STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 22-E-0317 -	Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service.
Case 22-G-0318 -	Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Gas Service.
Case 22-E-0319 -	Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service.
Case 22-G-0320 -	Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Gas Service.

NEW YORK DEPARTMENT OF PUBLIC SERVICE STAFF POST-EVIDENTIARY HEARING BRIEF

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INTRODUCTION

An evidentiary hearing was held in these proceedings on July 17, 2023 and July 18, 2023. The purpose of the hearing was to receive into evidence and evaluate the Joint Proposal (JP) filed on June 14, 2023. The hearing also provided an opportunity to consider the reasonableness of the JP and develop the record to determine whether the JP is in the public interest in accordance with the Settlement Guidelines of the New York Public Service Commission (Commission). At the hearing, Alliance for a Green Economy (AGREE), Multiple Intervenors (MI), Public Utility Law Project (PULP), AARP, Fossil Free Tompkins (FFT), and Ratepayer and Community Intervenors (RCI) conducted limited cross-examination of the Department of Public Service Trial Staff (Staff) and the New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E; collectively, the Companies) Panel who testified in support of the JP.

Chief Administrative Law Judge Dakin Lecakes and Administrative Law Judge Erika Bergen (ALJs) established a schedule for post-hearing briefs, which the ALJs limited to ten pages, and to issues raised at the evidentiary hearing. This post-evidentiary hearing brief addresses the following issues raised during the hearing through cross examination: 1) MI's cross-examination concerning the affordability of the revenue requirements; 2) MI's cross-examination concerning Earnings Adjustment Mechanisms (EAMs); 3) AGREE's cross examination concerning the JP's compliance with the requirements of the Climate Leadership and Community Protection Act (CLCPA) regarding greenhouse gas (GHG) emissions; 4) AGREE's cross examination concerning disadvantaged communities; and 5) PULP and FFT's cross examination concerning vegetation management. For the reasons stated herein, as well as in Staff's Statement in Support of the JP and Reply to Opposition, Staff respectfully recommends that the Commission adopt the terms of the JP and establish rate plans for NYSEG and RG&E in accordance therewith.

ARGUMENT

I. The JP Helps Customers With Affordability By Mitigating the Revenue Requirement

At the evidentiary hearing, MI's cross-examination implied that Staff did not adequately consider affordability as part of its analysis of the provisions contained in the JP.[1] Furthermore, MI questioned whether Staff was "aware of the relative economic conditions impacting …your handling of these rate proceedings?"[2] In fact, the JP addresses affordability by: 1) reducing the Companies' proposed expenditures from their initial filing; 2) accelerating the amortization of the excess depreciation reserve (EDR); and 3) phasing in a necessary increase in storm reserve rate allowance over the term of the rate plan. These provisions significantly reduce the revenue requirement to make the rates more affordable for customers.

The proposed revenue requirement increases in the current cases are largely due to the impact of the Covid-19 pandemic (Pandemic) during the Companies' last rate cases. Those cases occurred during the height of the Pandemic when the severity, timing, and full impacts of the Pandemic were still evolving. As a result, the Commission found it necessary to minimize the rate increases to help customers who were facing economic upheaval by limiting rate increases to less than two percent total bill impact in each rate year of the rate plan.[3] To achieve this reduction, the Commission authorized significant cuts to the annual base rate cost recovery for energy efficiency program and vegetation management spending; limited recovery of certain storm regulatory assets by extending the time period over which the costs would be amortized; and passed back several regulatory liabilities to customers in an expeditious time period.

These efforts were warranted given the magnitude of the economic impacts that the Companies' customers faced at that time, however, these costs and resulting build up of regulatory assets at both NYSEG electric and RG&E electric now have to be addressed in the current proceeding. Although there are unavoidable rate drivers in these cases, Staff has worked diligently to mitigate the impact of the revenue requirements on customers, which is reflected in the JP.

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1 Tr. 135, Ln. 25 to 136, Ln. 6.
2 Tr. 133, Ln. 21–23.
3 Cases 19-E-0378 et al., NYSEG – Electirc Rates, Order Approving Electric and Gas Rate Plans In Accord With Joint Proposal, With Modifications (issued November 19, 2020), p. 8.

The JP mitigates the revenue requirement by reducing the Companies' discretionary capital expenditures. Specifically, over the period 2024 to 2026, the JP reduces NYSEG's requested common capital expenditures by $50.93 million and RG&E's requested common capital expenditures by $32.71 million. Further, the JP reprioritized the Companies' electric capital budget and delayed several infrastructure projects that do not address immediate safety and reliability needs. These mitigation efforts resulted in significant cost savings for customers. When compared to the initial filing, the JP reflects a reduction to the requested electric capital budget from 2024 through 2026 by $2.28 billion for NYSEG and $280.59 million for RG&E.

Although the JP significantly reduces the Companies' capital expenditures, the authorized capital spending will still enable the Companies to pursue projects that are critical to improve service reliability, resiliency, and comply with federal requirements.

The JP also reduces the amount of spending initially requested by NYSEG for its vegetation management program. The JP proposes a vegetation management program that sets NYSEG on a six-year cycle, which results in savings of approximately $9 million for each rate year (RY), amounting to $27 million over the three-year term of the proposed rate plan. Even though this is a decrease in proposed expenses, it provides funding that allows NYSEG to expand the current program and will improve system reliability and reduce tree-related outages.

The JP also utilizes additional EDR funds to reduce revenue requirements and help address affordability for customers. This includes the use of $55 million in RY1, $40 million in RY2, and $25 million in RY3 in EDR for NYSEG electric. It also includes the use of $3 million in RY1, $2 million in RY2, and $1 million in RY3 for RG&E electric. Although the JP contains higher EDR amounts than what Staff or the Companies proposed in their testimony, increasing these EDR amounts further would incur negative consequences. The proposed depreciation factors and level of EDR in the JP brings the Companies' EDR within the 10% band commonly accepted by the Commission. Using any additional EDR could negatively impact the Companies' credit ratings and would lead to an inevitable sharp rate increase or a hockey stick in subsequent rate cases, when there simply is not any additional EDR that can be used.

Further, the JP gradually phases in an increase in the major storm Operations and Maintenance (O&M) expense allowance to lessen the impact on customers. This reduced RY1 revenue requirement by $15 million and RY2 by $5 million for NYSEG. For RG&E, this reduced the revenue requirement by $3.1 million in RY1 and $1.6 million in RY2. These increases are necessary to avoid an excessive buildup of regulatory assets that customers will eventually have to pay. Instead, the funding under the JP would allow the Companies to recover an amount of storm restoration costs that is closer to the actual costs incurred. Although the revenue requirement allowances for major storm restoration should be much higher based on historical levels experienced at the Companies, Staff supports the inclusion of a lesser amount to mitigate the immediate rate impact on customers.

The JP also uses Negative Revenue Adjustments (NRA), incurred by the Companies during their current rate plans, to mitigate the rate impacts on customers in the rate plans proposed by the JP. These rate moderators amount to a combined $49 million: 1) $29.4 million from the reliability NRA; 2) and $18.5 million from the customer service NRA.

Finally, even with the proposed increases, the rates for residential customers of both Companies will remain among the lowest in the State, which demonstrates that the provisions referenced above will help to keep rates affordable for customers. After the proposed increases, the typical monthly delivery bill in RY1 will be $61.24 for NYSEG's residential electric customers and $66.97 for RG&E's electric residential customers.[4] The typical monthly delivery bill in RY1 would be $65.81 for NYSEG's residential gas customers and $52.40 for RG&E's gas customers.[5] Among the six major electric local distribution companies in New York State, only Niagara Mohawk has lower typical electric delivery bills at $61.14 and typical bills at the next lowest utility, Central Hudson Gas and Electric Corporation, are significantly above the levels proposed in the JP, at $87.38.[6] Among the nine largest gas utilities in New York State, only National Fuel Gas has typical gas delivery bills lower than both Companies at $40.65,

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4 A typical monthly residential electric bill is considered to use 600 kilowatt hours (kWh).
5 A typical monthly residential gas bill is considered to use 100 therms.
6 A typical residential customer's bill was calculated using 600 kWh and the utility's current effective rates which are available on the Department's website: https://dps.ny.gov/electric-tariffs (Accessed on August 4, 2023).

and Niagara Mohawk is lower than NYSEG gas at $59.39.[7] The next lowest utility, Orange and Rockland Utilities, Inc., has a typical monthly delivery bill for residential customers of $100.38.

Based on the foregoing reasons it is clear that the JP contains numerous provisions that mitigate the proposed revenue requirements, and will help customers with affordability over the entire term of the rate plan. Therefore, the Commission should approve the JP.

II. <u>The EAMs Appropriately Incentivize the Companies to Meet Targets that Support the State's CLCPA Goals</u>

MI's cross-examination implied that the EAMs are unnecessary because the policy objectives they are intended to incentivize are already effectuated by ratepayer-funded programs.[8] Further, MI argues that EAMs rely on utility involvement that is largely limited to services the Companies are obligated to perform, such as interconnection procedures.[9] MI's questioning appears to advance an argument that because various state energy policy objectives in distributed energy resource deployment, demand-side management, and transportation electrification are presently supported to some extent by ratepayer funding, companies should perform such work compulsorily and without additional shareholder incentives.[10] The record in these cases demonstrates that this line of reasoning is flawed, because the EAMs are designed to encourage utility efforts in achieving policy objectives beyond established State and Commission targets.

Staff has been clear throughout this proceeding that EAMs are warranted under limited circumstances.[11] EAMs are appropriate to incentivize utility performance that supports State or Commission policy goals when: 1) there are no existing utility-administered programs and utility-specific funding of such efforts; or 2) such utility performance exceeds historical results or surpasses projected progress toward future policy objectives.[12] Historically, the Commission has expressed a preference for

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7 A typical residential customer's bill was calculated using 100 therms and the utility's current effective rates which are available on the Department's website: https://dps.ny.gov/natural-gas-tariffs (Accessed on August 4, 2023).
8 Tr. 191, Ln. 15-17.
9 Tr. 193, Ln. 10-11.
10 Tr. 195, Ln. 7-11.
11 Exhibit 146, Staff EAMs Panel Testimony, pp. 19-23.
12 Staff Statement In Support, pp. 73-74.

outcome-based EAMs that encourage a broader range of beneficial efforts, in contrast with more limiting programmatic metrics that attempt to isolate results and attribute these directly to discrete utility actions.[13]

While utility companies are obligated to perform interconnection work and other efforts that support such policy objectives, EAMs have a significant role in advancing and expediting resulting resource deployments through efficient administration and management of this process. Furthermore, EAMs are needed because the ambitious State energy and climate policy objectives can often be at odds with the conventional utility business model. The Commission reaffirmed the role of such incentives in spurring optimal utility performance in interconnection work by eliminating interconnection-specific EAMs in 2018 in favor of broader outcome-based DER Utilization EAMs that incentivize a range of utility DER efforts, including, but not limited to interconnection activities.[14] The EAMs recommended in the JP align with the Commission's guidance.

As Staff previously stated, the EAMs in the JP are not redundant.[15] They are not designed to reward the Companies for efforts that merely yield results that are expected from existing ratepayer-funded programs. Instead, EAMs establish performance metrics either based on exceeding historical utility performance, or in exceeding progress expected to meet future policy and statutory objectives.

Staff has stringently applied the foregoing criteria to the EAMs originally proposed by the Companies, and rejected any EAMs that did not meet this criteria.[16] Based on Staff's review, the number of EAMs was reduced from the fifteen requested by the Companies to the four recommended in the JP. A more detailed explanation concerning how the EAMs in the JP are reasonable and do not reward the Companies shareholders for meeting expected performance is contained in the Staff Statement in Support.[17] Accordingly, the EAMs in the JP are reasonable, in the public interest, do not reward the Companies for unexceptional performance, and should be adopted.

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[13] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (Track Two Order), (issued May 19, 2016), pp. 61-65.

[14] Case 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 Intereconnection Earning Adjustment Mechanisms (issued and effective April 24, 2019), p. 15.

[15] Exhibit 146, Staff EAMs Panel Testimony, pp. 21-23.

[16] Staff Statement in Support, pp.74-76.

[17] Id. at 72-77.

III. The JP Complies with the CLCPA's Requirements Regarding GHG Emissions

During the evidentiary hearing, AGREE's cross-examination focused on whether Staff quantified the GHG emissions impacts of the Companies' activities to achieve the CLCPA's emissions reduction targets.[18] This line of questioning incorrectly implied that the JP does not comply with the CLCPA's requirements regarding GHG emissions. Although GHG emissions reductions are a goal of the CLCPA, it is the subject of many government actions, including this JP. The Companies proposed rate plans for the next three years are a part of these government actions and should not be looked at in isolation. These actions include New York DEC rules to ensure compliance with the emission reduction targets. These rules are expected to be promulgated in 2024.

Further, there is a separate Commission proceeding focused on developing statewide GHG emissions reporting that is consistent with the goals of the CLCPA. In that Commission proceeding the utilities filed a proposal for an annual Greenhouse Gas Emissions Inventory Report, including detailed requirements and calculation methodologies.[19] That proceeding is ongoing, and the Commission has not yet acted on the utilities' proposals. Additional details concerning the pending government action concerning GHG emissions reduction is available in Staff's Statement In Support.[20]

Although there are ongoing proceedings regarding the establishment of GHG emission reduction criteria, the JP provides funding for leak prone main (LPM) projects that will reduce GHG emissions. In particular, the Boswell Hill, Winney Hill, and Ridgeway Avenue LPM projects are located in disadvantaged communities, and will result in the reduction of GHG emissions in those communities.[21] Accordingly, AGREE's implied argument that the JP does not comply with the requirements of the CLCPA is incorrect because the adoption of the Companies proposed rate plans are only one part of broader Commission and government agency actions that are required to implement the GHG emission reduction targets of the CLCPA.

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18 Tr. 38, Ln. 16-22.

19 Case 22-M-0149, Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act, Joint Utilities' Proposal for a GHG Emissions Reductions Pathways Study (filed March 31, 2023).

20 Staff Statement in Support, pp. 9-10.

21 Tr. 113, Ln. 22 to Tr.115, Ln. 24.

IV. The JP Complies With the CLCPA's Requirements Regarding Disadvantaged Communities

AGREE cross-examined Staff about the analysis it performed regarding the impact that the Companies' capital projects would have on disadvantaged communities. AGREE's cross examination implied that the JP does not comply with the requirements of the CLCPA because there was not any analysis of the air pollution impacts of the proposed capital expenditure projects on disadvantaged communities, or a comparison of the impact that these capital expenditure projects would have on non-disadvantaged communities compared to disadvantaged communities.[22] Further, AGREE implied that the JP did not comply with the requirements of the CLCPA because it did not prioritize the reduction of GHG emissions and co-pollutants in disadvantaged communities.[23] While the JP does not contain the analysis AGREE highlighted in its cross examination, this does not mean that the JP does not comply with the requirements of the CLCPA pertaining to disadvantaged communities.

As stated in Staff's Reply to Statements in Opposition, proposed gas capital projects mostly comprise efforts to replace deteriorating assets, while electric capital projects primarily reflect projects to upgrade and replace assets in poor condition to improve system safety, reliability, and resilience. These projects will provide a benefit to disadvantaged communities.[24]

Additionally, the provisions of the CLCPA relating to disadvantaged communities are currently the subject of government action in other proceedings. These include, but are not limited to, the adoption of the final disadvantaged community criteria by the Climate Justice Working Group on March 27, 2023, which will guide the equitable implementation and investment requirements of the CLCPA, and Case 22-M-0149, referenced above. Further, the JP contains several provisions that benefit disadvantaged communities. These provisions are listed in the Staff Statement In Support and include electric vehicle make-ready programs, fleet electrification, Energy Efficiency programs, and the LPM programs referenced above that will reduce GHG emissions and improve system safety.[25] Accordingly, it is clear

22 Tr. 59, Ln. 10-15.
23 Tr. 65, Ln. 10-12.
24 Staff Statement in Reply to Opposition, p. 27.
25 Staff Statement In Support, pp. 10-11 and Tr. 113, Ln. 22 to Tr. 115, Ln. 24.

that the JP includes provisions that will benefit disadvantaged communities and complies with the requirements of the CLCPA.

V. The Six-Year Vegetation Management Program for NYSEG Will Improve System Reliability and Help Customers With Affordability

At the hearing, FFT's cross-examination, assisted by PULP, incorrectly implied that there was insufficient cost justification to support the JP's recommended six-year vegetation management program for NYSEG.[26] Also, FFT's cross-examination probed whether the six-year vegetation management program adequately took into consideration the growth patterns of the vegetation that needs to be trimmed to ensure the reliability of the electric system.[27] Based on the record in this proceeding, FFT's concerns are unfounded.

Staff has clearly demonstrated that the JP's recommended six-year vegetation management program for NYSEG is a prudent investment that will save customers money, and improve system reliability.[28] The JP would provide funding over the next three years under the reclamation program for NYSEG to trim half of the circuits that have not been trimmed in several years. Also, the JP increases funding for routine trimming so that circuits that have been reclaimed, and are on the regular cycle, remain trimmed. This ensures that the reliability gains achieved through increased vegetation mitigation in recent years are maintained and improved upon.

In our Statement In Support, Staff explained that the recommended six-year vegetation management program will save customers approximately $9 million in RY1 compared to the vegetation management program that the company initially proposed.[29] Although this represents a decrease from what NYSEG requested, it is still an increase over NYSEG's current spending on vegetation management. The JP demonstrates this by comparing the proposed level of spending for NYSEG's vegetation management program to the current level of spending, which shows increases of approximately $18 million in RY1, $20 million in RY2, and $22 million in RY3.[30]

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26 Tr. 358, Ln. 18-22.
27 Tr. 366, Ln. 14 to Tr. 367, Ln. 25.
28 Staff Statement in Support, pp. 24-25.
29 Id.
30 Exhibit 109, Joint Proposal, p. 16.

The JP includes another vegetation management related provision that will help customers with affordability. Certain vegetation management related expenses are deferred and amortized over ten years. This mitigates rates by approximately $71 million over the course of the three-year rate plan.[31]

For the foregoing reasons, the NYSEG vegetation management plan in the JP represents an improvement over NYSEG's current vegetation management plan. These proposed investments will improve system reliability in a prudent manner while also addressing affordability by reducing the program's cost from the Companies' initial filing, and instituting measures to spread out the cost of the program over a longer period of time.

CONCLUSION

Staff respectfully recommends that the JP be found to be in the public interest and adopted by the Commission in its entirety. As explained in Staff's Statement in Support and Reply to Opposition, the JP meets the requirements of the Commission's Settlement Guidelines, is consistent with the Commission's goals and policies, compares favorably with the likely result of a litigated case, fairly balances the interests of ratepayers and investors, and provides the Commission with a rational basis for its decision. Further, as explained above, the JP contains numerous provisions to help customers with affordability, the EAMs in the JP provide appropriate incentives to achieve goals that wouldn't otherwise be attained, the provisions of the JP are consistent with the requirements of the CLCPA, and the vegetation management program in the JP will improve NYSEG's reliability. For all of these reasons, Staff respectfully recommends that the Commission adopt the terms of the JP and establish rate plans for NYSEG and RG&E in accordance therewith.

Respectfully submitted,

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Dated: August 4, 2023
Albany, New York

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31 Id.