



April 3, 2023

VIA ELECTRONIC FILING

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

Re: Case 22-M-0429 – Proceeding to Implement the Utility Thermal Energy Network and Job Act

Dear Secretary Phillips:

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments in response to the Notice Soliciting Comments (“Notice”) issued by the New York State Public Service Commission (“Commission”) in the above-referenced proceeding on February 1, 2023.

Background

On July 5, 2022, New York State enacted the Utility Thermal Energy Network and Jobs Act (“Act”). The purpose of the Act is to facilitate achievement of Climate Leadership and Community Protection Act mandates and, specifically, it aims to decarbonize buildings in New York through utility-scale installation of thermal energy networks as an alternative to natural gas service. The Act (i) amends the Public Service Law to remove legal barriers which previously precluded utilities from entering the thermal energy market, and (ii) requires each of the State’s seven largest utilities to participate in a thermal energy pilot program overseen by the Commission. Specifically, the Act requires those utilities to propose at least one and as many as five pilot thermal energy projects to the Commission for review, and some of those projects must be located in disadvantaged communities.

On September 15, 2022, the Commission issued an *Order on Developing Thermal Energy Networks Pursuant to the Utility Thermal Energy Network and Jobs Act* (“Order”). In the Order, the Commission, *inter alia*: (a) identified the utilities subject to the Act;¹ (b)

¹ Although not specified in the Act, the Order clarifies that the subject utilities are: (a) Central Hudson Gas & Electric Corporation (“Central Hudson”); (b) Consolidated Edison Company of New York, Inc.; (c) National Fuel Gas Distribution Corporation (“NFG”); (d) New York State Electric & Gas Corporation (“NYSEG”); (e) Niagara Mohawk Power Corporation d/b/a

established further procedures to assist in the eventual formation and adoption of rules and regulations governing the development and the regulation of thermal energy networks (Order at 9-10); (c) directed the utilities to develop and then refine proposed thermal energy network pilot projects (*id.* at 10-12); and (d) in response to concerns over customer rate impacts associated with paying for the pilot projects, directed that every proposal must identify the funding sources for the development and the operation of the project, including potential funding sources other than customers (*id.* at 12).

The utilities filed their proposed pilot projects with the Commission on or about January 9, 2023, and, in compliance with the Notice, Multiple Intervenors hereby submits its Comments in response to the utilities' proposals.

Comments

Multiple Intervenors (i) advances here three areas of general concern with respect to the utilities' proposed thermal energy network pilot projects, and (ii) urges the Commission to address these areas of concern in its evaluation of those proposed projects. First, the costs of the proposed pilot projects to customers appear material, and efforts should be expended to moderate those costs to the extent practicable. Second, the utilities' proposals with respect to how quickly the proposed projects would be depreciated vary materially, and the Commission should consider adoption of a general approach barring unusual circumstances. Third, the utilities' proposals with respect to cost recovery generally lack adequate detail; for instance, costs should be allocated to firm service classes on some basis of demand – or, alternatively, utilizing a “neutral” allocator such as delivery revenues – prior to recovery being implemented.

A. The Commission Should Evaluate the Costs of the Proposed Thermal Energy Network Pilot Projects Carefully and Moderate Those Costs to the Extent Practicable

The aggregated capital costs associated with the utilities' proposed thermal energy network pilot projects total in the hundreds of millions of dollars. Inasmuch as such costs ultimately would be recovered from customers – in addition to associated carrying costs and utilities' returns on equity – Multiple Intervenors urges the Commission to: (a) evaluate the proposed costs carefully; and (b) seek to moderate those costs to the extent practicable.

As the Commission is well aware, utility customers are being required to fund numerous programs and initiatives, many of which will cost well into the billions of dollars on an individual basis, and there are legitimate concerns regarding the collective impacts of those funding obligations on customers in the coming years.² While Multiple Intervenors recognizes

National Grid (“Niagara Mohawk”); (f) Orange and Rockland Utilities, Inc.; and (g) Rochester Gas and Electric Corporation (“RG&E”). (Order at 7-8.)

² See, e.g., Case 18-E-0130, *In the Matter of Energy Storage Deployment Program*, Initial Comments of Multiple Intervenors (dated March 20, 2023) at 8-15 (detailing many of the financial obligations imposed recently on customers).

the need for the Commission and the identified utilities to comply with the Act, the expenditures authorized on pilot projects – which will serve only a very limited number of customers – should be constrained to a modest level.

Multiple Intervenors also notes a great discrepancy in utility efforts to manage cost impacts. Central Hudson, for example, advances a proposal that: (a) initially was projected to cost between \$2 million and \$5 million; (b) now is expected to cost in excess of \$5 million; and (c) apparently may cost as much as \$15 million, based upon the discussion and table provided in its submission. (Central Hudson at 16-17.) While the initial cost of the proposal generally appeared reasonable – particularly in comparison to those advanced by other utilities – Multiple Intervenors is concerned that Central Hudson’s latest proposal lacks sufficient cost information and certainty to be evaluated by the Commission. While Multiple Intervenors can understand how an initial cost estimate of \$2 million to \$5 million could be revised to approximately \$5 million following additional analysis, the mere possibility that the project’s cost apparently could grow to \$10 million or even \$15 million should be of major concern to the Commission. Central Hudson should be required to provide a reliable cost estimate for its proposal prior to evaluation.

Niagara Mohawk has advanced two thermal energy network pilot proposals: one to be developed in Troy and the other to be developed in Syracuse. The Troy project has a projected capital cost of \$12.27 million (Niagara Mohawk at 4), which, while expensive, generally is not out of line with the capital costs of several other utilities’ proposals. The Syracuse project, however, has a proposed capital cost of \$66.754 million (*id.*), which apparently is many multiples higher than any other utility’s proposed project. Again, this is supposed to be a pilot to gain experience with thermal energy networks; utilities generally should be discouraged from proposing individual pilots that cost in excess of \$20 million, let alone \$60 million.

Multiple Intervenors does not expect the utilities’ pilot proposals to provide cost certainty down to the penny. But, the Commission should seek to moderate customer costs to the extent practicable in this proceeding. It can do so by, *inter alia*: (a) rejecting proposals that would be prohibitively expensive to customers and/or that lack sufficient cost justification; (b) requiring the utilities to provide some degree of cost certainty in their proposals (and then holding them to those cost estimates barring extraordinary circumstances); (c) requiring utilities to pursue all alternative funding sources aggressively – particularly in light of recent federal legislation – in order to minimize the resulting impacts on customers; and (d) ensure that the participants in the proposed pilots – the small minority of customers in position to benefit directly therefrom – contribute a fair amount toward the project costs.

B. The Commission Should Consider Adoption of a Uniform Approach to the Depreciation of Utility Thermal Energy Network Pilot Projects

The utilities have advanced very different proposals with respect to depreciating the proposed thermal energy network pilot projects. Central Hudson, for instance, proposes to depreciate its proposed project over 10 years (Central Hudson at 16), as does KeySpan Energy Delivery Long Island (“KEDLI”) (KEDLI at 5). NFG proposes to utilize a 15-year

depreciation period. (NFG at 11.) NYSEG and RG&E advance a 20-year depreciation period for their projects. (NYSEG/RG&E at 22.)

Inasmuch as the utilities' proposed projects generally appear similar in concept, it is not clear why there should be such disparities in proposed depreciation periods. Multiple Intervenors notes that, in virtually all instances, there is little to no discussion or justification offered in the filings for the depreciation period proposed by various utilities. NYSEG and RG&E do link their proposed 20-year depreciation period to their projects' expected useful lives. (*Id.*) Importantly, however, if the pilot projects proposed by NYSEG and RG&E each have a projected 20-year useful life, it is unclear why the same is not equally true for the other utilities' proposed projects.

Multiple Intervenors recommends that the Commission provide guidance on this issue and, preferably, establish a uniform depreciation period for the utilities' proposed thermal energy network pilot projects. Given the significant cost of the proposed projects, along with all of the other financial burdens being imposed on customers at this time and in the immediate future, Multiple Intervenors recommends that a depreciation schedule of at least 20 years be adopted for approved projects.

C. The Commission Should Ensure That Pilot Project Costs are Allocated Equitably Prior to Recovery

The utilities have advanced various proposals focused on recovering the cost of their proposed thermal energy network pilot projects. Generally, utilities are seeking to recover certain costs via surcharge, with many utilities proposing to recover costs through base delivery rates after a future rate proceeding. Multiple Intervenors recognizes that utilities will be entitled to recover costs incurred prudently in compliance with the Act and Commission orders relating thereto. The methodologies employed for effectuating such recoveries, however, need to be fair and equitable to all customer types.

Initially, Multiple Intervenors disagrees with utility proposals that seek to recover the entirety of project costs via surcharge. While surcharge recovery may be appropriate for a limited duration – such as until the subject utility's rates are next reset – it is inappropriate for use to recover the entirety of costs associated with one or more pilot projects, especially when such costs predominantly are capital in nature and will be recovered over a long period of time.

Instead, the costs of pilot projects should be reflected in base delivery rates as soon as practicable. Moreover, the costs should be allocated to a utility's service classes in accordance with cost causation principles prior to turning to rate design and recovery. Typically, capital projects are allocated by gas utilities on some basis related to class contribution to system demand (or system peak demand). Inasmuch as the pilot projects are intended to replace, or reduce, gas demand, use of such an allocator would be appropriate here. Alternatively, the Commission could utilize a neutral allocator, such as class delivery revenues, if seeking to allocate the costs in a manner different than class contribution to system demand. What the Commission should avoid doing is simply recovering all costs on a volumetric basis, which would be inconsistent with cost causation, and impose disproportionate impacts on larger, gas-

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intensive businesses (which would be particularly inequitable here, because the pilot projects under discussion generally are not targeted at businesses that have large gas demands, often for process purposes for which alternatives to natural gas currently are not viable).

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the positions advanced herein when evaluating the utilities' proposed thermal energy network pilot projects.

Respectfully submitted,

MULTIPLE INTERVENORS

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MBM/jc