

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

In the Matter of a Review of the Long-Term Gas System Plans  
of The Brooklyn Union Gas Company d/b/a National Grid NY,  
KeySpan Gas East Corporation d/b/a National Grid, and  
Niagara Mohawk Power Corporation d/b/a National Grid.

Case 24-G-0248

Proceeding on Motion of the Commission as to the Rates, Charges,  
Rules and Regulations of The Brooklyn Union Gas Company d/b/a  
National Grid NY for Gas Service.

Case 23-G-0225

## MOTION TO COMPEL RESPONSES

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March 24, 2025



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**MOTION TO COMPEL RESPONSES**

Sane Energy Project (Sane), a Brooklyn-based environmental community organization, was an active participant in Case 23-G-0225 and has been an active participant in Case 24-G-0225 since its inception in Spring 2024. In the Long-Term Gas System Plans proceeding, our focus is on whether or not continued operation of the Greenpoint Liquefied Natural Gas (LNG) facility is necessary, consistent with the Climate Leadership and Community Protection Act (CLCPA) as well as the Public Service Law, and in the public interest. Sane has submitted comments, asked questions, provided information during technical conferences, and promulgated written information requests.

Sane makes this motion pursuant to sections 3.6, 5.1, and 5.3 of 16 NYCRR (New York Codes, Rules and Regulations). Sane respectfully requests the Commission to modify its decision regarding discovery in its Order Adopting Gas System Planning Process<sup>1</sup> and direct the Department of Public Service Staff to withdraw its sudden, arbitrary, and capricious decision to prohibit further information sharing, thereby rendering a serious blemish in what had been a transparent process.

Additionally, Sane respectfully requests an extension of the date for filing comments on National Grid's Final Long-Term Plan. The "Notice Establishing Comment Deadline," issued on March 12, 2025, set April 3, 2025, as the deadline for filing comments. As explained below, Sane was unable to file comments on the previous version of National Grid's Plan due to the failure of PA Consulting to respond to our information requests. It would be even more harmful to the public interest, and continue to undermine the integrity of the process if the Commission deliberated upon National Grid's filing without the benefit of Sane's fully formed comments.

In the Planning Process Order at 24, the Commission stated:

**This long-term planning process should be collaborative**, and the Commission expects that the LDCs [Local Distribution Companies, i.e., gas utilities] will be forthcoming with information and stakeholders will be reasonable in their requests. This should allow for a more fluid and timely exchange of information than occurs

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<sup>1</sup> Case 20-G-0225, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures (issued May 12, 2022).

with formal discovery requests pursuant to 16 NYCRR Part 5. In contrast, the formal discovery process set forth in 16 NYCRR Part 5 is designed for proceedings in which parties will present their position through direct testimony and cross-examination at an evidentiary hearing. (footnote omitted) The gas system planning process we adopt in this Order will not involve the presentation of direct testimony or the cross-examination of witnesses. **Accordingly, at this time, we do not anticipate formal discovery between stakeholders and the LDC. Further, we expect Staff to facilitate the meetings and assist in resolving disputes regarding requests for information.** Finally, as noted above, we anticipate that all participants will learn from experience through the initial reviews conducted under this process. The Commission may modify the process to reflect such lessons learned.<sup>2</sup>

“Experience” and “lessons learned” have shown that while Staff allowed Sane to submit seventeen information requests to National Grid and allowed National Grid to provide responses to those requests, Staff refused to allow its own consultant to answer Sane’s nine information requests. With all due respect, it seems to Sane that is not “collaborative” for Staff to serve as the sole gatekeeper of information, conducting itself as the cause rather than the resolver of a dispute regarding requests for information.

Sane recognizes that the focus of the Commission’s statement is on seamless information exchange between “stakeholders and the LDC.” Ironically, after months of open communication among National Grid, Sane and other stakeholders, and Staff as well as its consultant, PA Consulting, Staff abruptly cut off information sharing at a critical part of the proceeding - one week before comments were due for National Grid’s consideration prior to its filing of its Final Long-Term Plan on March 7, 2025. Lack of transparency undermines the integrity of the process and the Commission. Withholding from public disclosure non-confidential, non-trade secret information produced at ratepayers’ expense not only is contrary to the public interest but also cannot be in the Governor’s interest.

These are the information requests we asked of PA Consulting on February 13, 2025:

1. Please provide all work papers and the methodology used to develop the Design Day load factor for both NMPC and DSNY.
2. Please provide all studies which document the rate of reduction in Design Day load being “sluggish” with respect to annual volume.
3. Please provide all documentation that shows that long-term firm transportation and/or liquefied natural gas (LNG) are more reliable than city gate firm deliveries.
4. Please provide all documentation that LNG is necessary for delivery on cold days on the National Grid system.
5. Please provide all gas supply daily dispatch data for the recent cold snap and PA’s analysis of how these figures show a requirement for LNG and ExC.

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<sup>2</sup> Emphasis added.

6. Please provide all design day analyses which have been conducted on a sendout basis (as opposed to a bottoms-up annual volume basis). This should include all regression analyses and the statistics associated therewith.
7. Please provide an analysis of the HDD assumptions used by NG in its Design Day analysis.
8. Please explain why the lack of LNG in NMPC does not pose a reliability risk to the customers in upstate NY.
9. Please discuss how bill impacts would be affected if design day remained sluggish to decrease but volumes went down at a faster rate. This may not be a rate case, but it is a long-term plan and affordability is an issue for all stakeholders in this proceeding.

Sane completely understands that PA Consulting is not required to conduct any new studies to respond to these questions; the responses can so indicate if that is the case.

Previously, Sane was unable to complete and file comments on National Grid's Revised Long-Term Plan because of Staff's refusal to allow PA Consulting to respond to our information requests. Our motion filed on February 21, 2025, requesting an extension of the date for filing those comments was denied by the Secretary on February 24, 2025. We explained:

The Department of Public Service Staff graciously hosted a technical conference on February 12, 2025, for the purpose of allowing stakeholders the opportunity to discuss and ask questions about PA's report. Sane asked a number of questions during the meeting. Several questions could not be answered at that time and it was agreed that we would submit information requests, which we did the following day. Since we have not yet received a response to Sane IR-18, we are respectfully requesting an extension of the date for submitting comments on PA's Preliminary Findings Report. Sane is seeking an extension of two business days after receipt of the response.

The Secretary's response ignored the underlying reason we sought an extension – the failure of PA Consulting to respond to our information requests -- but stated that since the proceeding is ongoing, we would have other opportunities to file comments. Sane is seeking answers to these information requests *now* so we can complete and file our comments on the Final Long-Range Plan.

### **Background**

The Greenpoint LNG plant was the subject of much discussion in the 23-G-0225 rates proceeding. The Joint Proposal (at pages 27-29), which was signed by Staff and approved by the Commission, contained a section on that facility:

#### 5.2 Review of the Operation of KEDNY's Greenpoint Energy Center

The Signatory Parties acknowledge that the Companies are required to file a Long-Term Plan covering a 20-year period through 2044 on May 31, 2024, pursuant to the Commission's May 2022 Order Adopting Gas System Planning Process in Case 20-G-0131.

The Signatory Parties acknowledge that the long-term plan necessarily must consider the role, if any, for the Greenpoint LNG plant through 2044, including how long it must be or is expected to be operated to support gas system reliability.

**To facilitate that consideration, the Companies commit to including (sic) a specific chapter in their initial Long-Term Plan filing on May 31, 2024, addressing the Greenpoint LNG plant ... .<sup>3</sup>**

To Sane’s knowledge, Staff did not advise the parties in the rates proceeding that it believed it had the authority in the Long-Term Gas System Plans proceeding to prevent public disclosure of non-confidential, non-trade secret information. The Commission’s discussion about this section of the JP on page 76 of its Order did not address discovery and did not grant Staff the authority to withhold non-confidential, non-trade secret information from parties.

The headline on the March 19, 2020 press release announcing the institution of the overall long-term gas planning proceeding (Case 20-G-0131) clearly indicated an open process: “PSC Launches Proceeding to Improve Transparency of Natural Gas Planning and Investments in New York.” The instituting order (at page 3), which resulted from a vote by Commissioners at a public session, states:

Given these potential impacts, the public interest demands that gas utilities provide information to and communicate with customers in a way that promotes effective customer planning, reduces confusion, and avoids inequities or the appearance of inequities. Similarly, the public interest demands that gas utilities provides (sic) information to and communicate with the Department, with other government entities and agencies, and with stakeholders, so as to promote effective planning and best consideration of alternatives, thus benefiting costs, emissions, and economic development.

Admittedly, the focus of the Order is on disclosure of information by the utilities but it would be nonsensical to allow Staff to withhold similar information from the public.

On July 16, 2024, Sane sent an email to Staff, asking these questions:

- 1. Who is the lead entity or person for this case? Is it PA Consulting or a staff member of the NYS DPS?*
- 2. What is the protocol for issuing IRs? I have received various answers:*
  - a. Send to everyone on this email*
  - b. Send only to designated parties in the docket*
  - c. Send to PA Consulting and copy National Grid*
- 3. Can parties be automatically added to DREAM, or do new people need to email Frances Matte for setup? If there is a lead person or entity for this case, it would be helpful to create an orientation list of FAQs or provide access to an existing document if it exists.*

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<sup>3</sup> Emphasis added.

The following day we received this email response from Staff member Cynthia McCarran:

*Kim – thank you for these questions. Here are some answers:*

*1. I am the project manager for the Department of Public Service on the review of National Grid's long-term gas plan (LTP). DPS has a multi-disciplinary team, including Staff counsel members Peter Hilerio and Nick Forst. PA is working at the direction of the DPS Staff team, and their project manager is Jacque Windle.*

*2. The protocol for data requests is to send them to PA at Case 24-G-0248@PACONSULTING.COM. PA will review data requests to ensure that the questions have not already been asked by another stakeholder; if it has, PA will refer the person requesting the information to where it can be found. If it has not, PA will send the question to Grid.*

*3. Persons needing access to DREAM should reach out to Frances Matte and MaryBeth Carroll of Grid.*

*4. There is not a list of FAQs for review of gas long-term plans. Feel free to send any questions my way.*

Staff provided no indication that data requests directed to PA Consulting were not permitted.

On February 24, the same day our motion to extend the filing date was denied, Staff member Peter Hilero sent this email:

*Interested stakeholders in this proceeding have sought certain information from PA, during and after recent technical conferences. Staff, on behalf of PA, is providing certain information attached to this email to ensure that stakeholders have a more complete understanding of PA's Preliminary Findings Report. **However, Staff notes that the process for the review of utilities' long-term gas system plans does not provide for discovery pursuant to 16 NYCRR Part 5, and, as such, does not provide for asking discovery questions of Staff, or by extension PA, whose work in this case is conducted at the direction of Staff. In its May 12, 2022, Order Adopting Gas System Planning Process in Case 20-G-0131, the Commission directed that an informal process for stakeholders to obtain information from the local gas distribution company. (Planning Order, p. 24.)***

Neither this email nor Mr. Hilero's two subsequent emails provided the information Sane sought in its requests to PA Consulting.

### **Discussion**

Claims of transparent processes, such as those in the press release announcing the gas long-term planning proceeding noted above, should apply to the Commission and its Staff, not just to the utilities. Ratepayers are paying almost \$1 million for the services of PA Consulting. Staff has not provided any reason to hide the

information from the public other than to refer to the Commission's Planning Process Order. The information sought is neither confidential nor trade secret.

It is difficult to believe that the Commission intended in this proceeding to insulate its Staff from responding to inquiries. In hundreds of technical conferences related to policy proceedings over the decades, Staff has responded to questions posed by parties. It is illogical to claim that formal written information requests are prohibited, whereas informal oral questions are allowed. Indeed, Sane asked PA Consulting several of the written questions orally at a technical conference held on February 12, 2025. PA Consulting indicated it could not answer the questions at that moment. Staff agreed Sane should put the questions in writing.

Further, the Planning Process Order suggested the Commission thought that parties would benefit from using informal discovery, stating: "This should allow for a more fluid and timely exchange of information than occurs with formal discovery requests pursuant to 16 NYCRR Part 5." It does not appear from this sentence that the Commission intended to *prevent* parties from asking Staff written questions.

From another perspective, Sane asserts that the Commission has misread section (a) of Part 5.1 - Generally of 16 NYCRR, which states:

(a) Consistent with the limitations and procedures set forth in this Part, **parties shall fully disclose to each other, upon request, all information (including data, records, objects, and documents) relevant and material to a proceeding in which they are participating and any information likely to lead to such information. The provisions of this Part apply to formal proceedings**, and do not limit any other authority of the commission or its staff to obtain information from a utility company, or other entity.<sup>4</sup>

There is no question that the balance of Part 5 refers to proceedings involving submission of written testimony. Part 5(a), however, has the title of "Generally" and applies to "formal" proceedings. The long-term gas planning proceedings are formal proceedings, voted upon by all Commissioners present at a public session. While the practice has been to act as if only those proceedings in which testimony is filed are "formal," that is not what Part 5(a) says. Unlike the Public Service Law, which was written by other entities, the PSC promulgated 16 NYCRR Part 5.1(a) and should abide by it.

Putting aside this argument, however, the Commission indicated it was open in its Planning Process Order to making adjustments if necessary based on experience and lessons learned, stating: "Accordingly, at this time, we do not anticipate formal discovery between stakeholders and the LDC." Sane urges the Commission to make such an adjustment now. Further, we seek an extension of the date for filing comments on the Final Long-Term Plan to seven days after we receive responses to the information requests we asked PA Consulting.

## Conclusion

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<sup>4</sup> Emphasis added.

Had the full discussion of the Greenpoint LNG plant remained within the rate case proceeding, written discovery would have been an essential tool for responsibly capturing the complexity of planning the facility's future.

Limiting access to information for a full discussion is not in the public interest and impedes Sane's ability to submit informed comments, contradicting the spirit of the agreement in the 23-G-0225 rate proceeding.

Therefore, we request the Commission to direct Staff and PA Consulting to answer our nine information requests with celerity. Timely access to this information is crucial for public participation, informed decision-making, and adherence to New York State law. Similarly, related to this request, Sane requests one week after receiving the responses to file our comments on National Grid's Final Long-Term Plan.

Respectfully submitted,



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March 17, 2025



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