

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 23-G-0225 – 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-0226 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service

PETITION FOR REHEARING OF
WE ACT FOR ENVIRONMENTAL JUSTICE

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PRELIMINARY STATEMENT

WE ACT for Environmental Justice (“WE ACT”) hereby petitions the New York Public Service Commission (“PSC” or “Commission”) pursuant to 16 New York Code of Rules and Regulations (“NYCRR”) Section 3.7 and New York State Public Service Law (“PSL”) Section 22 for an order granting rehearing of the Commission’s August 15, 2024 Order Approving Terms of Joint Proposal and Establishing Gas Rate Plans, With Minor Modification and Corrections (the “Order”).

While WE ACT opposed the Joint Proposal on a number of grounds, this Petition seeks rehearing and clarification only on two minor points regarding the new biomethane interconnections for which the Order approved rate recovery pending compliance with certain requirements. First, the Commission committed a legal error in determining that a disproportionate impacts analysis is required only where an interconnection will be located in a disadvantaged community (“DAC”), and not where an interconnection has the potential to disproportionately burden a DAC. Second, WE ACT seeks clarification as to whether the Order makes a modification to the Joint Proposal to require that environmental attributes be sold to voluntary purchasers in New York.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2023, the Brooklyn Union Gas Company d/b/a National Grid NY (“KEDNY”) and KeySpan Gas East Corporation d/b/a National Grid (“KEDLI”) (KEDNY and KEDLI are collectively referred to as the “Companies” and “National Grid”) filed a new tariff filing and testimony with the PSC in support of proposed increases to its gas delivery revenues

for gas service, effective April 1, 2024.¹ For its three-year rate plan, the Companies proposed to increase their annual gas delivery revenues by \$414 million for KEDNY and \$228 million for KEDLI.² On June 30, 2023, the Companies filed their revenue requirement update and updated testimony.³ The Administrative Law Judges (“ALJs”) held a procedural conference on June 14, 2023, and thereafter issued a Ruling on Schedule on June 21, 2023, setting dates for initial and rebuttal testimony as well as the evidentiary hearing. Department of Public Service (“DPS”) Staff, WE ACT, and other parties⁴ filed direct testimony on August 31, 2023, and rebuttal testimony⁵ on September 22, 2023.⁶ On September 26, 2023, the Companies filed a notice that settlement negotiations would commence on October 11, 2023, and the active parties engaged in discovery throughout the proceedings.⁷

A number of the parties ultimately reached agreement on a Joint Proposal, which was filed on April 9, 2024 and signed by National Grid, DPS Staff, the City of New York, the Environmental Defense Fund, and NRG Energy, Inc.⁸ WE ACT, the Public Utility Law Project, Alliance for a Green Economy, the Natural Resources Defense Council, the Newtown Creek Alliance, All Our Energy, SANE Energy, Margot Spindelman, and Mary T. Finneran filed Statements in Opposition to the Joint Proposal.⁹ The ALJs conducted an evidentiary hearing on

¹ KEDLI/KEDNY Joint Proposal at 2, NY PSC Case Nos. 23-G-0225 & 23-G-0226 (Apr. 9, 2024) (“Joint Proposal”).

² *Id.*

³ Order Approving Terms of Joint Proposal and Establishing Gas Rate Plans, With Minor Modification and Corrections at 8, NY PSC Case Nos. 23-G-0225 & 23-G-0226 (Aug. 15, 2024) (“Order”).

⁴ Parties filing direct testimony included Alliance for a Green Economy, City of New York, Environmental Defense Fund (“EDF”), Margot Spindelman, Natural Resources Defense Council (“NRDC”), NRG Energy, Public Utility Law Project of New York (“PULP”), Sane Energy Project, Mary T. Finneran, and the Division of Consumer Protection’s Utility Intervention Unit (“UIU”).

⁵ Parties filing rebuttal testimony included WE ACT, the Companies, Staff, City of New York, PULP, Sane Energy Project and UIU.

⁶ Order at 8–9.

⁷ *Id.* at 9.

⁸ Joint Proposal at 1.

⁹ Order at 10.

May 20, 2024, after which WE ACT and DPS filed post-hearing briefs and the Companies, DPS Staff and the City of New York filed post-hearing reply briefs.¹⁰ On August 15, 2024, the Commission issued an Order adopting the terms of the Joint Proposal with minor modifications.¹¹

The Order approves rate recovery of four new biomethane interconnections, two in KEDNY’s territory and two in KEDLI’s territory.¹² Specifically, the Order authorizes the Companies to defer future rate recovery of interconnection project costs of up to \$13.195 million for KEDNY and \$9.868 million for KEDLI.¹³ Under the Joint Proposal, which the Order adopted, at least 90 days before beginning construction on any interconnection, the interconnecting Company must file a report with the Commission containing a cost estimate, a summary of reliability benefits, a detailed description of the biomethane source materials that will be used, and a detailed accounting of upstream greenhouse gas emissions that will be avoided by the biomethane that the Companies will procure and inject into the interconnection.¹⁴

WE ACT opposed the Joint Proposal on the grounds that under the Climate Leadership and Community Protection Act (“CLCPA”), the Commission could not approve rate recovery without assessing whether the interconnections would disproportionately burden DACs.¹⁵ “To address concerns that these projects could have disproportionate impacts on Disadvantaged Communities,” the Order makes a minor modification to the Joint Proposal to require the Companies to include in the 90-day reports “an analysis of disproportionate impacts for any

¹⁰ *Id.*

¹¹ *See generally* Order.

¹² Order at 111.

¹³ *Id.*

¹⁴ Joint Proposal at 55–56.

¹⁵ Statement of WE ACT for Environmental Justice in Opposition to the Joint Proposal at 32–36, NY PSC Case Nos. 23-G-0225 & 23-G-0226 (May 1, 2024) (“WE ACT Statement in Opposition”).

projects located in a Disadvantaged Community.”¹⁶ WE ACT also raised concerns that any emissions benefits related to biomethane would be exported out of state when the associated environmental attributes are purchased by entities regulated under the California Low-Carbon Fuel Standard or federal Renewable Fuel Standard.¹⁷ The Order discusses the issue of environmental attributes as well.¹⁸

ARGUMENT

I. THE COMMISSION MADE AN ERROR OF LAW IN CONCLUDING THAT A DISPROPORTIONATE IMPACTS ANALYSIS IS NEEDED ONLY FOR AN INTERCONNECTION LOCATED IN A DAC.

WE ACT applauds the Commission for modifying the Joint Proposal to address concerns that the interconnections could disproportionately burden DACs, and urges the Commission to make an additional modification in order to bring the interconnection section of the Order into compliance with CLCPA Section 7(3). Rather than only requiring an analysis for any interconnection in a DAC, the Commission should require an analysis for all four, because all four are likely to disproportionately burden DACs.

Under the CLCPA Section 7(3), a state agency may not issue an “administrative approval” that would disproportionately burden DACs. As the Commission has recognized, an order approving rate recovery for the biomethane interconnections is an “administrative approval,” and therefore a DAC analysis is required.¹⁹ Moreover, as the Commission recognized in modifying the Joint Proposal in order to require a DAC analysis for any interconnection in a DAC, the interconnections have the potential to emit local pollution that could disproportionately

¹⁶ Order at 111.

¹⁷ WE ACT Statement in Opposition at 30.

¹⁸ Order at 112.

¹⁹ See Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements at 70, NY PSC Case Nos. 19-G-0309, 19-G-0310 & 18-M-0270 (Aug. 12, 2021).

burden DACs. Indeed, as the Companies explained in discovery responses and at the evidentiary hearing, biomethane production next to an interconnection involves methane combustion and emits harmful air pollutants including oxides of nitrogen and particulate matter.²⁰ Additionally, constructing the interconnection and biomethane production facilities will emit air pollution, as will transporting food waste and other material to produce biomethane. These pollutants can cause serious health impacts including asthma, cardiovascular illness, learning deficits, and premature death.²¹

The CLCPA does not require that state agencies assess disproportionate impacts only for projects located *inside of* a DAC. Rather, Section 7(3) requires that state agencies ensure that their decisions “not disproportionately burden” DACs. In guidance on implementing Section 7(3), the Department of Environmental Conservation (“DEC”) explains that “[a] project is likely to affect a disadvantaged community if there would be an increase in [greenhouse gases] or co-pollutants within a disadvantaged community, even if the source of the [greenhouse gases] or co-pollutants is located outside the disadvantaged community.”²² DEC uses spatial data to determine if a project is in, or is likely to affect, a DAC.²³ As the DEC guidance explains, “[t]he affected area of the proposed action includes the facility itself and areas reasonably expected to experience off-site impacts from [greenhouse gases] and co-pollutants associated with the

²⁰ See, e.g., Companies’ Response to WE ACT IR 150(a), (f), Exhibit 694 (explaining that flaring occurs when turning biogas into biomethane, and that the thermal oxidizer at the Newtown Creek Project relies on natural gas combustion for fuel); Companies’ Response to WE ACT IR 152(a), Exhibit 706 (explaining that the Newtown Creek Project emits oxides of nitrogen); Seneca Energy Responsiveness Summary at 1, 5–6, Exhibit 723 (discussing the use of a thermal oxidizer and NOx emissions at the Seneca Energy biomethane project and the project’s reliance on natural gas combustion); Transcript at 37:13–25, 40:9–20 (explaining that the Newtown Creek Project emits oxides of nitrogen, particulate matter, and other unknown air pollutants).

²¹ Direct Testimony of Sonal Jessel on Behalf of WE ACT for Environmental Justice, Exhibit 590 at 20–21, NY PSC Case Nos. 23-G-0225 & 23-G-0226 (Sept. 1, 2023).

²² NYS DEC, DEP 24-1 / Permitting and Disadvantaged Communities at 3 (May 8, 2024), <https://dec.ny.gov/sites/default/files/2024-05/prgrmpolicy24dash1.pdf>.

²³ *Id.*

operation of the facility,” and off-site impacts include those that, based on modeling, the project can be expected to cause at a distance from the project site.²⁴ DEC recommends that at a minimum, in determining whether a project could disproportionately burden a DAC, a project applicants should study potential air pollution impacts within a half-mile of the facility.²⁵ However, DEC cautions that a larger study area would be appropriate if modeling shows potential impacts beyond a half-mile.²⁶ Additionally, DEC explains that a DAC analysis “must include the potential impacts of emission from trucks driving to and from the facility” and should look at whether truck routes will go through a DAC.²⁷ DEC does not look simply at whether a facility is inside of a DAC, and the Commission should not either.

Air pollution does not stay put, and a facility emitting air pollution could burden a nearby community. National Grid has recognized this fact. In seeking a Certificate of Environmental Compatibility and Public Need for the Repowering of the Barrett Power Station, National Grid proposed assessing air pollution impacts to communities within two miles of the facility “due to the fact that the maximum and most significant air pollutant concentrations are anticipated to be within 2 miles of the facility.”²⁸ Similarly, the applicant for the Danksammer Energy Project studied potential air pollution within a five-mile radius.²⁹ While the Companies might protest that a biomethane project is not comparable to a power plant, both types of projects require burning methane, and the Companies have not even attempted to estimate the air emissions that will result from the interconnections. We cannot know how far their impacts will reach until the Companies do an analysis.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 7; NY DEC, CLCPA 7(3) Addendum for Mobile Emissions, <https://dec.ny.gov/sites/default/files/2024-05/clcpaaddndmblemmsns.pdf>.

²⁸ Demographic and Economic Attributes at 5–6, NY PSC Case No. 13-F-0464 (Mar. 19, 2014).

²⁹ Exhibit 28: Environmental Justice at 2, NY PSC Case No. 18-F-0325 (Dec. 11, 2019).

It is clear, however, that all four interconnections are, at a minimum, likely to disproportionately burden DACs. Although the Companies have provided inconsistent information about whether the interconnections will be located in DACs, they do not dispute that all of the interconnections will be either in or very close to DACs. In initial testimony, the Companies indicated that both KEDNY Interconnection 1 and KEDNY Interconnection 2 will be located in DACs and that neither interconnection in KEDLI's territory would be located in a DAC.³⁰ However, in response to an interrogatory from DPS Staff, the Companies stated that KEDLI Interconnection 2 is in a DAC, KEDLI Interconnection 1 and KEDNY Interconnection 2 are directly adjacent to DACs, and KEDNY Interconnection 2 is within a two-mile radius of a DAC.³¹

In any event, whether the interconnections are inside of, a block from, or two miles from a DAC, an analysis would be needed to determine whether they could disproportionately burden DACs. As discussed, DEC's guidance explains that a study area of at least a half-mile should be used, but a larger study area might be necessary if modeling demonstrates that impacts could extend beyond a half-mile. As National Grid has recognized, air pollution does not sit still and can impact communities miles away.³² Moreover, the inconsistency regarding the interconnections' locations might be a function of remaining uncertainties regarding the exact infrastructure that will need to be built and where exactly it will be placed; the Companies acknowledge that they do not know all of the biomethane developers' plans or the exact location

³⁰ KEDNY Pre-filed GIOP Testimony, Exhibit __ (GIOP-5) at 269, 273, Exhibit 40; KEDLI Pre-filed GIOP Testimony, Exhibit __ (GIOP-5) at 223, 227, Exhibit 52.

³¹ Companies' Response to DPS IR858(2), Exhibit 618.

³² Demographic and Economic Attributes at 5-6, NY PSC Case No. 13-F-0464 (Mar. 19, 2014).

of the biomethane facilities.³³ This uncertainty is yet another reason to require an analysis of the interconnections’ impacts before they can be constructed.

The need for a DAC analysis is particularly acute here. Both KEDNY Interconnection 1 and KEDLI Interconnection 2, which according to the Companies are directly adjacent to DACs, would be connected to existing wastewater treatment plants and therefore might not require a separate air permit.³⁴ As a result, it is unlikely that a different agency will conduct a DAC analysis at any point for those facilities—it is imperative that the Commission require such an analysis before construction. Moreover, KEDNY Interconnection 2, which according to the Companies is within a 2-mile radius of a DAC, would be a very large facility that is likely to induce a significant amount of truck traffic. The “planned industrial development project” associated with KEDNY Interconnection 2 is expected to produce over 2,100 dekatherms per day of biomethane,³⁵ more than the other three interconnections combined.³⁶ KEDNY Interconnection 2 would also rely on biomethane produced from food waste and paper waste that is transported to the industrial development site,³⁷ which will likely require the use of diesel trucks that emit harmful air pollution and whose impacts will reach the surrounding communities through which they must travel.³⁸ As a result, KEDNY Interconnection 2’s air pollution impacts are likely to be significant and extend far beyond the project site. As DEC has explained, a DAC analysis should examine truck routes for potential disproportionate burdens, in addition to looking at pollution from the facility itself.

³³ See, e.g., Transcript at 69:7–8, 80:7–8.

³⁴ Companies’ Response to DPS IR354, Exhibit 693. For example, the Newtown Creek Project is covered under New York City’s air permit for the Newtown Creek Wastewater Treatment Plant and does not have its own permit. See Companies’ Response to WE ACT IR 152(d), (e), (f), Exhibit 706.

³⁵ KEDNY Pre-filed GIOP Testimony at 80, Exhibit 35.

³⁶ *Id.*; KEDLI Pre-filed GIOP Testimony at 76, Exhibit 47.

³⁷ Transcript at 63:8–11.

³⁸ The Companies do not know how the waste will be transported but agree that it will need to be transported somehow, and have not required the developer to use electric vehicles that would not emit air pollution. *Id.* 64:2–11.

For these reasons, WE ACT submits that the Commission committed a legal error by requiring a disproportionate impact analysis only for an interconnection located in a DAC, and urges the Commission to require that the Companies include a DAC analysis in all four 90-day reports.

II. WE ACT SEEKS CLARIFICATION AS TO WHETHER THE ORDER MODIFIES THE JOINT PROPOSAL TO REQUIRE THAT BIOMETHANE ENVIRONMENTAL ATTRIBUTES STAY IN NEW YORK.

WE ACT seeks clarification on a separate point in the Order concerning the interconnections. The Order states that “[t]he Joint Proposal also requires the Companies to engage with the biomethane project developers concerning monetization of the environmental attributes. The environmental attributes must be (1) voluntary and (2) sold only to an entity located in New York State.”³⁹ However, the Joint Proposal states that “[r]egarding any environmental attribute credits produced in association with the biomethane entering the Companies’ distribution systems via the interconnections, the Companies will engage with the project developers to discuss options for the developers to monetize and sell credits for the environmental attributes associated with the biomethane projects that are (1) voluntary (*e.g.*, not credits that are registered for regulatory compliance with the U.S. EPA Renewable Fuel Standard or California [Low Carbon Fuel Standard]), and (2) sold to an entity located in New York State.”⁴⁰ In other words, the Joint Proposal appears to only require the Companies to engage the developers in conversation about selling the environmental attribute credits to voluntary purchasers in New York, whereas the Order appears to *require* that the developers sell the environmental attribute credits to voluntary purchasers in New York. “Pursuant to PSL § 22, the

³⁹ Order at 112.

⁴⁰ Joint Proposal at 56.

Commission may grant a petition for clarification of the terms or requirements of a Commission Order,”⁴¹ and WE ACT submits that the Companies, the Commission, and interested stakeholders would be served if the Commission clarifies whether the Order does in fact bind the Companies to only purchase biomethane if the associated environmental attributes are sold to voluntary purchasers in New York.

CONCLUSION

For the foregoing reasons, WE ACT asks the Commission to grant rehearing, require a disproportionate impacts analysis for all four biomethane interconnections, and clarify whether the Order modifies the Joint Proposal to require that the associated environmental attributes are sold to voluntary purchasers in New York.

Respectfully submitted,

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⁴¹ Order Regarding Stray Voltage Testing of Various Facilities at 3, NY PSC Case No. 15-E-0743 (Mar. 26, 2021).