

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 14, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 22-M-0159 - Proceeding to Implement Customer Credits and
Reimbursements Pursuant to Public Service Law
Section 73.

ORDER IMPLEMENTING PUBLIC SERVICE LAW SECTION 73

(Issued and Effective July 14, 2022)

BY THE COMMISSION:

INTRODUCTION

The Governor recently signed into law a new section of the Public Service Law (PSL), §73, which became effective on April 21, 2022. PSL §73 requires a "utility company" to compensate residential and small business customers who experience "a widespread prolonged outage lasting at least seventy-two hours...."¹ PSL §73(4) also requires the Commission to promulgate procedures, standards, methodologies, and rules, necessary to implement the provisions of PSL §73, as well as define the terms "widespread prolonged outage," "small business customer," and "proof of loss." Staff of the Department of

¹ PSL §73(1).

Public Service (Staff) prepared a proposal on the definitions, as well as the process and procedures that Staff recommended the Utilities implement to comply with PSL §73 (Staff Proposal).² By this Order, the Commission adopts the necessary definitions, process, and procedures to implement PSL §73 and requires the Utilities to file tariff amendments to incorporate these into their respective tariff schedules.³

BACKGROUND

When Tropical Storm Isaias tore through New York in August of 2020, it left behind a wake of downed trees and power lines resulting in hundreds of thousands of customers without power. A state of emergency was declared in Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester counties. After the first week, 35,000 customers in the State were still without power, causing a significant disruption to customer's daily routines, combined with the financial loss of spoiled food and prescription medication. Con Edison, NYSEG, and Orange and Rockland reimbursed customers for food and prescription medicine spoilage when they lost power for at least two consecutive days,

² Case 22-M-0159, Notice of New Proceeding and Soliciting Comments (issued April 11, 2022).

³ As used in this Order, "Utilities" refers to: Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Edison); National Fuel Gas Distribution Corporation (National Fuel); New York State Electric & Gas Corporation (NYSEG); The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY); KeySpan Gas East Corporation d/b/a National Grid (KEDLI); and Niagara Mohawk Power Corporation d/b/a National Grid (NMPC, and collectively with KEDNY and KEDLI, National Grid); Orange and Rockland Utilities, Inc. (O&R); Rochester Gas and Electric Corporation (RG&E); Corning Natural Gas Corporation; Valley Energy, Inc.; and, Liberty Utilities (St. Lawrence Gas) Corp.

and PSEG-LI reimbursed customers for food and prescription medicine spoilage when they lost power for at least three consecutive days during tropical Storm Isaias.

The new PSL §73, effective April 21, 2022, requires Utilities to provide residential customers: (1) a bill credit of \$25 for each 24-hour period of service outage that occurs for more than 72 consecutive hours after a widespread prolonged outage; (2) reimbursement up to \$235 if the residential customer provides an itemized list or up to \$540 if the customer provides proof of loss, for any food that spoils due to a service outage that lasts longer than 72 consecutive hours after a widespread prolonged outage; and (3) reimbursement for prescription medications that have spoiled up to the amount of the actual loss. Further, PSL §73 requires Utilities to reimburse small business customers for food spoilage up to \$540 if they provide an itemized list and proof of loss for any food spoiled due to a widespread prolonged service outage. To receive reimbursements, both residential and small-business customers are to provide the Utility with itemized lists and/or proof of loss within 14 days of the outage. The Utilities are to provide reimbursement within 30 days of receipt, or within a time-period determined by the Commission if the Utility seeks a waiver of the credit or reimbursement. PSL §73(2) provides that any costs incurred by the Utility in compliance with §73 are not recoverable from ratepayers.

Additionally, Utilities may petition the Commission for a waiver of the credits/reimbursement requirements within 14 days after the "occurrence" of the widespread prolonged outage. The Utility must demonstrate that granting the waiver is fair, reasonable, and in the public interest. PSL §73 provides that the Commission shall issue a final decision regarding the grant of the requested waiver no later than 45 days after submission

of the Utility waiver petition. The Department issued the Staff Proposal in response to provision of PSL §73(4), which requires the Commission to promulgate procedures, standards, methodologies, and rules, and define specific terms, including "widespread prolonged outage," "small business customer," and "proof of loss." On April 11, 2022, the Secretary to the Commission issued a Notice of the creation of this case and soliciting comments on the Staff Proposal pursuant to PSL §73.

SUMMARY OF PROPOSAL

The Staff Proposal presented definitions of the required terms and procedures and rules to provide customer credits and reimbursements as mandated by PSL §73. These include definitions for "widespread prolonged outages," "proof of loss," and "small business customer." Further, the Staff Proposal expatiates on the procedures and rules for: utility waiver filings with supporting information; when the 14-day filing period is triggered; residential customers and small business customers to receive credits and reimbursements in a timely and efficient manner with supporting information; when the \$25 outage bill credit is triggered; and the applicability of the Utilities' existing tariff provisions regarding outage credits and reimbursements. The Staff Proposal also asked the Utilities to file draft tariff language to incorporate PSL §73 and the Staff Proposal into their respective tariff schedules.

The Staff Proposal also explained that, by its terms, PSL §73 does not apply to municipal-owned utilities or the Long Island Power Authority or its Service Provider. The definitions, rules and procedures are discussed in detail in the discussion section below.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on April 13, 2022 [SAPA No. 22-M-0159SP1]. The time for submission of comments pursuant to the Notice expired on June 13, 2022. In addition, the Secretary to the Commission issued a Notice of New Proceeding and Soliciting Comments. Initial comments were due May 20, 2022, with reply comments due June 13, 2022.

The Public Utility Law Project of New York (PULP) and the Joint Utilities submitted initial comments on May 20, 2022.⁴ PULP and the Joint Utilities then submitted reply comments addressing each other's initial comments on June 13, 2022. The comments are addressed in the relevant portions of the Discussion section below. Generally, the comments addressed the following issues: (1) the definition of "widespread prolonged outage"; (2) definition of "small business customer"; (3) definition of "proof of loss"; (4) at what time the Utilities must begin to provide the outage credits; (5) the starting point for setting filing deadlines; (6) to which customers the outage credits are available; (7) whether the utilities can apply for waivers to allow them to recover the costs of the outage credits and reimbursements; (8) waiver petitions and reimbursement claim deadlines; (9) status of existing tariff provisions; (10) dry ice programs; (11) form/type of reimbursement; (12) application of PSL §73 to gas outages; and (13) how PSL §73 would be implemented for outages that occur between April 21, 2022, and the date of issuance of this Order.

⁴ The Joint Utilities are: Central Hudson; Con Edison; National Fuel; NYSEG; KEDNY; KEDLI; NMPC; O&R; and RG&E.

LEGAL AUTHORITY

PSL §73(4) provides the Commission with the authority to promulgate procedures, standards, methodologies, and rules to implement PSL §73. It also requires that the Commission define the terms "widespread prolonged outage," "small business customer," and "proof of loss."

DISCUSSION

In this Order, the Commission adopts the Staff Proposal regarding the procedures, standards, methodologies, and rules, including defining the terms "widespread prolonged outage," "small business customer," and "proof of loss," with modifications as discussed within the body of this Order. Further, this Order addresses the additional issues raised in the comments received regarding this proceeding.

Definitions

1. Widespread Prolonged Outage - Electric Event

In the Staff Proposal, a "widespread prolonged outage" for an electric outage event is defined as "an event impacting at least 20,000 customers at the same time and having one or more customers who remain without power for 72 hours or more due to utility-owned equipment unable to provide power." While not expressly stated, the 20,000-customer threshold would apply individually to each utility. In its initial comments, PULP contends that based on differences regarding Utility service areas and the number of customers per Utility, the Commission should adopt a more granular approach of dividing the Utilities into tiers or using some other factor(s) to group the Utilities

would better serve customers.⁵ Additionally, PULP states that approximately 14 electric service providers serve less than 20,000 customers.⁶ Applying Staff's definition would mean those customers could never qualify for compensation under PSL §73.⁷ PULP asserts this result would discriminate against customers of smaller Utilities.⁸

In their initial comments, the Joint Utilities recommend that "the Commission define a widespread prolonged outage as an outage of more than 72 consecutive hours that affects 10 percent or more of the customers in the Utility's service territory or, in the case of companies with more than one division, more than 20 percent of an operating division due to utility-owned equipment being unable to provide power."⁹ This definition of "widespread prolonged outage" relies on the definition of "major storm" set forth in 16 NYCRR §97.1(c).¹⁰ Also, the Joint Utilities requested additional exclusions for electric outages resulting from a directive of the New York Independent System Operator, Inc.¹¹

⁵ Case 22-M-0159, Initial Comments of the Public Utility Law Project of New York (filed May 20, 2022) (PULP Initial Comments), p. 6.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Case 22-M-0159, Joint Utilities Initial Comments on Staff's Proposal for Definitions and Procedures for Customers to Receive Credits and Reimbursements (filed May 20, 2022) (Joint Utilities Initial Comments), p. 13.

¹⁰ Sixteen NYCRR §97.1(c) defines a major storm as a period of adverse weather that during which service interruptions affect at least 10 percent of the customers in an operating area and/or result in customers being without electric service for durations of at least 24 hours.

¹¹ Joint Utilities Initial Comments, p. 14.

In its reply comments, PULP opposes the Joint Utilities' proposed definition of "widespread."¹² PULP argues that the Joint Utilities failed to explain why the various Utilities might need to depart from a statewide standard, and why the detriment to customers might be substantially outweighed by the benefit to the Utilities.¹³

a. Determination

We are not persuaded by the Joint Utilities' proposal to draw from the definition of a major storm. Of note, the Joint Utilities neglect the fact that 16 NYCRR §97.1(c) defines a major storm based on the percentage of customers interrupted or whether a service interruption lasts more than 24 hours, regardless of the number of customers impacted. The major storm definition includes a time duration component because certain operating areas, typically those areas serving larger cities, rarely have events that that impact more than 10 percent of customers due to the sizable number of customers served.

Moreover, the Joint Utilities' comments fail to appropriately recognize that the definition of a major storm in 16 NYCRR Part 97 exists for a specific purpose - to enable electric reliability to be analyzed by cause component to assess the effectiveness of a utility's capital and maintenance programs. Staff's proposed definition on the other hand, is tied to triggers for when escalated communication action should be taken in accordance with approved Emergency Response Plans, including but not limited to issuing estimated times of restoration on various levels, issuing press releases for widespread distribution, holding calls with municipal and

¹² Case 22-M-0159, Reply Comments of PULP (filed June 13, 2022) (PULP Reply Comments), p. 4.

¹³ Id.

governmental officials, and modifying messaging customers receive when calling the Utility. These actions coincide with the public's desire for information due to the increased severity of an event. Therefore, it is logical that the definition of a widespread event relates to triggers in the emergency response plans.

The Joint Utilities' 10 percent threshold does not result in a reasonable storm event for larger Utilities and undermines the intent of the law. For example, National Grid would need to have more than 167,000 customers without service for an event to qualify under the Joint Utilities' proposed definition. The Commission views this as an excessive customer outage threshold that would be triggered by only the most extreme events. Conversely, O&R - including its New Jersey service territory, and Central Hudson would have a customer outage threshold of approximately 31,000 for an event to qualify. This is relatively close to the level proposed by Staff when compared with National Grid's level.

Additionally, the Joint Utilities' comments do not clearly provide a common definition for an operating division nor provide support for why they propose a customer outage threshold of 20 percent for operating divisions, which would be double that of the major storm definition, provided the operating division is equivalent to operating area. Using a customer outage threshold of 20 percent applied to operating divisions for the major investor-owned utilities, as outlined in the Electric Standards,¹⁴ could qualify an event as widespread with significantly fewer customers interrupted than the

¹⁴ Case 02-E-1240, Proceeding on the Motion of the Commission to Examine Electric Service Standards and Methodologies, Order Adopting Changes to Standards on Reliability of Electric Service (issued October 12, 2004).

threshold recommended by Staff. Excluding Con Edison's five network operating divisions, 22 of the 37 operating divisions statewide have less than 20,000 customers.¹⁵ Additionally, only nine of the 37 operating divisions statewide have greater than 30,000 customers. Given the wide disparity in whether customers within an area would qualify for potential reimbursement of costs, the Commission does not find the Joint Utilities' proposed definitions acceptable.

The Commission disagrees with PULP that defining widespread as 20,000 customers across Utilities is discriminatory against customers of smaller utilities. Of note, PSL §73 was established to provide compensation to customers experiencing widespread prolonged outages. This is distinguished from localized events that may affect a smaller number of customers. PULP states that there are approximately 14 electric providers with less than 20,000 customers. As there are only two small investor-owned electric utilities and five electric cooperatives in New York,¹⁶ all with less than 20,000 customers, PULP's figure appears to include municipal electric utilities. PSL §73 imposes requirements only on "utility companies," not municipalities; thus, it does not apply to municipal electric providers. The definition of widespread proposed by Staff represents a significant level of customer impact and having a definition with a threshold higher than the customers served by these small utilities is not inappropriate or discriminatory.

¹⁵ Given the high reliability of Con Edison's networks, we found it appropriate to review the data without these divisions. However, 20 percent of customers served in individual Con Edison network operating divisions ranges from 8,500 (Westchester) to 175,000 (Brooklyn).

¹⁶ Rural Electric Cooperative Law §67 provides that electric cooperatives are not subject to the provisions of the PSL.

For the reasons discussed above, the Commission adopts Staff's recommended definition of widespread prolonged outage. It sets a uniform statewide threshold that would reflect a significant event if it occurred in any of the major investor-owned utilities' service territories. This ensures that customers who are impacted by such an event for more than 72 hours receive the benefits intended by PSL 73.

2. Widespread Prolonged Outage - Gas Event

The Staff Proposal recommended defining a "gas widespread prolonged outage" as "a gas outage event impacting at least 500 customers at the same time and having one or more customers who remain without service for 72 hours or more, unless the Utility is denied access to inspect and relight those services prior to the 72-hour mark." While not expressly stated, the 500-customer threshold would apply individually to each utility.

The Joint Utilities disagreed with this definition. They stated in their initial comments that a threshold of 500 customers does not constitute a "widespread" outage, particularly in cases where the Utility serves a large customer base of up to millions of customers.¹⁷ The Joint Utilities agree with the aspect of the Staff Proposal specifying that, in the case of gas outages, the Utility would not be responsible to provide compensation if it is denied access to inspect and relight natural gas services prior to the 72-hour mark.¹⁸ They further agree that outages that result from damage to customer-owned equipment should be excluded.¹⁹ The Joint Utilities requested an additional exclusion for gas outages that involve

¹⁷ Joint Utilities Initial Comments, p. 13.

¹⁸ Id.

¹⁹ Id. at 13-14.

the discovery of leaks during the restoration process and for gas outages resulting from a directive of a pipeline operator.²⁰

a. Determination

The Joint Utilities disagree only with that aspect of Staff's proposed definition of a "widespread prolonged outage" for a gas event related to the number of customers subject to the outage. In this respect, the Commission agrees that 500 customers may be too low within an urban setting. However, the definition of "widespread prolonged outage" should not be based on geography but rather the magnitude of the customer impact relative to how the system would be compromised. In the Commission's view, because only a couple of unique gas distribution events could trigger a "widespread prolonged outage" affecting 500 or more customers in an urban setting, we agree that 500 customers seems to be too few for purposes of the trigger event. Additionally, given the unlikelihood of a single event affecting 500 customers, the Commission believes that the customer count should be raised to a level that would reflect multiple contemporaneous events. Therefore, the Commission sets the threshold at 1,500 customers per Utility service territory but otherwise retains the definition in its entirety.

In their comments, the Joint Utilities agree with the Staff Proposal that the utility would not be responsible if it is denied access to inspect and relight prior to the 72-hour mark, and seek similar exclusions when restoration is delayed because the customer prevents the Utility from accessing utility-owned equipment or there is damage to customer-owned equipment. We agree with the Joint Utilities that inability to restore customers for safety purposes due to inadequate customer-owned equipment, such as compromised piping or

²⁰ Id.

appliances,²¹ should not result in a credit if the utility discovered the issue prior to the 72nd hour of the outage event. However, this exclusion does not apply if the delay to restore service is caused by the Utility or the issue is not discovered prior to the 72nd hour of the outage event. We disagree with the Joint Utilities' comment seeking an exclusion from the requirement to provide credits when the delay in restoration is due to the Utility being unable to access utility-owned equipment. The Utilities must have proper protocols in place to gain access to utility-owned equipment to allow for service to be restored in a timely manner.

3. Proof of Loss

The Staff Proposal defined a "proof of loss" as a verifiable proof of perishable food and/or prescription medication spoilage. To verify spoilage, the Staff Proposal recommended requiring that a customer provide an itemized list of perishable foods and/or prescription medication and a depiction (photographic evidence) of food and/or prescription medication spoilage. To determine the reimbursement amount of an impacted customer's food and/or prescription medication spoilage, the customer must provide itemized receipts, itemized cash register receipts, itemized credit card receipts, or photographs of replacement goods that also indicate the price of the item, or other verifiable documentation of the market value of the item. In appropriate circumstances, an interview with the claimant could satisfy the need to provide a proof of loss.

PULP argues in its comments that the requirement of an itemized receipt or, in cases where that is lacking, verifiable documentation of the item's market value, specifically for

²¹ If at least one appliance can be relit, this exclusion shall not apply.

residential customers, will place undue burden on residential customers and hinder the intent of PSL §73.²² PULP also recommended that the Commission provide flexibility to customers regarding the requirement to submit an itemized list and/or proof of loss within 14 days of the outage.²³ For example, PULP proposed a two-step process in which a customer could submit an initial itemized list within the 14-day period, and then the customer could supplement its claim after an additional two-weeks or perhaps after the "state of emergency" has ended.²⁴

The Joint Utilities agreed with the Staff Proposal's definition of proof of loss.²⁵ However, the Joint Utilities recommended that the Commission clarify the Staff Proposal to differentiate between a customer's itemized list of spoiled food and prescription medicine, which is necessary for a claim but not itself a "proof of loss," and the eligible proofs of loss (e.g., itemized receipts) identified in the Staff Proposal.²⁶ The Joint Utilities maintain this distinction is necessary because, under the statute, a residential customer can claim reimbursement of up to \$235 for food based solely on an itemized list but must provide additional proof of loss to obtain a larger reimbursement, up to \$540.²⁷ In their reply comments, the Joint Utilities highlighted that the two-step process proposed by PULP is problematic and contrary to the intent of the statute.²⁸

²² Case 22-M-0159, PULP Initial Comments, pp. 9-10.

²³ Id.

²⁴ Id.

²⁵ Joint Utilities Initial Comments, p. 16.

²⁶ Id.

²⁷ Id.

²⁸ Joint Utilities Reply Comments, p. 4.

a. Determination

The Commission adopts the Staff Proposal's definition of proof of loss. Additionally, we clarify that a customer's itemized list of spoiled food and prescription medicine is not itself a proof of loss. The Joint Utilities are correct in noting that the statute distinguishes between an itemized list and proof of loss and provides that a residential customer can claim reimbursement of up to \$235 based solely on an itemized list. The Commission notes that the itemized list should at minimum include the price of the items listed. As already stated, the customer must however provide additional proof of loss to obtain a larger reimbursement, up to \$540.

Regarding PULP's contention that the definition, particularly as it relates to proof of the reimbursement amount, will impose an undue burden on residential customers or hinder the intention of PSL §73, we disagree. Staff's proposed definition provides customers with multiple options for demonstrating proof of the reimbursement amount. Customers need not rely solely on itemized receipts. For example, customers can rely on screenshots of supermarket websites or grocery applications (App) to provide photographs of replacement goods that also indicate the price of the item.

PSL §73 defines two levels of reimbursement that a customer can claim from a utility for a loss. Utilities must provide a reimbursement up to \$235 if the residential customer provides an itemized list, or up to \$540 if the residential or small business customer provides proof of loss, for any food that spoils due to a service outage that lasts longer than 72 consecutive hours after a widespread prolonged outage; and reimbursement for prescription medications that have spoiled up to the amount of the actual loss."

While an itemized grocery receipt with prices, submitted with digital pictures of the spoiled items or prescription medicine is the optimal documentation to provide for reimbursement, often, all these types of documentation are not readily obtainable or available.

The definition of proof of loss allows a customer to provide "other verifiable documentation of the market value of the item" to substantiate the claim. This can include, but is not limited to, credit card receipts, grocery flyers with item identification and pricing, screenshots of items with pricing, and when needed, an interview between the customer and utility claims representative. The interview provides an opportunity for the utility to request additional documentation and explain why the additional information is needed.

A claim can be submitted to the utility by a customer through electronic means, online, initiated by a telephone call from the customer to the Utility, or via correspondence through the mail. As approvingly noted by PULP, the definition allows a customer to substantiate the proof of loss through an interview in appropriate circumstances. An interview should be considered as the communication, including correspondence, between customer and the utility to discuss the filing of a claim for loss or to discuss a previously submitted claim that is pending review by the utility. The interview should be used to gather any additional information or documentation needed to resolve the claim of loss.

The utility is not required to contact all affected customers, due to the numbers involved. It is the customer who is required to contact the utility to initiate the claims process and provide the required information to the utility. However, in cases where the information provided by the customer is not sufficient, or requires clarification, the utility must

attempt to contact the customer to request additional needed information.

The Commission denies PULP's request to allow additional time in which customers can provide proof of loss, including through implementing a two-step process. The plain language of PSL §73 is clear that customers "shall provide" their itemized list and/or proof of loss "within fourteen days of the outage." The statute provides no ability to modify this deadline.

The Staff Proposal for the definition of "proof of loss" and methods for providing such proof both provide ample flexibility for customers to demonstrate a loss of spoiled food or prescription medicine. It balances this flexibility with a requirement that a customer make a demonstration that the customer actually suffered a loss commensurate with the requested reimbursement amount. Accordingly, we find that the Staff Proposal's definition satisfies the intent of PSL §73 and we adopt it.

4. Small Business Customer

The Staff Proposal recommends defining a "Small Business Customer" as a person, corporation, or other entity, receiving gas and/or electric service from a Utility, that is not a residential customer as defined in §11.2(a)(2) of Title 16 of the New York Codes, Rules and Regulations (16 NYCRR), and has an accepted permanent application for service. Specifically for electric service, the Staff Proposal recommends defining an electric "small business customer" as a customer who may take electric demand service as part of a voluntary demand-based rate offering, may have actual demand that is less than or equal to 500 kilowatts (kW), or may have electric generating capacity that is less than or equal to 500 kW. The Staff Proposal recommends defining a gas "small business customer" as a firm

gas customer that has actual annual gas consumption that does not exceed 750 dekatherms per year, or, for customers with less than one year of actual meter readings, is a firm gas customer that has an average actual monthly usage that when multiplied by 12 does not exceed 750 dekatherms.

PULP proposes in its initial comments that the Commission adopt its definition of "small business customer" as used in PSL §32(6), which was effective until July 1, 2022.²⁹ That provision restricts terminations to small business customers with "twenty-five or fewer employees that is not a: (a) publicly held company, or a subsidiary thereof; (b) seasonal, short-term, or temporary customer; (c) high energy customer as defined by the commission; or (d) customer that the utility can demonstrate has the resources to pay the bill, provided that the utility notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures...." PULP acknowledges that PSL §32(6) is temporary and proposes that the Commission define small business customer by analogizing to two other statutes. First, PULP suggests the Economic Development Law definition of small business, a business that is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons.³⁰ Second, PULP references the Affordable Care Act (ACA) definition of a small employer. The ACA defines a small employer for purposes of a group health plan with respect to a calendar year and a plan year, as an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs

²⁹ PULP Initial Comments, pp. 7-9.

³⁰ Economic Development Law §131.

at least one employee on the first day of the plan year.³¹ New York State has adopted this definition under its Insurance Law.³² PULP stated that the definitions provided by the Economic Development Law and Insurance Law are reasonable alternatives to the Staff Proposal. However, PULP argues that the definition in PSL §32(6) is the most reasonable and equitable to efficiently implement customer credits for extended outage and food spoilage credits. Additionally, PULP proposes that the Commission not limit small commercial gas customers to those taking firm service.

The Joint Utilities in their initial comments agreed with the Staff Proposal threshold for gas.³³ However, the Joint Utilities opposed the demand threshold of 500 kW for electric customers. The Joint Utilities argue that this would capture a much larger portion of commercial customers than intended by PSL §73. The Joint Utilities recommend that the Commission apply the same definition for small commercial customers that it established in its December 12, 2019 Retail Access Order.³⁴ The Retail Access Order defines small commercial electric customers as non-demand metered customers, and small non-residential gas customers as those using less than or equal to 750 dekatherms per year.³⁵ In its reply comments, the Joint Utilities opposed PULP's proposal to rely on PSL §32(6), as it is temporary,

³¹ Patient Protection and Affordable Care Act (2010).

³² Insurance Law §§3231(a)(1) and 4317(a)(1).

³³ Joint Utilities Initial Comments, pp. 14-16.

³⁴ Case 15-M-0127 et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019) (Retail Access Order).

³⁵ Retail Access Order, pp. 102-103.

created for a limited purpose that does not apply to PSL §73, and is impractical to implement in the context of PSL §73.³⁶

a. Determination

The Commission adopts the Staff Proposal's definition of small business customer for gas service, and modifies the definition for electric service. The Commission defines an electric "small business customer" as a nonresidential customer that receives service either: (1) under a non-demand billed rate, or (2) under a demand billed rate, provided the highest metered demand was less than or equal to 40 kW during the previous 12 months.

The modified definition addresses the Joint Utilities' comment that a demand threshold of 500 kW would capture the majority of their nonresidential customers, which the Commission finds is not the intent of PSL §73. While the Joint Utilities urged limiting the definition to non-demand customers, the definition we adopt allows for a level of demand that is consistent with the usage of a small nonresidential customer under electric tariffs.

The modified definition also reflects PULP's suggestion to use an existing law as the basis for defining a small business customer. The definition we adopt is consistent with 16 NYCRR §13.5(b)(1)(v), which limits deferred payment agreements to an electric nonresidential customer that during the previous 12 months, had a combined average monthly billed demand for all its accounts with the utility of 20 kW or less, or who registered any single demand on any account of 40 kW or less. This regulation provides a basis for establishing a demand level of between 20 kW and 40 kW, as deferred payment agreements for nonresidential customers appear to target

³⁶ Case 22-M-0159, Joint Utilities Reply Comments, pp. 1-3.

businesses that are more inclined to have financial limitations, similar to PSL §73.

In addition, as highlighted by the Joint Utilities, the modified definition is easy to administer and simple for customers to understand. Metered demand is a value that is known by the Utility and customer, and is already considered by the Utilities when deciding if a customer qualifies for a deferred payment agreement.

Also, in establishing the demand level, we considered small business customers' current and potential future usage. Presently, small commercial customers such as florist or a small convenience store have demands that can be, on average, less than or equal to 25 kW. However, as we move towards electrification, it is expected that customer demand levels will increase; therefore, a demand level of 40 MW is reasonable.

We decline to rely on PSL §32(6), Economic Development Law §131, or Insurance Law §§3231(a)(1) and 4317(a)(1) to define "small business customer" as proposed by PULP. Establishing a definition based on the number of employees would limit the Utilities' ability to validate whether a customer meets this definition, and such validation would be burdensome to both the Utilities and customers if implemented over an extended period. We also decline to limit this definition for PSL §73 to non-demand customers as proposed by the Joint Utilities and authorized in the Retail Access Order.³⁷ The Joint Utilities do not have the same requirements for the type of customer that receives a demand meter or the same demand-based rate structures/terms. It would result in an inequitable treatment of customers throughout New York State regarding who qualifies as a non-demand customer and receives reimbursement for loss.

³⁷ Retail Access Order, pp. 102-103.

In the Retail Access Order, small business customers are defined as non-demand customers for the purpose of inclusion in the population of mass market customers that require the same level of regulatory oversight and protection as residential customers from energy services companies' pricing and marketing abuses. It was determined that it would be reasonable to consider these non-demand customers as less sophisticated energy market participants. PSL §73, however, appears to be focused on the financial limitations of a small business customers, in line with the purpose of 16 NYCRR §13.5. Defining small business customer as including demand-billed customers with loads of up to 40 kW provides the benefits of PSL §73 to a greater population of customers.

Additionally, the Commission confirms that to qualify as a small business customer, a gas customer must receive firm service. Interruptible service, by its very nature, is subject to outages. Such customers pay discounted rates to reflect the potential for service interruptions and therefore are already compensated for those interruptions. Moreover, the impacts of outages on interruptible customers are limited given that they generally rely on alternative fuels when their gas service is interrupted.

Applicability of PSL §73 to Gas Customers

The Staff Proposal states that, if a residential or small business customer experiences both a gas and electric outage for 72 consecutive hours, the customers would be entitled to a credit for the outage of each service. In instances where customers receive electric and gas service from different Utilities, they would be entitled to a credit for the outage of each service. Customers who are provided both services from a single Utility would also be entitled to the same credits and

reimbursements. The Staff Proposal clarified that the inability to use gas appliances due to the loss of electrical service does not constitute a loss of gas service. Further, the Staff Proposal states that reimbursement for any food and prescription medications that spoil due to a gas-only outage event that lasts longer than 72 consecutive hours is required under PSL §73 if a customer can provide proof of the use of a gas-powered refrigerator or freezer.

The Joint Utilities disagree that PSL §73 applies to outages of natural gas service.³⁸ They maintain that PSL §73 does not contain any express reference to gas service. Further, they argue that the section's focus on food and prescription medicine spoilage from lack of refrigeration supports the conclusion that PSL §73 was intended to apply solely to outages of electric service.

In its initial comments, PULP asserts that the inability to use gas appliances due to a loss of electric service should "in certain circumstances constitute loss of gas service as defined herein as a compensable condition."³⁹

a. Determination

The Commission finds that PSL §73 applies to both electric and gas Utilities. PSL §73, is under Article 4 of the Public Service Law, which addresses both electric and gas utilities. In provisions of Article 4 that pertain solely to electric or gas, that is explicitly stated.⁴⁰ In contrast, PSL §73 states that it applies to "utility companies" and requires compensation to residential utility customers or small business customers without singling out electric utility companies or

³⁸ Joint Utilities Initial Comments, pp. 17-18.

³⁹ PULP Initial Comments, p. 11.

⁴⁰ See, e.g., PSL §65(6) and 66(27).

customers. Moreover, the Sponsor's memo for the bill that enacted PSL §73 explicitly states that PSL §73 "would require gas and electric corporations to provide" compensation to customers.⁴¹ Finally, although there is the possibility that a single widespread prolonged outage could result in credits to a gas customer in excess of the customer's entire monthly bill, the likelihood of this is minimal as gas outages are rare. Moreover, PSL §73's prescribed daily outage credit of \$25 is not tied, explicitly or implicitly to what the customer pays in a monthly utility bill. Accordingly, the Commission finds that the Joint Utilities' argument is not supported by the plain language of PSL §73 or its intent.

With regard to PULP's comment that, in some circumstances an electric outage that precludes a customer from using gas appliances should trigger separate \$25 credits for both electric and gas outages, the Commission disagrees. PSL §73(1) provides for credits and compensation when a customer experiences an "outage lasting at least seventy-two consecutive hours or more without having been resolved by the utility company...." If a customer cannot use gas appliances due to an electric outage while gas service remains available, then there is no gas outage that can be "resolved by the utility company." Additionally, some customers have different utilities for gas and electric service. Accordingly, we decline to provide for gas outage credits in circumstances where customers have gas service but may be unable to use gas appliances due to an electric outage.

Periods to which Outage Credits Apply

The Staff Proposal recommended that the Commission determine that the Utilities must provide the initial \$25 outage

⁴¹ <https://www.nysenate.gov/legislation/bills/2021/S4824>.

credit once the 72nd outage hour has passed. An eligible residential or small business customer would be entitled to a \$25 credit until the start of the next 24-hour outage period, i.e., once the 96th outage hour has passed, at which point the customer would receive a second \$25 credit, and so on. Staff did not propose any pro-ration of credits for ease of administration and to avoid customer confusion. Further, the Staff Proposal recommended that, when a Utility provides the \$25 credit, it supersedes the current practice of any Utility that provides a credit to residential and small business customers for customer or service charges, which could be less than \$1 dollar a day for an outage. Such duplicative credits could potentially result in customer confusion. For those Utilities that currently have tariff provisions in effect that concern customers, other than residential customers or to be defined small business customers, Staff proposed that those tariffs remain in effect until otherwise determined by the Commission.

PULP in its initial comments proposed that the \$25 credit to customers be prorated back to the beginning of the 72 consecutive hour outage.⁴² The Joint Utilities, in their initial comments, sought clarification regarding whether the \$25 daily outage credit would be available only to residential customers pursuant to PSL §73.⁴³ The Joint Utilities further requested that the account credit of \$25 apply only after each full 24-hour period that an outage continues following the 72 consecutive-hour outage period that qualifies as a "widespread prolonged outage."⁴⁴ Thus, under the Joint Utilities' approach, residential customers would be entitled to the first \$25 account

⁴² PULP Initial Comments, pp. 11-12.

⁴³ Joint Utilities Initial Comments, pp. 7-10.

⁴⁴ Id.

credit only after an outage lasts for 96 consecutive hours, and an additional \$25 after every full 24-hour outage period thereafter. In their reply comments, the Joint Utilities opposed PULP's proposal that the \$25 credit begin at the start of the outage, arguing that it conflicts with the plain language of PSL §73.⁴⁵

a. Determination

PSL §73(1)(a) states that a Utility shall "[p]rovide a credit of twenty-five dollars on the balance of such residential utility customer's account for each subsequent twenty-four-hour period of service outage that occurs for such customers for more than seventy-two consecutive hours after the occurrence of such widespread prolonged outage." The plain language of the text demonstrates that only residential customers are eligible for the \$25 credit. Accordingly, small business customers are not eligible for the \$25 outage credit.

The Commission agrees with the Joint Utilities regarding the time periods for which customers are to be provided with a \$25 credit. PSL §73(1)(a) states that Utilities shall provide credits for each subsequent 24-hour period of service outage. The language of PSL §73(1)(a) is clear that it does not provide for credits for the period prior to the 72-hour mark. Further, it is clear that it only provides credits for each "24-hour period of service outage." Thus, the Commission finds that, by its terms, PSL §73 mandates that each Utility shall provide a \$25 credit for outage period lasting a full 24 hours in excess of 72 hours, and for each full 24-hour outage period thereafter. Thus, to be clear, the Utilities shall provide a \$25 credit on residential customers' accounts when an outage lasts at least 96 hours. The Utilities would then

⁴⁵ Joint Utilities Reply Comments, p. 4-5.

provide a second \$25 credit when an outage lasts at least 120 hours, and an additional \$25 after every full 24-hour period thereafter.

Starting point for 14-day filing periods

PSL §73(1)(b) and (c) require that customers seeking reimbursement for spoiled food and/or prescription medicine must provide itemized lists and/or proof of loss "within fourteen days of the outage." Additionally, PSL §73(3), states that a utility company can petition the Commission for waiver of the requirements of PSL §73 "not later than fourteen calendar days after the occurrence of a widespread prolonged outage." According to the Staff Proposal, the 14-day filing periods would be triggered on the day on which an event first meets the definition of a "widespread prolonged outage."

The Joint Utilities commented that customers' deadlines for submitting reimbursement claims and Utilities' deadlines for submitting waiver petitions should both be set at 14 days following the restoration of service to 100 percent of customers affected by a widespread prolonged outage.⁴⁶ The Joint Utilities stated that this will allow the affected customers and Utility to focus on recovering from the event rather than assembling claims and petitions during the outage itself.⁴⁷

a. Determination

The Joint Utilities request to start the 14-day deadline after service has been restored to 100 percent of customers affected by the widespread prolonged outage is not reasonable. We disagree with the Joint Utilities because, there may be instances where it is not possible to restore 100 percent of customers due to issues outside of Company control, which

⁴⁶ Joint Utilities Initial Comments, pp. 4-7.

⁴⁷ Id.

would needlessly prolong the start of the 14-day deadline. PSL §73 does not specify whether the clock begins to run at the outset of the outage or at its conclusion. The Commission finds that it is reasonable to set the 14-day deadline as of the 72nd hour of a "widespread prolonged outage," when customers become eligible for reimbursements pursuant to PSL §73. This will prevent any miscommunication and uncertainty about when the 14-day clock begins to run. In addition, it will ensure fairness by providing some time to allow customers to deal with the disruptions resulting from the outage as well as allow the Utilities to focus on restoring service in a timely fashion.

Accordingly, the 14-day deadline for customers' reimbursement claims and for utilities' waiver requests will begin once a widespread prolonged outage lasts 72 hours. An affected Utility shall notify its customers by noon the following calendar day, that the 14-day window provided by PSL §73 to file for reimbursement for loss has begun and clearly state the deadline for when customers must request reimbursement. This notification must be conducted in a manner to maximize public knowledge of the deadline. Methods of notification should include mass press release, television news updates, email, text message, or other method that reaches the entire affected customer base. Finally, each Utility shall include detailed communication plans for notifying their customers that the widespread outage criteria has been met, and the 14-day window to file for reimbursement has begun, in their subsequent Emergency Response Plans.

Waivers of the Requirements of PSL §73

As noted, under PSL §73(3), "a utility company" can request waiver of the requirements of the section in which it has the "burden of demonstrating that granting the waiver is fair, reasonable and in the public interest." The Staff

Proposal provided that, upon a Utility requesting a waiver of PSL §73, the Utility's request would be noticed by the Commission to allow any interested party to comment and Staff to review the request. The Staff Proposal observed that the Commission would within its discretion issue a decision within the time-period mandated by PSL §73 (i.e., 45 days) taking into consideration any and all criteria set forth in PSL §73(3)(a)-(g).

The Joint Utilities requested that the Commission allow utilities to request waivers specifically of PSL §73(2), which specifies that "[a]ny costs incurred by a utility company pursuant to this section shall not be recoverable from ratepayers."⁴⁸ The Joint Utilities argue that the Commission should allow Utilities to request a waiver of subdivision (2) in cases where the widespread prolonged outage is due to conditions or events external to a Utility's control and the utility makes reasonable efforts to restore service as soon as practicable.⁴⁹ In its reply comment, PULP recommended that the Commission deny the Joint Utilities' request seeking a waiver specifically to allow cost recovery, arguing that allowing cost recovery from customers for otherwise mandated expenses delineated in PSL §73 is contrary to the intent of the statute.⁵⁰

a. Determination

The Commission finds that the text of PSL §73(2) expressly precludes cost recovery from customers. Indeed, subdivision (2) could not be more clear that the utility is prohibited from recovering any costs required to be paid under Section 73 from ratepayers. Although subdivision (3) authorizes

⁴⁸ Joint Utilities Initial Comments, pp. 2-4.

⁴⁹ Id.

⁵⁰ PULP Reply Comments, pp. 3-4.

a utility to "petition the commission for a waiver of the requirements of this section," the Commission does not read the phrase "requirements of this section" to apply to subdivision (2), which contains language that is unconditionally prohibitory. By contrast, the language in subdivision (1) is in the nature of requirement in that it becomes operative upon some precondition or triggering act. There is otherwise nothing in the language of PSL §73 giving the impression that the Commission has any discretion to socialize the costs delineated in subdivision (1) to the utility's ratepayers.

Moreover, allowing for cost recovery of the costs of credits and reimbursements provided pursuant to PSL §73 would essentially require that customers pay the Utility for the credits the Utility provided to customers. This would undermine the objective of PSL §73, which is to provide customers with compensation when they experience a widespread prolonged outage. PSL §73(2) is subsidiary to PSL §73(1). If a Utility requests a waiver of the requirements of PSL §73(1), and demonstrates that waiver of those requirements is fair, reasonable, and in the public interest, then there would be no need to waive PSL §73(2).

Applicability of PSL §73 Between April 21, 2022, and the Issuance Date of this Order

The effective date of PSL §73 is April 21, 2022; however, SAPA required that the Staff Proposal be issued for public comment prior to its consideration by the Commission. To protect customer interests, the Staff Proposal recommended that, the Utility be required to provide notice to the Secretary indicating if an event occurred resulting in an electric and/or gas outage for more than 72 consecutive hours prior to the issuance of this Order. Further, the Staff Proposal recommended that, if such an event occurs, the Utility be required to provide notice to customers without electric and/or gas service

for at least 72 consecutive hours of the possibility of a credit/reimbursement, and for customers to keep a record of spoiled items and proof of loss. Finally, the Staff Proposal recommended that the rules and procedures adopted by the Commission in this proceeding, as well as those mandated by PSL §73, would then be applied to any such outage event.

The Joint Utilities raised as a concern the applicability of PSL §73 prior to the Commission's adoption of an order effectuating its terms.⁵¹ Specifically, the Joint Utilities requested that any such order apply only prospectively, not retroactively.⁵²

a. Determination

As PSL §73 became effective on April 21, 2022, customers are entitled to compensation and reimbursements as of that date, if a qualifying event were to occur. Since the issuance of the Staff Proposal, only one such event occurred. On April 18, 2022, a snowstorm caused widespread service outages within NYSEG's service area, impacting approximately 230,000 customer accounts over time. By the end of April 23, 2022, all customer service outages had been restored. NYSEG submitted a petition for a declaratory ruling regarding the applicability of PSL §73 to that event,⁵³ which the Commission will address separately. In the petition, NYSEG asserted that "no NYSEG customer outages associated with the Weather Event exceeded 72 hours" following April 21, 2022, the effective date of PSL §73.⁵⁴ As no other events that could qualify as widespread prolonged

⁵¹ Joint Utilities Initial Comments, pp. 19-20.

⁵² Id.

⁵³ Case 22-E-0301, Petition of New York State Electric and Gas Corporation for a Declaratory Ruling.

⁵⁴ Case 22-E-0301, supra, New York State Electric & Gas Petition for Declaratory Ruling, pp. 2-3.

outages have occurred between April 21, 2022, and the issuance of this Order, this issue is moot and need not be addressed here.

Form of Reimbursement

The Joint Utilities in their initial comments requested a definition for reimbursement and suggest that it include "any type of compensation, including but not limited to bill credit or check with the form of compensation to be determined by each utility."⁵⁵

PSL §73(1)(a) provides for a credit of \$25 on the balance of residential Utility customer's account for each subsequent 24-hour period of service outage that occurs for the customers for more than 72 consecutive hours after a widespread prolonged outage. PSL §73(1)(b) also provides for monetary reimbursement, not to exceed \$235 for residential customers who provide an itemized list of food spoiled due to lack of refrigeration and \$540 for residential and small business customers who provide proof of loss. PSL §73(1)(c) also provides for reimbursement to residential customers for prescription medication spoiled due to lack of refrigeration and the amount of the reimbursement shall not exceed the actual loss of perishable prescription medicine.

Accordingly, PSL §73 clearly defines the procedure, form, and type of customer reimbursement relating to this statute. Thus, the customers are provided a \$25 bill credit for outages exceeding 72 hours and monetary reimbursement for food and or prescription medicine spoiled due to lack of refrigeration. If the bill outage credit for an outage event is higher than the customer's bill, the surplus is to be carried over into future billing cycles until depleted.

⁵⁵ Joint Utilities Initial Comments, p. 17.

Existing Tariff Provisions Regarding Outage Compensation

In their initial comments, the Joint Utilities agree with the Staff Proposal to the extent it recommends that the daily outage credits required by PSL §73 should replace the existing outage credits currently provided to residential customers under the Utilities' electric tariffs.⁵⁶ However, the Joint Utilities disagreed with the recommendation in Staff's Proposal that credits that apply to other customer classes should "remain in effect until otherwise determined by the Commission."⁵⁷ The Joint Utilities argue that maintaining two separate compensation systems—one derived from PSL §73, the other based on pre-existing tariffs—will be confusing to customers and difficult for Utilities to administer.⁵⁸ The Joint Utilities request that PSL §73 supersede all other tariff provisions on this subject.⁵⁹ Specifically, the Joint Utilities object to the continuation of tariff terms authorized by the Commission in Case 13-M-0061 and the food and medicine reimbursement requirements unique to Con Edison's electric tariff.⁶⁰

The Commission's order in Case 13-M-0061 directs all major electric and gas utilities to establish customer outage credits for electric or natural gas service outages lasting at least 72 hours.⁶¹ The customer outage credit and lost volumetric

⁵⁶ Joint Utilities Initial Comments, pp. 10-11.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Case 13-M-0061, In the Matter of Customer Outage Credit Policies and Other Consumer Protection Policies Relating to Prolonged Electric or Natural Gas Service Outages.

⁶¹ Case 13-M-0061, supra, Order Establishing Policies (issued November 18, 2013).

delivery revenue from such outages are not recovered under the Utilities' respective Revenue Decoupling Mechanisms (RDM). In addition, this credit is not limited to only residential and small business customers. The Joint Utilities have failed to explain why customers other than residential and small business customers, as defined in this Order, should not continue to receive credit as specified in each Utility's existing tariffs and why treatment of lost volumetric delivery revenue as it relates to the RDM, should cease. PSL §73 does not restrict other customer compensations, instead, it establishes what must be in place for residential and small business customers.

Regarding Leaf 171 of Con Edison's tariff schedule, P.S.C. No. 10 - Electricity, qualifying customers are reimbursed for perishable items lost from an electric outage caused by malfunctions in its lines and cables of 33 kilovolt or less and associated equipment for more than 12 hours or when the same customer is subject to two or more such conditions that aggregate to 12 hours or more within a 24-hour period. Customers can receive up to \$235 for an itemized list of spoiled food, up to \$540 for an itemized list and proof of loss of food, and for actual losses of lost prescription medicine with an itemized list and proof of loss. A customer can receive up to \$10,700 per incident. The Company's total liability is capped at \$15,000,000 per incident. Pursuant to this provision, Con Edison has provided reimbursements to customers related to outage events such as the Washington Heights Network outage of

1999 and the Long Island City Network outage of 2006 of varying outage lengths.⁶²

The Commission notes that the Joint Utilities merely state that the separate compensation system will be confusing without providing reasonable support for this claim. The Commission finds that a customer is not entitled to the credits and/or reimbursements afforded under both PSL §73 and pre-existing outage compensation programs. If PSL §73 is triggered by an event, then, it supersedes all other tariffs for customers eligible to receive compensation pursuant to PSL §73. However, in the event that PSL §73 is not triggered and a Utility has another outage compensation program in place, then the Utility shall continue to employ those tariff provisions. A Utility may not modify its procedures without filing a petition to the Commission to do so.

Dry Ice Programs

The Joint Utilities argue that regulations created to implement PSL §73 may discourage customers from seeking dry ice if reimbursement will be provided in the alternative.⁶³ PULP in its reply comments posits that the Joint Utilities' concerns regarding dry ice are unfounded.⁶⁴

a. Determination

The Commission agrees with PULP that the Joint Utilities' argument is without merit. Under the Staff's Proposal, the customer bears the burden of providing at least an

⁶² See Case 99-E-0930, Proceeding on Motion of the Commission to Investigate the July 6, 1999 Power Outage of Con Edison's Washington Heights Network; and, Case 06-E-0894, Proceeding on Motion of the Commission to Investigate the Electric Power Outage of Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network.

⁶³ Joint Utilities Initial Comments, p. 12.

⁶⁴ PULP Reply Comments, pp. 4-5.

itemized list of all food spoiled, or proof of loss of spoiled food and prescription medicine, within fourteen days of the outage. In addition, customers' claims are subject to review, and in the event that the full reimbursement will be issued, the customer will have to wait up to 30 days to receive the reimbursement to which they will be entitled. If a Utility requests waiver of the provisions of PSL §73 for a particular widespread prolonged outage, customers will have to wait longer than 30 days to receive reimbursements, if any are ultimately required. Thus, the proposition that customers will intentionally allow their food and/or prescription medicine to spoil in the hope of receiving reimbursement is unsubstantiated. The Utilities continue to remain under the obligation to provide dry ice to customers who experience service outages longer than 48 hours as outlined in their approved Emergency Response Plans.⁶⁵

Tariff Filings

The Staff Proposal asked that the Utilities submit draft tariff language with their comments that would be necessary to implement PSL §73 and to address the Staff Proposal. The Joint Utilities provided draft tariff leaves for each Utility as an attachment to the initial comments. However, since the requirements as recommended in Staff's Proposal have been modified in this Order, these draft tariff leaves require updating. Accordingly, the Utilities are directed to file new tariff leaves that are consistent with the requirements contained in this Order to be effective on July 25, 2022, on a temporary basis.

⁶⁵ Case 21-E-0567, In the Matter of December 15, 2021 Electric Emergency Response Plan Review (2022 Plans), Order Approving Certain Utilities' Amended Electric Emergency Response Plans (issued May 12, 2022).

CONCLUSION

By this Order the Commission adopts procedures, standards, methodologies, and rules, that the Utilities must comply with in providing outage credits and reimbursements as required by PSL §73. The Commission also adopts definitions of the terms "widespread prolonged outage," "small business customer," and "proof of loss." The Utilities are required to file tariff leaves incorporating these procedures, standards, methodologies, and rules to be effective on July 25, 2022, on a temporary basis, which will appropriately compensate those electric and/or gas Utility customers who experience widespread prolonged outages in a practical and effective manner.

The Commission orders:

1. Central Hudson Gas & Electric Corporation ; Consolidated Edison Company of New York, Inc.; National Fuel Gas Distribution Corporation; New York State Electric & Gas Corporation; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation, Corning Natural Gas Corporation; Valley Energy, Inc.; and Liberty Utilities (St. Lawrence Gas) Corp. shall provide customer outage credits and reimbursements during prolonged outages consistent with the discussion in the body of this Order.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc.; National Fuel Gas Distribution Corporation; New York State Electric & Gas Corporation; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and

Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Corning Natural Gas Corporation; Valley Energy, Inc.; and Liberty Utilities (St. Lawrence Gas) Corp. shall file tariff leaves consistent with the discussion in the body of this Order, on no less than three days' notice, effective on July 25, 2022, on a temporary basis.

3. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary