

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission  
As to the Rates, Charges, Rules and Regulations  
Of New York State Electric & Gas Company  
for Electric and Gas Service**

**Cases 22-E-0317 &  
22-G-0318**

**Proceeding on Motion of the Commission  
As to the Rates, Charges, Rules and Regulations  
Of Rochester Gas and Electric Company  
for Electric and Gas Service**

**Cases 22-E-0319 &  
22-G-0320**

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**MOTION TO DISMISS  
NYSEG AND RG&E'S RATE FILINGS**

INTRODUCTION

AARP New York, Alliance for a Green Economy (AGREE), Campaign for Renewable Energy (CRE), Climate Solutions Accelerator of the Genesee-Finger Lakes Region (CSA), Fossil Free Tompkins (FFT), Public Utility Law Project of New York (PULP), and Ratepayer and Community Intervenors (RCI) (collectively, Consumer Advocates) respectfully move, pursuant to 16 NYCRR § 3.6, to dismiss the above-captioned rate cases filed by New York State Electric and Gas (NYSEG) and Rochester Gas and Electric (RG&E) (hereinafter, the Companies) for failure to comply with well-established law, regulation, and policy regarding the level of detail required in rate filings.<sup>1</sup> As detailed below, according to Department of Public Service (DPS) Staff public testimony, the Companies have failed to provide the legally required cost histories, budget specifics, and rational spending priorities needed to evaluate their proposals. Additionally, as DPS Staff indicated, this is the second successive suite of rate filings in which the Companies have failed to provide required data. Instead, the Companies are relying on DPS Staff, through

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<sup>1</sup> Public Service Law (PBS) § 66 (12) (i); 16 NYCRR § 61.

discovery and, primarily, during the protracted, multi-month settlement process, to satisfy the legally required burden of proof.<sup>2</sup> This conduct is contrary to the hundred-year-long expectation and practice of the Public Service Commission (Commission) that any utility seeking to increase its rates must shoulder both aspects of the burden of proof, namely, the burden of coming forward and the burden of persuasion.<sup>3</sup>

Consumer Advocates urge the Commission to dismiss the Companies' deficient rate filings. It is not in the public interest to approve the Companies' enormous rate increases when they have failed to follow basic requirements.<sup>4</sup> If the Commission ignores the law and regulations and approves these major rate hikes based on the insufficient record provided by the Companies, they will have lowered the bar for every utility in every future rate case.

Consumer Advocates assert that the Companies' rate filings should be dismissed because their filings are deficient as a matter of law in that they have failed to timely and fully provide necessary details to justify the requested capital spending. Additionally, according to DPS Staff testimony, this failure could leave insufficient time to acquire correct information and to perform due diligence, both for litigation and, importantly, even for settlement discussions.<sup>5</sup> Significantly, the flaws DPS Staff found in the instant filings echo the flaws found in the Companies' 2019 rate filings and are consistent with problems identified in the 2016 Management Audit of the Companies.<sup>6</sup>

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<sup>2</sup> PBS § 66 (12) (i).

<sup>3</sup> See, for example, 16 NYCRR § 61.3 and the Statement of Policy on Test Periods in Major Rate Proceedings (Case 26821, issued November 23, 1977).

<sup>4</sup> Staff Policy Panel Testimony, 9/26/22;

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={ACD06C2C-5654-4488-8DA1-8894E1139272}> Proposed one-year rate increases as follows: Companies updated Aug. 12 2022 proposal: NYSEG Electric, 34.9%, NYSEG Gas 14.9%, RG&E Electric 21%, RG&E Gas 18.8%. DPS Testimony, Sept. 26, 2022: NYSEG Electric 27.6%, NYSEG Gas 4.8%, RG&E Electric 15.9%, RG&E Electric 14.1%.

<sup>5</sup> "If the Companies do provide detailed cost estimates later in this proceeding, whether during or after litigation or during negotiations, review of the information, would be very time consuming and difficult to complete given the time constraints associated with litigation or negotiations. These time constraints are particularly troublesome considering the number of projects that the Companies did not provide cost estimate details for. Additionally, we note that reviewing that type of information is typically done during the discovery phase of rate proceedings." Staff Gas Infrastructure and Operations Panel, Direct Testimony, pp. 16-17;

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={47CF7BE0-16A5-43AA-BEAA-A549090A57F5}>

Lack of appropriate information can delay the onset of serious negotiations between the only parties necessary for the submission of a joint proposal (the Companies and DPS Staff), thereby increasing the likelihood of rate compression.

<sup>6</sup> Case 16-M-0610, In the Matter of Comprehensive Management and Operations Audits of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation; <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-M-0610>

In the face of these deficiencies, Consumer Advocates propose that the Commission dismiss the above-captioned filings and order the Companies to submit new filings that comply with all filing requirements. Until such time, to help address any safety and reliability concerns, we suggest the Commission consider approving a temporary rate increase pursuant to Public Service Law (PBS) § 114. DPS Staff's testimony made detailed recommendations as to the type of information expected in a rate filing. These details, as well as others as may be recommended by DPS Staff or the Commission, should be required in the next filings submitted by the Companies. Also appropriate for inclusion is a discussion of the Companies' plans regarding the availability of federal infrastructure funding. Finally, the Companies should be required to institute austerity measures, which would have the effect of preserving their credit rating and cash flow without needing to seek double-digit rate increases.

### ARGUMENT

1. *The Companies' Filings Are Deficient As A Matter Of Law And Therefore The Public Service Commission Should Grant This Motion To Dismiss.*

The Commission's regulations require that every rate filing "shall, for instance, 'exactly set forth' all changes in rates as well as comparative balance sheets, and three preceding years of earned surplus statements and "all assumptions of changes in price inputs because of inflation or other factors or changes in activity levels due to modified work practices."<sup>7</sup> When complying with the requirements in 16 NYCRR § 61, the utility carries the burden of proof to justify that its rates, rules and regulations are just and reasonable;<sup>8</sup> and to support any expected changes in revenues, expenses, or income with data that is neither speculative nor conjectural and is accompanied by detailed explanations for all estimates.<sup>9</sup>

DPS Staff's testimony provides many examples of the Companies' failure to provide the necessary information in fulfillment of its burden of proof. Below we provide excerpts of public testimony submitted by DPS Staff panels evaluating the Companies' Electric, Gas and Common Capital revenue requests to demonstrate the extent of this failure.

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<sup>7</sup>16 NYCRR § 61.3; Cases 09-E-0082 *et al.*, DPS Staff Motion to Dismiss, p. 14 (Feb. 13, 2009).

<sup>8</sup>16 NYCRR §§ 61.1 - 6.3; also see, Case 92-M-0138, 1992 Revised Procedural Guidelines, Section E, p. 5.

<sup>9</sup>16 NYCRR § 61.4.

The Staff Electric Infrastructure and Operations Panel (SEIOP) testimony<sup>10</sup> provided an alarming summary of the deficiencies in the Companies' CapEx proposals for electric infrastructure and operations:

Q. How did the Panel find the review of the Companies' proposal for this rate proceeding?

A. **The Panel found it to be difficult to find consistent and detailed information in its review of the Companies' proposal. The initial filing lacked some crucial information and the numerous rounds of IRs [information requests] from the Panel were answered insufficiently by the Companies. This issue was present in the Companies' last rate filing in Cases 19-E-0380 *et al.* (emphasis added).**<sup>11</sup>

Q. In this rate proceeding, did the Companies provide adequate project justification and necessary work papers for the Panel to review?

A. **No. Our experience was much like that described by the 2019 Staff EIOP. The Companies provided vague, inconsistent answers or failed to provide necessary documentation.**<sup>12</sup>

Staff Gas Infrastructure and Operations Panel (SGIOP) testimony<sup>13</sup> regarding the Companies' Gas CapEx Infrastructure and Operations reflected similar concerns:

Q. Does the Panel have any concerns with the information provided by the Companies during the discovery phase of this proceeding?

A. **Yes, we have significant concerns about the way the Companies responded to our IRs, which showed a lack of transparency with respect to the cost estimating processes used to develop forecasted capital expenditures. We asked multiple rounds of IRs for many of the capital projects, and we requested that the Companies demonstrate how capital cost estimates were determined. However, we received only vague responses.**<sup>14</sup>

The SEIOP and SGIOP testimonies are rife with examples of the specific shortcomings of the Companies' filings. Deficiencies are pervasive across a wide range of projects -

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<sup>10</sup> Staff Electric Infrastructure and Operations Panel Testimony, 9/26/22; <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F08632B5-FC77-40CC-B7DD-B0964D853CEC}>

<sup>11</sup> Throughout this document, statements in bold indicate Consumer Advocates' emphasis added to DPS Staff testimony.

<sup>12</sup> SEIOP pp. 16-17.

<sup>13</sup> Staff Gas Infrastructure and Operations Panel Testimony, 9/26/22; <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={47CF7BE0-16A5-43AA-BEAA-A549090A57F5}>

<sup>14</sup> SGIOP pp. 9-10.

both new and ongoing, related to maintenance, reliability, regulatory compliance, emergency response, security and more.

Additional excerpts from the SEIOP testimony about the deficiencies in the Companies' proposals and IR responses underscore the breadth and depth of the deficiencies:

- Asset Condition Projects: Ongoing projects
  - While the Companies have identified the need for certain projects in this category, the **Companies have not provided sufficient documentation to support the increased budgets** for various replacement programs and projects.<sup>15</sup>
  - The Companies have **failed to show how [various projects] would have a material impact** on reliability.<sup>16</sup>
  - The **Companies did not identify the assets that are in poor health nor provide the analysis** for us to review.<sup>17</sup>
  - The Companies claim the increase is needed to address a backlog of projects resulting from various inspection programs...[however] the **Companies failed to provide a list of the backlog projects and the workpapers showing how the forecasted budgets were developed.**<sup>18</sup>
  
- Reliability Projects: Substation Circuit Breaker Replacement - ongoing program
  - **The historical spending was not used** when estimating the program's forecasted expenditures.<sup>19</sup>
  
- Distribution Load Relief - new program
  - The **lack of cost history and work history makes us uncomfortable** with the proposed budgets.<sup>20</sup>
  - [Several projects in this category] are in the process of evaluating the mitigation strategy or final solution. Without a final solution it is **impossible to accurately estimate the time and materials needed** to complete the project. Therefore, the **budget projections for these projects can't be verified.**<sup>21</sup>
  
- Comprehensive Area Studies - new program

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<sup>15</sup> SEIOP, *supra*, p. 30

<sup>16</sup> *Ibid.*, p. 29

<sup>17</sup> *Ibid.*, p. 30

<sup>18</sup> *Ibid.*, p. 31

<sup>19</sup> *Ibid.*, p. 40

<sup>20</sup> *Ibid.*, p. 43

<sup>21</sup> *Ibid.*, p. 43-44

- **Companies view the budgets as preliminary, high-level cost estimates** that were based on the anticipated number of system deficiencies. Therefore, the **budget projections for this program cannot be verified.**<sup>22</sup>
- Regulatory Compliance projects - ongoing program
  - Since the **Companies failed to provide a risk assessment** of the projects, we are **unable to evaluate the projects and ensure the projects are prioritized appropriately.**<sup>23</sup>
- Emergency Response
  - Base Camp Contract: The Panel is concerned that the **Companies do not have more than one vendor providing potential pricing** and terms for these setups...In addition, when the Companies were asked if any additional costs would be incurred when activating this agreement, the Companies stated ‘[E]ach supplier may assess additional costs differently and would be explicit in any contract developed with suppliers.’ This eludes [sic] to **hidden costs that may be charged to ratepayers...**The Companies’ **failure to reach out to neighboring utilities** to determine if they are using such an arrangement in New York and document the feedback regarding these types of agreements is **a large oversight, indicating the Companies did not perform their due diligence prior to requesting these funds.**<sup>24</sup>
  - Right of First Refusal Retainer Agreement: **The Companies failed to provide the needed documentation** to review the storm line vendor agreements that the Companies have considered...The **panel recommends that the Companies perform official benchmarking to determine if the resources available, thresholds, activation criteria, and costs associated** with contracts they seek to establish are comparable with other companies in New York.<sup>25</sup>

The SGIOP testimony expressed similar concerns about lack of detail in the Companies’ Gas CapEx proposals pertaining to regulator station and pipeline projects. The following excerpts appear on pages 12-17 of the SGIOP testimony:

Q. Describe your concerns with the Companies’ responses to IRs that requested a detailed cost estimate.

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<sup>22</sup> *Ibid.*, p. 45

<sup>23</sup> *Ibid.*, p. 72.

<sup>24</sup> *Ibid.*, pp. 110-11.

<sup>25</sup> *Ibid.*, pp. 116-17.

A. The project descriptions provided in testimony and in Exhibits \_\_ (GCE-3) through \_\_ (GCE-10) and \_\_ (CCE-2) include an annual capital spending forecast through 2026. **However, the Companies only provided the dollar amounts and did not specify how these amounts were determined.** Therefore, in DPS-226, we requested a detailed cost estimate and supporting workpapers for the following projects: Hebron Station Rebuild/Line J Retirement, Canandaigua Feeder Main 6 Reinforcement Project, MF120 Eastern Monroe System Improvements, MF60 Phases 1, 3 and 4, CM8 Pipeline Chili GS to Ballantyne Road, Mt. Read SF115 psi, Vienna Road Regulator Station, Hornby Regulator Station, Chambers Road Regulator Station, Winney Hill Regulator Station, Gardner Regulator Station, Limestone Regulator Station, Caledonia Station Rebuild, Mendon Gate Station, and CM-1A Regulator Station.

Q. How did the Companies respond to DPS-226?

A. The response to DPS-226 is included in Exhibit \_\_ 17 (SGIOP-1). The Companies either refer back to their previously supplied exhibits, or state that ‘forecast spending is based on historical costs or projects having similar scope, size and complexity.’

Q. Is this an appropriate response?

A. While we note that this approach itself is a reasonable way to forecast capital costs, **the Companies did not provide any supporting workpapers showing how historic costs were used to determine the forecasted expenditures included in its rate filing for these projects, as requested by DPS-226. Therefore, it is impossible for us to verify that this was in fact the approach they used to forecast these costs, or if the approach produced reasonable results.**

Q. Did you send any further IRs to obtain workpapers or calculations demonstrating how the Companies’ used historic costs or projects to forecast future costs?

A. Yes. We sent IRs DPS-537 through DPS-539, DPS-551 through DPS-555, and DPS-560 through DPS-567, or **sixteen IRs in total**, regarding all the projects listed previously. **These IRs requested that the Companies provide a list of historic projects used to determine the future costs of each project included in DPS-226, and, more importantly, that the Companies demonstrate how those historic project costs were used to develop the future budgets.** We also **requested additional information** that could be used to forecast costs such as **historic costs** for main replacement and equipment replacements. All of these IRs, including the responses, are included 4 in Exhibit \_\_ (SGIOP-1).

Q. Were the Companies able to demonstrate how they determined the cost estimate for each of the previously mentioned projects in response to these IRs?

A. **No. The Companies did list comparable projects, as applicable, and the cost of the project, which they state was ‘roughly scaled to accommodate any differences from the reference project.’**

Q. Did the Companies provide any supporting workpapers for their cost estimates, as requested?

A. **No, they provided only that statement as a response to the question asking for a demonstration of how historic costs were used to determine future costs.**

Q. Why is this an issue for ratemaking?

A. **In order for us to make a recommendation regarding whether the Companies’ cost estimating methodology is appropriate, we need to see how they are scaling these historic projects. This information should have been provided as part of a demonstration of how historic projects were used to forecast future project costs, however, it was not provided. Accordingly, we have no way of determining if the cost estimate is reasonable and we cannot recommend that those costs be allowed to be recovered from ratepayers.**

Likewise, the Staff Shared Services Panel (SSSP) testimony<sup>26</sup> presented similar issues:

- Buildings and Facilities:

The Companies **did not adequately justify their proposed Minor Projects budgets in response to [information requests]. The Companies were not able to provide specific lists or locations and associated costs for individual projects for calendar years 2022 through 2026.**<sup>27</sup>

- Low-Risk Buildings Project:

According to the Companies’ response to DPS-85 question f, which states: ‘[t]he Companies do not yet have a specific listing for the rate year. Response (d) indicates the types of projects that will be done based on need.’ **The Companies indicated that ‘a specific listing for the rate year’ has not been compiled. Based on the lack of historical spending provided in Exhibit\_(CCE-2) and the lack of specific buildings**

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<sup>26</sup> Staff Shared Services Panel Testimony, 9/26/22; <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6FACFEEC-0E50-4887-A95E-B803EB1280F3}> }

<sup>27</sup> *Ibid.*, p. 13.



**identified** in response to DPS-85 we eliminated the NYSEG and RG&E forecasted budgets.<sup>28</sup>

- IT Programs:

The Companies were asked to provide cost estimate breakdowns for each of the individual IT programs. Their response **did not explain or provide much detail for their forecasting methodology**. In the future, the **Companies should itemize their forecasts as much as possible**. ...[T]he Companies were asked to provide Excel workpapers and documentation supporting the cost estimates for their various IT programs. **Their responses ...were lacking sufficient source documentation and did not fully explain the foundation for their budgeted amounts.**<sup>29</sup>

- Physical Security: Avangrid Security Domain (ASD)

**Failure by the Companies to provide historical budget data for completed projects made comparative analysis impossible. We would have preferred to have used a three-year historical average of projects, budget estimates and actual project cost, however lack of information in IR responses prevented this approach.**<sup>30</sup>

**Companies did not provide supporting documentation explaining the risk assessment process** as requested in DPS-369 in order to evaluate methods and internal risk assessment processes. Without this documentation, evaluating the risk assessment process and installation schedule for each project is obfuscated. **Transparency into the risk assessment process is important to determine prudence and reasonableness of security expenditures. Without accurate data, DPS field audits may be less effective in monitoring the ongoing security installations and functionality.**<sup>31</sup>

- Fire Protection Projects

**Responses provided by the Companies were incomplete or lacked sufficient detail to draw conclusions. For example, there was no information provided on completed RG&E projects for 2019, 2020, 2021 or 2022. There is also missing or incomplete data ...with regards**

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<sup>28</sup> *Ibid.*, pp. 14-15.

<sup>29</sup> *Ibid.*, pp. 30-31.

<sup>30</sup> *Ibid.*, p. 37.

<sup>31</sup> *Ibid.*, p. 40.

**to both budget estimates and actual costs for Fire Protection projects.<sup>32</sup>**

**The lack of any significant historical spending details on the RG&E program raises doubt as to the ability to complete forecasted projects on time or complete projects within budgeted forecasts.<sup>33</sup>**

As demonstrated in the foregoing passages from DPS Staff's testimony regarding Electric, Gas and Common CapEx proposals, the deficiencies in the Companies' filings are pervasive, and when DPS Staff provided opportunity for clarification via discovery requests, the Companies were not responsive.

To ensure that ratepayers are not overcharged for capital projects, DPS Staff are tasked with scrutinizing utility proposals. We appreciate their assiduousness in conducting discovery over the course of the rate proceeding to elicit details, perform due diligence, and provide proper oversight of the regulated utility. However, discovery should not substitute for the Companies' providing a proper filing. As PBS § 66 (12) (i) and 16 NYCRR §61 make clear, the utility bears the burden of proof to establish that the proposed changes to its rates, rules and regulations are just and reasonable. To do so they must present "competent testimony" to support estimates of changes in revenues, expenses, or income. As detailed above by DPS Staff's testimony the Companies have not met the burden of proof required of them, and have not provided competent information even through discovery. Accordingly, we move for dismissal of their filings.

*2. According to DPS Staff, In The Face Of Deficient Filings, There Is Insufficient Time To Acquire Correct Information And For Staff To Perform Due Diligence; Hence Neither Settlement Nor Litigation Serve The Public Interest.*

There can be no question that the Companies' failure to meet the burden of proof required by 16 NYCRR § 61 and to timely and thoroughly respond to IRs has impeded Staff's and other parties ability to evaluate the Companies' rate proposals. These same failures will hamper the Commission when either a litigated recommendation or a Joint Proposal comes before Commissioners for a vote.

The SGIOP testified specifically as to how the lack of timely, competent information hinders their ability to perform needed due diligence and disrupts the expected timing of a rate proceeding:

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<sup>32</sup> *Ibid.*, pp. 43-44.

<sup>33</sup> *Ibid.*, p. 45.

Q. Do you have any other concerns about the Companies' lack of a verifiable cost estimate?

A. **Yes. First, we are concerned about the process in this rate proceeding. If the Companies do provide detailed cost estimates later in this proceeding, whether during or after litigation or during negotiations, review of the information, would be very time consuming and difficult to complete given the time constraints associated with litigation or negotiations. These time constraints are particularly troublesome considering the number of projects that the Companies did not provide cost estimate details for. Additionally, we note that reviewing that type of information is typically done during the discovery phase of rate proceedings. Second, as a longer-term focus, we are concerned about future rate filings and a repeat of this situation.**<sup>34</sup>

The lack of timely provision of detailed information that should have been provided as part of the original rate filing results in outcomes adverse to the public interest. By statutory requirement, the Commission is obligated to act on a utility's filing for new rates within 11 months. As described above, a delay in providing information as required under 16 NYCRR § 61.3, results in delays in DPS Staff's work, upon whose expertise most intervenors rely, as well as other parties being able to perform due diligence in reviewing project information. The delayed information also damages the settlement process in that Consumer Advocates, as representatives of multiple public constituencies, do not have the information necessary to make recommendations on the priorities for the use of limited ratepayer funds.

In theory, the settlement process offers an opportunity for traditionally adversarial parties to negotiate an outcome that represents the priorities of the Companies' diverse customer base while containing costs. But in the absence of basic information from the Companies, such prioritization is not possible. Instead, parties will be pressured to agree to projects lacking full details in an effort to achieve a settlement sooner rather than later to avoid months of "make-whole" and rate compression.

*3. In The Face Of Deficient Filings, Staff Recommendations Are Inevitably Unsupportable, Hence Neither Settlement Nor Litigation Serve The Public Interest.*

We appreciate DPS Staff's efforts in trying to extract needed details from the Companies in order to develop a budget that ensures safety, reliability, and progress toward climate

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<sup>34</sup> SGIOP, pp. 16-17.

mandates at a reasonable cost. Nonetheless, in the face of deficient filings from the Companies, as we will show below, DPS Staff’s recommendations and ultimately any decision by the Commission would inevitably be unsupportable.

Consider, for example, the Distribution Load Relief program, a new program, described above (p. 5), in which DPS Staff testified:

Q. Does the Panel have any concerns with the Distribution Load Relief Program budgets?

A. Yes. Distribution Load Relief is a new program, and the lack of cost history and work history makes us uncomfortable with the proposed budgets.”

Their testimony explains that the Companies presented only preliminary, high-level plans for some of the projects and costs could not be verified. In this instance, the SEIOP reduced expenditures for projects that lacked a final plan by one-half.

Without a final solution it is impossible to accurately estimate the time and materials needed to complete the project. Therefore, **the budget projections for these projects can’t be verified. For projects in the process of choosing the final solution we reduced the annual project expenditures by one half.**<sup>35</sup>

In contrast, regarding the Comprehensive Area Studies program, another new program, DPS Staff similarly stated they were “uncomfortable” since costs could not be verified. In this instance, the SEIOP recommended reducing the annual project expenditures by one-third:

This is a new program, and the lack of cost history and work history makes us uncomfortable with the proposed budgets. Additionally, in its response to DPS-205, the Companies view the budgets as preliminary, high-level cost estimates that were based on the anticipated number of system deficiencies. Therefore, **the budget projections for this program cannot be verified. For projects in the Distribution Comprehensive Area Improvement Program, we reduced the annual project expenditures by one third** and used a similar approach to allocate across the years that the Companies used.<sup>36</sup>

Staff’s different treatment of these two new programs is inconsistent, reducing funding by one-third to one project and one-half to the other. Is it possible that the program receiving half-funding could get by with one-third, or that the project cut by one-third only needs one-half? In the face of deficient filings by the Companies, DPS Staff can only respond

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<sup>35</sup> SEIOP, p. 44.

<sup>36</sup> SEIOP, p. 48.

with an educated, but ultimately unsupportable recommendation. With tens of millions of dollars on the line, ratepayers deserve better than this.

Another clear example of unsupportable recommendations made in the face of insufficient documentation is seen in the following scenarios relating to projects DPS Staff acknowledges are important.

When considering the Gas Regulator Projects, the SGIOP testimony remarked:

While we agree with many of the [regulator station upgrade] project justifications, we recommend removing the spending associated with this group of projects as it is not clear how the Companies forecasted capital costs and, as such, it is not appropriate to include these forecasted capital expenditures in the plant models used to develop rate base.<sup>37</sup>

Similarly, the SEIOP recommended removing funding for the Emergency Response Base Camp Contract because these programs had not justified the requested budgets:

The Panel agrees it is important for the Companies to appropriately house, feed, and supply crews responding to emergency events. [However,] the Companies need to have a contract in place once formalized benchmarking is completed to ensure the contract meets the needs of these workers at a reasonable cost. The specific agreement, thresholds, and costs need to be clear and vetted by the Companies... **We simply do not have enough information to recommend approval of this proposal.**<sup>38</sup>

In contrast, when faced with a similar lack of cost justification on important physical security projects, the SSSP acted differently:

There were several factors considered before making these adjustments. First, **failure by the Companies to provide historical budget data for completed projects made comparative analysis impossible.** We would have preferred to have used a three-year historical average of projects, budget estimates and actual project cost, however **lack of information in IR responses prevented this approach.** Additionally, in response to DPS-105, the Companies state that ‘budget estimates for nearer-term projects (1-2 years) are refined through a mini-tender bid evaluation process for each scope of work and used to estimate future years’ cost.’ One key phrase in this response is the reference to ‘nearer term projects.’ Therefore, a defined list of ‘life cycle replacement’ projects should be available to justify the forecasted 2023 budget. However, no such list was

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<sup>37</sup> SGIOP, p. 11.

<sup>38</sup> SEIOP, pp. 112-13.

provided as requested by DPS-105. **Although the 2023 budget estimates for ‘Life 6 Cycle Replacements’ are overly broad and lack detail required to justify full funding of this project component, we expect some assets will need to be replaced in 2023, which is why we did not remove all of the costs.**<sup>39</sup>

The foregoing scenarios demonstrate the inevitability of DPS Staff making unsupportable recommendations in the face of deficient filings. On the one hand, Staff recognizes the projects’ merits; on the other hand, the Companies did not provide justification for the capital costs. The Commission, in conjunction with establishing temporary rates, should determine the interim steps necessary to ensure that such projects continue in a manner that will address the public interest in necessities like safety, security, reliability, and emergency response. Allowing the projects to proceed without justifying the costs would be imprudent and also counter to public interest. The result is a no win situation for DPS Staff and other parties, and ultimately for the Commission.

Thus, in the face of a deficient rate filing in which project costs are not clarified and/or project need is not justified, all outcomes – whether it be no funding, full funding or something in-between – are inevitably unsupportable and not in the public interest. This is yet another reason we move to have the deficient rate filings dismissed.

*4. The Deficient Filings Along With Other Current And Historic Problems Cannot Be Ignored, And Until These Problems Are Addressed It Is Imprudent To Provide Budget Increases And Program Expansion Via Settlement Or Litigation, Hence The Filings Should Be Dismissed.*

The filing deficiencies along with other current and chronic issues raise questions about the Companies’ planning and operations, as well as whether it is a prudent use of ratepayer money to proceed with the rate cases. Additionally we are deeply concerned about the ongoing customer service and billing problems that have deeply eroded public confidence. We believe it is unreasonable to expect ratepayers to further invest in the Companies based on a flawed filing until proper administrative oversight and operational competencies are assured and the billing problems are sorted out.

*i. History Of Rate Case Filing Deficiencies*

These current rate filings are not the first time the Companies’ rate filings have been egregiously deficient. As noted in the 2022 SEIOP testimony, DPS Staff encountered similar filing deficiencies in the Companies’ previous 2019 rate case and the PSC 2016 Management Audit noted problems as well.

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<sup>39</sup> SSSP, pp. 37-38.

From the 2022 SEIOP testimony:

Q. How did the Panel find the review of the Companies' proposal for this rate proceeding?

A. The Panel found it to be **difficult to find consistent and detailed information** in its review of the Companies' proposal. The initial filing **lacked some crucial information** and the **numerous rounds of IRs** from the Panel were **answered insufficiently** by the Companies. **This issue was present in the Companies' last rate filing in Cases 19-E-0380 et al.**

Q. In this rate proceeding, did the Companies provide adequate project justification and necessary work papers for the Panel to review?

A. No. **Our experience was much like that described by the 2019 Staff EIOP. The Companies provided vague, inconsistent answers or failed to provide necessary documentation.**<sup>40</sup>

Looking back to SEIOP testimony in the 2019 rate proceedings shows very similar concerns to the deficiencies in the current rate filings. The 2019 SEIOP observed:

The scope, reasons, and benefits supporting the project are very high level and generic. They provide no meaningful detail as to how program expenditures were derived, prioritization of how and where this money would be spent, or any other detail to support and justify this program. Unfortunately, **this example of limited detailed information and justification was the norm throughout the Companies' filing.**<sup>41</sup>

The 2019 SEIOP further testified that these deficiencies caused them to question the administrative oversight of the companies budget process:

Q. **Does the Panel support the Company's internal capital budget and review process?**

A. **No. The process is concerning if major capital expenditures are being approved with little or no supporting documentation details being provided to the approving senior management.**

Q. Does the Panel recommend improvements to the Companies' capital budget process?

A. Yes. **The Panel does not believe that the relevant Company decision makers have the appropriate view of the investments they are approving.**<sup>42</sup>

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<sup>40</sup> SEIOP, 9/26/22, pp. 16-17.

<sup>41</sup> 2019 Staff Electric Infrastructure and Operations Panel Testimony, 9/20/19, p. 19; <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3541BB63-06A9-41CF-B96E-A D98B4B489E9}>

<sup>42</sup> *Ibid.*, pp. 21-22.

Additionally, the 2019 SEIOP testified that these deficiencies were noted in a 2016 Management Audit of the Companies:

Q. Are the Companies conducting a risk analysis or prioritization of projects presently?

A. No. In addition to our conclusions, **a recent management audit found this to be an area where corporate change is needed. Under NYSEG and RG&E's latest Management Audit, Case 16-M-0610, the Companies were given recommendations for numerous tasks**, including task 26.1 and task 26.2 under the Management of Projects section. Task 26.1 states “the Companies should ensure each project is identified by a quantitative scoring indicator in the Investment Plan. This will provide visibility to all stakeholders as to why a project was chosen or prioritized above another and its strategic importance to the portfolio.” Task 26.2 states “the Companies should conduct a detailed analysis on the methods and reasoning for selecting projects for the Five-Year Capital Investment Plan as well as the current year Investment Plan.”<sup>43</sup>

Notably, the SEIOP testimony in the current 2022 rate cases also referenced the 2016 Management Audit, citing recommendation 26.4, which states:

[T]he companies should transition the project and program management manual processes, and disparate processes, applications and systems to a more robust enterprise-wide portfolio and project management tool... and recommendation 10.1 which states [p]rospectively, NYSEG and RG&E should adequately document their use of benchmarking and the pursuit of best practices and should make this documentation available to the NYSPSC, its Staff, and their representatives, as appropriate.<sup>44</sup>

Despite recommendations from the 2016 Management Audit as well as concerns expressed in the 2019 SEIOP testimony, the 2022 SEIOP testified that “.. we received inconsistent information when asked about specific projects...[and] the Companies failed to provide us with sufficient benchmarking.”<sup>45</sup>

Consumer Advocates agree with the concerns expressed by DPS Staff in the 2019 and current 2022 rate filings that call into question the Companies’ management and planning competencies. That these filing problems have persisted since at least the 2016 Management Audit is cause for alarm.

*ii. Multiple Filing Errors Indicating Poor Oversight*

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<sup>43</sup> *Ibid.*, p. 23.

<sup>44</sup> 2022 SEIOP, p. 20.

<sup>45</sup> *Ibid.*, pp. 20-21.



In addition to the deficiencies noted above, according to DPS Staff testimony, the 2022 filings are plagued with “discrepancies,” “duplications,” “inconsistencies,” “unnecessary” or “excessive” spending, “overlapping” projects, “unwarranted investments,” and other errors indicative of lack of proper planning, poor administrative oversight and lack of competent review before filing.

- IR Response DPS-369 includes Table 2 listing ‘Most pertinent Regulations applicable to the Physical Security Program.’ Table 3 lists ‘Primary Applicable regulations by business’ which reference a Management Action Plan to Safeguard Physical Assets, or MAPSPA. **We can find no regulation with that title.** In response to DPS-649, the Companies confirmed that **the MAPSPA standard was inadvertently referenced in DPS-369, Tables 2 and 3 and it should not have been included. We are concerned a nonexistent or outdated regulation would be cited as a justification.**<sup>46</sup>
- The Companies **responded differently to multiple IRs requesting a breakdown of costs in this program... This concerns the Panel because inconsistent responses lead the Panel to believe that the Companies do not have a clear picture on what they are planning to invest in for resiliency projects.**<sup>47</sup>
- “When the Panel reviewed each investment on the resiliency circuits, some **investments seemed to be unnecessary or excessive.**” SEIOP testimony then details multiple proposed switches or other equipment that would benefit only 2, 3, 6, 9, 12, 65 or 72 customers, whereas the Companies’ own design criteria is to install this equipment to benefit 300 customers.<sup>48</sup>
- In other instances, resiliency projects were proposed for circuits that did not demonstrate poor reliability performance. “Investments should be focused on circuits that have the poorest performance, including storms. **The Panel questions the method the Companies used to identify these circuits and whether the method used in identifying areas that need resiliency will result in unwarranted investment in areas with relatively positive reliability.**”<sup>49</sup>

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<sup>46</sup> SSSP, pp. 40-41.

<sup>47</sup> SEIOP, pp. 54-55.

<sup>48</sup> *Ibid.*, pp. 59-60.

<sup>49</sup> *Ibid.*, p. 62.

- **The Companies are looking to invest money into [equipment for] these circuits that will cost tens of millions of dollars rather than trimming [the trees on] these circuits to improve reliability performance.**<sup>50</sup>
- When reviewing previous reliability reports on the resiliency circuit, the Panel testified as to the **“Companies not fully utilizing the automation devices they have on their existing circuit... Since the Companies are planning to add additional SCADA devices on these circuits, the Panel questions whether resiliency would be improved if the Companies do not fully utilize the investments that are already on these circuits.**<sup>51</sup>
- **It appears there are overlapping efforts** in installation of automation devices between the DSIP-Grid Automation projects and the Resiliency Automation, Hardening, and Topology program.<sup>52</sup>

Notably, Staff’s testimony identified similar problems in the 2019 Resiliency Project proposal:

Q. Does the Panel have concerns with the Resiliency Plan program?

A. Yes. The Panel has five main concerns with the Companies’ Resiliency Plan program: (1) the Companies’ criteria for determining which poles should be hardened; (2) the excessive number of reclosers and remotely controlled switches proposed to be installed on certain circuits; (3) the inclusion of certain sizable projects, such as those costing over \$5 million, that should not be included in the Plan; (4) including projects in the Plan that yield little to no reliability improvement; and (5) the Companies failed to complete a thorough review of the Resiliency Plan program before submitting it.<sup>53</sup>

*iii. Negative Revenue Adjustments*

Direct evidence of the Companies’ management and performance failings is seen in the nearly \$46 million in Negative Revenue Adjustments resulting from the Companies’ repeated failure to meet performance targets in Reliability (SAIFI), Gas Safety, and Customer Service in each of the three years since the last rate case.

*iv. Billing Problems*

Particularly notable are the customer service and billing problems NYSEG and RG&E customers are currently experiencing including but not limited to, receiving no bills for several months, receiving unexpected large bills, receiving bills with estimated reads for

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<sup>50</sup> *Ibid.*, p. 63.

<sup>51</sup> *Ibid.*, pp. 64-65.

<sup>52</sup> *Ibid.*, p. 68.

<sup>53</sup> 2019 SEIOP pp. 61-62.

an extended period of time, as well as experiencing long delays in reaching customer service staff when contacting the Companies to seek assistance.<sup>54</sup> In 2022, the number of consumer complaints against the two companies was approximately 4,700, with DPS Staff estimating that this is a 60 percent increase in complaints over the two previous years combined.<sup>55</sup> As a result, DPS is currently investigating the situation and public hearings have been held in the service territories.

We suggest that a rate increase based on a flawed filing - whether by litigation or settlement - in the face of the customer service and billing problems the Companies are experiencing - would be very poorly received, and frankly, would further erode public confidence in both the Companies and the Commission.

Here is just one letter among many, from a customer who is linking the billing problems with the proposed rate increase:

I tried contacting NYSEG on several occasions only to have to wait on hold for excessively long periods of time. On 2 occasions I was so desperate to speak to someone that I was on hold for almost 2 hrs. Customer service didn't resolve my problems. They only left me frustrated without real reason as to why I wasn't receiving my bills, no regular meter readings, charging me by estimating for several months, excessive billing rates and no one looking at my meter when I requested out of concern there was a problem because my bills were so high. I absolutely DISAGREE with such absorbent [sic] rate increases especially when there's zero customer service or customer satisfaction. I feel as though NYSEG is taking advantage of their customers and not doing their job to support their customers. I lost many hours to sitting on the phone just to get a representative on the line.<sup>56</sup>

Last, we share the concern of DPS Staff, as expressed by the SGIOP testimony, that **“as a longer-term focus, we are concerned about future rate filings and a repeat of this situation.”**<sup>57</sup>

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<sup>54</sup> Matter No. 23-00068, In the Matter of Staff's Investigation into Billing, Customer Service, and Meter Reading Issues Affecting Customers of New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.;

<https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=23-00068>  
<sup>55</sup> See, Department of Public Service Press Release, “DPS Expands Investigation of NYSEG and RG&E for Billing Errors.” December 28, 2022.

<sup>56</sup> See, Public Comment #4085 2/7/23;

<https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-E-0317>

Many additional comments are seen at

<https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=23-00068>

<sup>57</sup> SGIOP, p. 17.

To allow the Companies to continue reaping the benefit of large rate awards despite filing inadequate, error-ridden proposals sends a signal that deficient proposals will be tolerated. To responsibly serve the public interest, the Commission should dismiss the current deficient rate filings and make clear that such deficiencies will no longer be accepted.

*5. Deficient Filings Taint The Settlement Process And Are Not In The Public Interest.*

As we have demonstrated above, the Companies 2022 filings are deficient; moreover, similar problems were seen in the 2019 filings. Notwithstanding the deficiencies in the 2019 filings, a Joint Proposal was submitted by DPS and the Companies, over the objections of several of the parties filing this motion, in part because we objected to the deficient filing.<sup>58</sup>

The Commission's 1992 Revised Procedural Guidelines for Settlements requires settlement proposals concerning major rate increases to be "supported by documentation of the quality and detail required for major rate case filings...[which] shall include the relevant information discussed in Part 61 of the Commission's Rules of Procedure, 16 NYCRR."<sup>59</sup> Therefore, when complying with the requirements in Part 61, proponents of a settlement proposal carry the burden of proof to justify that its rates, rules and regulations are just and reasonable;<sup>60</sup> and to support any expected changes in revenues, expenses, or income with data that is neither speculative nor conjectural and is accompanied by detailed explanations for all estimates.<sup>61</sup>

Yet, as evidenced in the following IR responses from the 2019 case,<sup>62</sup> the confidentiality of settlement was used to mask the lack of information that should have been provided in the filing.

AARP asked Question 55 to elicit information in Staff's possession regarding three of RG&E's distribution projects about which Staff had concerns at the time of its testimony.

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<sup>58</sup> See, 7/22/20 Indicated Environmental Parties Statement In Opposition, pp. 6, 7, 10-12; <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F377F67E-EA3C-4639-9C1A-0FE08C2D25E6}>

<sup>59</sup> Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992), p. 22.

<sup>60</sup> 16 NYCRR § 61.1 - § 6.3; also see, 92-M-0138, 1992 revised Procedural Guidelines, Section E, pp.5.

<sup>61</sup> 16 NYCRR § 61.4.

<sup>62</sup> <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E4AAA108-2F6A-475F-A659-353A38470564}>, EXHIBIT 284, 2019 Rate Cases.

**b. Please provide all information Staff used to reach its decision to deviate from its testimonial position and agree to the budgets included in the JP. Explain when and how Staff obtained the information.**

**Response: The funding level in the Joint Proposal is part of an overall negotiated Cap Ex level. Staff objects to a request seeking information related to confidential settlement negotiations.**

AARP asked Question 57 because of Staff's testimony concerning the Companies' proposed Resiliency Plan Program:

The Panel has five main concerns with the Companies' Resiliency Plan program: (1) the Companies' criteria for determining which poles should be hardened; (2) the excessive number of reclosers and remotely controlled switches proposed to be installed on certain circuits; (3) the inclusion of certain sizable projects, such as those costing over \$5 million, that should not be included in the Plan; (4) including projects in the Plan that yield little to no reliability improvement; and (5) the Companies failed to complete a thorough review of the Resiliency Plan program before submitting it.

**d. Please provide all information Staff used to reach its decision to deviate from its testimonial position and agree to the budgets included in the JP. Explain when and how Staff obtained the information.**

**Response: Staff objects to a request seeking information related to confidential settlement negotiations.**

A weak foundation typically results in an unstable structure. So it is with settlement proceedings. If the proper information, as required by law and/or regulation, is not provided in a timely and transparent manner, in the end, settlement discussions result in a secretly arrived at compromise between the well-intentioned but unsupportable recommendations in Staff's testimony as the floor, and deeply flawed and inflated proposals of the Companies as the ceiling. Moreover, under cover of confidentiality no one can disclose how, if, or to what extent the deficiencies were rectified.

None of this is in the public interest. Ratepayers deserve better.

### CONCLUSION

Consumer Advocates seek the following relief:

- First, the Companies' rate cases should be dismissed as the filings are deficient as described in detail above.

- Second, to help address near-term safety and reliability concerns as well as credit metrics and cash flow, pursuant to PBS § 114, the Commission should order temporary rates.
- Third, the SEIOP and SGIOP testimonies make detailed recommendations as to the type of information that should be provided in a rate filing.<sup>63</sup> These details, as well as others as may be recommended by Staff or the Commission, should be required in the next filings submitted by the Companies. Also to be included is a discussion of all efforts of the Companies regarding applying for federal infrastructure funding.
- Fourth, Consumer Advocates strongly recommend that the Commission address the reality of affordability challenges by ordering the Companies to institute austerity measures and file a plan explaining what actions they will be taking to reduce unnecessary expenditures and create immediate rate relief.

Austerity measures have been encouraged by the Commission, including in 2009, when a generic proceeding was instituted to require the utilities to file austerity plans that would reduce unnecessary expenditures and create immediate rate relief. Those measures included actions such as not paying direct or indirect dividends to a parent company; reduced and deferred capital expenditures; reduced employee overtime, travel, and other benefits; suspension of all dividend payments to shareholders; relief to customers arising from austerity measures in the form of direct bill credits as opposed to “deferrals for the benefits of customers” and more.<sup>64</sup>

Here, despite having filed a deficient proposal, the Companies are poised to be awarded hundreds of millions of ratepayer’s hard earned dollars - all while they cannot even get their billing right. If the Companies cannot write a reasonably justified capital plan, with cost histories, benchmarking, consideration of alternatives, and the like, the Commission must hold them accountable by granting the relief we seek.

For the foregoing reasons, the parties listed below request that the rate cases be dismissed.

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<sup>63</sup> See, for example, SEIOP, pp. 18-20, 58-59, 65; SGIOP, pp 17-18.

<sup>64</sup> See, Case 09-M-0435, Proceeding on Motion of the Commission Regarding the Development of Utility Austerity Programs, NYSEG/RG&E Report on Temporary Austerity Measures (filed June 12, 2009); and see, Case 20-M-0266, Initial Comments of the Public Utility Law Project of New York, filed July 10, 2020, p. 18.

Respectfully submitted,

/s/ Beth Finkel  
State Director, AARP New York

/s/ Laurie Wheelock, Esq.  
Executive Director and Counsel, Public Utility Law Project

/s/ Jessica Azulay  
Executive Director, Alliance for a Green Economy

/s/ Kristen Van Hooreweghe  
Director of Collaborative Action, Climate Solutions Accelerator

/s/ Irene Weiser  
Coordinator, Fossil Free Tompkins

/s/ Brian Eden  
Policy Coordinator, Campaign for Renewable Energy

/s/ Carol Chock  
President, Ratepayer and Community Intervenors

cc.

Hon. Erika Bergen (via E-Mail)  
Hon. Lindsey N. Overton (via E-Mail)  
Active Parties (via E-Mail)