

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission in
Regard to Gas Planning Procedures**

Case 20-G-0131

**INITIAL COMMENTS
OF
MULTIPLE INTERVENORS**

Dated: May 3, 2021

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PRELIMINARY STATEMENT

Pursuant to the *Notice of Stakeholder Forum and Soliciting Comments* issued by the New York State Public Service Commission (“Commission”) on February 12, 2021, Multiple Intervenors hereby submits its Initial Comments in Case 20-G-0131.¹

Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State. Multiple Intervenors supports reasonable and cost-effective measures to reduce greenhouse gas (“GHG”) emissions. Toward that end, Multiple Intervenors members have expended many millions of dollars on projects and initiatives to reduce GHG emissions, including, but not limited to, investments related to environmental controls, energy efficiency, process improvements, and renewable energy generation and/or procurement.

Multiple Intervenors also supports – and most of its members require at this time – the continued availability of safe, reliable, and economic gas service. In addition to fulfilling space heating needs at their facilities in a cost-effective manner, natural gas is utilized by many Multiple Intervenors members for industrial and other processes for which no viable, alternative fuel sources exist, at least at this time.² Quite simply, absent safe, reliable, and economic gas service or viable alternatives thereto, many facilities in New York would close, with manufacturing and other production relocating to other states and countries.

Multiple Intervenors recognizes that due to the Climate Leadership and Community Protection Act (“CLCPA”), New York will need to transition gradually toward reduced reliance

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

² At some members’ facilities, the only viable alternative to natural gas is the burning of fuel oil, which can result in increased emissions compared to gas.

on natural gas. This transition is important, and Multiple Intervenors supports it. How the transition is managed and implemented in the coming years – and how gas-related costs are allocated to and recovered from customers – also is important. For instance, a failure to implement the transition in a manner that preserves reliable and economic gas service for those customers that require such service likely would result in a loss of jobs, capital investments, and economic activity in the State, and also could result in certain GHG emissions increasing if manufacturing operations leave New York and relocate to other states and countries with less-stringent environmental laws and regulations.

On February 12, 2021, New York State Department of Public Service Staff (“Staff”) issued the following two proposals in response to a Commission directive herein: (a) the Gas Planning Process Proposal (“Planning Proposal”); and (b) the Gas Moratorium Management Proposal (“Moratorium Proposal”). The Planning Proposal recommends implementation of, *inter alia*, a new, long-term gas planning process that would be more consistent with a low-carbon future, as mandated by the CLCPA. The Moratorium Proposal seeks to manage the initiation, maintenance, and lifting of gas service moratoria that may become necessary.

Multiple Intervenors commends Staff’s efforts to reform gas planning and moratoria management, and supports the vast majority of the recommendations and proposals advanced in the Planning Proposal and the Moratorium Proposal. Given the critical importance of managing the transition to toward reduced reliance on natural gas, Multiple Intervenors agrees that existing planning processes, focused primarily on preparedness for the upcoming winter heating season, are not adequate and need to be longer-term in nature. A comprehensive planning effort with robust stakeholder involvement as the Planning Proposal envisions should help facilitate maintenance of reliable and cost-effective gas service during the transition. Moreover, prudent

management and increased outreach and communication of the need for potential gas service moratoria, as envisioned by the Moratorium Proposal, should minimize future moratoria and, additionally, help to ameliorate some of the hardships that moratoria can impose on customers.

Multiple Intervenors' Initial Comments are organized into two Parts. In Part I, Multiple Intervenors addresses the recommendations contained in Staff's Planning Proposal by advancing four points for further consideration and to improve reforms to the gas planning process. In Part II, Multiple Intervenors addresses Staff's Moratorium Proposal.³

First, the proposed gas planning process appropriately focuses on the long-term, and would address the adequacy of local distribution company ("LDC") supply portfolios. Multiple Intervenors recommends that the proposed Long-Term Plans specifically also address LDC capacity to reliably and economically serve the needs of existing and potential future firm transportation customers. In other words, planning analyses should address, in equal measure, not only an LDC's ability to meet the supply needs of firm sales customers, but also the LDC's ability to meet the delivery needs (behind the city-gate) of firm transportation customers.⁴

Second, while Multiple Intervenors strongly supports the consideration and evaluation of non-pipeline alternatives ("NPAs"), care should be exercised to limit the implementation of NPAs

³ Pursuant to the Notice of Stakeholder Forum and Soliciting Comments, issued by the Commission herein on February 12, 2021, comments were solicited only with respect to the Planning Proposal and the Moratorium Proposal. Accordingly, Multiple Intervenors focuses these Initial Comments on those two documents prepared and issued by Staff, and does not respond herein to previous, unauthorized pleadings by other parties seeking to expand the scope of this proceeding or advocate for different outcomes at this time. Multiple Intervenors' decision to comply with the Notice and limit its Comments to the Planning Proposal and the Moratorium Proposal should not be construed as agreement with any of the positions advocated herein by other parties to date.

⁴ For the reasons set forth, *infra*, Multiple Intervenors also recommends that the Commission guard against potential, sudden and dramatic declines in the availability of interruptible gas service.

to instances where they are demonstrably beneficial to customers from reliability, environmental, and economic perspectives, all of which should be considered. In some instances, NPAs represent an opportunity to address system needs at a lower cost than comparable infrastructure investments. That noted, NPAs are not always appropriate or viable alternatives to all necessary gas infrastructure investments, and in some circumstances their pursuit could result in diminished reliability and/or increased costs to customers. As detailed herein, certain safeguards should be implemented to ensure that NPAs meet system needs and deliver customer benefits. Additionally, it is important for the Commission to adhere to cost causation principles in the allocation and the recovery of NPA investments.

Third, Multiple Intervenors urges the Commission to limit any consideration of the accelerated depreciation of gas assets to informational purposes only, as recommended in the Planning Proposal. Initially, the CLCPA does not require that all gas consumption cease by 2050, and there is considerable uncertainty as to how the objective of “net zero emissions in all sectors of the economy” will be implemented.⁵ Moreover, there may be alternatives that utilize portions of the utilities’ existing gas systems, thereby obviating the need to depreciate certain assets by 2050. Importantly, accelerated depreciation could have substantial, detrimental rate impacts on customers, resulting in harms to customers of all types, and the State’s economy in general. There may be a time during the transition to reduced reliance on natural gas where it makes sense to revisit depreciation schedules and policies on a generic basis. Multiple Intervenors submits that modifying such schedules and policies at this time would be premature.⁶

⁵ See, e.g., Env’t Consv. Law § 75-0103(11).

⁶ The Commission should be especially sensitive to potential, harmful rate impacts on customers at this time as the country, including New York, seeks to recover from a severe economic recession caused by the COVID-19 pandemic.

Fourth, Multiple Intervenors is concerned about a possible expansion of customer-funded utility incentives. Multiple Intervenors opposes the practice of incentivizing utilities for undertaking activities that they should be doing in the normal course, and for which the Commission possesses ample power to mandate. Insofar as the Commission does employ incentives, they should be very constrained in magnitude to minimize potential customer rate impacts, and be limited to rewarding performance that truly is exceptional or superior; the payment of base rates should entitle customers to at least an average or better level of performance.

Multiple Intervenors generally supports Staff's recommendations in the Moratorium Proposal. There should be substantial advance notice of any potential gas moratoria being imposed on new customers or expansions by existing customers. Staff's proposed requirements for LDCs prior to and during moratoria, if adopted, should assist in minimizing the need for future moratoria, as well as help to alleviate some of the negative impacts of moratoria on affected customers where such moratoria truly are needed to maintain system reliability.

PART I: PLANNING PROPOSAL COMMENTS

POINT I

LDC LONG-TERM PLANS SHOULD ADDRESS FIRM TRANSPORTATION SERVICE AND INTERRUPTIBLE SERVICE IN ADDITION TO FIRM SALES SERVICE

The LDC Long-Term Plans described in the Planning Proposal would focus heavily on gas supply and gas demand. Regarding supply, Long-Term Plans would include, *inter alia*, a 20-year supply forecast across multiple scenarios, a supply portfolio that must include demand-side measures, localized supply availability, and an identification of any potential upstream issues. (Planning Proposal at 15-17.) Regarding demand, the Long-Term Plans would include, *inter alia*,

20-year demand forecasts that detail sources of growth by customer class. (*Id.* at 14-15.) This information is critical to an assessment of how LDCs would meet gas demand, and Multiple Intervenors supports its inclusion. As the structure for these Long-Term Plans are developed initially and then refined over time, it is important that LDCs plan actively to meet system demands not only for supply service, but also firm transportation service and interruptible service. Cognizant of the need to gradually reduce the State's reliance on natural gas, it is imperative that the reliability – and the economic competitiveness – of various forms of gas service not be compromised.

For decades, LDCs have offered transportation service, which unbundles commodity service from distribution service. Pursuant to such service, customers purchase gas supplies from a marketer, and LDCs deliver that gas.⁷ Many transportation customers take firm service, and therefore rely on LDCs possessing sufficient pipeline capacity to deliver the gas supplies that transportation customers purchase (and which marketers deliver to LDCs' city-gates). In this regard, the delivery of gas supplies essentially should be the same for firm sales and firm transportation customers – the only material difference is the entity that supplies the commodity itself. Potential curtailments due to an inability to deliver purchased gas supplies would have serious impacts on firm transportation customers. Accordingly, as the Commission and Staff develop appropriate gas planning procedures, it is critical that analyses address, in equal measure, not only an LDC's ability to meet the supply needs of firm sales customers, but also the LDC's ability to meet the delivery needs of firm transportation customers.

⁷ See generally Case 97-G-1380 – *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies*, Policy Statement Concerning the Future of the Natural Gas Industry in New York State and Order Terminating Capacity Assignment (November 3, 1998).

While Multiple Intervenors recognizes that interruptible service (sales and transportation), by definition, is subject to interruptions, the Commission should guard against potential, sudden and dramatic declines in the availability of such service. Interruptible customers presumably have alternate energy sources and can withstand periodic interruptions. Importantly, however, many interruptible customers chose that level of service many years ago based on a longstanding history and reasonable expectation of periodic – *i.e.*, not extensive – interruptions in service. A sudden and dramatic decline in interruptible service could necessitate large investments in alternate energy supplies and/or the increased burning of fuel oil, potentially leading to increased emissions and/or some businesses choosing to relocate. Moreover, interruptible customers provide reliability benefits to the system and economic benefits to firm customers. Thus, while gas planning should continue to focus on meeting the future demands of firm sales and transportation service, care also should be exercised to avoid a sudden, major deterioration in interruptible service, recognizing that such service may be impacted by the State’s planned, gradual transition to reduced reliance on natural gas.⁸

⁸ Encouraging some customers to migrate from firm transportation to interruptible transportation service is one means of helping to contain demand for new gas infrastructure. Significantly, however, if the quality of interruptible service is allowed to decline materially, such that interruptions become much more frequent and/or long-lasting, any interest on the part of customers to so migrate will disappear in whole or large part.

POINT II

WHILE THE CONSIDERATION OF POTENTIAL NPAs SHOULD BE ENCOURAGED, THEY MUST BE EVALUATED CAREFULLY TO ENSURE THAT ONLY THOSE NPAs THAT TRULY ARE BENEFICIAL TO CUSTOMERS ARE IMPLEMENTED

NPAs play a central role in the Planning Proposal (and the Moratorium Proposal as well). Any traditional infrastructure solution proposed to meet demand, as well as leak prone pipe, would need to be evaluated for the potential to be replaced with an NPA. (Planning Proposal at 18-19.) To that end, the LDCs would propose NPA suitability criteria to assess whether and how to consider NPAs in any given situation. (*Id.* at 8-9.) Additionally, the Planning Proposal would have the gas utilities file NPA cost recovery and incentive mechanisms. (*Id.*)

At the outset, Multiple Intervenors has long expressed strong support for utilities to explore and evaluate NPAs (and, on the electric side, non-wires alternatives) as a prudent means of satisfying gas (or electric) system needs at least cost to customers. LDCs have an obligation to provide safe and adequate service to their customers at just and reasonable rates. To the extent that NPAs can cost-effectively defer or eliminate the need for future infrastructure investments, while also ensuring that customers continue to have access to safe and reliable service, they should be considered as part of the LDCs' system planning process. Conversely, paying a higher price for traditional infrastructure investments and earning a return thereon from customers when lower-cost solutions are available is neither just nor reasonable.

Importantly, however, the consideration and the evaluation of NPAs – which Multiple Intervenors supports – does not mean that NPAs should be implemented in all, or even most, circumstances. In some cases, NPAs may not resolve the underlying system need, or may not resolve the need with adequate certainty in the time required. In other cases, the economic cost of

proposed NPAs may be in excess of traditional infrastructure projects, even with environmental externalities considered, and in such cases NPA implementation may impose costs on customers that exceed – potentially significantly – the projected benefits.⁹

Thus, while Multiple Intervenors supports the consideration and the evaluation of potential NPAs to address system needs, it opposes proposals that place an artificial “thumb on the scale” in benefit/cost analyses (“BCA”) in favor of NPA implementation (or, for that matter, traditional infrastructure projects), irrespective of the circumstances. The evaluation of individual NPAs should address, *inter alia*: (a) the suitability to and likelihood that an NPA will resolve the system need at issue; (b) whether the timing of an NPA is in accord with resolving the system need; (c) the economic benefits and the environmental benefits, if any, associated with an NPA; (d) the economic costs and the environmental costs, if any, associated with an NPA. At a minimum, following unbiased evaluations, NPAs should have benefit/cost ratios in excess of 1.0 (*i.e.*, benefits exceed costs) to be eligible for approval.¹⁰ Implementing NPAs where the costs exceed the benefits appears contrary to customers’ interests.

Multiple Intervenors hereby advances additional recommendations regarding NPAs. First, NPAs should not be implemented for their own sake. NPAs are a means of meeting system needs at a lower cost for customers than traditional infrastructure projects. NPAs that are unable to

⁹ Multiple Intervenors supports Staff’s inclusion of NPAs in bill impact analyses. (Planning Proposal at 24-26.) In addition to total costs on customers, the potential rate impacts of NPAs should be considered. For instance, a potential NPA may pass a benefit/cost analysis but still result in materially larger rate impacts on customers if, hypothetically, the costs of that NPA are recovered over a shorter time period than the alternative infrastructure project. Multiple Intervenors is not advocating that such circumstances would disqualify the NPA from implementation; rather, only that the resulting customer cost impacts must be considered carefully before NPAs, or traditional infrastructure projects, are approved.

¹⁰ Where there is material uncertainty as to the effectiveness and/or the cost of an NPA, requiring a benefit/cost ratio with some margin above 1.0 should be considered.

safely, reliably, and cost-effectively meet those needs should not be pursued. As we have seen in recent years, some NPA solicitations may not identify any viable and/or cost-effective NPAs. That is not necessarily a negative outcome; but, rather, the result of a process with customer interests at its foundation. For instance, Staff recommends that traditional infrastructure needed to address an imminent threat to safety and reliability would not be considered for an NPA. (*Id.* at 18-19.)¹¹ Multiple Intervenors supports this proposed suitability criteria as it would avoid using customer funds to pursue an NPA that could not be implemented in time. Other additional safeguards include a cost threshold for traditional infrastructure below which it is not cost-effective to pursue an NPA, or certain need cases for which NPAs may not be suitable, similar to criteria adopted for NPAs. (*Id.* at 8-9.) Importantly, the adoption of reasonable criteria to evaluate NPAs is not to discourage their consideration (which consideration generally should be encouraged), but, rather, to ensure that if and when implemented, they truly are beneficial to customers.

Second, to the extent feasible, the cost of NPAs should be recovered over time periods reasonably comparable to the alternative infrastructure projects. In addition to ensuring that NPAs approved for implementation will produce benefits in excess of costs, there is a need for the Commission to manage customer rate impacts. For instance, an NPA may be projected to result in modestly higher benefits than costs, but still could result in detrimental rate impacts to customers if, hypothetically, the originally-proposed infrastructure project would be amortized over multiple decades but the NPA's costs instead would be recovered over a much-shorter period. To the extent the Commission desires to rely on NPAs to a greater extent in the future, care should be taken to

¹¹ See also Planning Proposal at 20, fn. 10 (“Safety, reliability, and adherence to law cannot be compromised.”).

moderate the rate impacts associated therewith, and one means of doing so is the use of recovery periods comparable to those proposed for competing infrastructure projects.

Finally, equitable cost allocation and recovery are no less important for NPAs than they are for traditional infrastructure projects. Cost causation principles should determine how the costs of NPAs are allocated: they should be treated consistent with how the costs to resolve system needs of that nature traditionally are allocated to and recovered from service classes. In other words, if a system need has been identified warranting implementation of either a traditional infrastructure project or an NPA, the selection of either solution should have no impact as how the costs are allocated to and recovered from customers. Thus, for instance, if there is a capacity constraint in one region of an LDC's system, and the costs of traditional upgrades typically are allocated to classes on the basis of contribution to peak demand, then any resulting NPA costs incurred to resolve that system need should be allocated to and recovered from customers in the same manner. This approach ensures that service classes are treated the same, vis-à-vis other classes, irrespective of whether an infrastructure project or an NPA is selected to address an identified system need.

For the foregoing reasons, while Multiple Intervenors continues to support the consideration and the evaluation of potential NPAs, care should be exercised to ensure that only those NPAs that truly are beneficial to customers are implemented. If and when NPAs are selected for implementation, resulting rate impacts need to be managed carefully, with costs allocated to and recovered from customers on an equitable basis.

POINT III

THE POTENTIAL ACCELERATED DEPRECIATION OF LDC GAS ASSETS SHOULD NOT BE CONSIDERED – OR IMPLEMENTED – AT THIS TIME

Staff proposes a BCA framework to assess the cost-effectiveness of LDC-proposed solutions to any supply and demand gaps, which also would compare infrastructure solutions to NPAs. (Planning Proposal at 21-24.) The BCA framework in the Planning Proposal would use the existing BCA Framework with selected modifications. Most notable among the proposed modifications is to treat gas infrastructure assets as if their full value will be depreciated by 2050, presumably because of the CLCPA’s “net zero emissions in all sectors of the economy” objective. (*Id.* at 22-23.)¹² Importantly, this accelerated depreciation would be for evaluation purposes only; the Planning Proposal does not propose or recommend fully depreciating gas assets by 2050. (*See id.*) Similarly, Multiple Intervenors not support the potential accelerated depreciation of gas assets at this time.

Initially, Multiple Intervenors supports Staff’s restraint in not proposing or recommending that LDC gas assets be subject to accelerated depreciation. Currently, neither the CLCPA nor any other law requires that LDC gas assets be depreciated fully by 2050. Indeed, there is great uncertainty regarding how the CLCPA’s net zero objective will be implemented; the Climate Action Council has yet to issue its scoping plan for public comment, which itself will initiate a lengthy review process. Depending on the development of viable and preferred alternatives thereto, continued gas use beyond 2049 is possible, as is the use of renewable natural gas

¹² Other modifications include analysis of impacts on all customers and a more thorough accounting of costs and benefits. (Planning Proposal at 24-26.) Multiple Intervenors generally supports the proposed greater level of analysis and detail.

(something the Planning Proposal contemplates explicitly) or a different fuel source or technology (e.g., hydrogen) that utilizes existing gas assets. In all of these cases, and potentially others, existing gas assets could continue to be used on behalf of customers. While different entities assuredly have different preferences as to how the transition to reduced reliance on natural gas should be implemented, the one certainty is uncertainty. Until specific policies and plans that govern how the transition to reduced reliance on natural gas have been formulated and adopted, it is premature to even consider accelerating existing, Commission-approved depreciation schedules.

Multiple Intervenors emphasizes that accelerated depreciation could have enormous financial impacts on customers, as well as the competitiveness of existing businesses and the State economy by materially increasing gas delivery rates applicable to all customers. LDCs currently collect depreciation expense from customers of all types via delivery charges. Compressing depreciation timelines for assets with useful lives of 50, 70, or more years to 28 or fewer years would proportionally (and potentially massively) increase the depreciation expense that would need to be collected annually from customers. Recent rate case proposals illustrate this impact. Corning Natural Gas Corporation, for instance, proposed to accelerate depreciation in a manner that would have increased annual depreciation expense by \$1.7 million, a material amount for a utility of that size.¹³ As another example, the Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid proposed to accelerate depreciation *only* for leak prone pipe.¹⁴ Despite limiting accelerated depreciation to a modest subset of gas

¹³ See Case 20-G-0101 – *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service*, Direct Testimony of Paul Normand (filed February 27, 2020) at 15.

¹⁴ Cases 19-G-0309 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service*, Direct Testimony of Paul M. Normand (filed April 30, 2019) at 2-3.

assets, such acceleration would increase annual depreciation expense by \$27.5 million and \$24.5 million, respectively.¹⁵ Patently, full depreciation by 2050 would entail a potentially enormous increase in delivery rates that would impact customers of all types. Such acceleration would be particularly burdensome in the near-term, as the State, and customers, seek to recover from the economic devastation wrought by the COVID-19 pandemic.

It also should be recognized that the modification to the existing BCA framework advanced by Staff likely would increase financial costs to customers to some degree. Pursuant to the existing BCA framework, the benefits and costs of NPAs are evaluated against traditional infrastructure projects. By proposing that infrastructure projects be evaluated assuming full depreciation by 2050, they will appear more costly than currently is the case, thereby improving the relative performance of NPAs in such evaluation. As a result thereof, NPAs that might be deemed uneconomic under the existing BCA framework could appear beneficial moving forward. Multiple Intervenors advocates no position on this specific proposal. While Multiple Intervenors supports the consideration and the evaluation of NPAs, it does have cost and other concerns related to a potential over-reliance on NPAs. Nevertheless, Staff's proposal is far more measured, and less costly to customers, than actually accelerating the depreciation of LDC assets at this time – a proposal by some parties that Multiple Intervenors views as premature and outside the current focus of this proceeding.

¹⁵ Cases 19-G-0309, *supra*, Direct Testimony of Paul M. Normand, Exhibit____(PMN-3) (filed April 30, 2019). These sums also include decreases to net salvage.

POINT IV

THE COMMISSION SHOULD USE CUSTOMER-FUNDED UTILITY INCENTIVES SPARINGLY TO AVOID INCREASING COSTS AND RATES UNNECESSARILY

The Planning Proposal recommends that utilities be eligible for financial incentives, funded by customers, as part of a new gas planning process. (Planning Proposal at 8, 26-27.) Incentives could be received for pursuing NPAs, reducing greenhouse gas emissions, sourcing renewable natural gas, and encouraging electrification. (*Id.* at 26-27.) The Planning Proposal also offers potential incentive mechanisms, such as sharing net societal benefits and positive-only Earnings Adjustment Mechanisms (“EAMs”). (*Id.*) All of these incentive mechanisms would add an incremental customer expense to whatever activities LDCs pursue. (*See id.* at 24-25.) Multiple Intervenors is concerned about the customer-funded incentive mechanisms proposed, and the application of incentives generally.

Multiple Intervenors opposes the practice of incentivizing utilities for undertaking activities that they should be doing in the ordinary course, and for which the Commission possesses ample power to simply mandate. Incentives for NPAs provide an example. The Commission has broad authority under the Public Service Law to ensure safe and adequate service at just and reasonable rates, including ordering improvements “in the methods employed” by LDCs.¹⁶ If NPAs provide safe and adequate service at just and reasonable rates, the Commission can order LDCs to pursue them. Indeed, the Commission has taken analogous action in other proceedings. Recently, the Commission required utilities to incorporate advanced technologies into their

¹⁶ Public Service Law § 66(1); *see generally* Public Service Law § 65.

planning processes.¹⁷ The Commission declined to provide incentives – and the corresponding incremental expense to customers – for them to do so.¹⁸ As another related example, the Commission eliminated the interconnection EAM because there were other means to achieve the EAM’s objectives without resorting to shareholder rewards and increased customer costs.¹⁹ In light of the multiple alternatives to customer-funded incentives, Multiple Intervenors urges the Commission to pursue such alternatives here.²⁰

In addition to the general concerns arising from incentivizing utilities to do what the Commission could order them to do, the EAMs proffered in the Planning Proposal are problematic. Multiple Intervenors has long opposed EAMs. Such opposition is founded upon: (a) the material rate impacts on customers;²¹ (b) the difficulties associated with Staff and intervenor parties negotiating equitable performance metrics given the informational advantages possessed by

¹⁷ Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Phase 1 Local Transmission and Distribution Project Proposals (issued February 11, 2021) at 18-19.

¹⁸ *Id.*

¹⁹ Cases 16-M-0429 *et al.* – *In the Matter of Earnings Adjustment Mechanism and Scorecard Reforms Supporting the Commission’s Reforming the Energy Vision*, Order Eliminating Interconnection Earnings Adjustment Mechanisms (issued April 24, 2019) at 12-13.

²⁰ Multiple Intervenors submits that, in certain circumstances, the failure to reasonably consider and evaluate NPAs as an alternative to an infrastructure project could be perceived as imprudent. Moreover, if, *arguendo*, an NPA that would satisfy the identified system need is found to be demonstrably more beneficial than a comparable infrastructure project, it is not clear why utilities should require, or be entitled to, customer-funded financial incentives to pursue the more beneficial option.

²¹ For example, Niagara Mohawk Power Corporation d/b/a National Grid will collect \$12.6 million above base rates for service beginning April 1, 2021 for its EAM performance in 2020, similar to its \$12.3 million in incremental collections for its 2019 performance. See Cases 17-E-0238 *et al.* – *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service*, Earnings Adjustment Mechanisms 2020 Annual Report (filed March 1, 2021).

utilities; (c) the absence of symmetrical, negative incentives – *i.e.*, penalties – for unsatisfactory performance; and (d) the potential for utilities to be rewarded, at the expense of customers, for achieving certain performance metrics based on factors entirely or largely outside of their control or unrelated to their efforts. Those concerns are applicable here.

Therefore, insofar as the Commission determines that new, customer-funded financial incentives for utilities are necessary, Multiple Intervenors recommends the following. First, the magnitude of any incentives should be extremely constrained in magnitude to minimize potential customer rate impacts.²² Modernizing the gas system, as needed, while transitioning gradually to reduced reliance on natural gas is likely to entail incremental customer costs that new financial incentives likely only would exacerbate. Second, any incentives paid to utilities should be limited to rewarding performance that is truly exceptional, which goes beyond what the Commission simply could mandate, or what should be expected in the first place. The payment of base rates should entitle customers to at least satisfactory if not better performance. Third, if financial incentives are adopted for superior performance, financial penalties for unsatisfactory performance also should be adopted. Finally, incentive costs, if any, should be included in any BCA analysis and rate impact calculation, as the Planning Proposal recommends. (*Id.* at 25.) It is important that the planning process be transparent about all incremental costs being imposed on customers, including costs to reward utility shareholders.

²² As advocated, *supra*, the Commission should be especially leery about imposing new financial obligations on customers at this time, as customers of all types strive to recover from an economic recession caused by the COVID-19 pandemic.

PART II: MORATORIUM PROPOSAL COMMENTS

POINT

MULTIPLE INTERVENORS GENERALLY SUPPORTS THE RECOMMENDATIONS ADVANCED IN THE MORATORIUM PROPOSAL

Gas moratoria are highly disruptive. This is especially true for large non-residential customers, some of whom have large gas demands and depend upon manufacturing and other processes for which there currently is no viable alternative to natural gas. In addition to preventing new customers from receiving gas service, moratoria also can prevent existing customers from expanding service, which could lead to such expansions taking place outside of New York. In recent years, gas moratoria have been more frequent, and more controversial. To its credit, Staff has advanced the Moratorium Proposal, which seeks to better define the process for evaluating, implementing, administering, and ending gas moratoria. The Moratorium Proposal appropriately seeks to make all aspects of potential gas moratoria more transparent, with moratoria treated as a last resort option which, if forced to be exercised, is implemented as fairly as possible, and for as little time as possible. Multiple Intervenors generally supports the recommendations advanced in Staff's Moratorium Proposal.

The Moratorium Proposal, along with the Planning Proposal, seek to make gas moratoria a last resort and to end moratoria as soon as practicable. (Moratorium Proposal at 6-7.) This policy is vital in light of the disruptive nature of moratoria and the extreme uncertainty they create for affected and prospective customers. The Moratorium Proposal also has other laudable aspects, highlighted below.

First, the Moratorium Proposal would require substantial advance notice of potential moratoria. Two years prior to a potential moratorium, an LDC would file a notice of the scope,

the duration, and the affected customers of a pending moratorium. (*Id.* at 11.) This notice would be updated every six months. (*Id.*) Within 120 days of the beginning of a moratorium, another notice would be filed that would be subject to stakeholder comment. (*Id.*) Large customer capital investments are planned years in advance, take years to execute, and require years to realize a return on investment. This two-year forewarning mitigates, at least to some extent, the disruptive nature of moratoria by giving existing and potential new customers the information needed for advance planning.

Second, the Moratorium Proposal would allow new or expanded service on a limited, as-available basis during a moratorium through a waitlist. (*Id.* at 14.) This is an important inclusion in any moratorium management plan. Obviously, moratoria impose hardship because gas service is not available. Allowing new or expanded service where and when possible would therefore mitigate this aspect of a moratorium.

Finally, the economic impacts of a moratorium are explicitly contemplated by the Moratorium Proposal. The 120-day notice of moratorium addressed above would require an assessment of the economic development impact of the moratorium. (*Id.* at 11.) During a moratorium, LDCs would work with affected municipalities to address economic impacts, and report on such efforts. (*Id.* at 14-15.) Moratoria create significant economic impacts, both by directly halting expansions and the addition of new customers, and indirectly by calling into question the availability and the reliability of gas service in an area. Carefully documenting and seeking to mitigate economic impacts to the maximum extent possible, therefore, is important.

The Moratorium Proposal, if approved, would represent a material improvement in the evaluation, implementation, administration, and termination of potential gas moratoria. Multiple

Intervenors supports its approval in this proceeding, but also is open to refinements that may improve its efficacy in these areas.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to adopt the positions advanced herein in this proceeding.

Dated: May 3, 2021
Albany, New York

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