STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 15, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 20-M-0082 - Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data.

ORDER DENYING REHEARING AND PROVIDING CLARIFICATION

(Issued and Effective September 15, 2022)

BY THE COMMISSION:

## INTRODUCTION

On March 15, 2021, the Joint Utilities (JU)[1] filed a petition (Petition), seeking clarification and/or rehearing of certain accounting-related issues associated with the Public Service Commission's (Commission) Order Implementing an

[1] The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (Con Edison), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), KeySpan Gas East Corporation d//b/a National Grid (KEDLI), The Brooklyn Union Gas Company d/b/a National Grid (KEDNY), Orange and Rockland Utilities, Inc. (O&R), Rochester Gas & Electric Corporation (RG&E), and Liberty Utilities (St. Lawrence Gas) Corporation.

Integrated Energy Data Resource.[2] The JU supplemented the Petition in various responses to information requests provided by Department of Public Service Staff (Staff).[3] Specifically, the JU seek clarification with respect to cost recovery associated with capital expenditures, and request authorization to recover the deferred revenue requirements and carrying costs related to Integrated Energy Data Resource (IEDR) Phase 1 capital costs on a current basis through a surcharge mechanism. In addition, the JU request that the Commission clarify that utilities under the same corporate umbrella may aggregate the budget caps established in the IEDR Order to allocate costs between their respective affiliates as appropriate using accepted allocation methodologies.

By this Order, the Commission denies the JU's request to recover the capital costs associated with the IEDR Phase 1 projects on a current basis through a surcharge mechanism. The Commission also clarifies that utilities under the same corporate umbrella may aggregate budget caps established in the IEDR Order to provide flexibility to allocate costs between their respective affiliates.

## BACKGROUND

On February 11, 2021, the Commission issued the IEDR Order, which established a statewide IEDR to provide New York's energy stakeholders with a platform that enables effective

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[2] Case 20-M-0082, Order Implementing an Integrated Data Energy Resource (issued February 11, 2021) (IEDR Order).

[3] On July 15, 2022, each of the JU's filed responses to three Information Requests (IR) from Department of Public Service Staff (Staff) (each, an IR Response 1, IR Response 2, and IR Response 3). Thereafter, the JU jointly filed responses to a fourth Staff IR on July 29, 2022 (Joint IR Response 4), and a fifth Staff IR on August 12, 2022 (Joint IR Response 5).

access and use of integrated energy customer data and energy system data. The IEDR Order directed the development of the IEDR's design and adopted the necessary framework for funding, program management, and governance. Regarding funding, the Commission established utility-specific budget caps to complete the data sourcing efforts for Phase 1 of IEDR development. Additionally, the IEDR Order directed that each of the New York State investor-owned electric and gas utilities "shall defer applicable costs, up to their individual budget cap, for future recovery in their next rate case filing after Phase 1 of the IEDR development is completed."[4] The Commission explained that applicable costs "shall include incremental operation and maintenance expenses, net of related savings, and carrying costs on capital expenditures, which includes the 'return-on' and 'return-of' the investment, net of related incremental savings."[5]

## THE PETITION

The Petition seeks clarification and/or rehearing of the IEDR Order as it raises matters with respect to the accounting associated with cost recovery, as well as the allocation of costs between multiple companies under the same corporate umbrella.[6] The JU indicate that clarification on these issues is necessary for the utilities to effectively manage the costs and cost recovery associated with the IEDR platform.

Initially, the JU request authorization to recover the deferred revenue requirements and carrying costs associated with IEDR Phase 1 capital projects on a current basis through a

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[4] IEDR Order, p. 20.

[5] IEDR Order, pp. 20-21.

[6] According to the Petition, absent the Commission granting the requested relief, it will have "incorrectly denied utility recovery of costs to comply with Commission-mandated directives." Petition, n. 2.

surcharge mechanism.[7] The JU state that the surcharge mechanism would be designed to only allow each utility to recover its revenue requirement of the net utility plant in service (including carrying costs and depreciation) until its next rate case, at which time the investment would be reflected in base rates. The JU assert that the IEDR Order currently delays each utility from proposing a recovery mechanism for any Phase 1 costs until it files its next rate case after the completion of Phase 1, which would impact the company’s cash flow, credit metrics, and ability to earn a return on these investments. The JU contend that absent a surcharge mechanism to recover the deferred revenue requirement and carrying costs related to the incremental capital expenditures, the Commission will have incorrectly denied recovery of costs to comply with a Commission mandated directive.

The JU acknowledge that the IEDR Order allows for the deferral and recovery of applicable costs (up to utility-specific budget caps) in a future rate filing after Phase 1 is completed.[8] The JU argue, however, that Generally Accepted Accounting Principles (GAAP) prohibit the recognition of the equity component of the return because shareholder return is an allowed cost and not an incurred cost, and regulated utilities can therefore only recognize the debt portion of the “return on capital” and associated carrying charges of a capital tracker

[7] The JUs alternatively sought authority to include these costs in the assessment of net plant target deferrals. However, in their July 15, 2022 responses to Department of Public Service Staff’s information requests, the JUs, upon further review, determined this approach would not provide for the current recovery of the deferred revenue requirements and carrying costs related to the Phase 1 capital costs.

[8] See Joint IR Response 4.

regulatory asset.[9] The JU further argue that absent a surcharge mechanism the utilities will have to derecognize the equity component (i.e., "return on capital" and carrying charges) for the IEDR regulatory asset in their respective GAAP financial reports.

Separately, in its July 15, 2022 response to Staff's IRs, NFG argues, in accordance with GAAP, that the recognition of a regulatory asset of the deferral of a revenue requirement is permitted only if the additional revenues are collected within 24 months following the end of the annual period in which they are recognized, thus rendering necessary a surcharge mechanism.[10]

Additionally, the JU request Commission clarification that utilities under the same corporate umbrella may aggregate the utility-specific budget caps established in the IEDR Order to allocate costs between their respective affiliates.[11] The JU argue that the cost information provided to the Commission to establish the initial budget caps reflected design activities and synergies that would be shared between affiliated companies in developing the IEDR platform. However, the JU contend that the utility-specific budget caps established in the IEDR Order did not appropriately reflect the actual cost sharing allocations between affiliated utilities. For example, Con Edison and O&R indicate information technologies, such as the costs being contemplated in the IEDR Order, are a shared service amongst the affiliates, and thus, based on the current cost

[9] Id.

[10] See NFG IR Response 1.

[11] The Petition states that the following utilities are affiliated under the same corporate umbrella: (1) Con Edison and O&R; (2) NYSEG and RG&E; and (3) Niagara Mohawk, KEDLI, and KEDNY.

allocations, the budget caps established in the IEDR Order may be insufficient for Con Edison and more than ample for O&R.[12] Accordingly, the JU request flexibility to reallocate the budget caps between affiliates under the same corporate umbrella.

## NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on April 21, 2021 [SAPA No. 20-M-0082SP3]. The time for submission of comments pursuant to the Notice expired on June 21, 2021. No comments were received.

## LEGAL AUTHORITY

The Commission's authority to grant or refuse an interested person's request for rehearing of an order is established by Section 22 of the Public Service Law (PSL) and governed by regulations implementing that statute that are contained in 16 NYCRR §3.7. Rehearing may only be sought on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination.[13] A petition for rehearing must separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

## DISCUSSION

The Commission finds that the JU have failed to demonstrate an error of law or fact, or new circumstances warranting rehearing of the IEDR Order's determination regarding the methodology by which IEDR Phase 1 capital expenditures will

[12] See Con Edison/O&R IR Response 2.

[13] 16 NYCRR §3.7(b).

be recovered. Accordingly, the JU's request for rehearing is denied.

First, regarding the JU's claim that the IEDR Order will impact the companies' cash flow and credit metrics, the Commission has an interest in utilities maintaining their credit ratings in order to be able to access capital markets at rates that are favorable to ratepayers. Based on the authorized budget caps in the IEDR Order, we find the expenditures necessary to implement Phase 1 of IEDR development for each utility are not material enough to impact the utilities' cash flow or credit metrics. As to the utilities' ability to earn a return on investment, the IEDR Order authorized each utility to defer such costs until they are included in base rates, while also approving carrying costs on the capital expenditures. This not only provides utilities an immediate return on their investment but appropriately compensates the utilities for the timing difference between when their investments are incurred, and when costs are recovered from customers.

Second, the JU's assertion is misplaced that GAAP prohibits the recognition of the equity component of the return because shareholder return is not an incurred cost but rather represents an allowed cost. The Commission notes that GAAP allows for the recognition of the equity component of the return on investment when it is ultimately collected in rates.[14] Thus, contrary to the JU's assertions, the absence of a surcharge mechanism will not result in the Commission incorrectly denying recovery of costs to comply with a Commission mandated directive.

[14] Accounting Standard Codification (ASC) 980-340-25-5 through 25-6 clarify that regulated utilities applying ASC 980 are not permitted to capitalize the cost of equity, except while a plant is under construction.

Third, NFG's assertion is misplaced that GAAP requires that the utilities' recognition of a regulatory asset of the deferral of a revenue requirement be permitted only if the additional revenues are collected within 24 months following the end of the annual period in which they are recognized. That particular guideline only requires such accounting treatment in the recognition of revenues.[15] In this case, since the JU's request for surcharge recovery is not related to revenues, but to capital expenditures, the GAAP provision cited by NFG is not applicable. Given the foregoing, the Petition fails to demonstrate any error of law or fact, or any new circumstance warranting rehearing of the IEDR Order. As such, the request for rehearing as to the IEDR Order's directives on cost recovery is denied.

Notwithstanding the above, the Commission recognizes that certain costs incurred in IEDR Phase 1 development may be a shared cost among utility affiliates. As such, the Commission clarifies that utilities operating as affiliates under the same corporate umbrella may aggregate the budget caps established in the IEDR Order, provided that utilities under the same corporate umbrella must utilize their established, written cost allocation manuals, to allocate IEDR Phase 1 costs. Such an approach will leverage potential economies of scale, while ensuring that costs are appropriately allocated to each affiliate and costs allocable to one utility are not improperly borne by customers of another utility. To ensure compliance with their respective cost allocation manuals, utilities under the same corporate umbrella shall file an annual report, within 60 days after the

[15] ASC 980-605 states that recovery of lost *revenues* is appropriate if, among other requirements, the additional revenues will be collected within 24 months following the annual period in which they are recognized.

end of each calendar year, detailing what IEDR Phase 1 costs were incurred and demonstrating how those costs were allocated between the affiliated utilities.

CONCLUSION

For the reasons set forth above, the Commission affirms the methodology established in the IEDR Order regarding cost recovery associated with Phase 1 of the IEDR, and denies the JU's request for rehearing. The Commission also clarifies that utilities under the same corporate umbrella may aggregate the budget caps established in the IEDR Order, subject to the appropriate allocation of IEDR costs between affiliates.

The Commission orders:

1. The Joint Utilities' March 15, 2021 request for rehearing is denied.

2. The Commission's February 11, 2021 Order Implementing an Integrated Data Energy Resource is clarified, as discussed in the body of this Order.

3. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d//b/a National Grid, and The Brooklyn Union Gas Company d/b/a National Grid shall, within 60 days following the end of each calendar year, file with the Secretary to the Commission a report detailing the costs incurred to implement Phase 1 of the Integrated Energy Data Resource and the allocation of those costs between affiliated utilities, as described in the body of this Order.

4. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary