI filed a Notice of Impending Settlement Negotiations in Case 18-M-0270. Notices of settlement meeting were provided to all parties to the rate cases. On or about March 11, 2021, certain parties publicly declared their withdrawal from settlement negotiations.¹⁷ From that date on, the Companies and Staff continued to provide notices of settlement meetings to all parties to the rate cases, including to those parties that had publicly declared they were not participating in the settlement negotiations. However, in conformance with the Commission's settlement regulations found at 16 NYCRR §3.9, which provide for the sharing of settlement documents only amongst those parties "participating" in the negotiations, settlement documents could not be shared with the non-participating parties after they chose to withdraw from negotiations.

On May 14, 2021, the Companies filed, on behalf of the Signatory Parties, the Joint Proposal in Cases 19-G-0309, 19-G-0310, and 18-M-0270. Subsequently, on May 18, 2021, the ALJs issued a ruling¹⁸ providing deadlines of May 28, 2021 for Statements in Support of or Opposition to the Joint Proposal (Initial Statements), and June 11, 2021 for Reply Statements. That ruling also advised that the evidentiary hearing regarding the Joint Proposal would be conducted virtually and would begin at 10 AM on June 21, 2021. On May 20, 2021, the Alliance for a Green Economy (AGREE), on behalf of itself and several other parties, requested an extension of the deadlines for Initial Statements and for an expedited discovery process. Also on May 20, 2021, Staff requested a one week extension of the deadlines for each

¹⁷ See "Walk Out Press Release" dated March 11, 2021 from SEP and other parties: <https://static1.squarespace.com/static/5e383a758a73ef3c81c74323/t/604a6aa2074a412941fddb1f/1615489698442/Walk+Out+Press+Release.pdf> (accessed June 2, 2021).

¹⁸ Cases 19-G-0309 and 19-G-0310, supra, Ruling Establishing Procedural Schedule on Joint Proposal (issued May 18, 2021).

of the Initial and Reply Statements. On May 24, 2021, the ALJs issued a ruling¹⁹ extending the deadline for Initial Statements until Wednesday, June 2, 2021, and for Reply Statements until Monday, June 14, 2021. The ruling also provided for an expedited discovery process requiring, *inter alia*, that responses to discovery requests be provided within five days rather than the 10 days required under ordinary circumstances.

III. OVERVIEW OF THE JOINT PROPOSAL

As discussed in greater detail below, the Joint Proposal contains a number of provisions designed to provide for just and reasonable rates, particularly in light of the impacts the COVID-19 pandemic has had on ratepayers; maintain and improve KEDNY and KEDLI's ability to provide safe and adequate service; and to the extent feasible and appropriate, provide a resolution to other issues raised by intervenors. Section I of the Joint Proposal provides the procedural background for the proceedings addressed in the Joint Proposal. Section II provides the overall framework for the Joint Proposal. Section III provides definitions, including for the rate years: April 1, 2020 through March 31, 2021 (RY1); April 1, 2021 through March 31, 2022 (RY2); and April 1, 2022 through March 31, 2023 (RY3) (collectively, Rate Years). Section III also defines "Stayout Period" as the period beginning April 1, 2023 and ending on the earlier of the effective date of revised base rates for KEDNY and KEDLI or March 31, 2024. Sections IV presents the rate plans for KEDNY and KEDLI. Section V sets forth some additional provisions governing the relationship between the Signatory Parties.

Turning to the provisions of Section IV, Section 1 sets forth the three-year term of the proposed rate plan. Section 2 identifies the recommended annual revenue requirement and overall revenue changes. Note that, as discussed above, the overall revenue changes for RY1 include the change in revenue requirement, plus the impacts associated with the elimination of the existing tax savings sur-credit, the energy efficiency surcharge and impact of change in GRT. The net impacts associated with the elimination of the sur-credit, surcharge, and change in GRT results in a RY1 revenue increase of \$22.7 million for KEDNY and \$20.3 million for KEDLI.

For KEDNY, the Joint Proposal recommends a revenue requirement decrease of \$4.710 million in RY1, and revenue requirement increases of \$47.019 million and \$73.272

¹⁹ Cases 19-G-0309 et al., supra, Ruling Revising Procedural Schedule on Joint Proposal (issued May 24, 2021).

million in RY2 and RY3, respectively. The Joint Proposal recommends mitigating the impacts of these revenue increases on KEDNY ratepayers by amortizing regulatory liabilities (deferred credits) to limit revenue increases to 0% in RY1, and 2% in each of RY2 and RY3. To achieve these outcomes, KEDNY will amortize \$94.873 million of regulatory liabilities over the three Rate Years.

For KEDLI, the Joint Proposal recommends a revenue requirement decrease of \$22.839 million in RY1, and revenue requirement increases of \$28.910 million and \$26.181 million in RY2 and RY3, respectively. Furthermore, total revenue increases were limited to 0% in RY1, and 1.8% in each of RY2 and RY3. To achieve these outcomes, KEDLI will amortize \$4.835 million of regulatory liabilities (deferred credits), respectively, over the term of the rate plans.

Section 3 sets forth recommendations on revenue allocation and rate design issues for firm and non-firm customers, as well as addressing the Companies' merchant function charges (MFC), lost and unaccounted for gas (LAUF) calculations, and typical bill information as well as other related issues. Section 4 provides for the computation and disposition of excess earnings, predicated on a return on equity (ROE) of 8.8% and an equity ratio of 48.0% for both KEDNY and KEDLI.

Section 5 addresses the Companies' capital investment levels and operation and maintenance (O&M) programs, including pipeline safety programs. This section includes recommendations for incremental review of certain "Long-Term Capital Capacity Projects" to ensure that the Companies can only recover the costs during the term of the proposed rate plans if they make an additional demonstration of the need for the projects. The Joint Proposal also recommends tying cost recovery for the projects to the Companies' performance on energy efficiency and demand response, among other metrics.

Section 6 provides provisions regarding information technology programs, investments, and reporting. This includes specific provisions regarding the Companies' Gas Business Enablement (GBE) and Customer Information System (CIS) projects. Section 7 addresses a number of programs and issues, including: energy efficiency, demand response, targeted reductions to billed gas usage, non-pipe alternatives (NPAs), economic development, and earnings adjustment mechanisms (EAMs). Section 8 identifies recommended reconciliations, deferrals and true-ups. Section 9 provides detailed recommendations for the

metrics constituting the Customer Service Quality Program. Section 10 sets forth the provisions of the Gas Safety Performance Metrics, including the minimum number of miles of leak-prone pipe (LPP) the Companies must remove during the term of the Rate Plans. Section 11 identifies a number of customer programs the Companies will implement, or continue to implement, including the Energy Affordability Programs (EAP), electronic deferred payment agreements, and waiver of reconnection fees for EAP customers. Section 12 restricts the Companies' ability to file for new rates to become effective during the term of the rate plans. It also provides for modifications to certain reconciliations during the Stay Out Period, if the Companies refrain from filing for new rates to be effective during the 12-month period following RY3. Section 13 includes a resolution of an audit of KEDNY's paving deferral balances, an outgrowth of the prior rate plan for KEDNY.²⁰

Finally, Section V, as noted above, includes certain provisions regarding the relationship between the Signatory Parties. It also includes, in Section 5, a statement that, except where expressly provided for, the provisions of the Joint Proposal would continue after the end of RY3 until changed by the Commission.

IV. THE JOINT PROPOSAL IS IN THE PUBLIC INTEREST

1. Benefits of the Joint Proposal

The Joint Proposal is in the public interest and should be adopted by the Commission without modification. Adoption of the multi-year rate plans set forth in the Joint Proposal provides a number of benefits that would not be feasible if the Commission adopted a one year rate order based on the litigation record in these proceedings. This Initial Statement explains how the Joint Proposal comports with the Commission's "Settlement Guidelines" and then addresses the individual elements of the Joint Proposal. Below is an overview of six of the key benefits that are possible in these cases only through adoption of the Joint Proposal.

First, RY1 revenues are held flat, meaning that customer's bills will not be impacted for RY1. Indeed, the Joint Proposal's RY1 revenue requirements are *decreases* of \$4.710 million for KEDNY and \$22.839 million for KEDLI. As explained in footnote 7, above, the overall revenue changes differ from the revenue requirement changes in RY1 due to the

²⁰ Cases 16-G-0059 et al., KEDNY – Rates, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans (issued December 16, 2016) (2016 Rate Order).

expiration of a surcharge and sur-credit. The RY1 revenue changes recommended in the Joint Proposal are significantly better for customers than anticipated litigation outcomes. A rate case joint proposal usually recommends overall revenue requirements between the litigation positions of the utility and Staff. In contrast, this Joint Proposal's recommendation to hold KEDNY's revenues flat is significantly below Staff's litigated position, which recommended a revenue increase of \$56.3 million. For KEDLI, the Joint Proposal's recommendation to hold its revenues flat is much closer to Staff's litigation position, a decrease of \$15 million, than to KEDLI's litigation position, an increase of \$59.5 million.

Even under normal circumstances the Joint Proposal's outcomes would be welcome. Implementing the outcomes proposed in the Joint Proposal is even more important given the context of these rate cases. These rate cases were filed in April 2019, almost a full year prior to the start of the COVID-19 pandemic. Had these cases concluded with a litigated outcome by the end of the statutory suspension period, new rates would have gone into effect on April 1, 2020, just weeks into the pandemic. Indeed, due to the need for additional rounds of testimony in these cases, a litigated outcome following from the evidentiary hearing held in February 2020 would not have resulted in a rate order until at least a few months into RY1. Had that been the case, a rate increase for KEDNY, based on the litigation positions of the parties, would have been compounded by the need to collect the increase in annual revenues over the remainder of RY1. Furthermore, the Companies likely would have filed for new rates almost immediately, with anticipated effective dates of April 1, 2021.

This Joint Proposal avoids these undesirable outcomes. After RY1, it provides for RY2 and RY3 revenue increases of only 2% for KEDNY and 1.8% for KEDLI. The Joint Proposal does this by limiting the revenue requirement increases in RY2 and RY3, as well as by applying available deferral credits to offset the revenue requirement increases that are necessary to enable KEDNY and KEDLI to continue to provide safe and adequate service to their approximately 1.9 million customers in Staten Island, Brooklyn, Queens, and on Long Island.

Second, the Joint Proposal enables KEDNY and KEDLI to accelerate their energy efficiency programs and jump start demand response programs. These efforts will help to limit gas consumption, thus minimizing greenhouse gas (GHG) emissions. With proper targeting these efforts will temper peak customer demand, thus avoiding the need for additional infrastructure that would otherwise be required to ensure that the Companies can reliably meet

peak demand. The Commission had already set aggressive energy efficiency targets for 2019 through 2025 in the 2020 NE:NY Order.²¹ Section 3.22.1 of the Joint Proposal ensures that KEDNY and KEDLI have flexibility to shift NE:NY budgets forward to achieve more energy efficiency savings sooner than anticipated. The Joint Proposal allows the Companies to recover the costs of the accelerated energy efficiency programs in a timely manner.

Regarding demand response, Sections 3.22.2 of the Joint Proposal allows the Companies to develop demand response programs engaging firm customers in efforts to curtail demand when temperatures drop and the system nears its peak. In the past, gas demand response programs have primarily focused on non-firm customers; i.e., those who take service with the understanding that they are required to cease use when temperatures drop below a specified temperature or when the utility requires it. KEDNY and KEDLI have previously completed pilot firm demand response programs and this Joint Proposal enables a significant expansion of these demand response efforts. Both the accelerated energy efficiency and the firm demand response programs are specifically fruits of this Joint Proposal. During the litigation phase of these proceedings, these concepts and rate mechanisms were not developed in the detail and form set forth in the Joint Proposal.

Third, the Joint Proposal requires that KEDNY stop work on the Metropolitan Reliability Infrastructure (MRI) project, Phase 5. The MRI project, with five total phases, was included in the capital expenditure budgets adopted in the prior KEDNY rate plan.²² At present, KEDNY has completed and placed into service Phase 1 through Phase four. KEDNY has also completed some work on MRI Phase 5. However, Section IV.5.3.1 of the Joint Proposal requires KEDNY to cease work on MRI Phase 5 and ensures that the expenditures for MRI Phase 5 are not included in rate base at the current time. The Joint Proposal provides that, if KEDNY wants to pursue completing MRI Phase 5, it must submit a petition to the Commission supported by an analysis of the need for MRI Phase 5. Only if the Commission approves the petition can KEDNY complete MRI Phase 5. This provision directly responds to the positions of certain

²¹ 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) (2020 NE:NY Order).

²² 2016 Rate Order, Attachment 1 (Joint Proposal), Appendix 1, Schedule 5.

parties to these proceedings who opposed MRI Phase 5.²³ This provision provides a reasonable path forward on a complex and divisive issue, ensuring that KEDNY completes no additional work on the project at present, while allowing KEDNY the opportunity to revisit the project if it can demonstrate the need for the project to ensure the continued provision of safe and reliable service to customers.

Fourth, Section IV.5.3 of the Joint Proposal requires additional process before allowing KEDNY and KEDLI to recover the costs of certain Long-Term Capital Capacity Projects. These projects include stations at which the Companies can inject compressed natural gas (CNG) into their systems, new and upgraded vaporizers at the liquified natural gas (LNG) facility at Greenpoint, and improvements to certain segments of transmission pipelines on Long Island. The Joint Proposal imposes two separate checks before the Companies' can recover the costs of these projects from customers. First, the Companies must make an additional demonstration of the need for these projects. That need must be confirmed by an independent consultant working at the direction of Staff. If the independent consultant assesses the projects and concludes that any of them are not required to ensure the reliability of the systems, then the Companies are precluded from recovering the costs of those unneeded projects from customers. Second, the Companies must meet certain energy efficiency, demand response, and electrification targets, or have the recoverable costs of these projects limited until the Commission next sets base rates. Tying cost recovery of projects that are deemed necessary to provide safe and adequate service to the Companies' performance on these metrics is unprecedented.

This rigorous process is, quite simply, impossible outside of this Joint Proposal. In litigation, the Companies' asserted that these projects are necessary to ensure that the Companies could reliably meet peak customer demand on the coldest days of the year.²⁴ Staff, in litigation, also included these projects in its recommended capital expenditure budgets.²⁵ This reflects Staff's judgment that the projects are indeed needed to ensure system reliability at peak

²³ See, T. 5689.

²⁴ Companies' Initial Brief, p. 124.

²⁵ Ex. 467. As of the Reply Brief, Staff did exclude the MRI Phase 5 and the Northwest Nassau Transmission Main & Control Valve – Phase 3 Project, recommending that the Companies further consider alternatives to these projects.

customer demand. As millions of people rely on the KEDNY and KEDLI gas systems for heat on the coldest days of the year, it is imperative that the systems are able to reliably meet peak customer demand. There simply is no alternative to ensuring reliability, as it is at those times of peak demand when outside temperatures are at their lowest that customers depend on gas for heating their homes.

While other parties oppose some or all of the projects, no parties have provided cogent evidence demonstrating that the Companies are not required to meet customers' peak demand. Under normal circumstances, rate recovery for these projects likely would have been approved through the litigation track in these cases. However, the Joint Proposal provides for additional process, requiring that a consultant, independent of the Companies, assess the engineering need for the projects. Thus, while the Joint Proposal enables accelerated energy efficiency and demand response efforts, it also evidences a recognition that even with those efforts, additional infrastructure may be needed to ensure the reliable delivery of gas to customers during periods of peak demand.

Fifth, Section IV.7.5 of the Joint Proposal sets forth a number of provisions that are not reasonably possible through a litigation track resulting in a one-year rate plan. In Section IV.7.5 of the Joint Proposal, the Companies commit to operating their systems with the goal of reducing billed gas sales by 0.5% compared to forecasted levels for RY2 and RY3. In addition, subsections provide for studies considering modifications to address GHG emissions targets set forth in the Climate Leadership and Community Protection Act (CLCPA), implications of future reduced gas usage on the appropriate depreciation of capital assets, and the costs of providing certain facilities without direct charge for new gas connections. These studies will enable the parties to the Companies' next rate cases to propose more informed actions in those cases, as well as in other proceedings before the Commission. However, if these cases concluded through litigation, the result would be a single rate year, with the expectation of the utility filing its next rate cases within approximately 30 days. Under such circumstances, such studies simply are not feasible. It is only in the context of a multi-year rate plan, as recommended by the Joint Proposal, that the Companies have time to engage with stakeholders and then undertake these studies.

Sixth, the Joint Proposal includes customer initiatives that were not proposed during the litigation phase of these proceedings. Section IV.11.7 provides for an assessment of

the Companies' language access capabilities. This assessment, which will be performed in coordination with Staff and other interested parties, will review how the Companies ensure that customers and applicants who primarily speak, read, and/or write languages other than English can adequately communicate with the Companies. The Companies are also required to report on the outcome of the assessment.²⁶ Additionally, Section IV.11.8 provides for enhanced consumer advocate training, including the use of a checklist to ensure that consumer advocates provide necessary information to assist customers with their arrears during interactions with customers.²⁷ Connecting customers with additional resources and support will be beneficial to overcome the financial impacts of the COVID-19 Pandemic. Absent this Joint Proposal, these initiatives would not move forward in these cases, as both provisions were not proposed during litigation.

For these reasons, the Joint Proposal should be adopted by the Commission without modification as it is in the public interest.

2. Standard of Review

The Commission's Settlement Guidelines state that all decisions, including those to adopt the terms of settlement agreements (joint proposals) must be just and reasonable and in the public interest.²⁸ In addition to compliance with proper procedures, determining whether the terms of a joint proposal are in the public interest involves substantive consideration of the following:

1. consistency with the law and regulatory economic, social and environmental State and Commission policies;
2. whether the terms of the joint proposal compare favorably with the likely result of a fully litigated case and produce a result within the range of reasonable outcomes;
3. whether the joint proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and
4. whether the joint proposal provides a rational basis for the Commission's decision.²⁹

²⁶ Joint Proposal, p. 120.

²⁷ Id.

²⁸ Cases 90-M-0225 and 92-M-0138, In the Matter of Settlement Procedures, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) (Settlement Guidelines), p. 30.

²⁹ Settlement Guidelines, p. 31.

3. The Joint Proposal Comports with the Commission's Settlement Guidelines

The Joint Proposal entered into in these cases resolves all outstanding issues presented in testimony and settlement negotiations. In doing so, it fully comports with the Commission's Settlement Guidelines. The fact that KEDNY, KEDLI, Staff, EDF, Estates, NY-GEO, Bob Wyman, and LIPA have executed the Joint Proposal is a testament to the extensive efforts employed by the Signatory Parties to address key issues and the equitable resolution, comprehensiveness and reasonableness of the Joint Proposal's provisions.³⁰ Given the various interests of the specific parties involved in the negotiations, it is clear that the Joint Proposal is an agreement reached between normally adversarial parties.

3.1 The Joint Proposal is Consistent with State Policies

The Joint Proposal recommends outcomes that are consistent with the State's and Commission's policies. The recommended outcomes will continue KEDNY and KEDLI's efforts to retire LPP in their service territories, enhancing the safety of the communities served by the Companies. Additionally, the rate mitigation recommended in the Joint Proposal helps to shield customers from significant rate increases, particularly during RY1, RY2, and RY3, while the economy in the Companies' service territories continues to recover from the impacts of the COVID-19 pandemic. Regarding environmental matters, the Joint Proposal is consistent with the Commission's energy efficiency policies as set forth in the 2020 NE:NY Order, and also with the CLCPA.

The adoption of the Joint Proposal is consistent with the CLCPA's intent to reduce GHG emissions. The Joint Proposal advances energy efficiency programs, which help end-users of natural gas use it more efficiently, thus emitting less carbon dioxide than they otherwise would. Additionally, the Joint Proposal continues efforts to repair pipeline leaks and retire segments of LPP. These efforts help to decrease the amount of methane released from the Companies' distribution systems.

While the Joint Proposal does provide a mechanism for recovery of the Long-Term Capital Capacity Project costs, that mechanism requires an additional demonstration that

³⁰ In Addition to the signatory Parties, consumer advocates, the Public Utility Law Project and the Utility Intervention Unit of the New York Department of State's Division of Consumer Protection, as well as Family Energy will not oppose the Joint Proposal.

these projects are necessary to ensure the reliability of the distribution systems when strained by peak customer demand. If that need is demonstrated through the additional review to be conducted by a consultant independent of the Companies, then, failing to proceed with the projects would jeopardize the Companies' ability to provide safe and adequate service to customers when needed most: when outside temperatures are at their lowest and customers are dependent on natural gas to heat their homes.

Thus, assuming for the sake of argument that the recovery of costs associated with the Long-Term Capital Capacity Projects is inconsistent with the intent of the CLCPA, the cost recovery is only being allowed due to the need to ensure safe, adequate, and reliable service to customers to meet a basic life need, warm shelter during cold weather. Furthermore, the Joint Proposal limits the Companies' ability to recover these projects' costs if the Companies do not meet energy efficiency, demand response, NPA, and electrification referral metrics. Tying cost recovery of projects that are deemed necessary to provide safe and adequate service to the Companies' performance on these metrics is unprecedented. To Staff's knowledge, a similar measure has not been imposed in recent litigated rate cases, and thus, likely is only possible in these cases through adoption of the terms of this Joint Proposal.

These metrics provide an additional incentive for the Companies to aggressively pursue the energy efficiency and other measures. Staff acknowledges that, even if the Companies meet all the specified metrics, the Long-Term Capital Capacity Projects may still be needed to ensure safe and reliable service. However, the Joint Proposal presents the Companies with aggressive targets, thus at least setting KEDNY and KEDLI on a path to avoiding the need for similar infrastructure in the future.

Finally, Staff notes that, in considering and adopting the Joint Proposal, the Commission would not be issuing a permit or license for the Long-Term Capital Capacity Projects. Instead, the Commission's adoption of the Joint Proposal only authorizes cost recovery through rate mechanisms. Indeed, other state agencies and entities do have permitting authority regarding the Long-Term Capital Capacity Projects, including the DEC, and various agencies of the City of New York.

3.2 The Joint Proposal Compares Favorably to the Litigation Positions of the Active Parties to These Proceedings

Comparing the litigation positions of the Active Parties to the terms of the Joint Proposal supports the conclusion that the Joint Proposal produces a result within the range that could be expected in litigation.³¹ Indeed, as explained above, the overall revenue increase for RY1 for KEDNY is actually lower than that recommended by Staff in litigation but, at the same time, the proposal allows for rate certainty. The Joint Proposal contains various provisions that place a strong emphasis on the Companies managing their costs, and provides enhanced incentives to that end (e.g., net-plant reconciliation, the gas safety performance metrics, and customer service performance mechanism). At the same time, KEDNY and KEDLI will receive sufficient additional revenues enabling them to implement new programs and maintain their gas systems to ensure the continued provision of safe and reliable service. Moreover, the Joint Proposal continues reconciliation mechanisms and reporting requirements characteristic of Commission-adopted rate plans.

The Joint Proposal's recommended allowed ROE of 8.8% is a fair compromise between the Companies' and Staff's litigation positions. Additionally, the 8.8% ROE is comparable to the ROE allowed for other major utilities operating under recent Commission-approved multi-year rate plans.³² For example, the 8.8% ROE for a multi-year rate plan compares favorably to the 8.75% ROE recommended recently by Trial Staff in its pre-filed testimony in rate proceedings for Orange and Rockland Utilities, Inc. (O&R).³³ Furthermore, the earnings sharing mechanism mandates sharing with customers if over-earning were to occur.

³¹ Parties' testimonies and briefs are referenced herein only as examples of potential litigated outcomes.

³² See the recent rate orders regarding Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E). Cases 19-E-0065 and 19-G-0066, Con Edison – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued January 16, 2020) (2020 Con Edison Rate Order), pp. 24 – 26; Case 19-G-0379, et. al., NYSEG and RGE – Electric and Gas Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, With Modifications (issued November 29, 2020) (2020 NYEG and RG&E Rate Order), pp. 64 – 66.

³³ Cases 21-G-0073 and 21-E-0074, O&R – Gas and Electric Rates, Testimony of Staff Finance Panel (filed May 28, 2021), p. 10.

3.3 The Joint Proposal Appropriately Balances the Interests of Stakeholders

The variety of interests represented by the Signatory Parties demonstrates that the Joint Proposal appropriately balances the interests of stakeholders. Signatories include, but are not limited to: EDF, which works to advance environmentally beneficial policies; Estates, which owns large multi-family residential properties served by the Companies; and NY-GEO, which seeks to advance the adoption of geothermal heat pump technology. While Staff anticipates opposition to the Joint Proposal from some parties to these cases, such opposition must be considered in context. These cases began almost a year before the onset of the COVID-19 pandemic. As a result of the onset of the pandemic and other impacts, the cases have continued for significantly longer than the traditional 11-month period. These cases have presented numerous complex and changing circumstances. While Staff does not purport that this, or any, Joint Proposal is perfect, this Joint Proposal sets forth a reasonable resolution of the issues presented. Further, in Staff's view, it balances the competing interests of the parties to these cases, and provides an outcome far superior to any that litigation could produce, particularly at this phase of these proceedings.

3.4 The Commission has a Rational Basis on which to Adopt the Terms of the Joint Proposal

In these cases, the ALJs have already held a multi-day evidentiary hearing regarding parties' litigation positions. Following that hearing, parties have submitted initial and reply briefs. Thus, these cases present the Commission with a practically complete litigation record. The Joint Proposal provides for the resolution of all of the issues raised in these cases in a reasonable manner, reflecting parties' positions in litigation and compromises between those positions. All parties to these cases had the opportunity to participate in the settlement negotiations and many parties actively participated in the settlement negotiations process. Moreover, the ALJs have scheduled an evidentiary hearing regarding this Joint Proposal to begin on June 28, 2021. At that evidentiary hearing, parties will once again have the opportunity to supplement the evidentiary record in these proceedings.

In sum, the Joint Proposal should be adopted because it satisfies the criteria the Commission has established, pursuant to the PSL, for judging the reasonableness of settlements, namely that safe and adequate service be provided at just and reasonable rates. Furthermore, the

Joint Proposal achieves a fair balance of interests on the issues presented in these cases and produces results that may not have been attainable except through a joint proposal.

Additionally, as part of the Joint Proposal, the Companies agree to collaborative meetings with Staff and other interested parties on a variety of issues, including CLCPA and depreciation studies, and arrears resolution. The Signatory Parties recognize the importance of an open exchange of ideas and information with respect to these topics. These collaborative processes ensure that the Companies, Staff, and other interested parties will have the opportunity to work together to develop mutually beneficial projects and ideas.

The Joint Proposal is a detailed proposal to the Commission submitted by the Signatory Parties as to the costs and revenues underlying the proposed base rates and mechanisms provided for in the Joint Proposal. These costs and revenues, along with the other terms of the Joint Proposal, provide a sound, equitable, and rational evidentiary basis on which to determine that the provisions of the Joint Proposal are reasonable and, therefore, should be adopted.

When considering whether the Joint Proposal is in the public interest, the document should be considered as a whole, with each individual provision providing support and balance to the others. Staff is aware that the Commission may accept, reject, or modify, in whole or in part, any recommendation or term of the Joint Proposal; however, it is Staff's belief that the Joint Proposal fairly resolves the ratemaking and policy initiatives of the Commission, thereby providing improved service at an equitable and well-reasoned cost. The Joint Proposal meets the public interest standard and, thus, should be adopted.

The record is more than adequate to support the terms of the Joint Proposal, which are consistent with both law and policy, have a rational basis, balance the interests of customers and the Companies, and compare favorably with the outcome of litigation. For these reasons, the Joint Proposal should be adopted.

V. ELEMENTS OF THE JOINT PROPOSAL³⁴

1. Effective Date and Term

As explained above, the Joint Proposal recommends three-year rate plans for KEDNY and KEDLI. The effective date, i.e., the beginning of RY1 is April 1, 2020.

2. Revenue Requirements

As noted above, these cases began almost a year prior to the onset of the COVID-19 pandemic. In light of the impacts of the COVID-19 Pandemic, the Joint Proposal seeks to limit the revenue requirement increases for both KEDNY and KEDLI, yet provide the Companies with sufficient funding to continue providing safe and adequate service. The Joint Proposal limits the total revenue increases to 0% for KEDNY, and KEDLI in RY1; 2% increase for KEDNY and 1.8% increase for KEDLI in RY2; and 2% increase for KEDNY and 1.8% increase for KEDLI in RY3. In recognition of the financial impacts associated with the COVID-19 pandemic, and to provide relief to customers, the Joint Proposal includes specific adjustments to the revenue requirements proposed by the Companies in litigation. Some of these adjustments include but are not limited to: (1) limiting management wage increases; (2) reduce capital expenditures; (3) reduce the number of incremental full time equivalent employees (FTEs); (4) reduce O&M expense associated with new programs; (5) deferment and delay of new or enhanced programs; (6) reduce information technology expenditures; (7) delay in the acceleration of depreciation associated with LPP assets, for KEDNY; (8) significantly accelerate the amortization of excess accumulated deferred federal income tax benefits for unprotected assets, especially for KEDNY, and (9) use of existing deferred regulatory liabilities to further reduce revenue requirements. One impact of the COVID-19 pandemic that regrettably increases the revenue requirements is an update to reflect reduced sales forecasts during the term of the rate plan compared to the sales forecasts thought to be reasonable during the litigation phase of these proceedings. While the revenue requirement increases are modest, they result in an appropriate amount of funds to allow the Companies to continue providing safe and adequate

³⁴ In order to facilitate the reader's comparison of the actual provisions of the Joint Proposal with the descriptions included in this Initial Statement, the headings in this section generally correspond to the headings in Section IV of the Joint Proposal.

service to customers, and at the same time, make progress toward various policy goals and objectives.

The tables below illustrate the RY1 – RY3 revenue requirements for KEDNY and KEDLI, as well as the impacts of the energy efficiency surcharge and sur-credit for the federal tax rate change being eliminated, and the offsetting use of deferred credits:

KEDNY	Rate Year One (TME 03/31/2021)	Rate Year Two (TME 03/31/2022)	Rate Year Three (TME 03/31/2023)	Total
Revenue Requirement Increase/(Decrease)	\$ (4,710)	\$ 47,019	\$ 73,272	\$ 153,180
Impact of elimination of sur-credits/surcharge	21,937	-	-	
GRT on the elimination of sur-credits/surcharge	<u>795</u>	<u>-</u>	<u>-</u>	
Total Revenue Impact	\$ 18,022	\$ 47,019	\$ 73,272	
Amortization of Regulatory Assets/(Liabilities)	\$ (17,392)	\$ (6,190)	\$ (30,317)	\$ (94,873)
GRT on the Amortization of Regulatory Assets/(Liabilities)	<u>(631)</u>	<u>(218)</u>	<u>(1,087)</u>	
Net Revenue Increases/(decreases)	<u>\$ -</u>	<u>\$ 40,611</u>	<u>\$ 41,868</u>	
Total Revenue % Increases	0.0%	2.0%	2.0%	

KEDLI	Rate Year One (TME 03/31/2021)	Rate Year Two (TME 03/31/2022)	Rate Year Three (TME 03/31/2023)	Total
Revenue Requirement Increase/(Decrease)	\$ (22,839)	\$ 28,910	\$ 26,181	\$ 15,484
Impact of elimination of sur-credits/surcharge	20,125	-	-	
GRT on the elimination of sur-credits/surcharge	<u>206</u>	<u>-</u>	<u>-</u>	
Total Revenue Impact	\$ (2,508)	\$ 28,910	\$ 26,181	
Amortization of Regulatory Assets/(Liabilities)	\$ 2,483	\$ (5,512)	\$ (1,259)	\$ (4,834)
GRT on the Amortization of Regulatory Assets/(Liabilities)	<u>24</u>	<u>(56)</u>	<u>(12)</u>	
Net Revenue Increases/(decreases)	<u>\$ -</u>	<u>\$ 23,342</u>	<u>\$ 24,910</u>	
Total Revenue % Increases	0.0%	1.84%	1.84%	

Among the adjustments that moderate the revenue increases during the rate plan are adjustments to the Companies' proposals to accelerate the depreciation of their LPP assets with depreciation rates and net salvage factors. The Companies' proposals would recover all costs related to the removal of LPP assets within a 20-year period.³⁵ The Companies' proposed net salvage factors reflect historical net salvage data over a three-year period, from 2016-2018.³⁶ Staff recommended a 30-year amortization of LPP assets instead, with net salvage factors

³⁵ T. 1713, 1724.

³⁶ T. 1714, 1724 – 1725.

reflecting historical data over a four-year period, from 2015-2018.³⁷ The City of New York proposed to reject the Companies' proposal to accelerate LPP depreciation entirely.³⁸ The Joint Proposal recommends no changes to KEDNY's currently approved depreciation rates, with the exception of Newtown Creek Project's depreciation rate. The Joint Proposal also recommends that KEDLI's LPP depreciation rates reflect a 25-amortization and four-year net salvage band for RY1 and RY2 and reflect a 20-year amortization of LPP assets and a three-year net salvage band for RY3. This provision of the Joint Proposal is reasonable because it delays accelerating KEDNY's LPP amortization and stretches amortization of KEDLI's amortization period to mitigate the impact on customers as they recover from the impacts of COVID-19 while still allowing KEDLI to begin accelerated recovery of LPP assets.

2.1 Rate Plan Revenue Requirements

2.1.1 KEDNY Rate Plan Revenue Requirements

(a) RY1 Base Rate Decrease

Staff's reply brief reflected a recommended revenue requirement increase of \$31.3 million for KEDNY. Staff premised its recommendation on an 8.2% ROE and a 6.09% overall after-tax rate of return. On a pre-tax basis, Staff's recommendations reflected an 7.59% overall rate of return. In comparison, KEDNY in reply brief, proposed a \$179.8 million revenue requirement increase, including an ROE of 9.65% and a 6.77% overall after-tax rate of return.

Compared to Staff's reply brief position, the Joint Proposal recommends a revenue requirement decrease of \$4.7 million, lower than Staff's litigation revenue requirement increase by approximately \$36.0 million. This \$36.0 million difference comprises adjustments³⁹ to six main areas: net margin, a decrease of \$17.2 million, which results in an increase to revenue requirement; O&M expenses, a decrease of \$21.0 million; amortization of regulatory deferrals, a decrease of \$13.7 million; depreciation expense, a decrease of \$14.6 million; ROE increase from 8.2% to 8.8%, an increase of \$18.4 million; and rate base, a decrease of \$7.0 million.

Again, the difference between Staff's litigation position and the Joint Proposal largely reflects provisions implemented to take into account the COVID-19 Pandemic. The

³⁷ T. 2939.

³⁸ T. 5398.

³⁹ The amounts cited are adjustment amounts, and not the revenue requirement impact amount.

change in net margin is primarily the result of updating the sales forecast to reflect the projected reduction in sales due to the impacts of the COVID-19 pandemic in KEDNY's service territory. By using an updated sales forecast, the Joint Proposal should limit the size of potential revenue decoupling mechanism (RDM) adjustments during the term of the rate plan. The Joint Proposal reflects adjustments further reducing O&M areas beyond the adjustments Staff recommended during litigation. These adjustments include: service company rents, \$11.5 million; other initiatives, \$15.5 million; and paving, \$5.0 million. In addition, the Joint Proposal recommends amortizing excess accumulated deferred income taxes (ADIT) over five years, instead of the 10-year period recommended by Staff in litigation. This acceleration of the amortization resulted in a downward adjustment made to KEDNY's revenue requirement of \$14.1 million. These adjustments are appropriate and reasonable in light of the information developed throughout the course of these proceedings.

(b) RY2 and RY3 Base Rate Increases

The Joint Proposal provides for revenue requirement increases of \$47.019 million in RY2 and \$73.272 million in RY3. As shown in Appendix 1, Schedule 1 of the Joint Proposal, the incremental revenue requirements for both RY2 and RY3 reflect changes in gross margin, various expenses associated with inflation, with specific forecasts applied to some expenses, depreciation expense, property tax expense, and increases in rate base for net utility plant resulting from forecasted capital spending.

2.1.2 KEDLI Rate Plan Revenue Requirements

(a) RY1 Base Rate Decrease

Staff's reply brief reflected a revenue requirement decrease of \$37.9 million for KEDLI. Staff premised its recommendation on an 8.2% ROE and a 6.05% overall after-tax rate of return. On a pre-tax basis, Staff's recommendations reflected an 7.55% overall rate of return. In comparison, KEDLI in its reply brief proposed a \$37.5 million revenue requirement increase, including an ROE of 9.65% and a 6.74% overall after-tax rate of return.

Compared to Staff's reply brief position, the Joint Proposal recommends a revenue requirement decrease of \$22.8 million, a difference from Staff's litigation revenue requirement decrease of \$37.9 million of approximately \$15.1 million. This \$15.1 million

difference comprises adjustments⁴⁰ to six main areas: net margin, a decrease of \$8.5 which results in an increase to revenue requirement; O&M expenses, a decrease of \$9.5 million; depreciation expense, an increase of \$3.1 million; ROE increase from 8.2% to 8.8%; an increase of \$12.5 million; and rate base, a decrease of \$4.5 million. Compared to KEDLI's litigation revenue requirement, the Joint Proposal recommends a RY1 revenue requirement \$60.8 million lower. Thus, the Joint Proposal recommends a revenue requirement significantly closer to Staff's litigation position than to KEDLI's.

Similar to KEDNY, the difference between Staff's litigation position and the Joint Proposal largely reflects provisions implemented to address the impacts of the COVID-19 pandemic. The significant change in net margin, which results in an increase in the revenue requirement, is the result of updating the sales forecast to reflect the projected reduction in sales due to the effects of the COVID-19 pandemic in KEDLI's service territory. By using an updated sales forecast, the Joint Proposal should limit the size of potential RDM adjustments during the term of the rate plan. Additionally, the Joint Proposal reflects adjustments that go further than Staff's litigation position to the O&M areas of: service company rents, \$8.5 million, and other initiatives, \$5.5 million. These adjustments are appropriate and reasonable in light of the information developed throughout the course of these proceedings.

(b) RY2 and RY3 Base Rate Increases

The Joint Proposal provides for revenue requirement increases of \$28.910 million in RY2 and \$26.181 million in RY3. As shown in Appendix 2, Schedule 1 of the Joint Proposal, the incremental revenue requirements for both RY2 and RY3 reflect changes in gross margin, various expenses associated with inflation, with specific forecasts applied to some expenses, depreciation, property taxes, and increases in net utility plant resulting from forecasted capital spending.

2.2 Mitigation of Revenue Increases

In recognition of the financial impacts of the COVID-19 pandemic on the Companies' customers, the Joint Proposal recommends that the base rate changes be implemented in a manner designed to mitigate the RY1, RY2, and RY3 revenue increases.

⁴⁰ The amounts cited are adjustment amounts, and not the revenue requirement impact amount.

Specifically, the Joint Proposal recommends mitigation to achieve no revenue increases in RY1 and annual revenue increases in RY2 and RY3 of 2.0% for KEDNY and 1.8% for KEDLI. In order to achieve this rate mitigation, KEDNY and KEDLI will amortize \$94.873 million and \$4.835 million of regulatory liabilities (deferred credits), respectively, over RY1 through RY3.

2.3 Make Whole Provision

The approval of the Joint Proposal can only occur after the beginning of RY1, April 1, 2020. Accordingly, the Joint Proposal recommends that the Companies recover the revenue shortfall resulting from the extension of the suspension period through a make whole provision. The make whole provision is designed to ensure the Companies and customers are restored to the same financial position they would have been in had rates gone into effect on April 1, 2020.

As such, the Joint Proposal identifies the components of the make whole calculation and allows the Companies to reconcile actual revenue to the allowed revenue and uses existing reconciliation mechanisms. The make whole only includes components to return the Companies to the financial position as if rates became effective on April 1, 2020. This provision is reasonable because it allowed for difficult and complex negotiations to occur in these cases.

2.4 Specific Elements of the Revenue Requirement

2.4.1 Other Initiatives

The Other Initiatives O&M expense component includes costs associated with proposed incremental FTEs, and also non-labor costs of new or expanded programs. In litigation, KEDNY requested 153.3 incremental FTEs in RY1 and KEDLI requested 99.4 incremental FTEs in RY1.⁴¹ Whereas, in litigation, Staff recommended 137.7 incremental FTEs in RY1 for KEDNY and 78.9 incremental FTEs in RY1 for KEDLI.⁴² The Joint Proposal recommends allowing rate recovery for 45.4 and 43.3 incremental FTEs for KEDNY and KEDLI, respectively, in RY1. An additional 32.8 and 34.2 incremental FTEs are included in RY2 and an additional 13.7 and 3.3 incremental FTEs are included in RY3 for KEDNY and

⁴¹ Ex. 408.

⁴² Staff Initial Brief, p. 59; Staff Reply Brief, p. 68.

KEDLI, respectively. The Joint Proposal reflects a reasonable level of incremental FTEs and takes into account the economic impacts of the COVID-19 pandemic, demonstrated by the Joint Proposal's reduced number of incremental of FTEs when compared to both the Companies' and Staff's litigated positions. Further discussions on the specific incremental FTEs included in the Joint Proposal are discussed throughout this Initial Statement.

With respect to the non-labor costs of incremental new or expanded programs, in litigation, KEDNY and KEDLI proposed \$62.4 million and \$35.8 million, respectively.⁴³ In Staff's litigated position, we recommended \$39.6 million and \$25.4 million for the incremental programs.⁴⁴ The Joint Proposal reflects an amount of \$30.7 million and \$23.9 million for KEDNY and KEDLI, respectively, in RY1. RY2 of the Joint Proposal reflects an amount of \$29.9 million and \$21.5 million and RY3 of the Joint Proposal reflects an amount of \$24.8 million and \$23.5 million for KEDNY and KEDLI, respectively. The level of Other Initiatives expense reflected in the Joint Proposal is reasonable, especially when compared to the Companies' and Staff's litigated positions. The Joint Proposal's recommended expense level again takes into account the economic circumstances of the COVID-19 pandemic. The Joint Proposal mitigates revenue requirements by removing, delaying and/or revising certain programs and non-labor costs of those programs. A variety of these new programs and initiatives are discussed throughout this Initial Statement.

2.4.2 Amortization of Excess Accumulated Deferred Income Taxes

The 2017 Tax Cuts and Jobs Act reduced the federal income tax rate from 35% to 21%. At that time, the Companies recorded the effect of tax rate reduction to the ADIT with an offset to an income tax regulatory liability account. This represents the customer benefit of the federal income tax rate reduction. The Companies categorized the excess ADIT between protected plant, unprotected plant, net operating loss, and unprotected non-plant balances.⁴⁵ The IRS normalization regulations require the use of the Average Rate Assumption Method (ARAM) to calculate the amortization of the excess ADIT related to protected plant. The Companies calculated ARAM lives for KEDLI and KEDNY of 47 years and 44 years, respectively. In

⁴³ Ex. 403, p. 2.

⁴⁴ Staff Reply Brief, Appendix 1, p. 2, Appendix 2, p. 2.

⁴⁵ T. 1907, 2170.

litigation, the Companies proposed using the ARAM amortization period for the unprotected and non-plant excess ADIT balances as well.⁴⁶

In litigation, Staff agreed with using the Companies' calculated ARAM life amortization periods and their use to amortize the protected plant excess ADIT balances. This is required to comply with the IRS normalization regulation. However, Staff recommended amortizing the unprotected plant and non-plant excess ADIT balances over a shorter, 10-year period.⁴⁷

In litigation, AARP and PULP made alternative proposals. AARP proposed returning the excess ADIT over the term of the rate plan, which would have been over a single rate year.⁴⁸ In comparison, PULP, proposed to allocate the excess unprotected ADIT in the following way: 50% to "the low-income residential customers' Affordability Program;" 25% to moderate rates in RY1; and, 25% to "paydown the arrears/uncollectibles" at the end of the present "public health emergency and moratoria."⁴⁹

In the Joint Proposal, the revenue requirements reflect the amortization of protected excess ADIT over the life of the underlying assets to align with the calculated ARAM lives, and the amortization of unprotected plant and non-plant excess ADIT balances over significantly shorter periods. Specifically, the Joint Proposal recommends amortizing the unprotected and non-plant excess ADIT over a five-year period for KEDNY and a ten-year period for KEDLI. The accelerated amortization of the unprotected and non-plant excess ADIT helps to moderate the revenue requirements during the rate plans. This is reasonable as it benefits customers during a time when the economy of the Companies' service territories are being impacted by and recovering from the ongoing COVID-19 pandemic.

Section 2.1.1 of the Joint Proposal recognizes that it is possible that during the term of the rate plan, it may be determined that the amortization of excess ADIT set forth in the Joint Proposal would be in violation of the IRS tax normalization provisions. If this were determined, it would then preclude the Companies from the full use of accelerated depreciation. In order to address this possibility, the Companies will have the ability to modify the accounting

⁴⁶ T. 1908 – 1909; 2171 – 2172.

⁴⁷ T. 2591 – 2592.

⁴⁸ AARP, Initial Brief, pp. 4 – 5.

⁴⁹ PULP, Initial Brief, pp. 20 – 21.

for ADIT and the amortization of excess ADIT, only to the extent necessary to maintain consistency with applicable tax normalization principles and remain eligible to use accelerated depreciation without interruption. The Joint Proposal requires that, if the Companies make such a modification, they must file a notice with the Secretary to the Commission. In such notice, the Companies must explain the action(s) taken and the need for such action(s). Any issues raised by the Companies or regarding their actions would be resolved in the next base rate proceedings. This provision is reasonable as a means to ensure that the Companies avoid any violation of the IRS normalization requirements, associated with the amortization of excess ADIT, that would prohibit the Companies from claiming accelerated depreciation (including any available bonus depreciation). Should such a violation occur, it would have adverse consequences in the future for customers. The intent and purpose of this provision is to proactively address the inadvertent or unintentional situation, if it were to arise, prior to any IRS finding of a normalization violation and where if that were to occur, it would be too late to remediate. By doing so, this provision mitigates the potential incremental cost to customers in the future in the event the IRS prohibited the Companies from using accelerated depreciation for tax purposes.

3. Revenue Allocation and Rate Design

3.1 Revenue Forecast

In litigation, the Companies proposed the use of the sales forecast filed in the Third Supplemental Testimony of Company Witness Poe in January 2020.⁵⁰ As expressed in Staff's Initial Brief, Staff recommended a sales forecast filed in the Second Supplemental Testimony of Company Witness Poe, with adjustments to the forecasted customer growth to reflect the impact of the Companies' moratoriums in their service territories and the expansion of the Companies' non-firm demand response programs and an adjustment to reflect the energy efficiency amounts set forth in the 2020 NY:NY Order.⁵¹

The Joint Proposal recommends the use of a sales forecast that was prepared by the Companies during the settlement process to reflect the latest known information, most notably the impacts of the COVID-19 pandemic, to arrive at the revenue forecast. This provision of the Joint Proposal is reasonable because prior forecasts did not foresee and thus did not reflect

⁵⁰ T. 5198.

⁵¹ Staff Initial Brief, p. 10.

the impacts of the COVID-19 pandemic. The Companies and Staff litigation position differences were dwarfed by the COVID-19 changes and subsumed into the updated forecast. Additionally, as the Joint Proposal's recommended forecast more reasonably reflects the impacts of the pandemic, its adoption should minimize the impacts of RDM adjustments during the term of the rate plans.

The historical data provided by the Companies in their sales forecasts, including the sales forecast recommended by the Joint Proposal, shows an increase in customers over time, notably in residential heating, and no signs of decreasing gas usage-per-customer.⁵² From 2014 through 2019, KEDNY has added an average of 6,370 customers a year, for a total of 31,848 customers added over those five years. Likewise, from 2014 through 2019 KEDLI has added an average of 7,369 customers a year, for a total of 36,843 customers added over those five years.

In addition, from 2014 through 2019, KEDNY had an average of 183 non-firm (interruptible) customers convert to firm service per year, for a total of 1,100 converted customers. Similarly, KEDLI, from 2015 through 2019, had an average of 11 non-firm customers convert to firm service per year, for a total of 54 converted customers.⁵³ It is therefore reasonable and prudent for the sales forecast and the recommendations of the Joint Proposal to reflect these historical trends, adjusting for COVID, and to expect a recovery to continued growth of gas usage and increased need for capacity during the rate plans. This is especially true, as the Companies have been directed in the Order Adopting and Approving Settlement issued November 26, 2019 in Case 19-G-0678 to continue to accept new requests for gas connections until at least September 21, 2021.

3.2 Newtown Creek

The Newtown Creek renewable gas project, when operational, will capture waste gas from the Newtown Creek wastewater treatment facility, process it to pipeline quality, and inject it into KEDNY's distribution system. In litigation, KEDNY proposed to include the entire cost of the Newtown Creek project in rates: capital costs of approximately \$38 million, depreciated over 20 years, and \$0.668 million in RY1 O&M costs.⁵⁴ The RY1 O&M costs

⁵² Ex. 401 and 402.

⁵³ Ex. 520, p. 19 (Response to IR DPS-1063).

⁵⁴ T. 3616; Ex. 489, p. 275 (Response to IR DPS-972).

reflect a 20-year tax abatement New York City has granted, for \$14.4 million of the capital costs. KEDNY forecasts that the revenue requirement impact of the Newtown Creek project would be offset by revenues of \$1.0 million from the sale of the renewable natural gas, and \$0.9 million from the sale of the project's environmental attributes.⁵⁵ KEDNY proposed to true-up the actual revenues, such that any variances will be deferred for future recovery from, or refund to, KEDNY customers. Any revenues realized above the level necessary to fully reimburse customers for the project costs will be shared evenly between customers and NYC beginning in the fifth year after the project becomes operational. Revenue sharing will then be assessed every year thereafter for the remainder of the project. KEDNY proposed to track revenues on an annual basis and compare to the project's cumulative revenue requirement.⁵⁶

In litigation, Staff proposed that KEDNY bear the risks of the project not providing sufficient revenues to meet its costs. To that end, Staff recommended that the Commission impute a level of revenue in KEDNY's revenue requirement to equal the actual annual costs of the project. KEDNY should test annually to determine if the actual revenues exceed the actual revenue requirement of the project. If the actual revenues do not exceed the actual revenue requirement of the project, no reconciliation should be permitted. If the actual revenues exceed the actual revenue requirement, shareholders can retain any revenues to recoup previous cumulative shortfalls.⁵⁷

The Joint Proposal provides that a capital investment of \$37.898 million be placed into service in RY2 and assumes the investment will be depreciated over 20 years. The revenue requirement impact of the project is completely offset by forecast annual revenues of \$1.924 million beginning in RY2 from the sale of gas and environmental attributes and also includes imputed revenues of \$4.010 million in RY2 and \$4.007 million in RY3. Beginning in RY2, KEDNY will reconcile the actual revenues derived from the sales of gas and environmental attributes associated with the Newtown Creek Project to the amounts reflected in rates with shareholders assuming the risk for the first \$1.6 million in revenue each year and then an equal sharing of the reconciled revenues above \$1.6 million.

⁵⁵ T. 105 – 106.

⁵⁶ T. 106.

⁵⁷ T. 3623.

The Joint Proposal is reasonable because the assumed forecast level of revenues in RY2 and RY3 completely offset the costs of the project, which mitigates the rate increase. The proposed revenue sharing is reasonable because shareholders are responsible for the first \$1.6 million in revenue associated with the project, or 85% of KEDNY's projected revenue from the sale of gas and environmental attributes. Moreover, the equal sharing of any shortfall above \$1.6 million recognizes that the project does have some meaningful societal benefits, while ensuring that the Companies maintain some risk if revenues sufficient to offset costs do not materialize.

3.3 Revenue Allocation

In litigation, the Companies proposed to use pro-forma Embedded Cost of Service (ECOS) studies, or studies that use rate year forecasted data, as a guide for their revenue allocation and rate design.⁵⁸ A minimum system study was used to classify costs associated with distribution mains which includes customer and demand components.⁵⁹ The Companies used a minimum system study because distribution mains are used to both connect customers to the system and meet customers' maximum demand.⁶⁰ The customer-related portion of the mains costs were then allocated to the service classes based on the number of customers, and the demand-related portion was allocated based on the service classes' contribution to design day demand.⁶¹ The Companies' non-firm demand response classes were included in the ECOS studies similar to firm service classes.⁶²

The intent of the Companies proposed revenue allocation was to move each service class rate of return closer to the system average while mitigating large bill impacts on customers.⁶³ The Companies then implemented a 25% tolerance band around the system average rates of return, determined in the ECOS studies, to account for imperfections within these studies.⁶⁴ The Companies allocated a smaller revenue increase to service classes above the

⁵⁸ T. 2659, 2744.

⁵⁹ T. 2653, 2739.

⁶⁰ Id.

⁶¹ Id.

⁶² Ex. 129, 145.

⁶³ T. 2661, 2746.

⁶⁴ T. 2662, 2747.

tolerance band, i.e., classes that are over contributing revenue.⁶⁵ Service classes that were below the tolerance band, i.e., classes that are under contributing revenue were allocated a larger revenue increase.⁶⁶ Service classes that were within the band were allocated average revenue increases.⁶⁷ The Companies also allocated a different amount of revenue to classes close to the band compared to classes that were significantly above or below the band or close to the system average rates of return.⁶⁸

In litigation, Staff agreed with the methodology the Companies used in its ECOS studies, but recommended that the Companies use historic ECOS studies, or studies that use historic test year data.⁶⁹ Staff recommended that the Companies use historic ECOS studies since the pro-forma studies can introduce additional errors into the studies.⁷⁰ Additionally, pro-forma ECOS studies should only be used if there are large changes in utility operations are projected and those changes were not present in these cases.⁷¹ Staff agreed that the distribution mains should be classified as part demand and part customer related in the Companies' ECOS studies for the same reasons as the Companies and NYC.⁷² Staff recommended that the 25% tolerance band be used for revenue allocation with service classes with a rate of return falling within the band being allocated the average increase.⁷³ If, however, a service class's return is outside the tolerance band, the service class would be allocated 20% more or less incremental revenue requirement ,depending on if the return for the service class was below or above the tolerance bands, respectively.⁷⁴

In testimony, UIU recommended that revenues be allocated based on the results of two ECOS studies, one study with distribution mains classified using a minimum system study and another study with distribution mains classified as 100% demand to determine whether

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Ex. 146.

⁶⁹ T. 2943.

⁷⁰ Id.

⁷¹ Id.

⁷² T. 2653, 2738, 5544.

⁷³ T. 2946.

⁷⁴ Id.

a service class is within, over or under the tolerance band.⁷⁵ If there was any dispute between the ECOS studies, then the service class would be treated as if it was within the tolerance band.⁷⁶ UIU stated that ECOS studies have been controversial for the past 40 or more years since they require an analyst's judgment.⁷⁷ The NARUC 1989 gas distribution rate design manual recognizes classifying distribution mains costs as 100% demand.⁷⁸ Additionally, UIU recommended establishing a percentage limit on how much a service class could be allocated that could change based on the incremental revenue requirement.⁷⁹ UIU recommended that the Companies submit ECOS studies where distribution mains were classified as 100% demand in their next rate filings.⁸⁰ Additionally, UIU expressed concern that the Companies included the non-firm demand response service classes in the ECOS studies to determine how much revenue was allocated to these classes and noted that the Companies would have more freedom in designing firm rates if these service classes were excluded.⁸¹

In litigation, NYC recommended that the Commission adopt the Companies' ECOS studies in these cases for revenue allocation because they are consistent with past practice and reasonable.⁸² NYC agreed that distribution mains should be classified using minimum system studies because the mains are used to both connect customers to the Companies' distribution systems and provide capacity to meet peak demand.⁸³ NYC noted that the NARUC 1989 gas distribution rate design manual also recognizes classifying distribution mains costs as part customer and part demand.⁸⁴ NYC cited prior Commission decision in which the Commission upheld the classification of distribution mains costs into both customer and demand components.⁸⁵ NYC agreed with the Companies' revenue allocation except that NYC

⁷⁵ T. 1328.

⁷⁶ T. 1331.

⁷⁷ T. 1362.

⁷⁸ Id.

⁷⁹ T. 1380 – 1381.

⁸⁰ T. 1329.

⁸¹ T. 1374.

⁸² T. 5538.

⁸³ T. 5543, 5568.

⁸⁴ T. 5543.

⁸⁵ T. 5570 – 5571, citing Case 94-G-0885, National Fuel Gas Distribution Corporation – Gas Rates, Order Approving Compliance Filing (issued August 23, 1995); Case 93-G-0162, Niagara Mohawk

recommended that KEDNY non-firm demand response service classes be allocated a larger decrease in revenue and KEDLI non-firm demand response service classes receive no increase in revenue.⁸⁶

In litigation, the Companies disagreed with using historic ECOS studies, as they assert that pro-forma studies reflect the RY1 forecast, which could include projecting significant changes that should be reflected in the ECOS studies.⁸⁷ The Companies disagreed with UIU's proposal to use two ECOS studies to determine a service class's rate of return because the Companies do not support classifying distribution mains costs as 100% demand.⁸⁸ Additionally, the Companies disagree with placing boundaries around the percentage change in revenue a service class could receive because the revenue allocated to a service class because the boundaries should be set in each case based on the overall increase in that case.⁸⁹

The Joint Proposal's recommended revenue allocation uses historic ECOS studies reflecting minimum system studies to classify distribution mains costs as a guide. The Joint Proposal allocates distribution mains using a minimum system study. This reflects that these mains serve two main purposes, connecting customers to the Companies' systems and to provide gas at peak demand. The Joint proposal adopts the Companies' revenue allocation methodology since it is more granular than the alternatives proposed. The non-firm demand response customers revenue decrease shown in the revenue allocation appendices is based on the need for increased discounts to incent these customers to remain non-firm. The non-firm customers are no longer allocated revenue based on the Companies ECOS studies. Rather, non-firm customers paying rates set based on a discount to the tail block rate of the otherwise applicable service class. Additionally, the Joint Proposal allocates KEDNY's SC-21 an average increase even though the class was under returning and, therefore, should have received an above average increase. This is reasonable due to the concern that end-use customers receiving gas under that

Power Corporation – Gas Rates, Opinion and Order Approving Electric Settlement Agreements with a Change and Determining Gas Revenue Requirement and Rate Design (issued May 12, 1994).

⁸⁶ T. 5547 – 5578.

⁸⁷ T. 2815.

⁸⁸ T. 2823.

⁸⁹ T. 2824.

service class are low- to moderate-income housing who may be struggling economically as a result of the impacts of the COVID-19 pandemic.

The Joint Proposal is reasonable because revenue allocation reflects the historic ECOS studies. This is important particularly due to the economic uncertainty surrounding the ongoing COVID-19 pandemic and forecasting costs. Additionally, the Joint Proposal's revenue allocation methodology makes progress toward correcting for service class return imbalances. Furthermore, the Joint Proposal is consistent with recent rate cases where the Commission found it reasonable to classify distribution mains as part customer-related and part demand-related.⁹⁰

3.4 Rate Design – Firm Service Classifications

In testimony, the Companies generally proposed to increase minimum charges and reduce the slopes of the declining block gas rates for both KEDNY and KEDLI.⁹¹ The Companies' overall objectives for rate design were to collect the revenue allocated to each class through revenue allocation, avoid disproportionate impacts on customers within a class, and provide customers with price signals that reflect the effects their usage have on the gas systems.⁹²

In litigation, Staff recommended adjusting the gas block rates to move 15% towards flat block rates for KEDNY and KEDLI.⁹³ In addition, Staff recommended increasing existing minimum monthly charges by 5% to mitigate the impacts on higher usage customers, except for the large DG classes, SC-21 for KEDNY and SC-17 for KEDLI.⁹⁴

Other parties also took positions on rate design in litigation. UIU recommended that the Companies help high-use residential customers understand how they can reduce their usage through an increased level of targeted assistance.⁹⁵ In addition, UIU proposed that the Companies determine if a high-use customer is in the appropriate class and move them to a

⁹⁰ Case 16-G-0257, National Fuel Gas Distribution Corporation - Gas Service, Order Establishing Rates for Gas Service (issued April 20, 2017), p. 90.

⁹¹ T. 2665 – 2670, 2750 – 2755.

⁹² T. 2664, 2750.

⁹³ Ex. 524.

⁹⁴ T. 2960.

⁹⁵ T. 1388.

different class if necessary.⁹⁶ UIU proposed gradually shifting declining block rates toward flat blocks to avoid large impacts on high usage customers.⁹⁷ In addition, NYC asserted that Staff's firm rate design be rejected because it moved classes towards flat blocks too aggressively.⁹⁸

The Joint Proposal generally proposes to shift declining blocks toward flat blocks by allocating a larger increase to the tail block. Further, the Joint Proposal recommends holding the minimum charges constant for both KEDNY and KEDLI. The slope of the block rates for KEDNY's SC-1A are not being reduced due to the greater than average revenue being allocated to this class as it is presently producing less than the system average return. The rate design recommended in the Joint Proposal is feasible because the Joint Proposal's revenue requirements are significantly lower than Staff's and the Companies' litigated positions. Further, the shift toward flat blocks is reasonable because it produces appropriate price signals for conservation. This should help reduce gas usage overall, which has environmental benefits and should help to ease the capacity constraints in the Companies' service territories.

3.5 Rate Design – Non-Firm Demand Response

In litigation, KEDNY proposed to combine its current non-firm SC Nos. 5A and 6 into SC 22 with two tiers, Tier 1 customers would be interruptible at 15°F and Tier 2 customers would be interruptible at 20°F.⁹⁹ In addition, KEDNY proposed to set the minimum monthly charge at \$375 for both tiers and set the Tier 2 volumetric rate at 5% below the Tier 1 volumetric rate.¹⁰⁰ Similarly, KEDLI proposed to combine its current non-firm SC Nos. 4, 7, 12 and 13 into SC Nos. 18 and 19 for sales and transport, respectively. KEDLI proposed to have the same two tiers as KEDNY, except KEDLI proposed to set the minimum monthly charge at \$450.¹⁰¹ The Companies proposed to use the current non-firm demand response gas cost formula for all sales customers in the new non-firm service classes.¹⁰² The Companies currently charge non-firm

⁹⁶ T. 1387.

⁹⁷ Id.

⁹⁸ T. 5575.

⁹⁹ T. 2668.

¹⁰⁰ Id.

¹⁰¹ T. 2753.

¹⁰² T. 2833.

demand response customers the weighted average cost of gas (WACOG) adjusted for lost and unaccounted for (LAUF) gas.¹⁰³

In litigation, Staff recommended that Tier 1 and Tier 2 customers receive a 30% and 40% discount, respectively, off the total bill of the otherwise applicable service class.¹⁰⁴ Staff also recommended that the Companies charge non-firm customers the incremental cost of gas (ICOG) weighted on the gate allocations in the gas transportation operation procedures (GTOP) manual and weighted on incremental volumes instead of the WACOG, otherwise firm sales customers will continue to subsidize non-firm sales customers.¹⁰⁵ Non-firm customers are not guaranteed gas 100% of the time since they could be interrupted and should only pay a portion of demand or pipeline transportation costs.¹⁰⁶ Staff recommended that the Companies charge the non-firm demand response customers the ICOG because the WACOG reflects gas purchases intended for firm customers. If the Companies charge non-firm customers the WACOG, then non-firm customers are receiving a benefit of lower gas costs than the cost of gas procured for their use.¹⁰⁷ Non-firm customers benefit the entire gas system, so firm sales customers should not be subsidizing non-firm sales customers when firm transportation customers also benefit from the increased system efficiency provided by non-firm sales customers.¹⁰⁸ The Companies opposed charging non-firm customers the ICOG.¹⁰⁹

The Joint Proposal recommends non-firm customers commodity will be based on a newly developed ICOG weighted on upstream pipeline city gates and volumes used to determine deliveries to non-firm customers. This new weighted ICOG will also include a demand charge reduced to 10% of the allocated pipeline transportation costs and the applicable LAUF gas factor. The upstream pipeline city gate allocations will be the same as set forth in the Companies' GTOP manual. The Joint Proposal recommends that the non-firm demand response service classes consist of Tier 1 and Tier 2 service. Tier 1 and Tier 2 volumetric rates were further adjusted to 50% and 60% below the tail block rate of the otherwise applicable service

¹⁰³ Id.

¹⁰⁴ T. 2964 – 2965.

¹⁰⁵ T. 2966; Ex. 642, pp. 48 – 49 (Response to IR DPS-1086).

¹⁰⁶ Staff Initial Brief, p. 175.

¹⁰⁷ T. 2966.

¹⁰⁸ T. 2961.

¹⁰⁹ T. 2834.

class, respectively, to account for the new ICOG. The minimum charges for KEDNY and KEDLI for both tiers will be set at \$375.

The Joint Proposal sets forth reasonable non-firm rates and conditions because it provides significant discounts off firm rates in order to incent customers to take non-firm service, as opposed to seeking firm service. As non-firm customers are not using service during the coldest periods, when system demand is at its peak, they do not contribute to that peak demand. All firm customers benefit from customers taking non-firm service because the Companies do not have to install system capacity for these customers on a peak day and, therefore, the delivery rates are, all else equal, lower than if non-firm customers took firm service.

Furthermore, the shift from the WACOG to the new weighted ICOG for non-firm demand response customers ensures that these customers will pay a cost of gas that reflects the cost to the Companies of procuring non-firm customers' gas. This preserves the lowest cost of gas for firm customers. Charging non-firm demand response sales customers the weighted ICOG will ensure that firm sales customers do not subsidize the gas costs of non-firm customers. Any forecasting error related to non-firm demand response customers' cost of gas would be paid for or refunded to firm sales customers in the annual GAC reconciliation. Since the non-firm demand response sales customers would be paying the new weighted ICOG, there is no longer a subsidy from firm sales customers. Overall, the impact of the increased discounts and the shift from WACOG to the new weighted ICOG provides non-firm customers with a larger discount compared to the current non-firm rates. This should incent existing non-firm customers to remain non-firm rather than seeking to convert to firm service, and may entice additional customers, either new customers or those presently receiving firm service, to take non-firm service. This would help alleviate the capacity constraints in the Companies' service territories.

3.6 Lost and Unaccounted For Gas

In litigation, the Companies proposed discontinuing the inactive accounts adjustment to their respective LAUF targets, updated LAUF targets based on recent historical experience aligned with the Gas Adjustment Clause (GAC) year (September 1 through August 31), and a new Factor of Adjustment (FOA) calculation.¹¹⁰ The Companies stated that the inactive account adjustment is unnecessary because inactive accounts represent flowing gas

¹¹⁰ T. 2675, 2765.

without a customer of record and therefore is not included in metered deliveries.¹¹¹ The Companies stated that, when LAUF is above the upper dead band, the Company incurs a penalty for an inactive accounts adjustment.¹¹²

Ultimately, throughout the litigation, the differences between Staff and the Companies revolved around the inactive accounts adjustment, and the inclusion of data from 2014 in the calculation of KEDLI's LAUF target. Staff recommended continuing the inactive accounts adjustment. The inactive accounts adjustment provides the Companies with an additional incentive to lock meters for inactive accounts in an expeditious manner.¹¹³ Staff recommended removing 2014 from the calculation of KEDLI's LAUF target because it was an outlier that unreasonably increased KEDLI's resulting LAUF target.¹¹⁴

The Joint Proposal recommends no longer including a volumetric inactive accounts adjustment as proposed by Staff, however it does include a monetary inactive account adjustment in the GAC reconciliation. The KEDNY and KEDLI LAUF gas targets were updated to reflect the removal of the volumetric inactive account adjustment and removal of the 2014 data for KEDLI. The changes to the calculations of the factor of adjustment are now consistent with the recommendations contained in the Staff LAUF White Paper. The Joint Proposal is reasonable because the LAUF targets will incentivize the Companies to increase the efficiency of their systems and are consistent with the Staff Gas LAUF White Paper.

3.7 Revenue Decoupling Mechanisms

In litigation, the Companies proposed to modify the RDM calculation from a revenue per customer to a revenue per class mechanism because a revenue per customer mechanism provides an incentive for the Companies to attach new gas customers. The Companies proposed to modify the RDM for SC No. 1B – Residential Heat, SC Nos. 2 – Non-Residential and 3- Multiple Family, and expand the RDM to SC No. 1A – Residential Non-

¹¹¹ T. 2672, 2766.

¹¹² Id.

¹¹³ T. 2977.

¹¹⁴ T. 2974, 2842; Ex. 500.

Heat.¹¹⁵ Staff recommended that the RDM targets be updated based on the revenues and customer counts approved by the Commission in this proceeding.¹¹⁶

The Joint Proposal includes all of the Companies' proposals and updates the RDM targets based on the revenues associated with the sales forecasts underlying the Joint Proposal. The RDM provisions of the Joint Proposal are reasonable because they remove any benefit the existing revenue per customer RDM provides to the Companies to expand gas service. This can help address the capacity constraints in the Companies' service territories and aligns with the State's environmental goals.

3.8 System Benefits Charge

In testimony, the Companies proposed to expand the Systems Benefit Charge (SBC) to KEDNY SC Nos. 21–and 17-21 -Distributed Generation, KEDLI SC Nos. 17 and 5-17 –Distributed Generation, KEDNY SC Nos. 22 and 18-22 – Non-Firm Demand Response, and KEDLI SC Nos. 18 and 19–Non-Firm Demand Response as part of allowing these service classes to take advantage of energy efficiency programs.¹¹⁷ Additionally, the Companies sought to recover their energy efficiency program costs in base rates. Once those costs are moved into base rates, the SBC would only include the costs associated with Clean Energy Fund (CEF).¹¹⁸ Lastly, the Companies proposed to include any over-or under-recovery of energy efficiency program costs in the RDM reconciliations for SC Nos. 1A, 1B, 2, and 3 for both KEDNY and KEDLI.¹¹⁹

NYC supports non-firm customers participating in and paying for energy efficiency programs targeted to their needs as long as the Companies provide applicable programs and commit to outreach to the city and other non-firm customers.¹²⁰

Staff agrees with the Companies' proposal to move the energy efficiency program costs into base rates. Additionally, Staff agrees, in part, that energy efficiency program costs can

¹¹⁵ T. 2682, 2767.

¹¹⁶ T. 2971.

¹¹⁷ T. 2698, 2781.

¹¹⁸ T. 2698 – 2699, 2781.

¹¹⁹ T. 2699, 2783.

¹²⁰ T. 5556.

be recovered from the baseload DG customers, as long as the bill impacts are reasonable.¹²¹ However, Staff does not recommend that energy efficiency program costs be separately recovered from non-firm customers, as Staff recommended that non-firm customers' rates be based off of the otherwise applicable firm rates, which would already reflect energy efficiency program costs.

The Joint Proposal recommends that the energy efficiency costs associated with the Companies' NE:NY budgets and targets authorized for the rate period be recovered through base rates. Additionally, the Joint Proposal recommends eliminating the SBC surcharge entirely and establishes a process for making final reconciliations. Collecting energy efficiency costs through base rates is reasonable and aligns with the Commission's directive to shift energy efficiency costs into base rates.¹²² Eliminating the SBC surcharge is also reasonable because, with the energy efficiency costs collected through base rates, the Companies no longer need the Energy Efficiency Tracker component of the SBC and should treat energy efficiency reconciliations and lost revenues in the same manner as other elements of the base rates. In addition, as of January 1, 2021, gas companies no longer collect funds to contribute toward the New York State Energy Research and Development Authority (NYSERDA) programs.¹²³ Therefore, the CEF component of the SBC is no longer necessary.

Finally, the Joint Proposal allows non-firm customers to participate in the Companies' energy efficiency programs, but does not separately charge energy efficiency program costs to those customers. This is reasonable because the Joint Proposal recommends that the Companies charge non-firm customers volumetric block rates based on a discount on their otherwise applicable firm rate. Based on this, non-firm customers would be contributing to the Companies' energy efficiency program costs, since those costs are included in the rates charged to the otherwise applicable firm service classes' base rates.

¹²¹ T. 2982.

¹²² Case 15-M-0252, Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Energy Efficiency Portfolio Budgets and Targets for 2019-2020 (issued March 15, 2018).

¹²³ Case 14-M-0094, Clean Energy Fund, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016).

3.9 Paperless Billing Credit

In testimony, the Companies proposed to update the current paperless billing credits from \$0.35 to \$0.41 per bill for KEDLI and from \$0.49 to \$0.44 per bill for KEDNY.¹²⁴ Staff accepted the proposed update for KEDLI but recommended that a full year of data be used to update the paperless billing credit for KEDNY.¹²⁵ The Joint Proposal recommends the paperless billing credit for KEDLI and KEDNY be updated to \$0.41 and \$0.43 per month, respectively. This provision of the Joint Proposal is reasonable because it reflects a year of actual data on the enhanced paperless billing platform. It is, therefore, both more accurate to actual costs than the Companies' proposal and satisfies Staff's recommendation.

3.10 Gas Safety and Reliability Surcharge

In testimony, the Companies proposed to expand the Gas Safety and Reliability Surcharge (GSRS) to include a customer connections productivity incentive, as well as clarifying language regarding the recovery of incentives related to LPP removal, LPP productivity, and leak repair incentives currently allowed to be recovered through the GSRS.¹²⁶ Additionally, the Companies proposed to revise their tariffs to allow recovery through this surcharge of the costs of professional engineering certification, operator qualification and other similar programs necessary to fulfill pipeline safety requirements that may be finalized after rates have been set in these proceedings.

In testimony, Staff recommended continuing the GSRS, but terminating the LPP mileage incentive and removing it from the GSRS. Additionally, Staff recommended the addition of a new incentive to complete specific capital investments under budget, although that incentive requires further development. Staff recommended that, once developed any incentives earned through this new mechanism would be recovered through the GSRS. Lastly, Staff recommended rejecting the Companies' proposal to recover costs associated with pipeline safety requirements that may or may not be finalized after the Commission sets rates in these proceedings.¹²⁷

¹²⁴ T. 2705, 2788.

¹²⁵ T. 2952.

¹²⁶ T. 2692, 2775.

¹²⁷ T. 2985.

The Joint Proposal continues the GSRS with the recovery of the following: (1) incremental proactive LPP replacement costs up to 102% of the rate allowance unit cost; (2) any earned leak repair positive revenue adjustment (PRA); and (3) incremental leak repair costs. The Companies will not be permitted to recover any earned PRA for LPP removal through the GSRS. The Joint Proposal includes a provision that the Companies will work with interested parties to develop a new general capital efficiency incentive. This incentive would take effect in the first rate year after its approval by the Commission.

This provision of the Joint Proposal is reasonable because the GSRS should reflect the addition or removal of the related incentives to align with the Commission's goals. The recovery of costs associated with non-finalized pipeline safety requirement programs through GSRS is not included because the timing and costs for those programs are unknown and it would be premature to recommend recovery of those costs before having any idea or estimate of what they may be.

3.11 Merchant Function Charge

The Companies proposed to update its Merchant Function Charges (MFC) to reflect the Companies' pro-forma ECOS studies, updated forecasts and proposals from these cases.¹²⁸ The Companies proposed that the MFC targets should be based off a pro-forma ECOS study, and is more appropriate because it is forward looking and, therefore, the best estimate available of the revenue, expenses, and rate base in RY1.¹²⁹

Staff recommended using historic ECOS studies and basing the relevant MFC targets on those studies.¹³⁰ Furthermore, Staff recommended that the Companies update their MFC targets for the uncollectible rates and pre-tax weighted average cost of capital used by the Commission to set rates in these proceedings.¹³¹

The Joint Proposal reflects MFC targets updated for the historic ECOS studies, pre-tax weighted average cost of capital, and uncollectible rates used in the Joint Proposal. The monthly cost of gas forecast was updated for the most recent data. Additionally, the Joint

¹²⁸ T. 2677.

¹²⁹ T. 2832.

¹³⁰ T. 2943.

¹³¹ T. 2950.

Proposal states the commodity-related credit and supply procurement will convert from a fiscal year basis to GAC year starting September 1, 2021. This provision of Joint Proposal is reasonable because the MFC targets and monthly cost of gas forecast align with relevant other provisions of the Joint Proposal, which will result in the MFC rates reflecting consistent recent costs.

3.12 Delivery Rate Adjustment

In testimony, Staff recommended that the Companies create Delivery Revenue Adjustment (DRA) statements and include the statement in rebuttal.¹³² The Companies agreed to propose a draft DRA statement in rebuttal.¹³³ The Joint Proposal includes a draft DRA statement that will increase the transparency of the DRA by detailing each of the specific components in the statement. The DRA statements should make it easier for customers to understand each component that is included in the DRA. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

3.13 Consolidated Billing Fees

Based on the results of the ECOS studies, the Companies proposed to update the consolidated billing charge.¹³⁴ In addition, the Joint Proposal for RY2 states that the consolidated billing fee will be \$1.26 per bill instead of \$1.31 per bill due to (i) the reduction in the billing fee and (ii) a compressed period over which the total RY2 consolidated billing fee revenue will be collected. The rate reflected in the Joint Proposal is reasonable because it reflects the Companies' proposal, which Staff had no objections to because it was supported by the ECOS studies.

3.14 Miscellaneous KEDNY Fees

In litigation, KEDNY proposed to decrease the unproductive field visit fee from \$38.60 to \$31.74.¹³⁵ With regard to reconnection fees, KEDNY proposed to decrease the fee for reconnection at the meter from \$66.13 to \$53.89, and to increase the fee for reconnection at the

¹³² T. 2989.

¹³³ T. 2846.

¹³⁴ Ex. 134, Schedule 3; Ex. 150, Schedule 3.

¹³⁵ Ex. 134, Schedule 1, p. 2; Ex. 134, Schedule 2.

main from \$300 to \$500.¹³⁶ In litigation, Staff agreed with KEDNY's proposed fee changes as the proposed rates were based on actual costs.¹³⁷

The Joint Proposal recommends that KEDNY's fees for (i) unproductive field visits shall be \$31.74, (ii) reconnection at the main shall be \$500, and (iii) reconnection at the meter shall be \$53.89. The updated fees are reasonable as they reflect KEDNY's actual costs.

3.15 Miscellaneous KEDLI Fees

In litigation, KEDLI proposed to decrease the unproductive field visit fee from \$59.47 to \$47.14.¹³⁸ With regard to reconnection fees, KEDLI proposed to decrease the re-establishment fee from \$78.00 to \$74.39.¹³⁹ In litigation, Staff agreed with KEDLI's proposed fee changes as the proposed rates were based on actual costs.¹⁴⁰

The Joint Proposal recommends that KEDLI's fees for (i) unproductive field visits shall be \$47.14, (ii) reconnection/reestablishment at the meter be \$74.39, and (iii) Energy Services Companies (ESCOs)-initiated suspensions shall be \$74.39. These updated fees for KEDLI are reasonable as they reflect KEDLI's actual costs.

3.16 New York Facilities System

The Companies proposed to change the timing of the reconciliation period of the New York Facilities System from a calendar year basis, starting on January 1, to a rate year and fiscal year basis, starting on April 1.¹⁴¹ Staff accepted this proposal.¹⁴² The Joint Proposal is reasonable because the change in timing would align the reconciliation with the timing of costs included in base rates.

¹³⁶ Id.

¹³⁷ T. 2987.

¹³⁸ Ex. 150, Schedule 1, p. 2; Ex. 150, Schedule 2.

¹³⁹ Id.

¹⁴⁰ T. 2987.

¹⁴¹ T. 2675, 2759.

¹⁴² T. 2984.

3.17 Economic Development Discount Program Rates

In litigation, the Companies proposed to amend the economic development discount rate programs to better suit the needs of qualifying businesses.¹⁴³ KEDNY proposed to update its Area Development Rate to include current designated areas that better reflect economic development priorities, and KEDLI proposed to implement a similar Area Development Program. Both KEDNY and KEDLI proposed to update their Business Incentive Rates (BIR) to include qualifying tenant businesses locating or expanding in properties that receive benefits from an Industrial Development Agency.¹⁴⁴ In litigation, Staff recommended that KEDLI expand its BIR to include non-firm customers to align it with KEDNY.¹⁴⁵

The Joint Proposal recommends the adoption of all proposed changes by both Staff and the Companies. These modifications to the economic development discount rate programs are reasonable because they will benefit customers by expanding the scope of eligible customers and may result in additional businesses locating to the KEDLI and KEDNY service territories.

3.18 Natural Gas Vehicles

In litigation, KEDNY and KEDLI proposed to offer a program to their respective Natural Gas Vehicle (NGV) classes, SC No. 4A – Compressed Natural Gas and SC No. 9 – Natural Gas Vehicles where new customers could be interrupted during periods of peak demand.¹⁴⁶ Staff agreed with the proposal, as long as customers were only interrupted during a day's peak periods and the customer was capable of modifying the fueling profile for several days at a time.¹⁴⁷ The Companies clarified that the optional program would be negotiable with each customer depending on their need and fueling pattern.¹⁴⁸

The Joint Proposal recommends adopting the Companies' proposal to add an interruptibility option for new KEDNY and KEDLI NGV customers. This provision is

¹⁴³ T. 93 – 98.

¹⁴⁴ T. 95 – 97.

¹⁴⁵ T. 1502 – 1503.

¹⁴⁶ T. 2785.

¹⁴⁷ T. 2970.

¹⁴⁸ T. 2849.

reasonable as the optional program will allow the Companies to reduce peak usage and provide a benefit to all firm customers.

3.19 Electric Generation Rates

In testimony, LIPA proposed that KEDLI eliminate its Value Added Charge and Minimum Bill Obligation elements from its charges for services pursuant to SC-15 14, transportation service to electric generators.¹⁴⁹ In contrast, KEDLI stated that it was awaiting guidance regarding the appropriate charges for electric generators in Case 17-G-0011, which was initiated by the Commission to review the required tariff provisions and rate structure for non-core gas transportation service to electric generators. Until an order is issued in that proceeding, KEDLI does not believe any changes should be made.¹⁵⁰

The Joint Proposal recommends waiting for a Commission determination in Case 17-G-0011 prior to making any modifications to transportation service to electric generators. Further, the Joint Proposal states that, when such order is issued, the Companies will work with LIPA to implement any revised rates within three months of a Commission order requiring changes. The Joint Proposal is reasonable because modifications to rates charged for transportation service to electric generators should not be made prior to the Commission addressing the issues in Case 17-G-0011. Further, the Joint Proposal sets out a clear timeline for parties to work to implement changes after the Commission does address the issues presented in Case 17-G-0011.

3.20 Miscellaneous Tariff Changes

In litigation, the Companies proposed a number of miscellaneous tariff modifications.¹⁵¹ Staff recommended that the Companies continue to streamline their tariffs and perform a study to ensure that the customers are in the correct service classification¹⁵² The Companies only disagreed with Staff's recommendation to perform a study to ensure that customers are in the correct service classification.¹⁵³

¹⁴⁹ T. 5667.

¹⁵⁰ T. 3036.

¹⁵¹ T. 2687 – 2690, 2771 – 2772.

¹⁵² T. 2988.

¹⁵³ T. 2847.

The Joint Proposal recommends miscellaneous tariff changes, including but not limited to implementing a new EAM surcharge, clarification and revision to non-firm demand response service classifications, eliminating mid-year adjustments, offering interruptibility option for new NGV customers, and adding tariff language regarding the demand capacity surcharge mechanism. The tariff changes are reasonable as they either merely serve to effectuate other provisions of the Joint Proposal, clarify existing provisions in the tariff, or remove adjustments that are not needed. Also, the Joint Proposal states that the Companies will file tariff revisions to streamline the general information sections of their tariffs in a matter consistent with the recommendations filed by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) in Case 20-G-0381. Streamlining the tariffs is beneficial as it should provide administrative benefits to the Companies, Niagara Mohawk, and Staff. It can also provide greater transparency for customers.

3.21 Green Gas Tariff

In litigation, the Companies proposed to implement a Green Gas Tariff that would allow customers the option to choose a tiered level of renewable natural gas (RNG) at a flat rate per month for residential customers and either a flat rate or percentage of monthly consumption for non-residential customers.¹⁵⁴ Family Energy, Inc., an energy services company, opposed the Companies' proposal. Family Energy, Inc. identified a number of concerns that the Companies' Green Gas Tariff proposal could result in the Companies utilizing monopoly resourced in a manner that would impact the competitive supply market and stifle competition.¹⁵⁵ Staff initially expressed support for the Companies' Green Gas Tariff proposal.¹⁵⁶ However, after reviewing the concerns of Family Energy, Inc.'s concerns, Staff agreed that there are a number of issues that should, at the very least, be thoroughly examined before the Companies be allowed to move forward with their Green Gas Tariff proposal. Therefore, Staff recommended that the Companies' Green Gas Tariff proposal be rejected at this time.¹⁵⁷ The Joint Proposal recommends precluding the Companies from implementing their proposed Green Gas Tariff

¹⁵⁴ T. 56 – 57.

¹⁵⁵ Cases 19-G-0309 and 19-G-0310, supra, Comments of Family Energy, Inc. (filed September 24, 2019), p.1.

¹⁵⁶ T. 4017.

¹⁵⁷ Staff Initial Brief, p. 192.

during the term of the rate plan. The Joint Proposal is reasonable as the Companies' Green Gas Tariff proposal at a minimum requires further development before it could be appropriately considered in a future proceeding.

3.22 Demand Capacity Surcharge Mechanism

Beginning in RY2, the Companies will be allowed to implement the Demand Capacity Surcharge Mechanism to collect the costs associated with the portfolio of solutions identified in Sections 3.22.1, 3.22.2, and 3.22.3, below. The specific programs and project costs allowed to be recovered through this mechanism are those related to the incremental efficiency programs, incremental demand response programs, and the Long-Term Capital Capacity Projects. The Demand Capacity Surcharge Mechanism provides a necessary cost recovery mechanism for these programs outside of base rates. This mechanism is necessary because of the nature of the projects or programs. For example, the energy efficiency and demand response programs may experience potential delays in implementation or fluctuation of costs. Additionally, cost recovery for the Long-Term Capital Capacity Projects is subject to the Companies' attainment of certain metrics, and an additional engineering assessment of need by a consultant. The projects and programs that are ultimately implemented and for which costs are recovered through this mechanism benefit firm customers due to the increased system reliability that they provide to ensure that peak demand requirements of firm gas customers can be met during cold weather events.

3.22.1 Energy Efficiency

The Joint Proposal allows the Companies to implement the energy efficiency targets and budgets already authorized by the Commission in the 2020 NE:NY Order more rapidly than the Commission's previously identified schedule. Moving these energy savings and associated cost recovery forward in time will allow the Companies to make use of the already-approved budgets and energy efficiency savings targets to help manage their system capacity needs. To the extent that the Companies spend more on energy efficiency measures than is reflected in base rates, the Joint Proposal allows the Companies to recover such incremental energy efficiency costs through the Demand Capacity Surcharge Mechanism. The Joint Proposal allows the Companies to begin recovery of such incremental energy efficiency costs after a filing made during RY2. Based on that initial filing, the Companies would be allowed to recover 50%

of the expected costs during the following one-year period. The Companies would make a similar filing for the subsequent one-year period. In that subsequent one-year period, the Companies would be able to recover the remainder of the actual costs incurred during the first year, and 50% of the costs forecast for the next year. This process would continue in subsequent years.

The Joint Proposal sets caps on the amount of energy efficiency program costs that the Companies could recover through the Demand Capacity Surcharge Mechanism. The Caps are capped at the total amount of the 2019-2025 energy efficiency budgets approved by the Commission in the 2020 NENY Order, less the previously recovered amounts and less the NE:NY budget amounts reflected in base rates. These Company-specific caps would be modified in the event that the Commission authorizes additional funding as a result of the NE:NY interim review expected to occur in 2022. In addition, the Joint Proposal requires the Companies to make annual filings that will describe the energy efficiency programs for which the Companies are seeking cost recovery, and request incremental resources, including incremental internal labor and/or contractors, needed to implement such Commission-approved incremental energy efficiency programs. The filings are required at least 150 days prior to the Companies' intended start dates to ensure that the Commission has ample time to issue proposals for comment and consider whether the incremental energy efficiency programs requested in the filings should be undertaken and made eligible for cost recovery.

The Joint Proposal provides for the ability to move energy efficiency savings and associated cost recovery forward in time to allow the Companies to make use of these already-approved programs to manage their system capacity needs. The Joint Proposal also provides a venue for the Companies to request additional resources if needed to ensure effective operation of the programs. The 50/50 split between forecast and as-incurred cost recovery will allow the Companies to expend the required incremental funds without significant impact on their already-stretched cash-flows, and without burdening customers with recovery of the full forecasted amounts when such amounts may not ultimately be spent during the proposed time period. For these reasons the terms of the Joint Proposal are reasonable and should be adopted.

3.22.2 Demand Response

The Joint Proposal allows the Companies to continue operating capacity-based demand response programs (differentiated from the distribution-level demand response programs discussed in Section IV.7.3 of the Joint Proposal). This provision of the Joint Proposal allows the Companies to recover the costs of these capacity based demand response programs using the same 50/50 split between recovery on a forecast-basis and an as-incurred-basis as described in Section V.3.22.1 for incremental energy efficiency costs through the Demand Capacity Surcharge Mechanism. The Joint Proposal establishes annual maximum recoverable amounts for each Company for RY2, RY3, and the Stayout Period. The Joint Proposal requires the Companies to make annual filings with the Commission describing the demand response programs that will be implemented for the upcoming winter heating season, and thereafter file annual reports detailing the operations of such programs in accord with a recent Commission order regarding the Companies demand response programs.¹⁵⁸ The Joint Proposal allows the Companies to continue using a valuable tool to help them manage their capacity issues with appropriate checks and balances, opportunities for stakeholder input and Commission approval. The Joint Proposal is reasonable and should be adopted.

3.22.3 Long-Term Capacity Projects

See Section 5.3, below, for a complete discussion of the Long-Term Capital Capacity Projects and their use of the Demand Capacity Surcharge Mechanism.

3.23.4 Operation of the Mechanism

Under the terms of the Joint Proposal, the Demand Capacity Surcharge Mechanism will be included as a component of the DRA, with specific cost allocation and recovery methodologies separately tailored to recover the costs of the energy efficiency, capacity-related demand response, and Long-Term Capital Capacity Projects being recovered through the mechanism. Specifically, the Joint Proposal allocates applicable demand response program and Long-Term Capital Capacity Projects costs to all firm customers based on peak daily sendout. Applicable energy efficiency costs will be allocated to all firm and non-firm

¹⁵⁸ Cases 20-G-0086 and 20-G-0087, KEDNY and KEDLI- Tariff Filing to Establish Firm Demand Response Program, Order Directing Implementation Plan Filing, Annual Reporting, and Tariff Modifications (issued October 15, 2020).

service classifications, with further allocations of residential program-related costs being allocated to residential customers, and commercial and industrial program-related costs being allocated to all firm and non-firm non-residential service classifications. The Joint Proposal's operation of the Demand Capacity Surcharge Mechanism and allocation of applicable costs to service classifications comports with the Commission's long-held reliance on the "Beneficiaries Pay" Principle, and is therefore reasonable and should be approved.

3.23 Next Base Rate Filing

This section of the Joint Proposal includes two requirements for the Companies next base rate filings. First, the Companies commit to meeting with Staff prior to the filing to discuss options for normalizing data prior to commencing the Ogive process. This provision is reasonable because it aims to avoid unnecessary disputes regarding underlying data during the next rate proceedings. Second, the Companies commit to providing, for informational purposes, ECOS studies that classify distribution main costs as 100% demand-related. This provision is reasonable because it commits the Companies to providing data in their next rate proceedings of interest to other parties and that will contribute to a complete record in those future proceedings.

4. Cost of Capital, Computation and Disposition of Excess Earnings

4.1 Earnings Report

By August 31 of each year, commencing in 2021, the Companies will file their earnings reports using the methodology described below in this Section and shown in Appendix 5 of the Joint Proposal.

4.2 Discrete Incentives and Revenue Adjustments

There are a number of discrete incentives, amounts previously in excess of earnings thresholds, and negative and positive revenue adjustments that are excluded from the calculation of the Companies' ROE calculation because these items are not directly related to regulated gas earnings. Including them in the ROE calculations would improperly interfere with these incentive mechanisms. Accordingly, this provision is reasonable.

4.3 Earnings Sharing Mechanism

The Joint Proposal proposes Earnings Sharing Mechanisms (ESM) as described below. In order to both incentivize the Companies to find and employ efficiencies in their business operations and to protect customers if the Companies' earnings are greater than allowed, the proposed ESM allows customers and shareholders to share earnings attributable to an achieved ROE in excess of 9.30%. Under the ESM, the actual earned ROE will be calculated on an annual basis for each Rate Year of the rate plan commencing April 1, 2020. Earnings for each Rate Year will be measured individually, and any overearnings that are owed to customers will be placed in a deferred credit account for future disposition to be determined by the Commission. In the event of a partial or "stub" period, the earnings sharing threshold of greater than 9.30% will be prorated to develop a stub period earnings sharing threshold. The stub period earnings will be calculated by adjusting the actual average rate base for that period by an operating income ratio factor. The operating income ratio factor will be calculated as the ratio of operating income during the same partial period in the previous Rate Year to the total operating income for that Rate Year. The operating income ratio factor adjustment is necessary and reasonable because it addresses the impact of seasonality of the Companies' sales given that their earnings could be depressed in the stub period which is between the end of the Rate Plan (March 31, 2023) and the beginning of the rate year under a new rate plan.

The common equity ratio to be used in the calculation of the achieved ROE will be the 48% used to develop the cost of capital in the Joint Proposal. To avoid any potential disagreement regarding the earnings sharing computation, the Joint Proposal also provides that the calculation of individual ROEs shall exclude the effects of discrete incentives, amounts previously in excess of earnings threshold, and negative and positive revenue adjustments. An example of the calculation for the ESM is shown in Appendix 5 to the Joint Proposal.

The ESM provides four distinct tiered bands beginning with a 50 basis point "deadband" (first band) above the 8.80% allowed ROE (from 8.80% to 9.30% earned ROE) within which additional earnings will be retained by the Companies. The 50 basis point deadband is reasonable given that it is within the range of other ESM deadbands approved in recent cases, and is designed to give the Companies every incentive to cut costs and retain all of the initial savings. Examples of other recent ESMs include the 2018 Niagara Mohawk Rate

Order,¹⁵⁹ which established a threshold 50 basis points above the authorized ROE of 9.0%; the 2019 O&R Rate Order,¹⁶⁰ which established a threshold 60 basis points above the authorized ROE of 9.0%; the 2020 Con Edison Rate Order, which established a threshold 50 basis points above the authorized ROE of 8.80% and the 2020 NYSEG and RG&E Rate Order, which established a three-tiered deadband thresholds 20 basis points, 30 basis points, and 40 basis points above the authorized ROE of 8.80% in the first, second, and third rate years, respectively.

Under the Joint Proposal, the second band, in which earnings will be split equally between customers and shareholders, covers earnings above 9.30% and up to 9.80%. A third band, with 75% of earnings allocated to customers and 25% to shareholders, commences above 9.80% and up to 10.30%. Finally, in the fourth band, all earnings above 10.30% would be shared 90%/10% between customers and shareholders. The Companies will use 50% of their portion of shared earnings within the third and fourth bands identified above to reduce regulatory assets (i.e., deferred balances to be recovered from customers) related to Site Investigation and Remediation.

This ESM proposal provides distinct benefits. The first band would provide the Companies an incentive to pursue additional productivity gains. The second tiered band continues to provide the incentive to the Companies, while allowing customers to share in efficiency gains. The third and the fourth tiers provide a safeguard for the Commission and ratepayers against any potentially excessive overearnings by the Companies attributable to unanticipated large forecasting errors in revenue and expenses or unforeseen events. The provision for the earnings sharing mechanism will continue beyond the Rate Plan until modified by the Commission or until the Companies' rates are reset in a subsequent rate proceeding, thus assuring customers of a share of any efficiency gains beyond the Rate Plan.

ESMs are a critical part of multi-year rate plans adopted by the Commission. In this instance, the Joint Proposal's ESM provides the Companies with a strong incentive to minimize costs and improve efficiencies. It also allows customers to share in the financial benefits of the Companies' endeavors to improve efficiencies, while ensuring that the Companies

¹⁵⁹ Cases 17-E-0238 and 17-G-0239, Niagara Mohawk – Electric & Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 15, 2018) (2018 Niagara Mohawk Rate Order).

¹⁶⁰ Case 18-E-0067 and 18-G-0068, O&R – Electric & Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 14, 2019).

do not receive a windfall. The threshold is set at a point whereby the Companies can earn a fair return over the term of the Joint Proposal, while providing incentives to improve efficiencies and prevent overearnings to the detriment of customers. In addition, the ESM may result in lower expenses in the Companies' next rate filing because it incents management to expend efforts to deploy efficiencies in business operations.

4.4 Cost of Capital

The Joint Proposal's revenue requirements for KEDNY are based on overall pre-tax rates of return of 7.95%, 7.83%, and 7.83% or after-tax rates of returns of 6.34%, 6.22% and 6.22% for RY1, RY2, and RY3, respectively.¹⁶¹ The revenue requirements for KEDLI are based on overall pre-tax rates of return of 7.93%, 7.85%, and 7.82%, or after-tax rates of return of 6.32%, 6.24%, 6.21% for RY1, RY2, and RY3, respectively.¹⁶² The overall rate of return for each company is premised upon an ROE of 8.80%, a 48.0% common equity ratio, and a customer deposit rate of 0.90%. However, the Joint Proposal's weighted average cost of debt is different for KEDNY and KEDLI. Specifically, the weighted average cost of debt for KEDNY is 4.12%, 3.88% and 3.87% for RY1, RY2 and RY3, respectively and for KEDLI it is 4.06%, 3.92% and 3.85% for RY1, RY2, and RY3, respectively.¹⁶³

For RY1, in litigation, the Companies requested an overall pre-tax rates of return of 8.53% for KEDNY and 8.51% for KEDLI that utilized a 48.0% common equity ratio and a 9.65% ROE for both companies. However, the Companies requested a 10.15% ROE consisting of a 9.65% base ROE plus a 50 basis point stay-out premium if the rate case is settled with a four-year multi-year rate plan. Also, the Companies requested an incremental increase in the common equity ratio to 49% in RY2, 50% in RY3, and 50% in the proposed RY4 resulting in an overall after-tax rates of return of 7.00%, 7.06% 7.13% and 7.15% for RY1 through the proposed RY4, respectively, for KEDNY; and 6.98%, 7.07%, 7.15% and 7.14% for RY1 through the proposed RY4, respectively, for KEDLI.¹⁶⁴ The Companies asserted that the rationale for the ROE and the common equity ratio request was to maintain KEDNY's and KEDLI's then-current

¹⁶¹ Joint Proposal, p.10 – 11.

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ T. 5206 – 5207, 5230 – 5231.

credit ratings of “A3” and “A-” because further downgrades would negatively impact the Companies’ credit quality and cost of borrowings.¹⁶⁵ However, on November 10, 2020, Moody’s Investors Service (Moody’s) downgraded KEDNY’s ratings one notch to “Baa1” from “A3” while maintaining KEDLI’s rating at “A3” with a negative outlook. Similarly, on March 3, 2021, Standard and Poor’s (S&P) downgraded both Companies’ issuer credit rating by one notch to “Baa1” from “A-” with a stable outlook.

In litigation, Staff recommended a pre-tax rate of return of 7.58%, or an after-tax rate of return of 6.08%, for RY1 for KEDNY, predicated upon a cost of debt of 4.14%, an ROE of 8.20%, and a customer deposit rate of 2.45%. For KEDLI, Staff recommended a pre-tax rate of return of 7.54%, or an after-tax rate of return of 6.04% for RY1, predicated upon a cost of debt of 4.06%, an ROE of 8.20%, and customer deposit rate of 2.45%.¹⁶⁶

The Joint Proposal’s overall rates of return are reasonable for two reasons. First, the Joint Proposal’s overall rates of return produce credit metrics that, when combined with the business risk profiles of the Companies, produce overall financial parameters consistent with the Companies’ current credit ratings.

Second and perhaps most importantly, the Joint Proposal’s overall rates of return align with the Commission’s current ratemaking goals and efforts as seen in recent decisions,¹⁶⁷ related to minimizing rate increases during the current difficult economic environment caused by the COVID-19 pandemic. Specifically, the overall rates of return are likely to generate enough revenue for the Companies to provide affordable, safe, secure, and reliable utility services to customers and an opportunity to earn a fair and reasonable return on their prudent investments.

4.4.1 Cost of Equity

The 8.80% ROE proposed in the Joint Proposal is greater than Staff’s 8.20% litigated position because of the higher risk inherent in a multi-year rate plan and an increase in

¹⁶⁵ Id.

¹⁶⁶ T. 3091.

¹⁶⁷ 2020 NYEG and RG&E Rate Order, p. 65. See also, Cases 17-E-0238, et al., Niagara Mohawk – Electric & Gas Rates, Order Postponing Approved Electric and Gas Delivery Rate Increases and Updated Reduction to the Low Income Discount Credit and Temporarily Waiving Certain Tariff Fees (issued March 25, 2020), p. 4.

the cost of equity as these cases have progressed. The cost of equity, as measured by Staff's ROE model, has increased since Staff filed its testimony in August 2019. For example, in the New York American Water Company Inc. merger and acquisition case, Staff filed a testimony in October 2020 testifying to an 8.65% ROE for a one-year rate plan. Similarly, in May 2021, Staff filed a testimony recommending an 8.75% ROE for a one-year rate plan in the ongoing electric and gas rate cases regarding O&R.¹⁶⁸ As a multi-year rate proposal, the Rate Plan proposed in the Joint Proposal poses more business and financial risk to the Companies than would a one-year rate plan, and as such investors reasonably require higher returns for locking up their investment for an extended period of time.

A higher ROE is warranted for a three-year rate plan because the Companies are subject to additional financial risk that economic conditions could change such that their actual cost of capital would increase during the term of the rate plan. Furthermore, by locking in expense forecasts for three years, the Companies have additional business risk, considering the potential for higher operating costs than those forecasted, a consequence which is further magnified in successive years. For instance, the Companies could be exposed to additional business risk of high bad debt or other expenses related to the COVID-19 pandemic.

The Joint Proposal's ROE reflects a balancing of all the concessions made among the signatory parties. The proposed 8.80% ROE is 85 basis points lower than the Companies' requested 9.65% ROE for a one-year rate plan or 135 basis points lower than the Companies' requested 10.15% ROE for their proposed multi-year rate plan. At the same time, the Joint Proposal's recommended ROE reasonably and equitably reflects the current economic conditions as well as the additional business and financial risks inherent in a three-year rate plan. Further, the Joint Proposal's 8.80% recommended ROE is reasonable because it is comparable to the ROEs authorized by the Commission in recent cases. For instance, the three-year rate plan embodied in a joint proposal adopted by the Commission in the 2020 NYEG and RG&E Rate Order provided for an ROE of 8.80%. Moreover, as recent as May 20, 2021, the Commission approved an 8.80% ROE for Corning Natural Gas Corporation in a litigated case regarding a

¹⁶⁸ Cases 21-G-0073 and 21-E-0074, O&R – Gas and Electric Rates, Testimony of Staff Finance Panel (filed May 28, 2021), p. 10.

one-year rate plan¹⁶⁹ compared to the 8.80% ROE in the Companies' three-year rate plan in this Joint Proposal.

4.4.2 Cost Rate of Incremental Debt

For KEDNY, the Joint Proposal's overall cost of debt for the rate plan reflects the weighted average cost of outstanding long-term debt as well as projected 2.40% and 3.20% interest rates for planned 10-year and 30-year senior unsecured debt issuances in RY1 and RY3, respectively. These result in a weighted cost of debt of 4.12%, 3.88% and 3.87% for RY1, RY2, and RY3, respectively. KEDNY planned to issue \$400 million of 10-year fixed-rate long-term debt near the end of RY1, although still needed, this issuance has been delayed, and a 30-year, \$500 million debt obligation in RY3. In litigation, KEDNY projected interest rates for these planned debt issuances of 3.83% and 4.46%,¹⁷⁰ respectively, which resulted in projected weighted average costs of debt of 4.14%, 4.11% and 4.11% for RY1 through RY3, respectively. Staff testified to debt costs for RY1 only, and recommended a 3.24%¹⁷¹ interest rate for KEDNY's projected \$400 million debt issuance.

Similar to KEDNY, the Joint Proposal's overall cost of debt for KEDLI reflects the weighted average cost of its outstanding long-term debt as well as a projected 3.20% interest rate for its planned \$400 million, 30-year senior unsecured debt issuance in RY2. These result in the Joint Proposal's recommended weighted costs of debt of 4.06%, 3.92%, and 3.85% for RY1, RY2, and RY3, respectively. KEDLI has no plans to issue any new long-term debt during RY1 and RY3. Given that KEDLI had no plans to issue new debt in RY1, Staff accepted KEDLI's 4.06% embedded cost of existing debt capital for RY1 in litigation.

The Joint Proposal's proposed cost rates for incremental debt are reasonable given the current and expected interest rate environment during the Rate Plan. According to the April 2021 Mergent Bond Records publication, the monthly average yield for "BBB+/" "Baa1" long-term utility bonds is 3.48% and an implied 10-year utility bond yield is 2.82%. These are higher than the debt rates recommended by the Joint Proposal for similar forecasted issuances.

¹⁶⁹ Case 20-G-0101, Corning Natural Gas Corporation - Gas Service, Order Approving Gas Rate Plan (issued May 20, 2021).

¹⁷⁰ T. 5216.

¹⁷¹ T. 3129.

The Joint Proposal's recommended cost rates for the Companies' planned debt issuances are also reasonable because most Federal Reserve officials expect to try and maintain rates at their current level through 2023.¹⁷²

5. Capital Investment Levels and Operations and Maintenance

The initial capital plans proposed by the Companies represented significant investments in the systems that focused on traditional pipeline solutions and assumed the NESE project would be in service during RY1.¹⁷³ Changes to the initial capital plan were necessitated through the case by factors including the NESE project not being constructed, the settlements in Case 19-G-0678 to lift the moratorium on new gas connections, the COVID-19 pandemic, and consideration of feedback from stakeholders in this case to minimize investments in natural gas infrastructure. In the Companies' second supplemental testimonies, which assumed the NESE project would not be in service, and also incorporated impacts of the settlement agreement in Case 19-G-0678, the Companies requested total capital investments of \$2.649 billion for KEDNY and \$1.590 billion for KEDLI over the three Rate Years.¹⁷⁴ The Joint Proposal recommends total capital investments of \$1.775 billion for KEDNY and \$1.157 billion for KEDLI over the three Rate Years.¹⁷⁵ This equates to a decrease in the total capital investment plan of \$1.307 billion, or \$874 million for KEDNY and \$433 million for KEDLI, from the Companies' litigation positions. The significant reductions to the capital investment plans include adjustments to reflect the feedback from stakeholders to minimize natural gas capital investments, and the need to minimize rate increases due to the impacts of the COVID-19 pandemic.

5.1 Commitment to Non-Pipe Alternatives

In their initial testimony, the Companies proposed to implement NPAs.¹⁷⁶ The Company's proposals included a definition of NPA projects, screening criteria for traditional

¹⁷² Wall Street Journal, Fed Holds Steady on Interest Rates, Bond Purchases, published April 28, 2021.

¹⁷³ T. 4349.

¹⁷⁴ T. 4563 – 4566; Ex. 369, Schedule 1, p. 2; Ex. 369 Schedule 2, p. 2.

¹⁷⁵ Joint Proposal, Appendix 1, Schedule 5, p. 2; Joint Proposal, Appendix 2, Schedule 5, p.2, Total Direct Gas (Net of Cost of Removal).

¹⁷⁶ T. 143.

infrastructure to be considered for development as an NPA, eligibility requirements for resources to participate in an NPA project, a shareholder incentive mechanism, NPA project cost and incentive cost recovery mechanisms, and reporting requirements.¹⁷⁷ In initial testimony, Staff agreed with the Company's NPA-related proposals with the exception of the shareholder incentive mechanism.¹⁷⁸ With respect to the shareholder incentive mechanism, Staff recommended that instead of approving the shareholder incentive mechanism proposed by the Company, the Commission should allow the Companies to file a petition for an appropriate shareholder incentive mechanism concomitantly with the Implementation Plan for the Company's first NPA project.¹⁷⁹ In rebuttal testimony, the Companies agreed that a proposed NPA-related shareholder incentive mechanism should be presented at the time NPA proposals are presented with their proposed implementation plans.¹⁸⁰

The Joint Proposal requires the Companies to make evaluations of possible NPAs as a standard item prior to proceeding with the construction of new or replacement gas transmission and distribution infrastructure. The Joint Proposal recommends allowing the Companies to defer the costs of LPP-related NPAs. The Joint Proposal is reasonable because it implements evaluation and implementation of alternative solutions to traditional gas projects that are found to provide greater benefits to customers into the gas planning process while maintaining the reliability of the gas network and advancing the State's energy policy goals. The topic of NPAs is also addressed in significant part below in Section 7.5.

5.2 Capital Investment Levels

In their initial filing on April 30, 2019, and in their corrected and updated filing on July 3, 2019, the Companies assumed the NESE project would be in service.¹⁸¹ In their supplemental filing on June 11, 2019, the Companies modified their capital investment budgets to remove the impact of the NESE project.¹⁸² In their second supplemental filing on December 13, 2019, the Companies again updated their capital investment budgets to incorporate

¹⁷⁷ Ex. 49.

¹⁷⁸ T. 616.

¹⁷⁹ Id.

¹⁸⁰ T. 205.

¹⁸¹ T. 4349.

¹⁸² T. 4353.

the impacts of the Commission's November Order in Case 19-G-0678, which required that the Companies lift the moratorium on new gas connections.¹⁸³ KEDNY requested a total capital investment of \$796.609 million in RY1, \$922.716 million in RY2, \$929.421 million in RY3, and \$946.964 million in the stay-out period.¹⁸⁴ KEDLI requested a total capital investment of \$540.391 million in RY1, \$529.155 million in RY2, \$520.787 million in RY3, and \$544.090 million in the stay-out period.¹⁸⁵

In its supplemental testimony, Staff updated its recommended capital budgets to reflect the impact of the settlement terms adopted in Case 19-G-0678 accordingly and recommended a total capital investment of \$723.231 million for KEDNY and \$459.674 million for KEDLI in RY1.¹⁸⁶

For KEDNY, the Joint Proposal recommends a total capital investment of \$517.404 million in RY1, \$651.977 million in RY2, \$606.075 million in RY3, and \$710.143 million in the stay-out period. For KEDLI, the Joint Proposal also recommends a total capital investment of \$340.303 million in RY1, \$430.227 million in RY2, \$386.212 million in RY3, and \$432.940 million in the stay-out period.¹⁸⁷ The level of capital investment recommended in the Joint Proposal balances the economic needs of customers due to the impacts of the pandemic with necessary investments in the system to maintain safe and reliable service. Acknowledging the economic burdens brought on by the COVID-19 pandemic, the capital investment levels have been significantly decreased where possible while still allowing the Companies to maintaining system integrity and reliability. The Joint Proposal also reflects lower LPP targets and lower forecasts for City State Construction. Finally, as explained in Section 5.3, below, certain Long-Term Capital Capacity Projects were removed from base rates to encourage the Companies to pursue energy efficiency, demand response, electrification referrals and NPAs and to allow for an additional review of the reliability need for these projects.

¹⁸³ T. 4562.

¹⁸⁴ T. 4563; Ex. 369, Schedule 1, p. 2.

¹⁸⁵ T. 4563; Ex. 369; Schedule 2, p. 2.

¹⁸⁶ T. 4712; Ex. 526, pp. 3, 7.

¹⁸⁷ Joint Proposal Appendix 1 Schedule 5, p. 2, Joint Proposal, Appendix 2, Schedule 5, p. 2, Total Direct Gas (Net of Cost of Removal).

5.3 Long-Term Capital Capacity Projects

This section is focused on the Companies' proposed infrastructure resources to meet peak demand. Staff understands that new infrastructure is not the only type of resource that can help to meet projected peak demand. Other sections of the Joint Proposal commit the Companies to pursue energy efficiency and demand response efforts to help decrease peak demand.

The Companies have a duty to ensure the safety, adequacy and reliability of their systems and provide service to customers that request it. On November 26, 2019, the Commission approved a settlement agreement between the Companies and DPS Staff in Case 19-G-0678 in which the Companies agreed to lift the moratorium on new customer connections for at least the next two winters; *i.e.*, through September 1, 2021. When the Companies' moratorium was lifted, customers that requested but were denied new or additional natural gas service due to the moratorium began to be connected to the gas distribution system, resulting in associated increases in peak demand. The Companies have continually provided evidence that there is a need for increased supply resources to meet the growing peak demand on their systems.¹⁸⁸

The Companies' peak demand projections, which support the need for the Long-Term Capital Capacity Projects, are illustrated by the Companies' updated peak day supply/demand chart included in Ex. 394. The forecasted customer demands are also shown in the chart titled "Downstate NY Peak Day Supply/Demand Balance,"¹⁸⁹ and in Attachment 2 to the Companies response to interrogatory (IR) DPS-286.¹⁹⁰ The Companies also quantified the supply needs forecast of firm customers in a filing made in Case 20-G-0131.¹⁹¹ Notably, the Companies provided forecasts similar to those they generally provide as part of the Department's annual winter supply review of all major gas utilities, in the Long-Term Capacity Supplemental

¹⁸⁸ Historical demand growth is also evident in the customer sales forecasts contained in Ex. 401; Ex. 402.

¹⁸⁹ T. 3880.

¹⁹⁰ The response to IR DPS-286 is included in Appendix 1 to this Initial Statement.

¹⁹¹ See, Companies response to IR AGREE-007, included in Appendix 2 to this Initial Statement, which refers to the Companies' July 17, 2020 filing in Case 20-G-0131: "Supply and Demand Analysis Related to Service Areas with Known Supply Constraint Vulnerabilities."

Report filed in Case 19-G-0678.¹⁹² Thus, the Companies have consistently and recently developed forecasts demonstrating a need for additional resources to meet projected peak demand.

In their April 2019 testimony, the Companies proposed several capital projects that they asserted were required to maintain system reliability, including: (1) LNG – Vaporizers 7 & 8 Replacement for KEDNY; (2) the LNG – Truck Load/Unload Station; (3) the Elmhurst Reliability Project; (4) Riverhead Transmission Main; (5) Southeast Suffolk Infrastructure – Phase 1 & 2; and (6) Northwest Nassau Transmission Main & Control Valve – Phase 3 for KEDLI. Each of these proposed projects is addressed next.

In its initial testimony, KEDNY proposed the replacement of LNG vaporizers number 7 and 8. These are two of six submersible combustion vaporizers at the Greenpoint LNG Plant that vaporize the stored LNG into gas, which is then injected into the Company’s gas transmission system. These vaporizers have been in service for approximately 40 years, and the Company asserts that the vaporizers’ present condition necessitate replacement to ensure continued operability of the LNG plant at existing levels.¹⁹³ Additionally, in its initial testimony, KEDNY proposed a new truck loading/unloading station. This truck station was identified as a component of the Greenpoint Flood Study and would provide the capability to transfer LNG in the event of an unplanned outage or emergency at the liquefaction unit.¹⁹⁴

KEDNY stated in its initial testimony that the Elmhurst Reinforcement and Reliability project is required to support an increase in forecasted customer demand in the 2nd Ward of Queens, including at LaGuardia Airport. The project involves the creation of an interconnect that can be used to prevent outages in the event of a system emergency. Further, the project will reduce KEDNY’s dependence on supply from Con Edison.¹⁹⁵

¹⁹² See, Figure 3: Comparison of Downstate NY Forecast Natural Gas Demand and Existing Supply, 2021-2035. Cases 19-G-0678, Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, KEDNY and KEDLI, Long-Term Capacity Supplemental Report (filed May 8, 2020), p. 10.

¹⁹³ T. 4323.

¹⁹⁴ T. 4331, Ex. 62.

¹⁹⁵ T. 4319.

The Companies state that the Riverhead Transmission project and the Southeast Suffolk project are required to support new customer demand in eastern Long Island.¹⁹⁶ The Companies state that Riverhead Transmission Main project will address low system pressures in the east and north of Riverhead, New York due to an existing 124 psig distribution system being insufficient to support increasing customer demand.¹⁹⁷ The Southeast Suffolk project addresses the need to meet local peak customer demand, in order to avoid a limited moratorium in the eastern region of KEDLI's eastern service area, south of Riverhead, New York.¹⁹⁸ The demand response and energy efficiency programs deployed in eastern Long Island may reduce and delay the timing of these projects; however, depending on participation rates and requests for service, these projects may be needed to meet customers' supply and reliability needs in those areas.¹⁹⁹

The Northwest Nassau Transmission project is a three-phase transmission reliability project that was included in the 2016 Rate Cases to address three aging natural gas transmission lines in northwestern Nassau County. KEDLI proposed replacing and down rating these three transmission pipelines to increase reliability. At the time of the April 2019 filing, KEDLI reported that phase one was completed and construction of phases two and three would need to be delayed due to the lack of municipal permits.²⁰⁰

In their second supplemental filing, the Companies proposed the following additional capital investment projects: (1) CNG – Glenwood Injection Facility Upgrade; (2) CNG – 3rd Site Barrett; (3) CNG - 4th Site Inwood; (4) CNG – Fill Station Staten Island; (5) Portable LNG Permitting, and Site Work; and, (6) LNG – Greenpoint Vaporization Expansion (13 and 14).²⁰¹ Items one through four on this list relate to the expanded deployment of portable CNG injections to maintain system pressure during peak conditions. The Companies' proposed multiple new capital investment projects to meet both the additional gas demand requirements of the added customers and their projected demand needs of future customers, with consideration of

¹⁹⁶ T. 4569.

¹⁹⁷ T. 4439.

¹⁹⁸ T. 4422.

¹⁹⁹ T. 4422, 4439.

²⁰⁰ T. 4272.

²⁰¹ T. 4567 – 4575.

winter system reliability from potential pipeline delivery shortfalls, such as a compressor station outage.

This plan included expanding the Glenwood CNG facility to double its capacity, and adding two additional CNG injection facilities, a third at Barrett, and a fourth at Inwood.²⁰² The Companies stated that, in conjunction with the aforementioned CNG facility upgrades and additions, a CNG filling station would be required on Staten Island. This station would allow trucks to be filled with CNG for transportation to both KEDLI's and KEDNY's CNG injection sites.²⁰³

At the same time, items five and six on the above list are upgrades to the existing Greenpoint LNG facility, which the Companies asserted would also help ensure they can meet peak demand of existing and new customers. First, the Companies proposed a new portable LNG facility that would allow LNG to be delivered via truck to on-system injection points. Second, the Companies proposed to add two additional vaporizers, 13 and 14. The Companies stated that these are needed to support forecasted increased customer demand beyond the 2020/2021 winter.²⁰⁴

Staff reviewed the Companies plans for what are now referred to as the "Long-Term Capital Capacity Projects," both those from the Companies' initial filings in these cases, and those included in supplemental filings.²⁰⁵ Staff supported including those investments to enable the Companies to continue providing safe and adequate service, and ensuring they can continue to meet peak customer demand.²⁰⁶ In its Reply Brief, Staff recommended that, because of the Companies' evolving Long-Term Capacity Report and the new Gas Planning Proceeding in Case 20-G-0131, the Commission should require KEDLI to pause work on Phase 3 of the Northwest Nassau Transmission project until such time that all of the supply options have been vetted.²⁰⁷ Outside of this exception, Staff noted in its Reply Brief, that it continued to support the remaining Long-Term Capital Capacity Projects.

²⁰² T. 4570 – 4571.

²⁰³ T. 4571.

²⁰⁴ T. 4574 – 4575.

²⁰⁵ T. 4712.

²⁰⁶ T. 4728 – 4729.

²⁰⁷ Staff Reply Brief, p. 38.

In litigation, SEP generally opposed gas infrastructure capital investment, including the CNG and LNG projects.²⁰⁸ SEP asserted that any investment in gas infrastructure or expansion would be inconsistent with the goals of the CLCPA.²⁰⁹ SEP proposed that the Companies meet peak customer demand solely through incremental investments in beneficial electrification, and demand response programs.²¹⁰

As a means to address the concerns of various stakeholders, including SEP, the Joint Proposal recommends that the costs of the Long-Term Capital Capacity Projects, which include pipeline reliability, CNG, and LNG projects to meet customers' peak demand, not be included in forecasted plant in service during the term of the rate plan. Instead, the Joint Proposal provides for an additional, incremental review of the need for the projects prior to allowing the Companies to recover the carrying costs of the projects through the Demand Capacity Surcharge Mechanism. Furthermore, to ensure that the Companies are investing in energy efficiency and demand response at a level needed to help alleviate the Companies' capacity constraints, the Joint Proposal recommends a unique mechanism whereby the Companies must meet certain energy efficiency, demand response and electrification referral goals (See the discussion of the Capital Demand Metrics in Section 5.3.2, below) prior to being able to recover some or all of the Long-Term Capital Capacity Projects' carrying costs. To that end, the Joint Proposal prioritizes implementing energy efficiency and demand response programs to moderate customer demand over building new infrastructure.

However, Staff recognizes the need for a reasonable backstop to ensure that the Companies' approximately 1.9 million customers have reliable heating service in the middle of winter. System reliability would be at risk if the Companies do not have adequate means to meet customers' peak demand on cold days. If such peak demand events were to occur without adequate supply and system capacity, the Companies would have to curtail customers connected to parts of its gas network to maintain minimum pressures required for safe and reliable service on the remaining portions. Once curtailed, customers may be without the gas service they rely on for heat for a number of days, as the process to restart gas service safely is time consuming. Such an outcome must be avoided.

²⁰⁸ T. 5676, 5678 – 5679, 5686, 5690 – 5692; SEP Initial Brief, pp. 11 – 12.

²⁰⁹ T. 5677 – 5678, 5690-5692; SEP Initial Brief, pp. 11 – 12; SEP Reply Brief, pp. 4 – 5.

²¹⁰ T. 5678.

New customer service requests, usage per customer, and the economic recovery all influence the gas system's anticipated peak demand. Customers must be partners in achieving gas usage reductions, but demand response programs for firm gas customers are not as time-tested as analogous electric programs. It will take time and real-world experience to assess the reliability of such demand response programs in order to rely on them for peak day forecasts. Additionally, for energy efficiency programs to decrease peak demand, it requires not just money, but also customer cooperation and available physical and human resources.

Accordingly, each of these Long-Term Capital Capacity Projects provide reasonable backstops to ensure the Companies can meet continued peak gas demand of both new customers and existing gas customers. These projects may be necessary to ensure system reliability for firm customers on peak winter heating days if energy efficiency and demand response programs do not curb peak demand in a short-enough timeframe.

Although Staff supported rate recovery for these projects, with the exception of MRI Phase 5 and the Northwest Nassau Transmission Main & Control Valve – Phase 3 Project, Staff supports the Joint Proposal's recommendation to subject all of the Long-Term Capital Capacity Projects to an additional review by a consultant independent of the Companies. This consultant will conduct an engineering assessment and file a report of its findings as to whether the projects, on an individual basis, are necessary to ensure that the Companies' gas systems can reliably meet peak customer demand. This incremental review addresses stakeholders concerns regarding the need for these projects. It provides an additional check, incremental to the rate case process already conducted, to ensure the Companies are not installing infrastructure unless it is truly needed to serve customers.

5.3.1 Metropolitan Reliability Infrastructure (MRI) Project Phase 5 – KEDNY Only

In the 2016 Rate Cases,²¹¹ KEDNY proposed the Metropolitan Reliability Infrastructure (MRI) project.²¹² The MRI project was designed as an operational loop to the Brooklyn backbone system consisting of approximately 34,000 feet of 30-inch, 350 psig transmission main from Linden Boulevard in Brownsville to Maspeth Avenue in Greenpoint.

²¹¹ Cases 16-G-0058 and 16-G-0059, KEDLI and KEDNY – Gas Rates (filed January 29, 2016) (2016 Rate Cases).

²¹² 2016 Rate Cases, KEDNY Book 4 (filed January 29, 2016), p. 82.

KEDNY planned to construct the project in multiple phases. At that time, the forecast for the MRI project was \$45.46 million in the calendar year 2017, \$86.54 million in calendar year 2018 and \$56.72 million in calendar year 2019.²¹³ KEDNY expected the MRI project to be in service before the 2020/21 winter season.²¹⁴

In the 2016 Rate Cases, KEDNY explained that the purpose of the MRI project is to: (1) provide the downstate New York gas system with increased reliability by decreasing reliance on any deliveries of gas to individual gate stations by improving the ability to move gas from both the Narrows and the Lower New York Bay Lateral to any point across the transmission system, which reduces the dependence on gas from Con Edison at Newtown Creek; (2) allow the Brooklyn Backbone transmission system to be taken out of service for safety work, while still maintaining gas operations; (3) enhance the effectiveness (*i.e.*, prevent disrupting service to thousands of customers) of remote controlled valves on the transmission system by better isolating the transmission system; and (4) allow for higher operational distribution system pressures to facilitate the retirement of LPP by replacing lower pressure cast iron mains with higher pressure distribution plastic mains and to storm harden the distribution system.²¹⁵

On May 20, 2016, the Staff GIOP submitted its testimony in the 2016 Rate Cases and did not make an adjustment to the MRI project.²¹⁶ Also in the 2016 Rate Cases, the NYC Gas Infrastructure Panel filed testimony, which described that the MRI project is a proposal to loop the Brooklyn Backbone to reduce the dependency on gas transfers from Con Edison. Because additional supply was not the critical driver for the MRI project, NYC recommended the timing of the project be extend to reduce the pressure on rates.²¹⁷ The joint proposal adopted by the 2016 Rate Order included the MRI project, with an altered schedule to reduce the rate impact to customers, and identified the projected capital expenditures for the project of \$46.82 million in calendar year 2017, \$61.69 million in calendar year 2018 and \$56.72 million in

²¹³ 2016 Rate Cases, KEDNY Book 4, (filed January 29, 2016), p 135; Exhibit __ (GIOP-1).

²¹⁴ 2016 Rate Cases, KEDNY Book 2 C&U (filed April 4, 2016), p. 6.

²¹⁵ 2016 Rate Cases, KEDNY Book 4, Exhibit __ (GIOP-4) (filed January 29, 2016) p. 75.

²¹⁶ 2016 Rate Cases, Staff GIOP Testimony (filed May 20, 2016), p. 41; Exhibit __ (SGIOP-1), p. 81.

²¹⁷ 2016 Rate Cases, NYC Gas Infrastructure Panel Direct Testimony (filed May 20, 2016), p. 28.

calendar year 2019. Thus, after the review of the project in the 2016 Rate Cases, the MRI project was allowed to move forward.²¹⁸

In Cases 19-G-0309 and 19-G-0310, the Companies' provided testimony explaining that the MRI project was included in the previous KEDNY rate case as a major gas system reliability project. KEDNY stated MRI Phase 1 and Phase 2 were on track to be completed by the end of calendar year 2019. MRI Phase 3 and Phase 4 were pending construction and expected to be in service before the 2020-2021 winter heating season. KEDNY stated that the MRI project would be completed according to plans regardless of whether NESE is in service. The forecast to complete the MRI project was approximately \$63.9 million in FY 2020, \$100.0 million in the RY1 and \$25.6 million in RY2.²¹⁹

In the KEDNY's C&U filing, KEDNY provided an update for the MRI project. KEDNY adjusted MRI Phase 4 and Phase 5 such that \$75 million in costs originally included in MRI Phase 4 for RY1 were split into \$35.426 million for MRI Phase 4 and \$39.574 million for MRI Phase 5 in RY1.²²⁰ In the Companies' second supplemental filing, KEDNY stated that the MRI project must be accelerated by one year to provide hydraulic system support for enabling new customer connections over the next few winters.²²¹ In litigation, Staff initially agreed with the acceleration of the MRI project to meet new customer connections.²²² However, in the Reply Brief Staff modified this position, and advocated for completion of MRI Phase 1 through Phase 4 only. Staff explained that they were almost entirely complete and placing them in service would provide reliability and safety benefits.²²³ At the same time, Staff recommended that the Commission require KEDNY to pause work on MRI Phase 5 until such time that all of options have been vetted.²²⁴

²¹⁸ In addition to calendars years 2017-2019, an additional \$54.05 million of capital expenditures was projected for calendar year 2020. 2016 Rate Order, Attachment 1 (Joint Proposal) Appendix 1, Schedule 5, p. 1.

²¹⁹ T. 4280.

²²⁰ T. 4371.

²²¹ T. 4567.

²²² T. 4725.

²²³ Staff Reply Brief, p. 36.

²²⁴ Staff Reply Brief, p. 37.

In testimony, SEP opposed the MRI project because it claimed to expand or extend the life of gas infrastructure goes against climate science as well as city and state climate law to dramatically reduce greenhouse gas emissions. SEP advocated an immediate halt to construction for the MRI project.²²⁵

At the time the Joint Proposal was filed, MRI Phase 1 through Phase 4 have been completed and placed in service. Additionally, KEDNY constructed approximately 1,400 feet of MRI Phase 5 near the beginning of RY1; however, none of MRI Phase 5 has been placed in service. Reflecting this and other considerations, the Joint Proposal recommends different treatment for MRI Phase 5 and MRI Phase 1 through Phase 4.

With regard to MRI Phase 1 through Phase 4, they provide the following benefits: looping the Brooklyn Backbone to provide the ability to do safety work; allows for more refined transmission system isolation using remote controlled valves; and allows for more efficient use of CNG in peak periods (not at the Greenpoint Facility).²²⁶ MRI was proposed in the 2016 Rate Cases, and MRI Phase 1 through Phase 4 were constructed in accord with the plans proposed at that time. Thus, it is reasonable and appropriate to include the costs of MRI Phase 1 through Phase 4 in rate base. However, in recognition of stakeholder concerns raised in these proceedings, the Joint Proposal recommends halting any further construction on MRI Phase 5 at this time. If KEDNY seeks to pursue completing MRI Phase 5, the Joint Proposal recommends requiring KEDNY to submit a petition setting forth the rationale for completing MRI Phase 5, and the report of an independent consultant regarding the need for MRI Phase 5. The Joint Proposal recommends explicitly prohibiting KEDNY from moving forward on MRI Phase 5 unless and until KEDNY files such a petition, and the Commission takes action on said petition.

5.3.2 Capacity Demand Metrics

The Joint Proposal ties the Companies' ability to fully recover the costs of the Long-Term Capital Capacity Projects to their ability to meet or exceed certain Capacity Demand Metrics. The Joint Proposal implements five Capacity Demand Metrics, some of which are effective during the entire term of the Rate Plan while others would only be effective during RY2 and RY3. If and to the extent that KEDNY or KEDLI fails to meet one or more of the Capacity

²²⁵ T. 5676 – 5677, 5687 – 5689.

²²⁶ Ex. 735.

Demand Metrics in a Rate Year, the affected Company's recovery of costs for the Long-Term Capital Capacity Projects will be reduced as discussed in Section 5.3.3, below.

The five Capacity Demand Metrics are: (1) Energy Efficiency; (2) Demand Response; (3) Non-Pipes/Third Party Solutions; (4) Electrification; and, (5) Leak-Prone Pipe – NPAs. For the Energy Efficiency Capacity Demand Metric, the Companies must meet targets set by the Commission in the 2020 NE:NY Order, at a schedule as modified and approved by the Commission as a result of the Companies' annual Demand-Side Management Filings (discussed in Section V.7.5). The Energy Efficiency Capacity Demand Metric will be in place for the remainder of the Rate Plan, i.e., until the Commission next sets base rates for the Companies.

For the Demand Response Capacity Demand Metric, the Companies must meet or exceed baseline levels of customer participation in its capacity-based demand response program (discussed in Section 3.22.2). The baseline level for the capacity-based demand response program set by the Joint Proposal is set based on an annual 10% escalation of historical participation levels in such program between November 1, 2020 and March 31, 2021. The Demand Response Capacity Demand Metric will be in place for the entirety of the Rate Plan.

The Non-Pipes/Third Party Solutions Capacity Demand Metric requires the Companies to annually issue at least one request for proposals (RFP) seeking non-traditional, cost-effective solutions in lieu of traditional peak supply sources. The Joint Proposal requires the Companies to report on the results of such RFPs as part of their annual Capacity Project filings with the Commission. The Non-Pipes/Third Party Solutions Capacity Demand Metric will be in place for RY2 and RY3.

The Electrification Capacity Demand Metric requires the Companies to work with Con Edison and LIPA to refer an annual minimum number of prospective customers to electrification programs operated by those utilities. Specifically, over the course of the four-year period from 2021 through 2024, the Companies must refer over 1,500 would-be gas customers to the Con Edison or LIPA electrification programs, and report their progress annually. The Joint Proposal requires the Companies to meet with Staff and other interested parties to develop referral materials, and thereafter provide revised draft materials reflecting feedback of the parties. The Electrification Capacity Demand Metric will be in place for RY2 and RY3.

The Leak-Prone Pipe – NPAs Capacity Demand Metric requires that the Companies annually identify at least five segments of LPP in each of the Companies' service

territories that could be abandoned if all customers' natural gas loads are met with cost-effective NPA projects. For each section of LPP identified, the Joint Proposal requires that the Companies must either consider an NPA alternative to implementing an LPP-replacement project or otherwise demonstrate that abandonment of such section of LPP is not possible. While any sections of LPP replaced by an NPA solution in this way will count toward the Companies' minimum amounts of LPP required to be replaced, such NPA projects will not be eligible for shareholder incentives under any NPA incentive mechanism pursuant to the Joint Proposal. The Leak-Prone Pipe – NPAs Capacity Demand Metric will be in place for RY2 and RY3.

The Capacity Demand Metrics are intended to ensure that the Companies take aggressive actions to promote energy efficiency, demand response and electrification and seeking to offset the need for additional gas supply infrastructure through non-traditional solutions. The Capacity Demand Metrics set reasonable targets which strike the balance of requiring aggressive action by the Companies and being achievable. The Capacity Demand Metrics established in the Joint Proposal are reasonable and should be approved.

5.3.3 Cost Recovery Through The Demand Capacity Surcharge Mechanism

Only if the Companies meet their Demand Capacity Metrics will they be permitted to defer and recover carrying costs associated the Long-Term Capital Capacity Projects through the Demand Capacity Surcharge Mechanism. For capacity projects placed in service in RY1 – beginning in RY2, the Companies must meet the targets for the shareholder-funded demand response and energy efficiency programs proposed in Case 19-G-0678 for the winter of 2020/2021, as described in the Companies' summary document updated as of June 23, 2020, in that proceeding. For capacity projects placed in service in RY2 and RY3, the Companies must pass an independent consultant's review of the project and meet the Capacity Demand Metrics.

If the Companies fail to meet one or more of the Capacity Demand Metrics (described in Section 5.3.2, above), the recovery of the carrying charges will be reduced. For RY1, the Companies' recovery of Long-Term Capital Capacity Projects will be reduced by 50% if they fail to achieve the Energy Efficiency Capacity Demand Metric, 25% if they fail to achieve the Demand Response Capacity Demand Metric, and a further 25% if they fail to meet either of those two metrics. For RY2 and RY3, the Companies' recovery of Long-Term Capital Capacity

Projects will be reduced by 25% if they fail to achieve the Energy Efficiency Capacity Demand Metric; 15% each if they fail to meet the Demand Response, Non-Pipe/Third Party Solutions, Electrification, or Leak-Prone Pipe NPAs Capacity Demand Metrics; and a further 15% if they fail to meet any of the five Capacity Demand Metrics.

The Joint Proposal reflects a reasonable compromise between the litigation positions taken by various stakeholders to limit capital investments and prioritizes energy efficiency, demand response programs, electrification referrals and NPAs over building new infrastructure. The Joint Proposal is reasonable because failure to deliver on these metrics limits the Companies' recovery of costs incurred to construct capital investments. Furthermore, the structure of the incentives for the Demand Capacity Surcharge Mechanism encourages the Companies to meet all of the Capacity Demand Metrics in place for a given year, instead of creating tradeoffs among multiple metrics whereby the Companies might choose to pursue one outcome to the detriment of others. Moreover, the Long-Term Capital Capacity Projects will be subject to an additional round of scrutiny, by a consultant independent of the Companies, to assess the need for the Long-Term Capital Capacity Projects. These provisions are unique and reasonable, particularly given stakeholder positions in these proceedings.

5.3.4 Continuation of the Demand Capacity Surcharge Mechanism

This section of the Joint Proposal merely specifies that the Demand Capacity Surcharge Mechanism is unique to these proceedings, and that there is no presumption that it will continue in subsequent rate proceedings. Additionally, this section clarifies that the Companies must still meet applicable Capacity Demand Metrics in order to recover, in whole or in part, the costs of the Long-Term Capital Capacity Projects after RY3, until the Commission next sets base rates for the Companies. Accordingly, this explanatory provision is reasonable and should be adopted.

5.3.5 Reporting Requirements

This section of the Joint Proposal merely requires quarterly reports regarding the Companies' performance under the Capacity Demand Metrics. Such reports will make the Companies' actions transparent, and are thus reasonable.

5.4 Use of NRA Balances to Fund Certain Programs

In its initial filing, Staff proposed that incurred negative revenue adjustments (NRAs) be utilized to offset specific gas safety-related programs. The Joint Proposal recommends that existing NRAs of approximately \$5.288 million be utilized to offset the following program costs: enhanced residential methane detection; and instrument and regulation control line survey and GPS mapping.²²⁷ Utilizing incurred NRAs to offset gas safety-related program costs not only enhances public safety by improving upon the Companies' efforts but mitigates the incremental cost that customers would otherwise experience for the programs. Thus, this provision of the Joint Proposal is reasonable and should be adopted.

5.5 Capitalization Changes

In litigation, the Companies proposed to remove the 50-foot threshold and capitalize all main installation activities regardless of length.²²⁸ Staff agreed with this proposed change because there was no specific need for the 50-foot threshold.²²⁹ The Joint Proposal recommends adoption of this capitalization change.²³⁰

5.6 Capital Reporting

In litigation, the Companies did not propose any changes to the existing capital reporting requirements, whereas Staff recommended capital reporting requirements on both an annual and quarterly basis. Staff recommended annual reporting requirements prior to the start of each Rate Year to include the companies' approved five-year capital plans, LPP prioritization summaries to identify the proposed projects and costs, and an inventory of Type 3 leaks. Staff recommended quarterly reports during each Rate Year including capital expenditure variance reports with explanations of variances, LPP mileage retirement updates, and Type 3 leak repair and inventory updates. Staff also recommended annual reporting at the end of each Rate Year to summarize capital expenditure variances, provide explanations of variances beyond 10%,

²²⁷ Joint Proposal, p. 52.

²²⁸ T. 4327, 4468.

²²⁹ T. 4687.

²³⁰ Joint Proposal, p. 53.

provide project update narratives for ongoing and new projects, and provide sanction papers for new projects.²³¹

The Joint Proposal recommends capital reporting requirements aligned with Staff's recommendations.²³² These reporting requirements are reasonable because they enable transparency with respect to the Companies' spending levels, construction progress, leak repair progress and inventory, and LPP prioritization and progress.

5.7 Low Pressure Main Valve Installations

In their initial filings, KEDLI and KEDNY proposed to install shut-off valves approximately every 1,000 feet on low-pressure mains in conjunction with their LPP removal programs.²³³ In its initial filing, Staff supported of the Companies efforts but recommended that this program be offset by incurred NRAs.²³⁴

The Joint Proposal recommends funding through rates and not offset by incurred NRAs. Further the Joint Proposal recommends requiring that the Companies file, by December 31, 2021, an analysis to determine locations, other than through the LPP removal program, where low-pressure main valves should be installed.²³⁵ This recommendation is reasonable due to the wholistic approach required by the analysis and report, rather than the focused approach initially proposed by the Companies. This benefits the safety of the natural gas system as a whole and ultimately customers and residents of the Companies' service territories.

5.8 Service Line Proceeding

In their initial filings, KEDLI and KEDNY referenced Case 14-G-0357²³⁶ as the basis for more frequent leakage surveys and corrosion inspections. Accordingly, the Companies proposed additional operating and maintenance expenses; incremental field inspectors; and incremental capital funding to replace services.²³⁷

²³¹ T. 4705 – 4708.

²³² Joint Proposal, p. 53.

²³³ T. 3739 – 3740.

²³⁴ T. 4088 – 4089.

²³⁵ Joint Proposal, p. 54.

²³⁶ Case 14-G-0357, In the Matter of Gas Pipeline Safety Regulations, Memorandum and Resolution Adopting Gas Safety Regulation Amendments (issued April 2, 2015).

²³⁷ T. 3722.

In its initial filing, Staff supported the enhancements to the Companies service line inspection programs. Staff proposed that the Companies complete inside service line inspections during their normal course of business and during dedicated visits;²³⁸ file a procedure by which they will apply a penalty for non-cooperative customers; and utilize the collected penalties to offset program costs.²³⁹ In their rebuttal filings, KEDLI and KEDNY stated that they will consider using the funds collected through the penalty mechanism to offset program costs.²⁴⁰

The Joint Proposal recommends requiring the Companies to file a procedure, within 90 days of a Commission Order in this proceeding, by which they will establish penalties to be assessed to customers that do not cooperate with inside service line inspections. Further, the Joint Proposal recommends using the amounts recovered through the assessment of such penalties to offset program costs. Finally, the Joint Proposal recommends that the Companies coordinate these inspections with other activities whenever reasonably feasible.²⁴¹

As a result of Case 14-G-0357, both KEDLI and KEDNY are now required to inspect service lines to the outlet of each customer's meter, or at the connection to a customer's piping, whichever is further downstream. Therefore, additional funding is required to complete these inspections. The provision for applying penalties to non-cooperative customers acts as a deterrent and is intended to improve access-related issues. Thus, this recommendation is reasonable and should be adopted.

5.9 Research and Development

This provision of the Joint Proposal requires the Companies to file a plan, within 90 days after the issuance of a Commission order adopting the terms of the Joint Proposal. The plan will explain how the Companies will work to develop advanced utility detection devices for residential methane detection. This provision will help to advance the safety of residential customers and is therefore reasonable.

²³⁸ T. 4102.

²³⁹ T. 4103.

²⁴⁰ T. 3822.

²⁴¹ Joint Proposal, p. 54.

5.10 Local Law 152

New York City Local Law 152 (Local Law 152), requires owners of many buildings in New York City to perform periodic inspections of their buildings' natural gas piping. The inspections required by Local Law 152 would include examinations for atmospheric corrosion and testing for leakage. The natural gas piping inspected under Local Law 152 would include the inside piping that, due to the recent change in the definition of a service line, the Companies must inspect.²⁴²

In litigation, the Companies expressed disappointment that the NYC Department of Buildings (DOB) rules were written in a manner that precluded coordination with the Companies for inside service line inspections.²⁴³ The Companies stated that it should not be assumed any efforts to coordinate these inspections would be fruitful. Thus, the Companies budgeted for independently conducting inside service line inspections.²⁴⁴

In litigation, NYC stated that the Companies' inside service line inspections and the DOB rules are not duplicative; that two independent inspections may bolster safety; that it is inappropriate to suggest that NYC "ought to incorporate the New York and Federal operator qualification requirements;" and that the DOB may revisit the inspection cycle upon completion of at least one full cycle of periodic inspections.²⁴⁵

In litigation, Staff explained the three differences between the inside service line inspections required of the Companies and the DOB rules. First, the training and qualifications required for those conducting inspections is different.²⁴⁶ Second, the Companies are required to inspect tenant spaces, e.g., apartments, whereas the DOB rules do not require inspections of tenant spaces.²⁴⁷ Third, the timeframes of both inspections do not align. The DOB requires that their inspections be completed once every five calendar years. The Commission's regulations require either annual, three-year, or five-year inspections depending on where the service is located.²⁴⁸ Staff stated that there would not be benefits from both building owners and the

²⁴² T. 4104.

²⁴³ T. 3759.

²⁴⁴ T. 3835.

²⁴⁵ T. 5380.

²⁴⁶ T. 4105.

²⁴⁷ T. 4106.

²⁴⁸ T. 4107.

Companies conducting separate, overlapping inspections of the same inside piping. If a single inspection can be done to satisfy both requirements, that seems to be in the best interests of NYC, the Companies, and customers, be they residents or building owners. Accordingly, Staff recommended that the Companies continue to work with the DOB to further align the requirements of the service line inspections; file a plan on how they will encourage building owners to use qualified plumbers that can conduct inspections that meet the requirements of both Local Law 152 and the pipeline safety regulations; conduct an education campaign to explain to building owners the benefits of having a single inspection performed. Finally, Staff recommended that the Companies' request for rate recovery of the required inspections be allowed.

The Joint Proposal recommends that the Companies conduct their inside service lines independently of those required by the NYC DOB and Local Law 152. In addition, the Joint Proposal recommends requiring the Companies to file a petition, within 90 days of a Commission order adopting the terms of the Joint Proposal, providing for a pilot program for alternative re-inspection internals. The Companies' petition should include incentives to third parties to perform survey and/or inspection work in residential rental spaces on behalf of the Companies or explain why such incentives would not be feasible or cost of effective.²⁴⁹

The Joint Proposal's recommendations are reasonable because they ensure that the required inside service line inspection programs are properly funded until such time that the differences between the Commission's pipeline safety regulations and those of the DOB and Local Law 152 can be resolved allowing for streamlined inspections. Accordingly, these recommendations should be adopted.

5.11 Residential Methane Detection Programs

In litigation, KEDLI and KEDNY proposed to distribute Residential Methane Detectors, or RMDs, to customers and to enhance their customer education and outreach efforts.²⁵⁰ KEDLI and KEDNY stated that they would only be providing the RMD units, not installing, tracing, or supporting the RMD units once they have been provided to customers.²⁵¹

²⁴⁹ Joint Proposal, p. 55.

²⁵⁰ T. 3746.

²⁵¹ T. 3828.

In litigation, NYC expressed concern with customers properly installing, maintaining, and using the RMD units.²⁵² NYC stated that false positives could place unnecessary burdens onto its emergency resources.²⁵³ Further, NYC proposed that the Companies test each RMD unit for functionality twice each year and that the distribution of RMD units be coordinated with that of AMI meters.²⁵⁴

In litigation, Staff supported the distribution of RMD units. Further, Staff recommended that the RMD distribution program target customers with room meter sets, low income customers, multi-unit dwellings, and customers served by two- and four-inch cast iron piping. Finally, Staff recommended that the Companies be required to file annual reports detailing deployment strategies and costs to date.²⁵⁵

The joint proposal recommends that the Companies file an annual report, within 90 days of the end of each Rate Year, detailing their deployment strategies for RMD units and the costs that have been incurred to date.²⁵⁶ The use of RMDs directly benefits those customers who install, maintain, and utilize the units. Ideally, RMD units would communicate directly with the Companies' infrastructure for early detection. However, due to the Companies current infrastructure limitations, communication is not yet available. Regardless, RMD units can still benefit customers. Accordingly, this recommendation is reasonable and should be adopted.

5.12 Relocation of Inside Gas Meters

In testimony, Staff proposed that the Companies move meters outside whenever they perform service line replacements, either by insertion or direct burial, or service transfers.²⁵⁷ The Companies agreed with the safety benefits of relocating meters outside but preferred to avoid specific requirements at this time to pursue ongoing discussions with the New York City, Staff, and the DOB.²⁵⁸

²⁵² T. 5428.

²⁵³ T. 5429.

²⁵⁴ T. 5431.

²⁵⁵ T. 4099.

²⁵⁶ Joint Proposal, p. 55.

²⁵⁷ T. 4110.

²⁵⁸ T. 3836.

The Joint Proposal recommends parameters for the relocation of inside gas meters and recommends that the Companies be required to file annual reports by April 1 regarding the prior calendar year's efforts. Finally, the Joint Proposal requires the Companies to attempt to facilitate discussions with Staff and NYC related to issues that are occurring and working to reach mutually agreeable resolutions.²⁵⁹

The primary benefit of relocating meters outside is safety, as outside meters are inherently safer than inside meters. In the event of an emergency, utility personnel and/or emergency responders can quickly shut off the flow of gas at an outside meter without entering the building and without having to locate the curb valve. An additional benefit is that the facility does not require access to the premises to perform inspections. Thus, this recommendation is reasonable and should be adopted.

5.13 Pipeline Emergency Responders Initiatives and First Responder Training

In litigation, Staff proposed that the Companies adopt the principles of the Pipeline Emergency Responders Initiative, or PERI; conduct regular drills with local fire departments and municipalities; and file annual reports detailing its progress.²⁶⁰ The Joint Proposal recommends that the Companies be required, beginning in RY2, to adopt the principles of PERI; conduct regular drills; file annual reports detailing their progress; and implement their revised first responder training program.²⁶¹

Continual efforts to train first responders benefit customers and the public in general by reinforcing the knowledge required to respond to an incident, to review actions first responders should take, and those to avoid, and to educate first responders on how to safely operate certain field devices. Also, the Companies should be required to participate in PERI to train fire departments on how to prevent and management pipeline incidents. Thus, the Companies efforts as they related to PERI and first responders are reasonable and should be adopted.

²⁵⁹ Joint Proposal, p. 56 – 57.

²⁶⁰ T. 4096.

²⁶¹ Joint Proposal, p. 57 – 58.

5.14 City State Construction Program

In litigation, the Companies requested \$279.773 million for KEDNY²⁶², and \$10.878 million for KEDLI²⁶³ to support their respective City State Construction programs in RY1. Staff recommended \$255 million for KEDNY and \$7.131 million for KEDLI.²⁶⁴

The Joint Proposal recommends \$224.084 million, \$265.002 million, \$269.830 million, and \$287.226 million for KEDNY in RY1, RY2, RY3, and the stay out period, respectively.²⁶⁵ The joint proposal also recommends \$8.158 million, \$11.119 million, \$11.341 million, and \$11.568 million for KEDLI in RY1, RY2, RY3, and the stay out period, respectively.²⁶⁶ The investment levels set forth in the Joint Proposal for the City State Construction programs are reasonable because they reflect lower levels of construction work experienced by both Companies in RY1 due to economic impacts of the COVID-19 pandemic. The Joint Proposal also reflects decreases in RY2 and RY 3 for KEDNY due to the uncertainty associated with the return to normal spending levels in NYC. As this provision reflects the most recent information available, it is reasonable and should be adopted.

5.15 Green Infrastructure Efforts

In this provision of the Joint Proposal, the Companies commit to work with NYC on a process for protecting NYC's green infrastructure assets. This provision encourages cooperation to protect green infrastructure assets. Accordingly, it is reasonable and should be adopted.

5.16 Leak-Prone Pipe Algorithm

The Joint Proposal recommends that, where LPP segments have equal risk rankings, priority will be given to removing LPP in designated flood zones; and that methane flow rate data will be considered as a factor in prioritizing LPP removals.²⁶⁷ As discussed in Section 10.1, below, the removal of LPP in general is reasonable as it improves public safety and

²⁶² Ex. 369, Schedule 1, p. 1.

²⁶³ Ex. 369, Schedule 2, p. 1.

²⁶⁴ Ex. 526, p. 1, p. 5.

²⁶⁵ Joint Proposal, Appendix 1, Schedule 5, p.1.

²⁶⁶ Joint Proposal, Appendix 2, Schedule 5, p.1.

²⁶⁷ Joint Proposal, p. 58.

reduces fugitive methane emissions. Thus, considering methane flow rate data in prioritizing LPP removal advances New York's climate goals. Additionally, this provision will enhance the risk ranking algorithms by placing added emphasis on flood zones, due to their inherent risks. Thus, this recommendation is reasonable and should be adopted.

5.17 Enhanced High Emitter Methane Detection Program

The Joint Proposal recommends that the Companies develop an enhanced high emitter methane detection program; hire an advanced leak detection contractor to aid in prioritizing for repair large emitting leaks within high concentration areas; and commence advanced leak surveying within 12 months of Commission order adopting the terms of the Joint Proposal.²⁶⁸

As discussed in Section 10.2, below, the leak management metric is reasonable and should be adopted due to the decreased threat to public safety and reduced methane emissions that will be realized. By focusing the Companies' efforts on repairing larger emitting leaks and conducting more surveys using advanced leak detection technology, there will be increased benefits to public safety and further reductions to methane emissions. Thus, this recommendation is reasonable and should be adopted.

5.18 Leak Detection Pilot Program

In litigation, KEDLI and KEDNY proposed to continue exploring limited use of Cavity Ring-Down Spectroscopy, or CRDS, technology to enhance its leak repair programs; to use CRDS technology in high leak concentration areas to aid in leak repair prioritization; and to work with EDF, on the advancement and evaluation of CRDS technology.²⁶⁹ In turn, EDF proposed that the leak detection pilot program be expanded to include the Companies entire service territory.²⁷⁰ Staff supported the use of CRDS-like technologies,²⁷¹ but noted that CRDS-

²⁶⁸ Joint Proposal, p. 58 – 59.

²⁶⁹ T. 3309.

²⁷⁰ T. 5582 – 5614.

²⁷¹ T. 4116.

like technologies are not yet approved in New York.²⁷² Further, Staff recommended an annual reporting requirement.²⁷³

The Joint Proposal recommends that the Companies continue to collaborate with EDF on programs to deploy advanced leak detection technology.²⁷⁴ The research and development efforts associated with advanced leak detection technology benefit customers and the public in that more leaks are discovered and remediated, and there are less fugitive methane emissions. Thus, this pilot program is reasonable and should be adopted.

5.19 Buried Vent Lines

In litigation, KEDLI and KEDNY proposed to systematically address buried vent lines within their service territories.²⁷⁵ This was the result on an incident KEDNY experienced where a buried vent line was found to be corroded. The corroded buried vent line could have contributed to an over pressure event due to freezing water in the regulator.²⁷⁶ The Companies reiterated that they have identified and addressed buried vent lines for years during their regular course of operations and maintenance.²⁷⁷

The pipeline safety regulations require that each buried or submerged pipeline installed after July 31, 1971, must be protected against external corrosion, must have an external protective costing meeting the requirements of 16 NYCRR §255.461, and must have a cathodic protection system designed to protect the pipeline in its entirety, installed and placed in operation within one-year after completion of construction. In litigation, Staff confirmed that the Companies have not identified installation dates of the buried vent lines that have been identified through the inside service line inspection to date.²⁷⁸ Thus, the Companies should have known of these buried vent lines and their conditions, potentially for decades. Accordingly, Staff recommended that shareholders be responsible for funding the buried vent line program.

²⁷² T. 4116.

²⁷³ T. 4117.

²⁷⁴ Joint Proposal, p. 59.

²⁷⁵ T. 3739.

²⁷⁶ T. 3739.

²⁷⁷ T. 3826.

²⁷⁸ Ex. 481, p. 111 (Response to IR DPS-678).

The Joint Proposal adopts Staff's position and recommends that shareholders be responsible for funding the buried vent line program.²⁷⁹ Buried vent lines are more susceptible to corrosion and damage because the pipelines are not coated and do not have cathodic protection. Vent lines are a critical component to the safe and reliable distribution of natural gas through pipelines. Should a regulator experience an over pressure event, the vent line would transport the excess natural gas to a safety location; typically, venting to atmosphere. Pursuant to 16 NYCRR §255.603(c), the Companies are required to maintain maps or records of service lines. Pursuant to 16 NYCRR §255.3(a)(43), buried vent lines are included within the definition of a service line. Had the Companies appropriately identified the buried vent lines as required by the regulations and ensured proper maintenance for them of over the years, the current remediation efforts would not be necessary. Thus, this provision of the Joint Proposal is reasonable and should be adopted.

5.20 Plastic Fusion Quality Assurance/Quality Control Re-digs Inspection Program

The Joint Proposal recommends that the plastic fusion quality assurance and quality control re-digs inspection program be delayed until RY2.²⁸⁰ Due to delays and budgetary constraints related to the impacts of the COVID-19 pandemic, delaying the commencement of this gas safety-related program until RY2 is reasonable and should be adopted.

5.21 Construction Safety Inspections

In litigation, KEDLI and KEDNY requested incremental safety and compliance inspectors to perform on-site inspections and oversight of contractor crews. The Companies proposed a phased in hiring approach of a three-year term.²⁸¹ Staff supported the incremental inspectors but proposed a modest 5% reduction to the number of employees.²⁸²

²⁷⁹ Joint Proposal, p. 59.

²⁸⁰ Joint Proposal, p. 59.

²⁸¹ T. 3796.

²⁸² T. 4119.

The Joint Proposal recommends, beginning in RY2, a modified one-to-one and one-to-two inspector to contractor crew ratio depending upon the work being inspected to ensure adequate levels of on-site inspections and oversight of contractor crews.²⁸³

Currently, the program's scope does not cover every contractor crew and inspectors are assigned to cover multiple crews by rotating through work schedules. This reduction in the inspector to contractor crew ratio benefits safety by ensuring that more projects are inspected prior to the facilities being energized. Thus, this recommendation is reasonable and should be adopted.

5.22 LNG Facility Upgrade

The Companies proposed to inspect their LNG facilities and proposed significant reliability upgrades to KEDNY's Greenpoint LNG Tanks and KEDLI's Holtsville LNG Tank.²⁸⁴ The Greenpoint LNG Plant and the Holtsville LNG Plant have been in service for approximately 50 years, and the Companies state that the facilities require significant investment to support safe and reliable operation. Upgrades to certain facilities at the Greenpoint and Holtsville LNG Plants were authorized in the 2016 Rate Cases. In their April 2019 testimony, the Companies stated that major projects were developed to address reliability, namely the LNG tank modernization projects at Greenpoint and Holtsville. Execution of the then-planned projects were dependent on the NESE project would move forward. The Companies stated that without the additional capacity from NESE, they would be unable to take the LNG tanks out of service for sufficient time to complete the needed work.²⁸⁵ In their April 2019 testimony, the Companies did not provide testimony or support explaining how they would move forward with the Greenpoint and Holtsville LNG tank modernization projects if the NESE project was further delayed or not constructed.

In testimony, Staff recommended that the Companies put forth a reasonable proposal by the beginning of April 2021, detailing how they would address the needed tank work if the NESE project did not move forward.²⁸⁶ In their second supplemental filing the Companies

²⁸³ Joint Proposal, pp. 59 – 60.

²⁸⁴ Companies' Initial Brief, pp. 124 – 125.

²⁸⁵ T. 4349, 4491.

²⁸⁶ T. 4681 – 4682.

updated their LNG Tank Upgrade program to include a solution that wouldn't require the full replacement of the tanks, and thus would not require that the Companies take the tanks out of service for extended periods. The Companies were continuing to explore a more streamlined approach to performing inspections and repairs to the tanks that would ensure that the tanks are in service for the critical winter heating seasons.²⁸⁷

SEP opposed the Companies requested funding for the LNG tank work. SEP asserted that it goes against New York policy and that the facilities need to be shut down.²⁸⁸

The Joint Proposal requires for the Companies to conduct engineering and design studies for the upgrade of both its Holtsville LNG Facility in the KEDLI service territory and its Greenpoint LNG Facility in the KEDNY service territory in RY1 and RY2, respectively. Once both studies are complete the Companies will submit a report with the Secretary to the Commission concerning their future plans to upgrade each facility. This provision is reasonable because of the age of each facility and the reliance on these facilities to reliably meet peak customer demand during cold weather. Both facilities provide peak day gas supply to the Companies' systems. The reliable operation of these facilities is critical, especially to meet the demands of firm gas customers during extreme weather conditions.

5.23 Inactive Accounts

When the Companies do not have a customer of record for gas service, they need to shut off the flow of gas to ensure that unsafe conditions do not result in the premise.²⁸⁹ The Companies' current process is designed to resolve inactive accounts within 60 days. In litigation, KEDLI and KEDNY proposed to reduce this 60-day period to 30 days.²⁹⁰ The Companies challenged Staff's proposal to take "immediate and continuous" action to remedy inactive accounts due to this proposal being unachievable for reasons beyond their control.²⁹¹

In litigation, Staff explained that accounts typically remain inactive due to the Companies' inability to gain access, the referral of accounts to field operations for physical

²⁸⁷ T. 4572 – 4573.

²⁸⁸ T. 5678 – 5679.

²⁸⁹ T. 3725.

²⁹⁰ T. 3726.

²⁹¹ T. 3824.

disconnection, and the legal replevin process.²⁹² However, according to the Commission’s regulations, all meters and service regulators are required to be installed in a readily accessible location and be protected from corrosion and other damage, including vehicular.²⁹³ Thus, Staff recommended that the Companies take “immediate and continuous” action to remedy these conditions.²⁹⁴

The Joint Proposal recommends continuation of the Companies inactive account process. Additionally, it requires a meeting between the Companies, Staff, and other interested parties, within 6 months of a Commission order adopting the terms of the Joint Proposal, to discuss enhancements to this process. The Joint Proposal also recommends allowing the deferral of up to \$1.0 million in RY2, RY3, and the Stayout Period to fund any agreed upon enhancements; requires the Companies to make an informational filing to detail any agreed upon enhancements; and requires the Companies to file annual reports within 60 days of the end of each calendar year.²⁹⁵ Finally, the impact of the usage of inactive accounts on the Companies LAUF gas calculation is addressed in Section 3.6.1, above.

While the reduction from the 60- to 30-day process was not realized due to impacts of the COVID-19 pandemic, the Joint Proposal’s recommended meeting, deferral mechanism, and reporting requirements ensure that the Companies commence the initial stages of this transition. Thus, this recommendation is reasonable and should be adopted.

5.24 Additional Safety Programs

The Joint Proposal recommends that the following gas safety-related programs be delayed until RY2: pipeline safety management and damage prevention advisors; instrumentation and regulation training and test lab; gas control standard operating procedure training; field evaluation training; and plastic fusion in process inspections.²⁹⁶ Due to the impacts of the COVID-19 pandemic, delaying the commencement of these gas safety-related programs until RY2 is reasonable and should be adopted.

²⁹² T. 4111.

²⁹³ 16 NYCRR §255.353(a).

²⁹⁴ T. 4115.

²⁹⁵ Joint Proposal, p. 60 – 61.

²⁹⁶ Joint Proposal, p. 61 – 62.

6. Information Technology

6.1 Information Technology Capital Investment Level

In initial testimony, the Companies proposed a Service Company Information Technology (IT) capital investment of \$194.288 million in RY1.²⁹⁷ The proposed budget included the several IT programs, including, but not limited to: Customer Information Systems (CIS), Customer Transformation, Gas Operations, Technology Modernization, and Cyber and Physical Security.²⁹⁸ In Corrections and Updates testimony, the Companies proposed a Service Company IT capital investment of \$243.846 million in RY1, which included several updates, such as adding capital investment for SAP S/4 HANA.²⁹⁹

In litigation, Staff first recommended removing the capital expenditures associated with CIS in RY1, which would result in an adjusted IT capital investment of \$173.6 million, or a \$70.2 million downward adjustment of the Companies' proposed Service Company IT capex budget of \$243.8 million in RY1.³⁰⁰ Additionally, utilizing a forecasting adjustment and historic data to recommend setting rates for the Companies based on IT capital investment of \$129.4 million in RY1.³⁰¹ In total, with the CIS and forecasting adjustment, there was a total downward adjustment of \$114.4 million for the Companies' proposed IT capital investment in RY1.³⁰²

The Joint Proposal states that incremental Service Company IT capital investment is \$150 million in each of the Rate Years. These costs do not include costs associated with the Gas Business Enablement Program or costs associated with CIS. The Joint Proposal is not intended to limit the Companies' flexibility during the term of the rate plan to substitute, change, or modify the IT capital projects. The incremental Service Company IT capital investment of \$150 million in each of the Rate Year is reasonable as it falls in between Staff's and the Companies' proposed IT capital investment level. In addition, Staff believes the level of IT

²⁹⁷ T. 858.

²⁹⁸ Ex. 122, pp. 1-5.

²⁹⁹ Ex. 280.

³⁰⁰ T. 998.

³⁰¹ T. 997.

³⁰² T. 999.

capital investment will allow the Companies to appropriately and adequately invest in needed IT projects.

6.2 Gas Business Enablement

In Case 17-G-0239, the Niagara Mohawk proposed a Gas Business Enablement (GBE) program, which was authorized in the Commission's 2018 Niagara Mohawk Rate Order. The GBE program is an overhaul of National Grid USA's gas business systems that are at or nearing the end of their useful lives. The Companies began these proceedings seeking an increase in Service Company-level program costs for GBE from \$458.1 million to \$515.4 million.³⁰³ The Companies budget request and project delays increased and persisted throughout the case. In litigation, Staff recommended rejecting the Companies request for allowing rate recovery related to any GBE costs beyond the budget reflected in the 2018 Niagara Mohawk Rate Order, i.e., a total GBE budget of \$458.1 million.³⁰⁴

The Joint Proposal recommends capping total GBE program costs at \$515.5 million, or approximately the amount the Companies initially requested in these proceedings. This is reasonable because this amount is within the initial contingency budget set forth in Case 17-G-0239, and was a reasonable amount of potential program cost increases with the implementation of a program as complex as the GBE program. Moreover, the Joint Proposal recommends requiring the Companies to report on a number of key performance indicators (KPIs) regarding the GBE program. If, the Companies fail to meet the FY24 KPI targets, the Companies will be required to record regulatory liabilities reflecting the costs of the GBE program related to system enhancements incremental to mere replacement of existing systems. This provision provides some protection to customers and incents the Companies to achieve the benefits they assert GBE will provide. Accordingly, this provision is reasonable and should be adopted.

6.3 Customer Information System

In litigation, the Companies proposed a complete replacement of the legacy customer information systems currently in use to begin the transition to one common platform

³⁰³ Companies' Initial Brief, p. 32.

³⁰⁴ Staff Initial Brief, p. 29.

for all US National Grid companies, which is referred to as the Customer Information System (CIS) replacement program.³⁰⁵ KEDNY and KEDLI use different customer information systems, both of which have been in use for 20 to 30 years. The Companies state the current systems cannot “support customers’ escalating expectations or increasingly sophisticated billing needs, nor can they easily support services on web, mobile, and other customer and third-party channels.”³⁰⁶ Additionally, the Companies claim the systems are difficult to modify to continue to meet business and regulatory advancements; the skillset needed to support the systems is difficult to find due to the systems’ age; and the number of high and/or critical priority failures has increased significantly in recent years.³⁰⁷

In litigation, Staff expressed concerned that protections for customers could not be put in place because the project planning was not far enough along to provide the necessary details to develop effective protections, and the Companies could not supply the assurance Staff needed that the project would stay on budget and on time. Throughout these cases, the Companies continued to refine costs estimates, alter timelines, and seek internal approvals. Staff’s position that the Companies need to further develop implementation plans and costs reflects the concern that the Commission does not have enough information to properly protect customers who would be paying for the project in part through the rates requested in this proceeding. In addition, large IT projects that National Grid has previously undertaken have missed deadlines and/or gone over budget.³⁰⁸ This historical performance concerned Staff and further reenforces the need to ensure that the Commission can put proper safeguards in place to ensure that customers are not held financially responsible in the event this trend continues in the CIS project. Without the necessary information, Staff could not recommend approval for recovery of the costs requested by the Companies in these cases. As such, Staff recommended that the Companies continue the planning and development process and file a petition with the Commission for approval when the Companies can provide more information to consider.³⁰⁹

³⁰⁵ T. 1116 – 1118.

³⁰⁶ T. 1116.

³⁰⁷ Ex. 413 (Response to IR DPS-617).

³⁰⁸ T. 1453 – 1460.

³⁰⁹ T. 1452 – 1453.

PULP proposed that the Companies provide six years of billing data to customers as well as a customer's availability of public assistance benefits through an e-billing portal.³¹⁰ PULP stated that, while it understood why the Companies proposed the upgrade, it shared several of Staff's concerns and agreed a separate petition for costs would be warranted. PULP further recommended that if any changes to the CIS system are approved in this rate case, changes to the customer service operations problems outlined in the Testimony of William Yates be addressed, including the creation of a customer portal.³¹¹

The Joint Proposal recommends operating expenses in RY1 that reflect a revenue requirement of \$1.0 million for KEDNY and \$0.4 million for KEDLI related to a new CIS. RY2 and RY3 have no CIS related operating expenses, and no capital expenditures are reflected in the revenue requirement for a new CIS in any year. Further, the Joint Proposal provides that the Companies may file a petition with the Commission at any time during the rate plan to propose the CIS project and seek authorization to defer CIS-related development costs. The petition must include, at a minimum, a detailed description of the projects and related costs, an estimate of the costs the Companies seek to defer, the Companies' sanction papers that demonstrate the project and associated costs have been approved by all required National Grid management, an updated business case, a detailed project implementation timeline, and proposed key performance indicators. The Companies will also, as part of any such petition, identify the costs and benefits of certain CIS upgrades recommended in these proceedings by PULP. This will enable the Commission to determine whether the Companies should include PULP's recommended upgrades in the CIS project. In the absence of Commission deferral authority for the costs of PULP's proposed CIS upgrades, the Joint Proposal does not obligate the Companies to include PULP's upgrades in their CIS project.

The CIS provision of the Joint Proposal is reasonable because it seeks to balance the need for a new CIS to replace outdated, problematic legacy systems with the need to ensure customers are adequately protected and the project is delivered successfully, on budget, and on time. This provision of the Joint Proposal allows the Companies and Staff to minimize risks to both the business and customers while ensuring the project is vetted, planned, and managed

³¹⁰ T. 1678.

³¹¹ PULP Initial Brief, p. 15.

appropriately and should be approved. Further, the recommendation to treat the CIS project apart from a rate order is reasonable because it will provide transparency to all stakeholders and the opportunity to evaluate the project with the best available information. Accordingly, this recommendation should be adopted.

6.4 Service Company Rents, IT and GBE Net Utility Plant and Depreciation Expense Reconciliation Mechanism

In testimony, Staff recommended the Companies implement a Service Company Rents IT and GBE Program Net Utility Plant and Depreciation Expense Reconciliation Mechanism to protect customers from paying delivery rates higher than necessary to support the IT assets actually implemented.³¹² Staff's proposed mechanism would require the Companies to reconcile its respective actual IT and GBE program average net utility plant and depreciation expense revenue requirements to the forecast revenue requirements.³¹³ The IT and GBE program average net utility plant and depreciation expense revenue requirement would be calculated by applying the Companies' authorized pre-tax WACOC for RY1 to the IT and GBE program average net utility plant balance and adding the depreciation expense to the product.³¹⁴ In addition, at the end of RY1, if the actual IT and GBE program average net utility plant and depreciation expense revenue requirement is less than the target average net utility plant and depreciation expense revenue requirement, the Companies would defer the revenue requirement impact for the benefit of customers.³¹⁵ Staff recommended that the mechanism should be a one-way, downward only true-up.³¹⁶

In the Companies' rebuttal testimony, the Companies opposed Staff's proposed downward-only Service Company Rents IT and GBE program Net Utility Plant and Depreciation Expense Reconciliation Mechanism, stating that this type of tracker would be more appropriate for a multi-year plan and would be less persuasive for a litigated one-year rate case.³¹⁷ However, during the evidentiary hearings, the Companies acknowledged Staff's concerns over delays in

³¹² T. 1008.

³¹³ Id.

³¹⁴ Id.

³¹⁵ Id.

³¹⁶ T. 1009.

³¹⁷ T. 900.

the implementation of IT projects and agreed to a downward reconciliation mechanism with regard to Service Company Rent Expense.³¹⁸

The Joint Proposal recommends implementing a downward-only IT and GBE Net Utility Plant and Depreciation Expense Reconciliation Mechanism. For each Rate Year, the Companies will reconcile their respective actual IT and GBE Program average net utility plant and depreciation expense revenue requirements to the forecast revenues requirements as set forth in the Joint Proposal. The difference between the actual IT and GBE Program average net utility plant and depreciation expense revenue requirement and the target average net utility plant and depreciation will carry forward for each Rate Year and be summed up at the end of RY3. If at the end of RY3, the cumulative actual IT and GBE Program average net utility plant and depreciation expense revenue requirements are negative, the Companies will defer the revenue requirement impact for the benefit of customers. If at the end of RY3, the cumulative actual IT and GBE Program average net utility plant and depreciation expense revenue requirements are positive, there will be no deferral. The mechanism recommended in the Joint Proposal is reasonable as it addresses Staff's concern for customers paying delivery rates higher than necessary to support the IT assets actually implemented. Accordingly, this provision should be adopted.

6.5 IT Capital Budgeting and Reporting

In litigation, Staff recommended that the Company continue the process improvements that were required in the 2018 Niagara Mohawk Rate Order and make improvements to the Service Company's Investment Request Paper (IRS) and sanction papers.³¹⁹ Niagara Mohawk was required to make quarterly and annual filings.³²⁰ In addition, Niagara Mohawk is required to meet with Staff on a semi-annual basis to discuss several topics, including but not limited to proposed projects for the next six months and quarterly filings.³²¹

In litigation, the Companies' supported periodic reporting on IT project status to Staff, stating that it believes it would bring greater transparency regarding IT project selection,

³¹⁸ T. 913.

³¹⁹ T. 1010.

³²⁰ T. 1011.

³²¹ T. 1012.

prioritization, timeline, and budget status. Further, the Companies stated that it would promote increased collaboration between the Companies and Staff on the selection and delivery of IT projects and facilitate Staff's review of IT projects as part of rate proceedings for the benefit of New York customers.³²²

The Joint Proposal recognizes that the IT reporting requirements require further development so that the annual and quarterly reports will provide information in a format that permits easy monitoring and understanding of any individual IT project's status and progress, and will enable full comprehension of the entire IT portfolio. Accordingly, the Joint Proposal recommends that, within 60 days of the issuance of the Commission order adopting the terms of the Joint Proposal, the Companies and Staff will begin a collaborative to develop and improved IT annual and quarterly reporting requirements. The Companies will then file with the Secretary to the Commission a report describing the reporting requirements agreed to through the collaborative process no later than 90 days prior to the start of RY3. The Joint Proposal laid out different expectations and minimum requirements for the modified reporting requirements. Quarterly reports should be streamlined so that strategic, executive-level information regarding the status of IT-related projects is provided, enabling easier monitoring of project status and progress in terms of schedule, scope, and budget for each of the program categories and also major projects. Annual reports should include more detailed descriptions of the status of projects, expanding as necessary to address any issues identified. After the modified reporting requirements are developed, the Companies shall file with the Secretary to the Commission an annual report prior to the beginning of each Rate Year, and quarterly variance reports within 60 days after the end of each Rate Year quarter. On a semi-annual basis, the Companies will meet with Staff to discuss several topics, including but not limited to, budgeted and actual spending to date, status update on ongoing projects, and proposed projects for the next six months. The meetings will also discuss cybersecurity projects and the status of the sanctioning and partial sanctioning of cybersecurity projects. Beginning with the first semi-annual meeting, in October 2021, the Company will work with Staff to develop mutually agreeable sanction paper enhancements needed to justify IT investments and allow for adequate review. The

³²² T. 904.

enhancements, at a minimum, will include information that more fully supports the Companies' costs estimates and indicate whether the project was the minimum-cost alternative.

Collaborating with Staff to further develop the IT reporting requirements for the annual and quarterly reports will enable Staff to better understand any individual IT project and its budgets while also being able to fully comprehend the entire IT portfolio. The sanction paper enhancements mutually agreed upon between Staff and the Companies in the semi-annual meetings will allow Staff to review projects more efficiently and better understand how IT project costs are developed and justified. In addition, including discussions regarding the status of sanctioning and partial sanctioning of cybersecurity projects is important given the importance of cybersecurity in this day and age. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

6.5.1 IT Project Approvals

In testimony, Staff recommended that after IT projects are closed, National Grid's Chief information Officer (CIO) should attest to and report on the actual costs and benefits achieved through the IT investment plan, with any lessons learned and improvements to be incorporated into the IT reports. Staff stated that having the CIO attest to the costs and benefits would provide a level of accountability for the Companies to deliver on their promises.³²³ The Companies opposed requiring the attestation of costs and benefits by National Grid's CIO.³²⁴

The Joint Proposal requires that National Grid's New York CIO, or successor with ultimate responsibility for IT projects and services in whole or in part for the New York jurisdiction, approve or disapprove any newly proposed IT project business case before the project can proceed. Further, National Grid's New York CIO must review project closure papers that contain information concerning costs incurred, benefits derived, and lessons learned, and report that such review was completed and include a summary of the review in the IT report for the last quarter of each Rate Year. The Joint Proposal is reasonable because it adds a layer of accountability with the goal to drive improvements to the management of the IT investment portfolio, and therefore should be adopted.

³²³ T. 3591.

³²⁴ T. 906.

6.5.2 Key Performance Indicators

Staff proposed in its initial testimony that the Companies develop KPIs to track and quantify benefits stated in Sanction papers and compare and report on the actual benefits versus what was originally proposed.³²⁵ In its rebuttal testimony, the Companies opposed Staff's recommendation regarding developing KPIs relating to sanction papers.³²⁶ In addition, the Company stated that KPIs may be more appropriate as part of a negotiated resolution of a multi-year rate plan rather than a one-year litigated case.

The Joint Proposal stated that, within six months of the issuance of a Commission order adopting the terms of the Joint Proposal, the Companies will modify their IT sanctioning papers to include KPIs and will implement on-time/on-cost KPIs that will be reported quarterly on a portfolio basis. This provision is reasonable as the KPIs will allow Staff and the Company to track how well each IT project is implemented on time and within cost.

7. Future of Heat

In litigation, the Companies included a number of proposals under an umbrella term "Future of Heat." While Staff does not take a position as part of these rate proceedings regarding the nature of the "Future of Heat," this section of the Joint Proposal includes diverse provisions related to: energy efficiency; the Utility Energy Service Contract Program; distribution-level demand response costs; the online fuel switching calculator; reducing billed gas usage/NPAs; hydrogen blending research; economic development; and EAMs.

7.1 Energy Efficiency

In its initial testimony, the Companies proposed to set their energy efficiency budgets and targets for RY1 at the amounts approved by the Commission for calendar years 2020 and 2021 as set forth in Appendix C to the 2019 Energy Efficiency Order.³²⁷

Staff recommended that the Companies' proposed targets and budgets be used as placeholders. Staff advocated for updating the budgets and targets to reflect any subsequent

³²⁵ T. 1015, 1016.

³²⁶ T. 903.

³²⁷ T. 48; Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018).

Commission orders regarding utility proposals then pending in Case 18-M-0084.³²⁸ Staff recommended that the Commission impose a downward-only reconciliation of the Companies' energy efficiency spending during RY1.³²⁹ If actual expenditures are less than the Companies' budgets, the unspent funds would be deferred for future disposition by the Commission. In their rebuttal testimony, the Companies oppose Staff's recommendation that the reconciliation be tied to RY1. Instead, the Companies recommend that they be allowed to retain any unspent RY1 energy efficiency monies to use for energy efficiency through 2025, even if the Commission only sets rates for RY1.

On January 16, 2020, the Commission issued its 2020 NE:NY Order. That order adopted budgets and targets for KEDNY and KEDLI's energy efficiency programs. The ALJs in these proceedings issued a ruling on January 21, 2020, directing Staff and the Companies to address the impact of the 2020 NE:NY Order on these cases by January 29, 2020. In its supplemental testimony, Staff recommended that the budgets and targets set in the 2020 NE:NY Order be reflected in these proceedings by setting RY1 energy efficiency budgets and targets that reflected three-quarters of the Commission-approved 2020 budgets and targets, and one-quarter of the Commission-approved 2021 budgets and targets.

The Joint Proposal recommends that, as of the beginning of RY1, the Companies' forecasted energy efficiency costs will be recovered in base rates. The energy efficiency costs included in base rates reflect the amounts authorized by the Commission in the 2020 NE:NY Order. Energy efficiency costs are subject to a downward-only reconciliation over the term of the rate plans. Any under-expenditures in a given Rate Year will be carried forward, with any under expenditures at the end of RY3 to be used for other Commission-authorized energy efficiency programs in subsequent years or deferred for Commission disposition. The terms of the Joint Proposal fall within the litigated outcomes of the parties and are consistent with the Commission orders providing guidance on energy efficiency program operation in Case 18-M-0084. Accordingly, the terms of the Joint Proposal are reasonable and should be approved.

³²⁸ T. 667 – 668.

³²⁹ T. 672.

7.1.1 Unspent Energy Efficiency Funds

In litigation, Staff recommended using a portion of unspent Energy Efficiency Portfolio Standards (EEPS) funds, accrued EEPS interest, unspent Energy Efficiency Transition Plans (ETIP) funds, accrued ETIP interest, and NYSERDA CEF Bill-As You To (BAYG) collections to offset the energy efficiency budgets in base rates. Staff recommended amortizing the unspent funds over a five-year period.³³⁰ The Companies proposed using unspent/uncommitted EEPS funds to offset the incremental energy efficiency budgets in 2019 and 2020, but did not address the use of unspent ETIP funds, accrued ETIP interest, and CEF BAYG collections outside of their general opposition to Staff's recommendation.³³¹ In the 2020 NE:NY Order, the Commission stated that it expects all available uncommitted and unspent utility energy efficiency funds to be used to mitigate the impacts of the energy efficiency portfolio budgets authorized by the 2020 NE:NY Order. The Joint Proposal specifies that the Companies use any previously recovered unspent funds associated with EEPS, ETIP, BAYG programs, plus any other associated interest to offset the Companies' energy efficiency program costs. This provision supports policy objectives, is consistent with the 2020 NE:NY Order, is in the public interest, and should be adopted.

7.1.2 KEDLI HEAT Program

The KEDLI HEAT Program is an energy efficiency program designed to serve low to moderate income customers. In their initial testimony, KEDLI proposes to continue the EmPower Replacement Program (known as HEAT Program) which is funded through existing Low-Income Discount program deferral balance but include the HEAT program costs in base rates and to increase the budget from \$1.9 million to \$2.5 million annually to expand the offering to "moderate income" customers.³³²

In its initial testimony, Staff supported increasing the HEAT budget to \$2.5 million and expanding the program to eligible moderate-income customers. Staff recommended

³³⁰ T. 675.

³³¹ T. 162 – 163.

³³² T. 54.

that KEDLI incorporate the HEAT program into its energy efficiency portfolio and include costs in base rates.³³³

The Joint Proposal recommends that KEDLI's revenue requirement reflect \$2.5 million in each Rate Year for this program, incremental to the budgets established in the 2020 NE:NY Order. The KEDLI HEAT Program will be implemented in accordance with New York's Statewide Low- and Moderate-Income Portfolio³³⁴ that is being developed in Case 18-M-0084.³³⁵

This provision of the Joint Proposal is reasonable because the Statewide Low- and Moderate-Income Portfolio, of which the HEAT Program is a component, advances energy affordability and access to energy efficiency for New York's low-to-moderate income residents and communities and assists in alleviating energy cost burden. Therefore, this provision should be adopted.

7.2 Utility Energy Service Contract Program

In its initial testimony, the Companies proposed an incentive to help customers offset the cost of energy feasibility studies, up to 50% of total cost of facility study. The Companies also propose a new marketing budget to engage new customers.³³⁶ In total, the Companies propose incremental spending of \$0.257 million for KEDNY and \$0.261 million for KEDLI on the Utility Energy Service Contract (UESC) program in RY1.³³⁷ The Companies proposed to retain 33% of the fees received from UESC program participants, with the remaining 66% of fees deferred for customer benefit.³³⁸ The Companies claimed that this higher level PSR is warranted because the Companies' ability to earn a PSR is uncertain despite increased marketing and feasibility study management efforts.³³⁹ Furthermore, claimed the Companies, the enhanced service they provide as part of the UESC program, and the enhanced value of

³³³ T. 679.

³³⁴ The Joint Proposal incorrectly identified the Statewide Low- and Moderate-Income Portfolio as New York State's Low to Moderate Income framework.

³³⁵ Joint Proposal, p. 74.

³³⁶ T. 60.

³³⁷ T. 62.

³³⁸ T. 142.

³³⁹ T. 142 – 143.

customer participation in the UESC program toward State energy policy goals, justify providing the Companies with 33% of the fees.³⁴⁰

In litigation, Staff recommended that the Companies fund the UESC program out of their overall energy efficiency program budgets.³⁴¹ The UESC program provides energy efficiency measures and results in energy efficiency saving. It should be operated to ensure consistent and comprehensive treatment of energy efficiency programs and their resultant savings. This can best and most efficiently be accomplished by incorporating the UESC program into the Companies' overall energy efficiency portfolio budgets and targets.³⁴² Additionally, Staff argued that the Companies have not adequately justified the need for two incremental FTEs dedicated to the UESC program, particularly in light of the incremental seven FTEs Staff supported providing the Companies to support energy efficiency generally. Staff agreed that the Companies should earn a PSR related to the UESC program. However, Staff recommended that the PSR be calculated as 20% of the net revenues generated by the UESC program. First, the REV Track Two Order provides guidelines for PSRs, including identifying a 20% PSR as appropriate for programs that do not include shareholder funds at risk.³⁴³ Indeed, the Track Two Order specifically considers higher percentage PSRs, and says that they may be reasonable with higher levels of shareholder funds at risk.³⁴⁴ The costs of the Companies' UESC program are recovered from customers through rates; there are no shareholder funds at risk. Accordingly, the PSR should be limited to 20%. Additionally, Staff recommended that the PSR be calculated as a percentage of net revenues, that is, a percentage of the fees collected from UESC participants less the costs of operating the UESC program.³⁴⁵ Providing a PSR based on a percentage of net revenues would only reward the Companies if the UESC Program is successful in producing fees from participants in excess of what it costs customers for the Companies to operate the program.³⁴⁶

³⁴⁰ T. 205.

³⁴¹ T. 683 – 684.

³⁴² T. 683.

³⁴³ Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) (REV Track Two Order).

³⁴⁴ T. 598.

³⁴⁵ T. 600 – 601.

³⁴⁶ T. 600.

The Joint Proposal recommends that, beginning in RY2, the Companies will be permitted to earn a PSR Fee equal to 20% of the revenue in excess of program costs derived from the UESC program. The Joint Proposal closely follows the positions advocated by Staff and will provide the Companies with an additional earning opportunity through the UESC that is consistent with Commission guidance and precedent, as well as ensure that the Companies' shareholders are rewarded commensurate with the benefits that inure to customers. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

7.3 Distribution-Level Demand Response Costs

In their initial testimony, the Companies proposed expanding their current gas demand response program. The Companies proposed to recover the costs of the program, including non-labor O&M and an incremental FTE, in base rates.³⁴⁷

In its initial testimony, Staff noted that the non-labor costs, such as incentive payments to participating customers, are uncertain. Thus, Staff recommended allowing recovery of the non-labor O&M costs through a surcharge.³⁴⁸ In its rebuttal testimony, the Companies stated that they would object to a surcharge cost-recovery methodology with a lagged cost recovery period, they would not object if the non-labor O&M costs were included in the Delivery Rate Adjustment surcharge mechanism.³⁴⁹

The Joint Proposal recommends allowing the Companies to recover the non-labor O&M costs associated with their distribution-level demand response programs through the Demand Response O&M Component of the DRA. The Joint Proposal falls within the litigated positions of the parties, cleaving closely to Staff's position, and is consistent with cost recovery of demand response programs throughout New York State. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

7.4 Online Fuel Switching Calculator

In its initial testimony, the Companies proposed a web-based fuel-switching calculator to provide customers with the ability to assess their household heating options,

³⁴⁷ T. 72.

³⁴⁸ T. 694 – 695.

³⁴⁹ T. 169.

including comparing natural gas and heat pumps.³⁵⁰ The Companies propose incremental O&M expense for the development and operation of the calculator of \$0.250 million, split equally between KEDNY and KEDLI in RY1.³⁵¹

In its initial testimony, Staff recommended that the Companies adopt standardized assumptions and calculations, where appropriate. Additionally, Staff recommended that the calculator include other appliances, such as domestic hot water, cooking, and air conditioning.³⁵² Staff observed that the fuel-switching calculator is a tool that could be used more broadly by National Grid's operating utilities to inform their customers. Accordingly, Staff recommended conditioning approval of the fuel-switching calculator on sharing the total cost among other National Grid entities.³⁵³ Staff recommended using the general allocator to allocate the costs of the fuel-switching calculator to KEDNY and KEDLI, with them receiving 13.31% and 8.29% of the total \$250,000 cost, respectively.³⁵⁴

In its rebuttal testimony, The Companies disagreed with Staff's recommendation.³⁵⁵ The Companies state that, expanding the calculator for use by other National Grid operating companies will add to the costs of the fuel-switching calculator, however, the Companies did not quantify those speculative added costs. Additionally, the Companies asserted that they intend that the calculator initially only be used by KEDNY and KEDLI.³⁵⁶

The Joint Proposal allows the Companies to implement their proposed Online Fuel Switching Calculator in RY2. The cost allocation reflected in the Companies' revenue requirements recognize that the cost of the Online Fuel Switching Calculator should be allocated to all National Grid affiliates that provide comparable gas distribution services. The Joint Proposal provides an outcome within the bounds of the litigated positions of the parties, cleaving more closely to Staff's position than that of the Companies. The Joint Proposal is reasonable, as

³⁵⁰ T. 63.

³⁵¹ Id.

³⁵² T. 685 – 686.

³⁵³ T. 686.

³⁵⁴ T. 686 – 687.

³⁵⁵ T. 167.

³⁵⁶ Id.

it appropriately allocates costs among all National Grid affiliates that will make use of the Fuel Switching Calculator, and therefore it should be adopted.

7.5 Reducing Billed Gas Usage/Non-Pipe Alternatives

The Joint Proposal requires the Companies to: (1) strive to reduce gas usage below the levels included in the current forecast; (2) terminate all marketing and programs intended to promote oil to gas conversions; (3) develop educational materials and promote heating technology options, such as heat pumps, which are alternatives to gas heating; (4) complete a report evaluating how the Companies' business practices may evolve in the future to support emissions reductions and renewable energy goals of the Climate Leadership and Community Protection Act and New York City Local Law 97, to be submitted prior to the Companies next base rate filings; (5) complete a study on the potential depreciation-related impacts of climate change policies and laws, to be submitted at least three months prior to the Companies' next base rate filing; (6) seek opportunities to replace the need for infrastructure projects to (a) replace LPP and (b) new customer connections greater than 500 feet in length using heat pumps as NPAs; (7) provide as part of the Companies next base rate filing an emissions baseline for each Company, a computation of annual greenhouse gas emissions for each Company, an assessment of the impact that investments, programs, and initiatives contained in that base rate filing will impact greenhouse gas emissions from the Companies gas networks; and (8) file a report within nine months regarding the cost of facilities provided to new customers pursuant to the Commission's regulations and the Companies tariffs, which could form the basis for petition from an interested party requesting that the Commission provide an incentive to select electric heating options, such as heat pumps, instead of gas service.

These provisions of the Joint Proposal implement or advance several of the issues raised by parties in testimony and briefs. Turning to the specific provisions, the Joint Proposal requires the Company to develop a GHG Emission Inventory as proposed by EDF. This Emissions Inventory will be used to help benchmark the Companies' actions against historical emissions levels and act as a guide for assessing the Companies' proposals in light of their impact on GHG emissions in future rate proceedings.

In litigation, EDF proposed requiring KEDNY and KEDLI to develop a greenhouse gas (GHG) emissions inventory and assessment methodology in order to ensure that

the Commission has enough information to determine whether its decisions in a utility rate proceeding is consistent with the requirements of the Climate Leadership and Community Protection Act (CLCPA).³⁵⁷ EDF notes that the CLCPA directs the DEC to develop a statewide GHG emissions inventory and report.³⁵⁸

In litigation, Staff recommended that the Commission deny EDF's proposal at this time.³⁵⁹ Staff primarily argued that requiring a utility-specific GHG inventory was only one way of acquiring the data, and that it was premature to require it in these cases.³⁶⁰ However, in the context of this Joint Proposal, the Signatory Parties Thus, agreed to include the GHG inventory. In litigation, the Companies also opposed the GHG inventories noting that the CLCPA charges the DEC with developing statewide emissions inventories, not utilities.³⁶¹

However, in the context of the Joint Proposal, the Signatory Parties recommend that the Commission require the Companies to inventory GHGs. The Joint Proposal does provide that, if the Commission requires similar GHG inventories in Case 20-G-0131, the Companies would not need to complete the GHG inventories contemplated in the Joint Proposal, to avoid duplicating the work.

In the Joint Proposal, the Companies agree to cease marketing to new customers and proactive expansion of their gas distribution systems. At the same time, the Joint Proposal will help advance the heat pump market through increased development and reliance on NPA projects, marketing heat pumps as alternatives to new customer connections to the gas distribution system. Additionally, the Joint Proposal requires that the Companies' produce a report regarding the costs of new gas customer connections which may be useful when considering heat pump-related programs and incentives. The Joint Proposal also requires the Companies to consider the long-term operation of its system and associated business model, with potential modifications to each to be developed to help inform parties' and the Commission's consideration of the Companies' next base rate filings.

³⁵⁷ T. 5644.

³⁵⁸ T. 5659.

³⁵⁹ T. 715.

³⁶⁰ T. 715 – 716, 795 – 798.

³⁶¹ Companies' Initial Brief, pp. 220 – 221.

Regarding marketing to prospective gas customers and proactive expansion of the gas systems, in litigation, the KEDLI proposed to continue, with modification, its existing Neighborhood Expansion Program.³⁶² Under the revised program, KEDLI would offer prospective customers an opportunity to convert their heating requirements from oil to natural gas with certain incentives.³⁶³

In its initial testimony, the Staff recommended that the Commission not approve the Clean Conversion Program or its budget.³⁶⁴ Staff assumed that NESE would not be built during the Rate Year and accepted the Companies' position to not implement the LMI Conversion Program.³⁶⁵

For context regarding the heat pump related provisions, in litigation, the Companies proposed that they undertake an expanded "Geothermal Demonstration Project" in which the Companies would own and install the ground-loop portion of ground-source heat pump (GSHP) systems in parts of their service territories.³⁶⁶ During litigation, Estates supported the Companies' proposal,³⁶⁷ whereas Staff opposed it.³⁶⁸ While the Joint Proposal does not recommend that the Companies' move forward with a further Geothermal Demonstration Project, it does provide a number of measures to support heat pump adoption in the Companies' service territories. This has garnered the support of Estates, NY-GEO, and Bob Wyman, who each have advocate in favor of heat pump adoption in this case and/or in other venues.

The Joint Proposal's recommendations regarding these issues appropriately balances the litigation positions of various parties. Furthermore, the recommendations take significant steps toward meeting the State's climate and energy policy goals. Accordingly, these provisions are reasonable and should be adopted.

³⁶² T. 83.

³⁶³ Id.

³⁶⁴ T. 701.

³⁶⁵ T. 702.

³⁶⁶ T. 78 – 79.

³⁶⁷ T. 5747 – 5748.

³⁶⁸ T. 698.

7.6 Hydrogen Blending Research

In initial testimony, the Companies proposed to undertake a hydrogen blending study to analyze the impact of blending hydrogen into the natural gas system with a projected cost of \$0.446 million in the RY1 split evenly between KEDNY and KEDLI.³⁶⁹ The Companies envisioned using “excess renewable electricity” to convert electricity to hydrogen with the goal of this study being to determine the percentage of hydrogen that can be safely blended into the gas network without negatively impacting the network or customer appliances. The Companies had applied for a grant from NYSERDA that, if awarded, would provide \$0.346 million of the projected cost. Thus, if awarded the grant, the costs to be recovered from customers would be only \$0.100 million, of which only \$0.070 million is incremental to the Historic Test Year.³⁷⁰

In testimony, Staff recommended that the Commission reject the hydrogen blending study on the grounds that it was not consistent with the state’s energy storage goals provided by the 2018 Storage Order.³⁷¹ In its rebuttal testimony, the Company asserted that the Storage Order analysis is not appropriate for this proposal. Instead, the Companies state that the intention of the study is to assess a potential pathway toward decarbonizing the gas network.³⁷²

The Joint Proposal provides the remaining incremental funding above NYSERDA’s grant for the study. The Joint Proposal is within the litigated positions of the parties, and will provide valuable insight into the safety and efficacy of blending hydrogen into the natural gas system. This provision of the Joint Proposal is reasonable and should be adopted.

7.7 Economic Development

In its initial testimony, the Companies proposed to continue the current suite of Economic Development grant programs with modifications that would make them more responsive to customer needs and more compatible with a clean energy environment.³⁷³ Also the Companies proposed to create a new grant program titled Economic Development and the Future of Heat which would encourage customers to and developers to invest in projects involving

³⁶⁹ T. 112.

³⁷⁰ T. 114.

³⁷¹ T. 704.

³⁷² T. 188.

³⁷³ T. 90 – 91.

alternatives to traditional gas delivery service and efficient, emerging natural gas technologies.³⁷⁴ Staff agreed with the modifications and proposed that the Companies also include provisions in its economic development grant offerings funding to offset costs associated with a firm customer transitioning to non-firm service.³⁷⁵

The Joint Proposal provides that KEDLI and KEDNY will continue offering their economic development grant programs with an annual budget of \$2.75 million and \$2.25 million, respectively. During each Rate Year, the Companies will each amortize prior economic development deferral credits so that the net revenue requirement for each company is \$0.5 million. During the term of the rate plans, both firm and non-firm customers will be eligible for economic development grant and discount programs. Additionally, applicable infrastructure-related grant programs will be modified to allow the related costs of converting from firm to non-firm service to qualify for extra funding. These grant programs will be subject to downward-only reconciliation over the term of the rate plans. The Companies will file an annual economic development report with the Commission no later than April 1 of each year detailing economic development activities for the prior calendar year. These terms are reasonable because they promote economic development grant and discount programs, which provide support for attracting and retaining businesses to the service territories as well as create and retain jobs. Continuing these programs is a benefit to qualifying businesses and to the communities within the Companies' service territories.

7.8 Earnings Adjustment Mechanisms

In its initial testimony, the Companies proposed six EAM metrics to be measured on a calendar year basis. In total, these metrics would have provided KEDNY and KEDLI with the opportunity to earn 78 basis points and 77 basis points, respectively, worth of financial incentives for 2020, and 63 basis points 62 basis points, respectively for 2021.³⁷⁶ The Companies proposed the following metrics: (1) Peak Reduction; (2) Supply Diversification; (3) Incremental Energy Efficiency; (4) Affordability; (5) Carbon Reduced from Full-Service Customers; and (6) Carbon reduced from Transportation Customers. The Companies proposed a

³⁷⁴ Id.

³⁷⁵ T. 1503 – 1505.

³⁷⁶ T. 552.

programmatic Peak Reduction metric, which would reward the Companies for maximizing demand reductions achieved through the Companies' demand response programs.³⁷⁷ The Companies propose a Supply Diversification metric, through which the Companies could earn a financial incentive based on the amount of incremental renewable natural gas introduced into the Companies' systems each year.³⁷⁸ According to the Companies, to achieve the targets the Companies would work with third parties to increase RNG development, for example by standardizing RNG project interconnection requirements.³⁷⁹ The Companies proposed a program-based Incremental Energy Efficiency metric that would measure the incremental million British Thermal Unit (MMBTUs) reductions achieved through the Companies' energy efficiency programs.³⁸⁰ The Companies proposed an outcome-based Affordability metric through which the Companies would earn a financial incentive tied to the annual percentage reduction in the average low-income customer bill compared to the prior year.to reward the Companies for reducing low-income customer bills.³⁸¹ The Companies propose to earn one basis point for each 0.2% reduction in average low income customer bills, resulting in 10 basis points worth of financial incentive if the average low-income customer bill decreases by 2%.³⁸² The Companies proposed two related programmatic Carbon Reduction metrics, one focused on full-service customers, and the other focused on transportation customers. Under the full-service metric, the Companies would earn a reward based on reduced carbon emissions measured through the adoption rates of three specific offerings: oil-to-geothermal conversions, sales of renewable natural gas through the proposed Green Gas Tariff, and use of natural gas vehicles.³⁸³ Under the transportation metric, the Companies would earn a financial incentive based on customers' usage of natural gas vehicles.³⁸⁴

In litigation, Staff identified numerous concerns with the Company's proposed EAM portfolio, and recommended that the Commission implement a different set of EAM

³⁷⁷ T. 123 – 124.

³⁷⁸ T. 125.

³⁷⁹ Id.

³⁸⁰ T. 129.

³⁸¹ T. 131.

³⁸² T. 132.

³⁸³ T. 133.

³⁸⁴ T. 137.

metrics. Staff recommended that the Commission adopt an energy efficiency Share the Savings metric allow the Companies to retain a 30% share of dollar per lifetime-MMBTU of Verified Gross Savings achieved through efficient operation of the Companies' energy efficiency programs.³⁸⁵ Staff recommended developing a Peak Reduction metric based on peak-day usage reductions. The metric would measure the usage reductions of firm customers on a per-Heating Degree Day basis, measured during the month of January or February each year,³⁸⁶ with maximum incentive levels of 10 basis points.³⁸⁷

The Joint Proposal implements three EAM metrics: (1) a gas Peak Reduction metric similar to that described in Staff's testimony, (2) an Energy Efficiency Share the Savings Metric based on the Company retaining a 30% share of dollar per lifetime-MMBTU of Verified Gross Savings achieved through efficient operation of the Companies' non-LMI energy efficiency programs; and (3) a LMI Customer Savings metric measuring the three-year sum of energy efficiency savings achieved through the Companies' LMI energy efficiency programs. The Joint Proposal provides for up to 10 basis points of financial incentive annually for the gas Peak Reduction metric for both KEDNY and KEDLI; five basis points and 10 basis points related to the LMI Customer Savings metric for KEDNY and KEDLI, respectively, at the end of the three-year period; and a financial incentive determined formulaically related to the energy efficiency Share the Savings metric. The Joint Proposal provides for EAMs aligned with Staff's testimony, with the addition of the LMI Customer Savings metric. This latter metric will focus the Company on optimizing the use of its LMI energy efficiency budget to maximize energy savings for LMI customers. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

8. Reconciliations, Deferrals, and True-Ups

Section 8 of the Joint Proposal contains the provisions for reconciliations, deferrals, and true-ups. This section includes a summary, discussing briefly all deferrals, many of which should be clear on their face, and follows with more specific discussions of certain sections.

³⁸⁵ T. 573.

³⁸⁶ T. 563 – 564.

³⁸⁷ T. 594.

8.1 Existing Reconciliations, Deferrals, and True-Ups

Appendix 6, Schedule 1, of the Joint Proposal sets forth KEDNY's deferral accounts and other regulatory assets and liabilities forecast balances as of March 31, 2021, while Appendix 7, Schedule 1, sets forth KEDLI's. With the exception of the deferral accounts and other regulatory assets and liabilities identified as "Discontinued" on the Schedules, KEDNY and KEDLI are authorized to continue use of reconciliation mechanisms and/or deferral accounting (with certain modifications) with respect to the expenses set forth in the Schedules. The Joint Proposal recommends continuing deferrals for items such as: pension and OPEBs expense, the low income discount program, economic development grant programs, site investigation and remediation costs, property tax expense, City State Construction program, exogenous costs, and the net utility plant and depreciation expense reconciliation. In addition, the Joint Proposal provides for the continuation of the following reconciliation mechanisms to continue outside of base rates, including RDM and LAUF gas.

8.1.1 KEDNY and KEDLI Pension and Other Post-Employment Benefits (OPEBs) Regulatory Asset

The Joint Proposal allows the Companies to continue to defer and reconcile their respective actual pension and OPEB expenses to the levels allowed in rates in accordance with the Commission's Pension & OPEB Statement of Policy.³⁸⁸ Additionally, for the purposes of determining the Companies' internal reserve and the carrying costs that apply to that reserve, the Companies are authorized to combine the funding of its pensions and OPEBs, and to offset, for example, any deficiencies in funding.

8.1.3 Exogenous Costs

The Joint Proposal includes a provision allowing for 100% of all exogenous costs associated with, or cause by an individual instance to be deferred, once such costs exceed the threshold of exceeding 3% of pre-tax utility income for the year in which the change first occurs. Additionally, KEDNY and KEDLI will be permitted to a single exogenous cost arising from multiple municipalities' laws, regulations, or ordinances relating to the same subject matter.

³⁸⁸ Case 91-M-0890, In the Matter of the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other than Pensions, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions (issued September 7, 1993).

This provision recognizes that prior to the beginning of the rate plans, it is impossible to know what circumstances may potentially change and impact the Companies, and providing some protection to the Companies against unknown, uncontrollable events is reasonable. Accordingly, this provision should be adopted.

8.1.4 Site Investigation and Remediation (SIR) Expense

In testimony, the Companies sought recovery of 100% of forecasted SIR expenses in base rates,³⁸⁹ and continue amortization the deferred SIR balances as of December 31, 2016. In addition, KEDNY proposed to continue the SIR surcharge mechanism.³⁹⁰ Staff, in testimony, reviewed the Companies SIR program, and recommended the use of a projected average to forecast SIR expenses.³⁹¹

In its testimony, PULP argued that KEDNY be required to use 100% of its share of any earnings-sharing mechanism, including any dead-band, to reduce deferred SIR costs.³⁹² AARP supported PULP's arguments in its Initial Brief, asserting "the Commission should allocate 100% of KEDNY's earnings greater than the rate of return on which KEDNY's rates are based to reduce deferred SIR costs or, alternatively, in the absence of any "over earnings," should require KEDNY's shareholders to contribute to the payment of the SIR costs."³⁹³

The Commission, in Case 11-M-0034, evaluating the treatment of the State's regulated utilities' SIR costs, concluded that the risk of a negative market reaction to a generic requirement of shareholder responsibility for SIR costs could diminish any economic benefit to ratepayers.³⁹⁴ However, the Commission recognized, as does Staff, that sharing may be appropriate in a specific rate case, where the Companies performance or other specific factors warrant different treatment.

The Joint Proposal provides for the annual rate allowance for SIR based on a projected average of annual expenditures. Additionally, the Joint Proposal continues the

³⁸⁹ T. 3472 – 3473, 3492 – 3493.

³⁹⁰ T. 3473.

³⁹¹ T. 3549.

³⁹² T. 1629.

³⁹³ AARP Initial Brief, p. 4.

³⁹⁴ Case 11-M-0034, Review of the Treatment of Utilities' SIR Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012), pp. 14, 29.

amortization of the SIR deferral balance as of December 31, 2016. Further, the Joint Proposal continues to allow KEDNY to utilize an SIR surcharge for expenditures in excess of those used to forecast rates exceeding \$25 million on a cumulative basis and be limited to an amount no greater than 2% of the Companies' prior year's aggregate revenues. Finally, as discussed in Section 4.3, above, the ESM included in the Joint Proposal requires that KEDNY and KEDLI apply 50% of their share of earnings in the third and fourth tiers of the ESM to write down SIR deferrals. These provisions reflect reasonable potential litigation outcomes in these proceedings, and reflect forecasts of expenditures for SIR work. Accordingly, they are reasonable and should be adopted.

8.1.5 Property and Special Franchise Taxes

In its initial testimony, the Companies proposed a full reconciliation mechanism for property and special franchise taxes.³⁹⁵ In its initial testimony, Staff recommended not providing any reconciliation for property taxes for a one-year rate plan, as the Companies would have had the chance to update for any known material changes at a late stage in the proceedings.³⁹⁶

The Joint Proposal provides for the differences between actual property and special franchise taxes expense to the rate allowance to be deferred for future refund or recovery from customers. Differences will be shared 90%/10% between the customers and shareholders, subject to the following cap: the Company's 10% share of property tax expense above or below the level of rates is capped at an annual amount equal to 7.5 basis points on common equity in RY1, five basis points on common equity in RY2, and 2.5 basis points on common equity in RY3. The use of a property tax reconciliation mechanism is consistent with prior multi-year rate plans adopted by the Commission for other utilities. Further, the sharing mechanism, including the cap described above, is reasonable because, while the Companies do have some control in mitigating property tax expense, Staff recognizes that property tax expense, in large part is outside of their control. As such, implementing the caps allows the Companies to have some form of protection from unlimited risk, while ensuring that shareholders are also subject to some

³⁹⁵ T. 1102.

³⁹⁶ T. 2583 – 2584.

risk and will therefore have an interest in controlling property tax expense. Accordingly, this provision of the Joint Proposal is reasonable and should be adopted.

**8.1.5.1 Case 18-M-0270 – Hempstead Property Tax Refund
(KEDLI only)**

In a filing in Case 18-M-0270, KEDLI provided a notice of various refunds received on March 7, 2018, from the town of Hempstead and various districts located in the Town totaling \$49.3 million related to special *ad valorem* levies for garbage collection and disposal services on the Company's special franchise and public utility property.³⁹⁷ The refund is the result of a judgment in a tax challenge obtained by KEDLI. KEDLI later updated this amount to \$50.4 million, \$28.209 million of which is the principal balance, with the remainder consisting of interest.³⁹⁸ The judgment directing this tax refund remains subject to appeal by the Town and by the Company regarding the amount of interest. Therefore, the refund amount of \$50.4 million received is not final at this time, and could be subject to change as a result of appeal.

The Joint Proposal provides that the refund, minus KEDLI's costs to achieve, will be shared between customers and shareholders on an 85%/15% basis, respectively. KEDLI will set up a regulatory liability and credit to customers 85% of the refund received to date, adjusted for carrying costs and net of its cost to achieve the refunds.³⁹⁹ The final amount, after all appeals have been resolved and the actual costs to achieve known, would be subject to full reconciliation. If KEDLI collects any additional refund amounts as a result of the appeal, the Company will credit customers on the same basis, net of any incremental costs to achieve. If KEDLI ultimately retains less than the currently received refund due to the appeal, the Company will adjust the deferral balance and the amount of carrying charges consistent with the outcome of the appeal. The disposition of the final regulatory liability amount due to customers will be determined by the Commission at a later date, in a subsequent proceeding. The use of a sharing mechanism, including the division of 85% of net proceeds to customers and 15% to shareholders for a

³⁹⁷ Case 18-M-0270, Petition for Approval, Pursuant to PSL, Section 113(2), of a Proposed Allocation of Certain Tax Refunds Between KeySpan Gas East Corp d/b/a National Grid and Ratepayers (filed May 7, 2018).

³⁹⁸ Case 18-M-0270, supra, KEDLI Property Tax Refund Update Letter (filed July 23, 2018).

³⁹⁹ Joint Proposal, p. 92. KEDLI's current estimate of its costs to achieve to the property tax refund is \$200,000.

property tax refund is consistent with, or in range of, the allocation of, other property tax refund cases resolved by the Commission.⁴⁰⁰ Allowing shareholders to retain a share of the proceeds of the property tax refund provides an incentive to utilities to aggressively seek property tax refunds, with customers being the primary beneficiaries of these efforts. Accordingly, this provision is reasonable and should be adopted.

8.2 New Reconciliations, Deferrals, and True-Ups

There are a number of new reconciliations, deferrals, and true-ups that are incorporated into the Joint Proposal. These deferrals include paving expense (KEDNY only), IT Net utility Plant and Depreciation expense, pension & OPEB settlement/curtailment gain, energy efficiency costs, and inactive accounts. Additionally, the Joint Proposal recognizes that the Companies have the ability to petition for authority to defer uncollectible expenses in excess of the rate allowance that result from the COVID-19 pandemic.

8.2.3 Pension and OPEB Settlement/Curtailment Gain

Consistent with Section VI.2 of the joint proposal adopted by the Commission in the 2016 Rate Order, and after Staff completed its review, the Joint Proposal in these proceedings permits KEDNY and KEDLI to establish regulatory assets of \$1 million and \$47 million, respectively, for pension and OPEB-related amounts that were eliminated by KEDNY and KEDLI as a result of their affiliate KeySpan Electric Services LLC's (KES) recognition of the curtailment/settlement gain required at the expiration of the Management Services Agreement between KES and LIPA.⁴⁰¹ This establishment of the regulatory assets ensures that customers will pay no more or no less than they would have paid if KES had not recognized this curtailment/settlement gain, and as such it is reasonable and should be adopted.

8.3 Additional Reconciliations, Deferrals, and True-Ups

The Joint Proposal recognizes that nothing in it precludes the Companies from implementing additional reconciliations if authorized by the Commission.

⁴⁰⁰ 2016 Rate Order, Attachment 1 (Joint Proposal), pp. 83 – 84.

⁴⁰¹ 2016 Rate Order, Attachment 1 (Joint Proposal), pp. 109 – 110.

9. Customer Service Quality Program

The Companies proposed no changes to the current customer service quality metrics and associated potential NRAs in testimony.⁴⁰² Staff reviewed the Companies' recent annual performance on customer service metrics, and, in testimony, recommended adjusting the metric performance targets from the targets set in the 2016 Rate Order for several of the metrics measures. Staff did not recommend changes to the NRAs associated with the measures. For KEDNY, Staff proposed to adjust the minimum target for the PSC Complaint Rate per 100,000 customers from 1.1 to 1, adjust the minimum target for the Residential Transaction Satisfaction Index from 84.8% to 86.7%, maintain the minimum target for Percentage of Calls Answered Within 30 Seconds at 60.6%, and adjust the minimum target for Adjusted Bills from 1.69% to 0.61%. For KEDLI, Staff proposed to adjust the minimum target for the PSC Complaint Rate per 100,000 customers from 1.1 to 1, adjust the minimum target for the Residential Transaction Satisfaction Index from 83.4% to 85.1%, adjust the minimum target for Percentage of Calls Answered Within 30 Seconds from 62.2% to 64.4%, and adjust the minimum target for Adjusted Bills from 1.69% to 0.40%.⁴⁰³

UIU proposed changes to the targets in testimony as well. UIU did not recommend changes to the NRAs associated with the measures. For KEDNY, UIU proposed to adjust the minimum target for the PSC Complaint Rate per 100,000 customers from 1.1 to 0.7, adjust the minimum target for the Residential Transaction Satisfaction Index from 84.8% to 86.4%, maintain the minimum target for Percentage of Calls Answered Within 30 Seconds at 60.6%, and adjust the minimum target for Adjusted Bills from 1.69% to 0.62%. For KEDLI, UIU proposed to maintain the minimum target for the PSC Complaint Rate per 100,000 customers at 1.1, adjust the minimum target for the Residential Transaction Satisfaction Index from 83.4% to 85.1%, adjust the minimum target for Percentage of Calls Answered Within 30 Seconds from 62.2% to 64.4%, and adjust the minimum target for Adjusted Bills from 1.69% to 1.50%.⁴⁰⁴

The Joint Proposal recommendations reflect a compromise among the parties. The Joint Proposal recommends renaming the Customer Satisfaction metric to the Residential

⁴⁰² T. 1491 – 1492.

⁴⁰³ T. 1466 – 1472.

⁴⁰⁴ T. 1799 – 1801.

Customer Satisfaction Survey in accordance with the audit in Case 20-M-0046. Additionally, the Joint Proposal recommends continuing the potential NRAs currently in effect for poor performance at a total of \$11.7 million for KEDNY and \$9.9 million for KEDLI. Further, the Joint Proposal recommends no change to the targets for CY 2020 with adjustments in the targets for CY 2021 forward. For CY 2021 forward, the recommendations for KEDNY are minimum targets of 1.0 for the PSC Complaint Rate per 100,000 customers, 86.7% for the Residential Customer Satisfaction Survey, 60.6% for the Percentage of Calls Answered Within 30 Seconds, and 0.62% for the Adjusted Bills. For KEDLI, the recommendations for CY 2021 forward are minimum targets of 1.0 for the PSC Complaint Rate per 100,000 customers, 85.1% for the Residential Customer Satisfaction Survey, 62.2% for the Percentage of Calls Answered Within 30 Seconds, and 1.50% for the Adjusted Bills.

It is reasonable to maintain the targets in effect for 2020, as these cases will not conclude until 2021. Further, the recommended adjustments to the minimum targets for CY 2021 forward are reasonable because they update outdated targets to be more in line with the Companies' actual performance in recent years and incent the Companies to continue providing adequate levels of customer service supported by customers through rates. This provision is reasonable and should be adopted.

The Joint Proposal also acknowledges that the COVID-19 pandemic may impact the performance of the Companies, and states, to that end, the Companies may petition the Commission for waiver of NRAs if the Companies can demonstrate the performance results were due to the pandemic for CY 2020 through 2024. This provision is reasonable because the full effects of the pandemic are not yet known, and the Companies should be afforded the opportunity to request that the Commission evaluate potential impacts.

9.5 Reporting

The Joint Proposal provides that the Companies will submit an annual performance report to the Secretary to the Commission within three months after the conclusion of each full calendar year. The annual performance report will include a description of the service quality measures, the method for calculating performance, the results for the period, supporting calculations of annual results in spreadsheet format, and a narrative overall assessment of customer service performance during that calendar year. This is reasonable as it

allows both Staff and the Companies to review performance data for accuracy, concerns, and auditing purposes.

9.6 Service Guarantee

The Companies will continue to provide a credit of \$30 for residential customers and \$60 for non-residential customers for appointments missed by the Companies. This service guarantee provides customers with compensation for the loss of their time. Accordingly, it is reasonable and should be adopted.

9.7 Termination and Uncollectible Incentive

In litigation, the Companies proposed to continue the Terminations and Uncollectible Metric as a PRA only with updated targets. KEDNY proposed to use a normalized five-year average from seven years of data for the average target and reduce that target by one standard deviation to set the threshold target. Due to the separation from the Long Island Power Authority and less available data, KEDLI proposed to use four years of data to set the average target and reduce that target by one standard deviation to set the threshold target.⁴⁰⁵

In litigation, Staff proposed updated targets based on a three-year average and one standard deviation, as well as the addition of an arrears measure to the metric.⁴⁰⁶ Staff also recommended a structure in which the Companies could earn the maximum PRA if terminations, uncollectibles, and arrears were all at or below the threshold targets. Staff proposed the continuation of the partial PRA mechanism if terminations were at or below the threshold target and both uncollectibles and arrears were at or below the average target. For KEDNY, this is \$1.26 million for a full PRA and \$540,000 for the partial PRA. For KEDLI, the full PRA is \$840,000 and the partial PRA is \$360,000.

UIU recommended a stretch goal of two standard deviations from a five-year average of actual performance for KEDNY and a four-year average of actual performance for KEDLI.⁴⁰⁷ PULP recommended the addition of an arrears measure to the mechanism, updated

⁴⁰⁵ T. 1112 – 1116.

⁴⁰⁶ T. 1479 – 1487.

⁴⁰⁷ T. 1804 – 1806.

targets, and the addition of NRAs. To set the new targets, PULP recommended targets based on a five-year normalized average from seven years of data set at two standard deviations.⁴⁰⁸

These recommendations were made prior to the onset of the COVID-19 pandemic. In light of Chapter 108 of the Laws of New York of 2020, which imposed a moratorium on termination of residential service and altered utility collections practices beyond the Companies' control, these recommendations can no longer be implemented or adopted in a meaningful way. The Joint Proposal recognizes this and recommends that the existing termination and uncollectible incentive mechanism be suspended for the term of the rate plans, subject to the outcome of the generic COVID-19 proceeding. This is reasonable because this pause will allow for the collections data to stabilize after terminations resume once the moratorium is lifted. Of note, the recommendation in the Joint Proposal does not modify the monthly reporting requirements for collections activities in Case 91-M-0744 for continued monitoring by the Companies, Staff, and other interested parties. Further, the Joint Proposal does not preclude the mechanism from being reinstituted in the future.

10. Gas Safety Performance Metrics

In their initial filings, KEDLI and KEDNY proposed more stringent pipeline safety performance targets; the consolidation of certain metrics; redistribution of Negative Revenue Adjustments, or NRAs, amongst the metrics; maintaining the same overall NRA exposure; and to align their metrics with that of other Local Distribution Companies, or LDCs.⁴⁰⁹

In testimony, Staff addressed each of the performance metrics individually. Overall, Staff expressed support for redistributing the potential NRAs between metrics.⁴¹⁰ Further, Staff expressed its general support for aligning the Companies performance metrics with those in operation for other LDCs.⁴¹¹

The Joint Proposal recommends more stringent pipeline safety performance targets; the consolidation of certain metrics; redistribution of NRAs; and aligning the metrics with those of other LDCs. Also, the Joint Proposal recommends that incurred NRAs be deferred

⁴⁰⁸ T. 1620.

⁴⁰⁹ T. 3750.

⁴¹⁰ T. 4038.

⁴¹¹ T. 4037, 4058 – 4059, 4069 – 4072, 4081, 4090 – 4091.

for future disposition; the metrics be continued until modified by the Commission; and that KEDLI and KEDNY to refile their CY2020 annual performance metric reports. Finally, the Joint Proposal recognizes that the COVID-19 pandemic could impact performance during the rate plan.⁴¹²

The gas safety performance metrics set forth in the Joint Proposal are reasonable and should be adopted. The Companies recent performance demonstrates the need for such metrics, and the Joint Proposal aligns the metrics with those of other LDCs. Additionally, the Joint Proposal allows for the readjustment of CY2020 targets due to impacts of the COVID-19 pandemic.

10.1 Leak-Prone Pipe Removal Metric

In their initial filings, KEDLI and KEDNY proposed to continue their existing LPP removal programs;⁴¹³ proposed PRAs, and NRAs;⁴¹⁴ proposed a multi-year approach and cumulative targets;⁴¹⁵ modified LPP algorithms to assign higher weight factors for facilities located in flood plain areas;⁴¹⁶ and proposed to continue their existing reporting requirements.⁴¹⁷

In its initial filing, Staff supported the LPP removal targets;⁴¹⁸ supported the removal of LPP services in conjunction with LPP mains;⁴¹⁹ supported the increase in NRAs;⁴²⁰ proposed alternative PRAs;⁴²¹ and proposed enhanced LPP reporting requirements.⁴²² In its initial filing, NYC proposed the removal of all low-pressure LPP located in FEMA 100 and FEMA 500 flood plain areas within 10 years;⁴²³ opposed PRAs due to the lack of justification and a “compelling need;”⁴²⁴ proposed PRAs for additional LPP removals in low-pressure, flood

⁴¹² Joint Proposal, pp. 106 – 108.

⁴¹³ T. 3753.

⁴¹⁴ Id.

⁴¹⁵ T. 3795.

⁴¹⁶ T. 3796.

⁴¹⁷ T. 3832.

⁴¹⁸ T. 4048.

⁴¹⁹ T. 4044.

⁴²⁰ T. 4048.

⁴²¹ T. 3605.

⁴²² T. 4050.

⁴²³ T. 5434.

⁴²⁴ T. 5462.

plain areas;⁴²⁵ opposed increasing NRAs;⁴²⁶ and proposed that NYC be allowed to review LPP removals on an annual basis to insure maximum optimization of work and coordination.⁴²⁷ In its initial filing, SEP asserted that the Companies failed to consider climate change and the health impacts of fracked gas; and claimed that LPP replacement conflicted with New York climate goals.⁴²⁸

The Joint Proposal recommends calendar year and cumulative LPP removal targets; NRAs; no PRAs; the continuation of existing annual reporting requirements; and considers the impacts of the COVID-19 pandemic in that the Companies will be deemed to have met their targets if the main is installed and energized but services are not yet tied in. Those services not tied into mains will be completed in CY2021 and will not be counted towards the LPP metric in CY2021.⁴²⁹

The LPP removal metric is reasonable and should be adopted due to it improving public safety by removing LPP from the natural gas systems; reducing fugitive methane emissions; and working towards New York climate goals.

10.2 Leak Management

In their initial filings, KEDLI and KEDNY proposed to reduce their calendar year total leak backlogs;⁴³⁰ maintain their calendar year repairable leak backlogs;⁴³¹ proposed that they could meet this metric at any time during the last 10 days of the calendar year to avoid unnecessary expenses;⁴³² NRAs;⁴³³ PRAs;⁴³⁴ and that recheck inspections should not be required for Type 3 leaks.⁴³⁵

⁴²⁵ T. 5435.

⁴²⁶ T. 5461.

⁴²⁷ T. 5422.

⁴²⁸ T. 5675 – 5681.

⁴²⁹ Joint Proposal, pp. 108 – 109.

⁴³⁰ T. 4083.

⁴³¹ T. 4084.

⁴³² T. 4085.

⁴³³ T. 4084.

⁴³⁴ T. 4085.

⁴³⁵ T. 3805.

In its initial filing, NYC proposed the elimination of all leaks within five calendar years;⁴³⁶ NRAs;⁴³⁷ and PRAs.⁴³⁸ In its initial filing, EDF proposed the deployment of advanced leak detection technologies to quantify leakage rates and to prioritize repairs;⁴³⁹ and proposed that the Companies conduct studies utilizing advanced leak detection technology.⁴⁴⁰ In testimony, Staff supported reducing the calendar year total leak backlogs;⁴⁴¹ supported maintaining the calendar year repairable leak backlogs;⁴⁴² supported meeting this metric at any time during the last 10 days of the calendar year;⁴⁴³ recommended that recheck inspections be required for Type 3 leaks;⁴⁴⁴ supported NRAs;⁴⁴⁵ and supported PRAs.⁴⁴⁶ In their rebuttal filings, KEDLI and KEDNY disagreed with the use of advanced leak detection technology due to reliability concerns and it not being approved for use in New York;⁴⁴⁷ agreed with the use of CRDS technology to combat methane emissions;⁴⁴⁸ and disagreed with eliminating all leaks within five calendar years.⁴⁴⁹

The Joint Proposal recommends total and repairable leak backlog targets; NRAs; PRAs; the ability to meet the targets within the last 10 days of the calendar year; re-incorporating leaks into the backlog should they fail a recheck inspection; working collaboratively with others to ensure this metric incentivizing the identification of all discoverable leaks using available technologies; and annual reporting of the leaks eliminated and their associated costs.⁴⁵⁰ The leak management metric provisions are reasonable and should be adopted due to the decreased threat to public safety and reduced methane emissions that will be realized from eliminating leaks.

⁴³⁶ T. 5472.

⁴³⁷ T. 5473.

⁴³⁸ T. 5474.

⁴³⁹ T. 5582.

⁴⁴⁰ T. 5605.

⁴⁴¹ T. 4056.

⁴⁴² Id.

⁴⁴³ T. 4058.

⁴⁴⁴ T. 4059.

⁴⁴⁵ T. 4058.

⁴⁴⁶ T. 4061.

⁴⁴⁷ T. 3808.

⁴⁴⁸ Id.

⁴⁴⁹ T. 3806.

⁴⁵⁰ Joint Proposal, pp. 109 – 111.

10.3 Damage Prevention

In their initial filings, KEDLI and KEDNY proposed to consolidate the metric into a single category for total damages per 1,000 one-call tickets; proposed maintaining the current methodology used to calculate this metric; NRAs; and PRAs.⁴⁵¹ In testimony, NYC opposed consolidating this metric into a single category; and opposed PRAs due to lack of justification and a “compelling need”.⁴⁵² In testimony, Staff supported the consolidation of this metric into a single category;⁴⁵³ NRAs;⁴⁵⁴ PRAs;⁴⁵⁵ and calculating this metric based on the methodology used for other LDCs, or excluding refresh and relocate one-call tickets from the calculation.⁴⁵⁶ In their rebuttal testimony, KEDLI and KEDNY opposed modifying the methodology for calculating this metric; proposed that refresh and relocate one-call tickets be included in the ticket count; and reiterated that it is unfair to penalize the Companies for actions that are outside of their direct control.⁴⁵⁷

The Joint Proposal recommends consolidating this metric into a single category; continuing NRAs and PRAs; and ensuring that the methodology used to calculate this metric is consistent with that used by other LDCs. Also, the Joint Proposal recommends periodic meetings with LDCs, Staff, New York’s one-call centers, and other interested parties to discuss nuances with the damage prevention metric when applied throughout New York.⁴⁵⁸

Given the disruption and harm that damages to the Companies facilities can cause, it is imperative to continue this metric to ensure that the total number of damages per one-call ticket remains at or below the current performance levels. Thus, the reason this recommendation is reasonable and should be adopted.

⁴⁵¹ T. 3762.

⁴⁵² T. 5478.

⁴⁵³ T. 4069.

⁴⁵⁴ T. 4070.

⁴⁵⁵ Id.

⁴⁵⁶ 2016 Rate Order, Attachment 1 (Joint Proposal), pp. 51 – 52, 100 – 101.

⁴⁵⁷ T. 3811.

⁴⁵⁸ Joint Proposal, pp. 111 – 112.

10.4 Emergency Response

In initial testimony, KEDLI and KEDNY proposed to maintain their current targets; NRAs; and to exclude instances of 20 or more emergency reports within a two-hour period from issues not caused by the Companies.⁴⁵⁹ Also, KEDLI and KEDNY proposed PRAs similar to that in place for other LDCs.⁴⁶⁰

In testimony, NYC proposed increased emergency response targets⁴⁶¹ and suggested measuring response times from when the Companies receive a call to when a qualified crew begins remediation work.⁴⁶² In testimony, Staff supported the continuation of this metric;⁴⁶³ NRAs;⁴⁶⁴ the exclusion clause;⁴⁶⁵ and PRAs.⁴⁶⁶ In rebuttal testimony, KEDLI and KEDNY stated that dispatching a repair crew to every emergency report would not be the best use of its resources; and reiterated that qualified personnel are properly trained and equipped to investigate emergency reports in accordance with applicable procedures and standards.⁴⁶⁷

The Joint Proposal recommends continuing this metric and the targets; NRAs; PRAs; the exclusion clause; and maintaining the existing parameters surrounding how the response times are measured.⁴⁶⁸ As the Companies' response times increase, so does the potential for an incident or safety-related condition to occur. Therefore, it is imperative that LDCs minimize their response times to emergency reports. Accordingly, this metric is reasonable and should be adopted.

10.5 Gas Safety Regulations Performance Metric

In their initial testimony, KEDLI and KEDNY proposed alternative targets; reductions to the NRA exposure limits; continuation of remediation plans for 10 or more violations of a single code section; exclusion of violations subject to separate penalty

⁴⁵⁹ T. 3761.

⁴⁶⁰ T. 3762.

⁴⁶¹ T. 5468.

⁴⁶² T. 5469.

⁴⁶³ T. 4079.

⁴⁶⁴ Id.

⁴⁶⁵ Id.

⁴⁶⁶ T. 4080.

⁴⁶⁷ T. 3817.

⁴⁶⁸ Joint Proposal, pp. 112 – 113.

proceedings; and counting multiple violations attributed to an event as a single violation.⁴⁶⁹ In testimony, NYC opposed decreasing the NRA exposure limits due to it not being appropriate based on the Companies historic performance.⁴⁷⁰ In testimony, Staff proposed targets consistent with those of other LDCs;⁴⁷¹ supported reductions to the NRA exposure limits; supported remediation plans for 10 or more record audit violations of a single code section, but not for 10 or more field audit violations of a single code section; and proposed re-including those violations where the Companies failed to comply with their remediation plans.⁴⁷² In their rebuttal filings, KEDLI and KEDNY opposed the removal of remediation plans for 10 or more field audit violations of a single code section.⁴⁷³

The Joint Proposal recommends targets consistent with those in place for other LDCs. Additionally, the Joint Proposal recommends the continuation of NRAs; the inclusion of LNG regulation violations beginning with the CY2023 audit of CY2022 performance; requiring remediation plans for 10 or more occurrences of a single code section, not specific to either field or record audits; re-including those violations if the Companies fail to comply with their remediation plans; exclusion of violations subject to separate penalty proceedings; counting a technical and a corresponding procedural violation as one occurrence; prescribed specific communication requirements for the Companies and Staff; and deferred incurred NRAs for future gas safety and compliance improvement programs.⁴⁷⁴

Any violations of the Commission's minimum pipeline safety regulations could indicate a lack of control, issues with quality assurance, or a culture that is willing to accept violations as a cost of doing business.⁴⁷⁵ Therefore, having a metric by which the Companies incur NRAs for violations serves as an incentive to improve performance and is the reason why this metric is reasonable and should be adopted. Additionally, the NRA exposure limit should be decreased to balance the exposure more appropriately across the Companies' other pipeline safety performance metrics.

⁴⁶⁹ T. 3838.

⁴⁷⁰ T. 5461.

⁴⁷¹ T. 4091.

⁴⁷² T. 4093.

⁴⁷³ T. 3818.

⁴⁷⁴ Joint Proposal, pp. 113 – 115.

⁴⁷⁵ T. 4083.

10.6 Gas Safety Reporting and Exceptions

In testimony, KEDLI, KEDNY, and Staff sought to maintain the annual reporting requirement by April 1st of the following calendar year for the pipeline safety performance metrics. The Joint Proposal recommends continuing the annual reporting requirement.⁴⁷⁶ These publicly filed reports will allow others to view the Companies performance as they relate to the pipeline safety metrics. Thus, the reporting requirement is reasonable and should be adopted.

11. Customer Initiatives

11.1 Electronic Deferred Payment Agreements and Reports

In their initial testimony, KEDNY and KEDLI proposed to enhance the deferred payment agreement (DPA) process in order to permit customers to electronically enter into a DPA, rather than the current procedure of mailing in the DPA form or going to a customer office.⁴⁷⁷ A DPA is described in the regulations implementing the Home Energy Fair Practices Act as a written agreement for the payment of outstanding charges over a specific period, signed by both the utility and the customer, or applicant for utility service.⁴⁷⁸ Staff agreed with the Companies' proposal, but recommended that the Companies submit quarterly reports to the Secretary to the Commission to track the implementation and usage of electronic DPAs.⁴⁷⁹ PULP supports the implementation of electronic DPAs.⁴⁸⁰

The Joint Proposal recommends implementing this enhancement and describes the quarterly reporting that will be submitted by the Companies. These terms are reasonable because electronic DPAs expand accessibility for customers to enter into a DPA to avoid service terminations and expedite the process of doing so. The reporting requirements should be adopted because they increase transparency and allow Staff and other interested parties to monitor electronic DPAs in comparison to paper DPAs that are provided via mail or through an in-person visit to one of the Companies' customer offices.

⁴⁷⁶ Joint Proposal, p. 115.

⁴⁷⁷ T. 1219 – 1220.

⁴⁷⁸ 16 NYCRR §11.10 (a)(1).

⁴⁷⁹ T. 1490 – 1492.

⁴⁸⁰ T. 1670.

11.2 Energy and Affordability Programs

In initial testimony, the Companies' provided updated bill discount amounts, a revised budget, and rate allowance for KEDNY and KEDLI's Energy Affordability Programs (EAP).⁴⁸¹ The Companies also proposed to consolidate the bill discount tiers down to four tiers, originally from six tiers at KEDNY and five tiers at KEDLI, as KEDNY's Tiers 5 and 6 and KEDLI's Tier 5 are duplicative of Tier 1.⁴⁸² The Companies also proposed to decrease the rate allowance based on the 2019 Energy Affordability Program budget, from \$31.9 million at KEDNY and \$6.6 million for KEDLI to \$25.5 million and \$5.5 million, respectively.⁴⁸³ The Companies' proposals included adding 0.5 FTE shared between KEDNY and KEDLI to increase EAP enrollment.⁴⁸⁴ Staff agreed with the Companies' initial proposals and therefore did not submit testimony on these issues. PULP also agreed with the Companies' proposal to add 0.5 FTE; however, PULP proposed to increase this to one FTE.

NYC proposed to increase the EAP bill discounts and budgets⁴⁸⁵ and asserted that the current EAP methodology, which was set by the Commission in the generic Affordability Proceeding, Case 14-M-0565, is flawed for New York City.⁴⁸⁶ PULP also expressed concern that the EAP discounts would not offset the Companies' proposed rate increases in these proceedings.⁴⁸⁷ Staff and the Companies disagreed with NYC's proposals, stating the discounts are recalculated annually, and the City's proposals deviate from Commission's established policies for the generic, statewide approach.⁴⁸⁸ In supplemental testimony, Staff provided the Companies' EAP program updates for calendar year 2020, which increased the discounts for both Companies to a level more in line with NYC's proposed discounts and exceeded KEDNY's budget cap of 2% of revenues and had to be adjusted, consistent the Commission's policy set forth in the generic Affordability Proceeding.⁴⁸⁹

⁴⁸¹ T. 1146 – 1149.

⁴⁸² T. 1148.

⁴⁸³ T. 1148 – 1149.

⁴⁸⁴ T. 1154 – 1155.

⁴⁸⁵ T. 5357 – 5360.

⁴⁸⁶ T. 5344 – 5360.

⁴⁸⁷ T. 1622 – 1625.

⁴⁸⁸ T. 1513 – 1515, 1211 – 1214.

⁴⁸⁹ T. 1517 – 1521.

The Joint Proposal establishes annual EAP rate allowance at \$38.45 million for KEDNY and \$6.75 million for KEDLI. The Joint Proposal also recommends adding one FTE to support KEDNY and KEDLI in their continued implementation of the EAP, which is reasonable because this resource will support EAP enrollment. Additionally, the Joint Proposal recommends consolidation of the Companies' respective tiers as proposed, which is reasonable because it avoids duplication among the discount tiers and will streamline the tier identification process. The Joint Proposal also recognizes that Phase II of the Commission's Affordability Proceeding, Case 14-M-0565, is ongoing and the Commission may adjust the discount methodology, the Companies' budgets, or other terms of the EAP programs. Should such adjustments occur in the Affordability Proceeding, the Joint Proposal recognizes that such adjustments would control in place of any countervailing provisions of the Joint Proposal. These terms are in the interest of customers because they refine the EAP process and expand the EAP discounts so more customers receive needed assistance with their utility bills. The terms also recognize there is an ongoing proceeding that may alter the Joint Proposal. Accordingly, these terms are reasonable and should be adopted.

Regarding EAP file-matching, the Companies utilize automatic enrollment in HEAP and various other public assistance programs through a file match with the New York City Human Resources Association and the NYS Office of Temporary and Disability Assistance (OTDA).⁴⁹⁰ Additionally, the Companies' consumer advocates conduct outreach to identify more EAP participants.⁴⁹¹ PULP's direct testimony advocated for the Companies to accelerate efforts to enroll customers in EAP and energy efficiency, and to partner with the NYC HRA and Nassau/Suffolk Departments of Social Services to increase EAP enrollment.⁴⁹² NYC also proposed quarterly file matching and to increase the Companies' reimbursement of HRA reimbursement from the current \$100,000 to \$200,000.⁴⁹³ The Companies disagreed with NYC's file-matching proposal because more frequent matches may not increase participation levels and may also increase removal of customers.⁴⁹⁴

⁴⁹⁰ T. 1150 – 1154.

⁴⁹¹ T. 1150 – 1154.

⁴⁹² T. 1674 – 1679.

⁴⁹³ T. 5371 – 5376.

⁴⁹⁴ T. 1200 – 1203.

The Joint Proposal recommends increasing the file match to a quarterly frequency and reimbursing NYC \$50,000 from each Company. Any costs beyond the \$50,000 would not be recovered from customers or the responsibility of the Companies. The Joint Proposal also recommends that KEDLI schedule a collaborative meeting with OTDA and Nassau and Suffolk Counties to investigate an expanded EAP file-matching mechanism. The associated costs for an expanded file match with Nassau and Suffolk Counties, up to \$25,000, would be reflected in the EAP deferral mechanism. This is reasonable because it may expand participation in the EAP if a process is not developed in Phase II of the Generic Affordability Proceeding, Case 14-M-0565. Accordingly, the file matching provisions should be adopted.

11.3 Reconnection Fees for EAP Customers

NYC proposed that KEDNY waive reconnection fees for low-income customers, as KEDLI does.⁴⁹⁵ The Joint Proposal recommends that KEDNY waive reconnection fees for EAP participants, the cost of which would be deferred for future recovery. This is reasonable because a reconnection fee waiver further assists EAP customers who are already struggling with paying their utility bill and have had their service terminated.

11.4 Outreach and Education Plans

The Companies did not propose any changes to its outreach and education program. Staff recommended that the Companies electronically file their annual outreach and education plan in the generic outreach proceeding⁴⁹⁶ by April 1 each year to align with the Companies' rate years.⁴⁹⁷ Additionally, PULP proposed that the Companies should conduct additional outreach to customers about balance transfers⁴⁹⁸ and regarding an EAP customer's status on Department of Social Services or NYC HRA grants and assistance.⁴⁹⁹ The Companies disagreed with Staff, recommending instead that the outreach plans should be due at least 60 days following April 1 of each year to allow time to prepare the reports and address fiscal year-

⁴⁹⁵ T. 5368 – 5371.

⁴⁹⁶ Case 17-M-0475, In the Matter of Utility Outreach and Education Plans.

⁴⁹⁷ T. 1495 – 1496.

⁴⁹⁸ T. 1684.

⁴⁹⁹ T. 1677 – 1679.

end issues.⁵⁰⁰ The Companies also disagreed with PULP's outreach proposals, stating that balance transfer outreach is already conducted to affected customers,⁵⁰¹ and that outreach, tracking, accounting, and reporting on DSS or HRA grants should be the responsibility of the government agency providing the benefits.⁵⁰²

The Joint Proposal establishes that the Companies will file their annual outreach and education plans, which will include the calendar-year budget and prior year actual spend, electronically with the Secretary to the Commission by April 1 of each year in Case 17-M-0475. These terms are reasonable because they allow for additional transparency regarding the Companies' outreach and education plan and associated spending.

11.5 Increased Participation in Energy Efficiency Programs

The Joint Proposal recommends extending the Companies' energy efficiency programs to include to non-firm customers and Baseload Distributed Generation ("DG") customers. This provision is reasonable as it expands access to energy efficiency measures and should be adopted.

11.6 Arrears Resolution

The COVID-19 pandemic and associated moratorium on utility service terminations has led to increased customer arrears since the beginning of the pandemic in March 2020. In response to these increased levels, the Joint Proposal provides that a collaborative will commence no later than October 1, 2021, if the Commission does not address residential and small business arrears related to the pandemic in the generic COVID-19 or another generic proceeding by September 15. By November 15, 2021, the Companies would be required to file a report and request Commission authorization for any proposed arrears resolution program. The Joint Proposal recognizes that, if the Commission makes a determination concerning an arrears resolution on a generic basis, such determination will control and obviate need for the collaborative process outlined in the Joint Proposal. This provision is reasonable and should be adopted because it will help to prevent widespread service terminations after the conclusion of the termination moratorium.

⁵⁰⁰ T. 1219 – 1220.

⁵⁰¹ T. 1103.

⁵⁰² T. 1102.

11.7 Language Access

The Joint Proposal stipulates that the Companies will work with Staff and other interested parties to assess the Companies' customer communications and other parties in different languages. The Companies will file a report on these efforts with the Secretary to the Commission in these proceedings. These terms should be adopted because this report will show the various languages that are required by the Companies' customer base.

11.8 Enhanced Training for Consumer Advocates

The Joint Proposal establishes a new training checklist for the Companies' Consumer Advocates so they can provide payment options or assistance options to customers who have arrears in excess of \$300 or who have not made a payment in more than three months due to impacts of the COVID-19 pandemic. These terms are reasonable because they would provide customers with a better understanding of these options if they have not been in arrears prior to the pandemic and would help those customers avoid service termination after the termination moratorium is lifted.

12. Filing for New Rates

12.1 During the Term of the Rate Plans

The Companies commit to not file for new base delivery rates to be effective prior to April 1, 2023. This provision includes a number of standard exceptions, which allow for consideration of modifications that result in de minimis impact on rates, to address new services or, should the Commission determine that unforeseen circumstances have had a substantial impact on the Companies' rates of return so as to render the return unreasonable, unnecessary or inadequate for the provision of safe and adequate service. This provision is a standard provision of rate proceeding joint proposals, is reasonable and should be adopted.

12.2 Following the Term of the Rate Plans

This provision provides mechanisms that take effect during the Stayout Period. These mechanisms can only take effect if the Companies do not file for rates to be effective upon the conclusion of RY3. These mechanisms cease on March 31, 2024 or the date new rates become effective, whichever is sooner. Additionally, the Companies cannot avail themselves of

these mechanisms to the extent they cause the affected Company to earn a ROE in excess of 8.8% during the period in which the mechanisms are in effect.

The first mechanism is modification of the Net Utility Plant and Depreciation Expense Reconciliation Mechanism to a two-way reconciliation, up to a specified cap. In conjunction with this modification, the Companies would be allowed to apply a surcharge, as a component of the DRA, to recover the pre-tax revenue requirement associated with capital expenditures in excess of the amounts reflected in base rates. The second mechanism would allow the Companies to recover through a surcharge any Commission-authorized energy efficiency budgets, above those already recovered in rates, needed to achieve energy efficiency targets in the twelve months ending March 31, 2024.

These provisions may allow the Companies to avoid the need to request base rate increases to be effective before April 1, 2024. With regard to capital expenditures, the mechanism includes caps set forth in the Joint Proposal. With regard to energy efficiency expenditures, any recovery would be limited to monies the Commission has already authorized or will separately authorize the Companies to spend. Accordingly, there are sufficient guardrails in place to ensure that the Companies' recoverable spending during the Stayout Period would not be unreasonable. Thus, these provisions are reasonable and should be adopted.

13. Miscellaneous Provisions

13.1 Corporate Structure and Affiliate Rules

This provision refers to Appendix 11 to the Joint Proposal, which includes the Companies' corporate structure and affiliate rules. Appendix 11 to this Joint Proposal merely restates the same rules included in the joint proposal adopted by the Commission in the 2016 Rate Order. This provision ensures easy access to the currently effective corporate structure and affiliate rules and should be adopted.

13.2 Paving Deferral Balances

Consistent with Section IV.6.1.3 of the Joint Proposal adopted by the Commission in the 2016 Rate Order, KEDNY was authorized to defer the impacts of any legislative, court, or regulatory change that imposed new or modified existing obligations or duties, including added costs for incremental municipal permitting and paving requirements resulting from changes to New York City Highway Rules §§ 2-01 through 2-09, 2-11 through 2-14, and 2-20. As of

March 31, 2020, KEDNY had deferred \$67.9 million of such incremental paving costs. The Joint Proposal in these proceedings provides that KEDNY will write off \$3.4 million, or 5% of this balance, plus associated carrying charges, to resolve the question of how to determine if all of the deferred paving costs were truly incremental. After this adjustment, KEDNY's deferral balance will be \$64.5 million as of March 31, 2020, plus carrying charges, and will continue to accrue carrying charges until recovery is addressed in a future rate proceeding. This balance will remain subject to audit, but will not be subject to any further challenges that the \$64.5 million paving costs were not incremental to paving costs reflected in KEDNY's rates. Staff recognizes that KEDNY faced incremental paving costs during the term of the prior rate plan. The only question is whether some uncertain portion of the costs KEDNY has deferred were truly incremental. This provision of the Joint Proposal is reasonable given the uncertain resolution of the incremental costs issue, and should be adopted.

14. Other Provisions

Section V. of the Joint Proposal contains a number of provisions, common to such documents, that describe agreements between the Signatory Parties regarding submission of the Joint Proposal, and other such matters. These provisions do not require adoption by the Commission.

XIII. MANAGEMENT AUDIT COMPLIANCE

Public Service Law §66(19)(c), requires that "upon the application of a gas or electric corporation for a major change in rates...the Commission shall review that corporation's compliance with the directions and recommendations made previously by the Commission, as a result of the most recently completed management and operations audit." Since KEDNY and KEDLI's rates were last set in the 2016 Rate Order, the Companies have participated in the implementation of recommendations from three audits. Accordingly, Staff addressed KEDNY and KEDLI's status in relation to three recently completed management and operations audits in

testimony.⁵⁰³ These audits include Case 13-G-0009;⁵⁰⁴ Case 13-M-0314;⁵⁰⁵ and Case 13-M-0449.⁵⁰⁶

On September 28, 2018, Staff issued a letter to KEDNY, KEDLI and Niagara Mohawk confirming the completion of the implementation of all audit recommendations from Case 13-G-0009.⁵⁰⁷ On March 13, 2018, Staff issued a letter to KEDNY and KEDLI, as well as Niagara Mohawk, confirming the completion of all audit recommendations from Case 13-M-0314.⁵⁰⁸ On July 30, 2019, Staff issued a letter to KEDNY and KEDLI, as well as Niagara Mohawk, confirming the completion of all audit recommendations from Case 13-M-0449.⁵⁰⁹ Staff confirms that the Companies have completed the implementation of these most recently completed audits.⁵¹⁰

On May 17, 2018, the Commission initiated a management and operations audit of National Grid USA's New York electric and gas utilities in case 18-M-0195.⁵¹¹ On November 19, 2020, the Commission issued the final audit report for this audit.⁵¹² The final audit report made 24 recommendations, 19 of which applied to KEDNY and KEDLI. The Companies filed an implementation plan on December 21, 2020 that accepted all of the audit recommendations. The Commission approved the Companies' implementation plan on May 13, 2021. The first implementation update for this audit will be October 31, 2021, and the

⁵⁰³ T. 5786 – 5287.

⁵⁰⁴ Case 13-G-0009, Management and Operations Audit of National Grid USA's New York Gas Companies.

⁵⁰⁵ Case 13-M-0314, Review of the Accuracy and Effectiveness of Certain Reliability and Customer Service Systems – Gas and Combination Gas and Electric Utilities in New York State.

⁵⁰⁶ Case 13-M-0449, Operations Audit – Staffing -Major New York Energy Utilities.

⁵⁰⁷ Case 13-G-0009, supra, Letter Confirming the Completion of Audit Recommendations (September 28, 2018).

⁵⁰⁸ Case 13-M-0314, supra, Letter to National Grid Regarding Implementation Plan Update (issued March 13, 2018).

⁵⁰⁹ Case 13-M-0449, supra, Letter Confirming the Completion of Implementation Oversight of National Grid USA (issued July 30, 2019).

⁵¹⁰ T. 5287.

⁵¹¹ Case 18-M-0195, Proceeding on a Motion of the Commission to Conduct a Comprehensive Management and Operations of National Grid USA's New York Electric and Gas Utilities, Order Instituting Proceeding and Authorizing Issuance of a Request for Proposals (issued May 17, 2018).

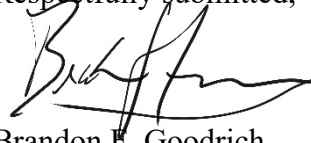
⁵¹² Case 18-M-0195, supra, Order Releasing Audit Report (issued November 19, 2020).

Companies are required to file quarterly updates until all recommendations have been fully implemented.

IX. CONCLUSION

For the reasons stated herein, Staff recommends that the Commission adopt the terms of the Joint Proposal without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brandon F. Goodrich', written over a horizontal line.

Brandon F. Goodrich
Nicholas Forst
Staff Counsel

Dated: Albany, New York
June 2, 2021