STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Proactive Planning for Upgraded Electric Grid Infrastructure	**Case 24-E-0364**

MULTIPLE INTERVENORS' COMMENTS ON THE JOINT UTILITIES' PROACTIVE PLANNING URGENT UPGRADE PROJECTS EVALUATION AND FUNDING PROPOSAL

Dated: March 10, 2025

MULTIPLE INTERVENORS
540 BROADWAY, P.O. BOX 22222
ALBANY, NEW YORK 12201-2222

PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published by the New York State Public Service Commission ("Commission") in the *New York State Register* on January 8, 2025 (I.D. No. PSC-01-25-00014-P), Multiple Intervenors hereby submits its Comments in response to the "Joint Utilities' Proactive Planning Urgent Upgrade Projects Evaluation and Funding Proposal" ("Proposal") dated November 13, 2024, and filed in Case 24-E-0364, *In the Matter of Proactive Planning for Upgraded Electric Grid Infrastructure*.[1] Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State. As detailed herein, Multiple Intervenors has numerous concerns regarding, and opposes, selected elements of the Proposal and recommends that those elements be rejected or modified in accordance herewith.

The Commission instituted this proceeding to plan proactively for infrastructure needs necessitated by electrification of the State's transportation and building sectors.[2] In the Order, the Commission issued directives to the Joint Utilities to develop two types of filings:

1. a joint filing proposing "a framework for a process to proactively plan for EV and building electrification, define methods for evaluation and cost allocation of infrastructure projects, and describe the process by which this

---

[1] For purposes of the Proposal, the Joint Utilities are comprised of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Orange & Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

[2] Case 24-E-0364, *supra*, Order Establishing Proactive Planning Proceeding ("Order") (issued August 15, 2024) at 1-2.

new planning framework may be integrated within other planning processes; and

2. individual filings proposing "urgent projects that may require deployment before the completion of the overall planning process proposed in the first filing."

(Order at 2.) These Comments respond to the Proposal, which was the Joint Utilities' submission in response to the first directive.

For the reasons set forth below, Multiple Intervenors recommends that the Commission: (1) modify the Joint Utilities' proposed urgent project criteria; and (2) reject the Joint Utilities' cost recovery proposals.

ARGUMENT

POINT I

THE COMMISSION SHOULD MODIFY THE JOINT UTILITIES' PROPOSED URGENT PROJECT CRITERIA

In the Proposal, the Joint Utilities advance the following four criteria for the evaluation of Urgent Upgrade Projects.[3] Specifically, for Urgent Upgrade Projects, the Joint Utilities propose to demonstrate: (1) that the upgrade is required to enable transportation or building electrification; (2) why "Construction-related Activities" must commence by July 1, 2026, to avoid the risk of delay in connection of customer electrification load; (3) that there is a high degree of certainty of the need for each project based on location, magnitude, and timing of

[3] Multiple Intervenors is using the term "Urgent Upgrade Projects" for consistency with the Joint Utilities' Proposal to which it is responding; such use should not imply that Multiple Intervenors agrees that projects characterized as such necessarily are urgent, or more urgent than other infrastructure projects advanced by utilities in rate proceedings.

expected load, as well as how a utility proposes to manage stranded asset risk; and (4) how they are addressing the potential risks and benefits of each project.[4]

Multiple Intervenors contends that the Joint Utilities' proposed criteria are not stringent enough, and should recognize that the approval of large capital projects outside of rate proceedings – which would impose additional costs on customers over and above levels approved previously by the Commission – should constitute the exception and not the norm. Moreover, if, *arguendo*, such projects are to be approved as part of this proceeding, utilities should be required to evaluate and, where possible, reduce planned capital spending on other projects by at least a comparable amount.

Utilities presumably are intimately familiar with the electric systems that they operate. As part of rate proceedings, utilities routinely prepare and submit multi-year capital expenditure plans that seek to address prioritized system needs in response to, *inter alia*, customer demand. Thus, it is not clear to Multiple Intervenors how and why truly "urgent" electrification projects could be omitted from the capital expenditure plans that utilities submitted, and were relied upon in some form, as part of their most recent rate proceedings.

To the extent a new, exigent need for electrification-related infrastructure work now exists, utilities should be required to demonstrate that: (a) the proposed Urgent Upgrade Projects for which they are seeking accelerated Commission approval outside the normal ratemaking process were not part of their most recently-submitted capital expenditure plans; (b) precisely why and how such Urgent Upgrade Projects were omitted from those capital expenditure plans (for instance, why the allegedly urgent need was not foreseeable during the subject utility's most recent rate proceeding); and (c) whether approval of the proposed urgent

[4] Proposal at 3-6.

project would eliminate or reduce the need for, or allow for the downsizing of, other infrastructure projects advanced in the subject utility's most recently-submitted capital expenditure plans. In other words, if Urgent Upgrade Projects are to be prioritized over other infrastructure projects at a potential added cost to customers, then utilities should be directed to identify previously-planned capital expenditures that can be canceled or delayed to mitigate customer impacts. Affordability should be a high priority in this and all Commission proceedings.

To demonstrate that an Urgent Upgrade Project is required to serve anticipated load with strong ties to transportation and/or building electrification, the Joint Utilities propose to rely upon: (1) a system forecast; (2) a granular load study; and/or (3) customer requests or electrification plans.[5] To the extent a utility relies on a system forecast and/or granular load study, they should be required to demonstrate how such forecast and/or study differs from the forecasts and/or studies relied upon in their most recent rate proceeding as well as other planning processes. Additionally, if a utility relies upon customer requests or implementation plans, they should be required to submit them to Department of Public Service Staff ("Staff") so that Staff is able to evaluate the extent to which such requests or plans were unforeseeable at the time of the utility's last rate proceeding and are definite enough so as to warrant potentially accelerating capital expenditures by the utility outside of the normal ratemaking process. For instance, the fact that a customer may have once planned to electrify does not mean such plan still exists and/or will be acted upon in the near future.

Next, the Joint Utilities propose to demonstrate urgency by explaining why or how Construction-related Activities must commence by July 1, 2026, to avoid the risk of delay in

---

[5] Proposal at 3.

the connection of customer electrification load.[6] Multiple Intervenors recommends that such demonstration be expanded to include the magnitude and the length of delay that would occur if the proposed Urgent Upgrade Project is considered as part of the utility's normal ratemaking process. For instance, if the cost of a proposed Urgent Upgrade Project is material, and the amount of electrification that would be delayed rather limited, the public interest may warrant evaluating the project alongside and in context with the utility's other, planned capital expenditures rather than singling it out for accelerated treatment.

Finally, if the Joint Utilities' proposed Urgent Upgrade Projects are evaluated for approval outside the normal ratemaking process, each utility advancing one or more such projects should be required to analyze and identify previously-planned infrastructure projects that can be canceled or delayed such that existing capital expenditure budgets can be reduced by amounts comparable to the cost of any approved Urgent Upgrade Projects.

Rate proceedings are resource-intensive efforts by parties occurring over the better part of a year, and sometimes longer. Utility-proposed capital projects and budgets are key revenue requirement "drivers" in rate proceedings, and the parties – particularly Staff – expend substantial efforts trying to understand and evaluate the proposed projects, the estimated costs associated with those projects, the evaluation criteria utilized by the utility to justify certain projects and to prioritize them over other potential projects, *etc*. In a rate proceeding – whether the outcome is a one-year litigated case or a negotiated multi-year rate plan (that typically will require many months of negotiations) – significant attention is accorded to ensuring that customer rate impacts are acceptable and the resulting rates are just and reasonable. Approved capital expenditure budgets, which impact both current and future utility revenue requirements,

[6] *Id.*

are major elements of rate decisions. From the perspective of Multiple Intervenors and, upon information and belief, other customers, one of the potential benefits of a multi-year rate plan is rate certainty – which benefit is undermined (if not destroyed) by the practice of authorizing utilities to implement increased collections from customers via surcharges or similar means above and beyond levels approved in rate proceedings (*see* Point II, *infra*).

During Commission-adopted rate plans, utilities have the discretion to modify planned capital expenditures, although the budgets established in the ratemaking process remain. Thus, based on system needs, a utility can implement a different capital project than one that was reviewed during its last rate proceeding. Equipment failures may accelerate certain projects while less-than-expected demand in certain regions may allow for other projects to be canceled or delayed. Recognizing this, if utilities are accorded an ability to advance, and potentially implement, Urgent Upgrade Projects outside of the normal ratemaking process, then, at a minimum, they should be required to identify projects included within their most recent capital plans that can be canceled or delayed. In other words, rather than simply assuming that all proposed Urgent Upgrade Projects automatically are additive to approved capital budgets, utilities should be directed to identify lower-priority capital projects that can be canceled or delayed in order to eliminate or minimize incremental customer rate impacts.

For the foregoing reasons, the Joint Utilities' proposed Urgent Upgrade Project criteria should be modified.

POINT II

THE COMMISSION SHOULD REJECT THE JOINT UTILITIES' COST RECOVERY PROPOSALS

The Joint Utilities advance several proposals relating to cost allocation and cost recovery associated with Urgent Upgrade Projects.[7] For the reasons set forth below, the Joint Utilities' cost recovery proposals should be rejected by the Commission.

Initially, with respect to cost allocation, the Joint Utilities "propose maintaining cost allocation principles consistent with mechanisms under each utility's respective Commission rate case cost recovery requirements and/or tariffs." Multiple Intervenors agrees insofar as the Joint Utilities are seeking to rely on cost allocation principles such as cost causation. The same principles that are utilized to allocate the costs of "traditional" infrastructure projects generally should be utilized to allocate the costs of Urgent Upgrade Projects. Moreover, if, notwithstanding Multiple Intervenors' objections, costs are authorized, allocated to service classes, and/or recovered from individual customers in this proceeding, outside of the normal ratemaking process, such decision should not alter how such costs are allocated and recovered. In other words, utilities should not employ certain principles and methodologies to allocate and recover infrastructure costs in rate proceedings and then employ different principles and methodologies for Urgent Upgrade Projects authorized in this proceeding. Rather, costs authorized in this proceeding should be allocated and recovered consistently with how similar infrastructure project costs would be allocated and recovered in rate proceedings.

Next, the Joint Utilities propose that the Commission: (a) pre-approve cost recovery for Urgent Upgrade Projects; (b) authorize cost recovery via new or existing

---

[7] Proposal at 8-9.

surcharges; and (c) provide utilities with the option of including 100% of Construction Work in Progress ("CWIP") in rate base on a current basis or accrue allowance for funds used during construction ("AFUDC") until the project enters service.[8] Multiple Intervenors recommends that these proposals be rejected.

The Commission historically does not pre-approve cost recovery for capital projects. In rate proceedings, for instance, the Commission adopts or approves a revenue requirement reflective of, *inter alia*, capital expenditure budgets, and utilities are required to proceed prudently or risk disallowance. Pre-approving cost recovery – and potentially doing so without limitation – is akin to signing a blank check and reduces utility incentives to minimize costs that ultimately are borne by customers. If, *arguendo*, the Commission is inclined to authorize the development and construction of certain Urgent Upgrade Projects in this proceeding, outside the normal ratemaking process, it should do so without any pre-guarantees of cost recovery or, at a minimum, limit any guarantee of recovery to specific amounts and subject to the accuracy of the information submitted by utilities in support of such projects. Commission approval of projects – as opposed to unlimited costs – should provide the necessary assurances that costs incurred on the development and construction of Urgent Upgrade Projects will be recoverable subject to any findings of imprudence.

Multiple Intervenors also opposes utilizing surcharges for the recovery of the costs associated with Urgent Upgrade Projects. In the normal course, (i) infrastructure projects are completed, (ii) when that occurs, utilities are allowed to earn a return of and on their investments, and (iii) cost recovery from customers is deferred until base rates are next reset. Typically, utilities are not authorized to start surcharging customers every time an infrastructure

---

[8] Proposal at 8-9.

project is completed between rate proceedings, and it is not clear why a different outcome is warranted here.

The Commission should be aware that, from the perspective of customers, there are some potential pros and numerous potential cons associated with multi-year rate plans. One of the biggest benefits of such plans is that they provide – or purport to provide – rate certainty for customers. For instance, there is a benefit to large, energy-intensive customers of knowing and being able to budget for electric (and gas) delivery costs. Allowing utilities to propose and then potentially recover incremental costs via surcharges, on top of what recently have been extraordinarily large delivery rate increases – undermines the benefit of rate certainty and renders multi-year rate plans much less attractive. The costs of authorized Urgent Upgrade Projects should be recovered via base rates, consistent with how the costs of other infrastructure project costs are recovered.

Finally, the Commission typically does not provide utilities with a choice of CWIP or AFUDC for "traditional" infrastructure projects, and no justification has been advanced as to why special treatment should be granted here. Providing the Joint Utilities with unlimited and/or accelerated cost recovery could result in material, detrimental rate impacts to customers. Given the base delivery rate increases implemented recently and the short- and long-term financial obligations that already have been imposed on customers, the Commission should focus on mitigating to the greatest extent any necessary rate impacts arising from this proceeding.

For the foregoing reasons, the Commission should reject the Joint Utilities' cost recovery proposals.

CONCLUSION

For the reasons set forth herein, Multiple Intervenors urges the Commission to adopt the positions advanced in these Comments.

Dated: March 10, 2025
Albany, New York

Respectfully submitted,

Michael B. Mager

Michael B. Mager, Esq.
Counsel to Multiple Intervenors
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222