STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission in Regard to Gas Planning Procedures	**Case 20-G-0131**

COMMENTS
OF
MULTIPLE INTERVENORS

(I.D. NOS. PSC-42-22-00010-P, PSC-42-22-00011-P, PSC-42-22-00012-P, PSC-42-22-00013-P, PSC-42-22-00014-P, PSC-42-22-00015-P, PSC-42-22-00016-P, PSC-42-22-00017-P, AND PSC-42-22-00019-P)

Dated: December 19, 2022

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PRELIMINARY STATEMENT

Pursuant to multiple notices in the *New York State Register* issued on October 19, 2022, Multiple Intervenors hereby submits its Comments to the New York State Public Service Commission ("Commission") in response to Non-Pipe Alternative ("NPA") filings by the State's local distribution companies ("LDCs"). Specifically, Multiple Intervenors responds to selected LDC proposals in Case 20-G-0131 relating to NPA incentive mechanisms and cost recovery procedures.[1]

On May 12, 2022, the Commission issued an Order Adopting Gas System Planning Process ("Planning Order") in this proceeding. In the Planning Order, the Commission noted that while NPAs may be desirable in light of certain Climate Leadership and Community Protection Act mandates, reliance on them may not be possible in all circumstances. (Planning Order at 36.) The Commission referenced the facts of Case 17-G-0432 as instructive of some of the challenges faced when transitioning away from traditional gas service, noting that NPAs in that proceeding were unable to satisfy the full load serving capability of a potential infrastructure project, nor did they enable the subject LDC to lift a gas moratorium in the region. (*Id.*)[2] The Commission ruled that as part of their gas planning processes, each LDC provide a "no infrastructure" scenario in its

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[1] *See* Case 20-G-0131, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*. *See also New York State Register*, edition issued October 19, 2022, I.D. Nos. PSC-42-22-00010-P, PSC-42-22-00011-P, PSC-42-22-00012-P, PSC-42-22-00013-P, PSC-42-22-00014-P, PSC-42-22-00015-P, PSC-42-22-00016-P, PSC-42-22-00017-P, and PSC-42-22-00019-P.

[2] *See also* Case 17-G-0432, *Petition of New York State Electric & Gas Corporation for Authorization to Construct a Natural Gas Compressor Pilot in Tompkins County, NY*, Order Approving Petition for Non-Pipe Alternative Projects, with Modifications (issued June 21, 2021).

long-term plan, but that an LDC may assert that such a scenario is not feasible for a certain project, or portion of its long-term plan. (Planning Order at 36-37.)

With respect to the screening and suitability process employed for potential NPAs, the Commission declined to adopt a Department of Public Service Staff ("Staff") proposal that would have applied to all LDCs and, instead, directed each LDC to file a proposed process that includes definitions as to what constitutes a "large" or "small" infrastructure project. (*Id.* at 37-38, 40-41.) The Commission found that a uniform demarcation between large and small projects "likely oversimplifies the complexities of engineering traditional solutions in disparate geographical locations and for myriad customer classes." (*Id.* at 38; *see also id.* at 41.) While inviting LDC-specific criteria for distinguishing between large and small projects, the Commission appears to support that portion of the Staff proposal whereby: (a) large projects would be subject to a full-scale solicitation of NPA, following by a benefit/cost analysis ("BCA") of potential solutions; and (b) small projects would be subject to a streamlined economic and technical analysis and take advantage of known alternative solutions with identifiable costs. (*Id.* at 37-38.)

The Planning Order also directed the State's LDCs to submit joint proposals with respect to: (a) an NPA shareholder incentive mechanism; and (b) NPA cost recovery procedures. (*Id.* at 42-43.) The Commission concluded that if an LDC reduces its traditional plant-in-service through an NPA, and the project (or portfolio of projects) has a positive BCA using the Societal Cost Test ("SCT"), the LDC's shareholders should be afforded the opportunity to retain a share of the net benefits. (*Id.*) The Commission did not rule on the appropriate magnitude of an LDC's share of NPA-related net benefits, but did state that "a strict cap on the amount is needed, especially if the majority of benefits result from emissions reductions." (*Id.* at 43.)

In response to the Planning Order, on or about August 10, 2022, the following LDCs filed proposed NPA screening and suitability processes: (i) Central Hudson Gas & Electric Corporation, (ii) Consolidated Edison Company of New York, Inc., (iii) Corning Natural Gas Corporation, (iv) KeySpan Gas East Corporation d/b/a National Grid, (v) Liberty Utilities (St. Lawrence Gas) Corp., (vi) National Fuel Gas Distribution Corporation, (vii) New York State Electric & Gas Corporation, (viii) Niagara Mohawk Power Corporation d/b/a National Grid, (ix) Orange and Rockland Utilities, Inc., (x) Rochester Gas and Electric Corporation, and (xi) The Brooklyn Union Gas Company d/b/a National Grid (collectively, the "State LDCs"). Additionally, also on August 10, 2022, the State LDCs jointly filed proposals for uniform NPA shareholder incentive mechanisms and NPA cost recovery procedures ("Joint Filing").

In the Joint Filing, the State LDCs seek a uniform NPA incentive as high as 50% of the "Initial Net Benefits" as measured by a BCA that utilizes the SCT. (Joint Filing at 4.) First, following a BCA, the State LDCs would be entitled to an "Initial Incentive" of 30% of the Initial Net Benefits, as determined prior to NPA implementation. Then, in order to reward LDCs for reducing costs during NPA implementation, that 30% Initial Incentive could rise to 50%. If costs rise during NPA implementation, such that customers are harmed (*e.g.*, costs exceed benefits, the NPA fails to postpone or eliminate the need for the alternative infrastructure project), the Initial Incentive could fall to – but not below – $0. (*Id.*). The State LDCs propose that they be authorized to start collecting the Initial Incentive once 70% or more of the NPA project or portfolio is operational. (*Id.*) The NPA incentive could be collected through a Rate Adjustment Mechanism ("RAM") over an "NPA Deferral/Elimination Period," which would begin when the Initial Benefits are set and run through 12 months past the time when the NPA project or portfolio postpones or eliminates the alternative infrastructure project. (*Id.* at 4-5.) Additionally, the State

LDCs propose to earn their weighted average cost of capital on the unamortized incentive balance until the full incentive has been recovered. (*Id.* at 5.)

With respect to cost recovery procedures, the State LDCs propose that: (a) NPA costs be recoverable as a regulatory asset, including a pre-tax rate of return on such costs; (b) costs be amortized over a period of 20 years, except where a different amortization period may have been adopted in an individual LDC's last rate proceeding; (c) the carrying charge on NPA costs be recovered through a RAM; and (d) any unamortized NPA costs, including a return thereon, be incorporated into base rates when the LDC's gas delivery rates are next reset. (*Id.* at 6.)

SUMMARY OF MULTIPLE INTERVENORS' POSITIONS

Initially, Multiple Intervenors supports consideration of NPAs. To the extent there is sufficient time to solicit NPAs, the State LDCs should do so and evaluate them against planned infrastructure projects. While NPAs may be worth pursuing in certain circumstances and not in others, LDCs should be obligated to at least consider NPAs where feasible to do so because in at least some instances their implementation might be beneficial to customers.

That noted, the potential feasibility of NPAs does not mean they always should be implemented in lieu of infrastructure projects. Rather, NPAs and infrastructure projects should be evaluated in a non-biased manner with the solution most beneficial to customers implemented. Ideally, NPAs would postpone or eliminate the need for new infrastructure in an economic manner that reduces costs to customers, while also reducing harmful emissions.

Multiple Intervenors advocates no position herein with respect to the reasonableness (or unreasonableness) of the LDCs' individually-proposed NPA evaluation criteria that would be used to distinguish between large projects and small projects. Importantly, however, Multiple Intervenors hereby advances several concerns with respect to the State LDCs' Joint Filing on NPA incentives and cost recovery.

First, the LDCs' proposal to retain up to 50% of NPA benefits is excessive and should be rejected. Inasmuch as customers fund the entirety of NPA costs, and the State LDCs are opposed to any sharing of costs should implementation of an NPA prove harmful to customers, allocating as much as half of the projected benefits to LDCs is not justified.[3]

Second, Multiple Intervenors questions whether the proposed "Initial Incentive" of 30% of NPA benefits, as determined before implementation even has commenced, with payment starting prior to the NPA entering service, is necessary or warranted.

Third, Multiple Intervenors questions whether the floor for an NPA incentive should be constrained to $0 given the LDCs' roles in evaluating, selecting, and administering NPAs, especially given the potential upside of the proposed 50% maximum incentive.

Fourth, Multiple Intervenors generally opposes the recovery of NPA costs through a RAM. Traditional infrastructure costs typically are not recovered through a RAM, and the Commission should refrain from ordering that RAMs be created or modified to include NPA costs.[4]

Finally, while not mentioned specifically in the LDCs' submissions, and irrespective of whether or not NPA costs are recovered in part via a RAM, all costs associated with

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[3] In the context of NPAs, benefits include estimates of avoided costs associated with emissions reductions pursuant to the SCT. Thus, an NPA can be deemed beneficial under the SCT while still increasing customer costs and rates due to its potential implementation in lieu of an alternative infrastructure project. Requiring customers to fund a 50% utility incentive when their costs and rates are rising is particularly egregious.

[4] Multiple Intervenors similarly is not advocating the Commission-approved RAMs providing for NPA cost recovery be modified to exclude such treatment while those mechanisms remain in effect.

NPAs should be allocated in the same manner as the infrastructure projects they are intended to postpone or eliminate. To the extent there is a need on an LDC's existing gas system, the selection of an infrastructure project or an NPA should not dictate which of differing cost allocations are utilized and imposed on customers.

ARGUMENT

POINT I

THE PROPOSED 50% MAXIMUM NPA INCENTIVE IS EXCESSIVE AND SHOULD BE REJECTED

In the Joint Filing, the State LDCs proposed an "Initial Incentive" for NPAs of 30% of projected net benefits, which could increase to 50% if costs are less than projected. (Joint Filing at 4.) A potential 50% incentive for implementing NPAs is excessive and should be rejected.

Initially, it is important to bear in mind that customers fund 100% of the costs associated with the evaluation, the selection, and the implementation of NPAs. While LDCs should be eligible for some financial incentive for their role with respect to the successful implementation of NPAs (*i.e.*, that produce quantifiable customer benefits), Multiple Intervenors submits that half of all projected net benefits constitutes an excessive share.

While NPAs can and should be pursued when and where it makes sense to do so, the Commission needs to be cognizant of the potential rate impacts associated therewith. LDCs generally are authorized to implement NPAs when they are projected to produce net benefits under a benefit/cost analysis ("BCA"). Under the SCT employed currently by the Commission, avoided societal costs associated with emission reductions (not limited to New York) are quantified and treated as benefits. Thus, it is possible (if not highly likely) that customers will be required to fund NPAs that place upward pressure on rates. LDC incentives as large as 50% – which of course would be paid in dollars and not emission reductions – would exacerbate those rate impacts.[5] In the Planning Order, the Commission expressed a specific concern that a strict cap on NPA incentives is needed, "*especially if the majority of benefits result from emissions reductions*."[6] The Joint Filing fails to address this particular concern in the slightest.

Multiple Intervenors is aware that certain LDCs currently are eligible for a maximum 50% incentive associated with NPAs. The Commission, however, is taking a fresh look at NPA incentive issues in this proceeding.[7] Moreover, while a 50% incentive arguably may have been justifiable when NPAs were brand new and LDCs lacked experience with them, that no longer is the case. The evaluation and the implementation (where justified) of NPAs should considered a normal and integral part of LDCs' business operations. The initially-high NPA incentives utilized in the past should not be needed to induce LDC behaviors that, frankly, should be required given State policies.

The proposed 50% maximum NPA incentive is particularly excessive if, as the State LDCs propose, the floor for such incentives is limited to $0.[8] LDCs are responsible for evaluating, selecting, and then administering NPAs. If, as a result of such actions, customers are harmed, such that the costs of one or more NPAs exceed the realized benefits and/or the need for the traditional

[5] Adding to potential customer rate impacts is the fact that NPAs generally would be recovered over 20 years, whereas the appropriate depreciation rate for most gas infrastructure projects typically would be multiple decades longer. Thus, even if, *arguendo*, an NPA had the same economic cost as an alternative infrastructure project, the NPA under most scenarios would impose materially-greater rate impacts on customers due to the use of shorter amortization periods.

[6] Planning Order at 43 (emphasis added).

[7] *See*, *e.g.*, Planning Order at 43 (anticipating further consideration of appropriate NPA incentive mechanisms and directing the Joint LDCs to file a proposal with respect thereto).

[8] Multiple Intervenors' concerns with respect to this proposed floor are set forth, *infra*, in Point III.

infrastructure project is neither postponed nor eliminated as anticipated, then a compelling case can be advanced as to why LDCs should share in the resulting harm caused to customers. If, however, LDCs are to be shielded from any economic consequences associated with their role with respect to unsuccessful NPA projects, then any claim for a 50% share of customer benefits on the upside should be perceived as excessive by the Commission. LDCs should not be accorded both substantial upside and no downside whatsoever with respect to NPAs.

For the foregoing reasons, Multiple Intervenors urges the Commission to reject the proposed 50% maximum NPA incentive as excessive and, instead, limit customers' exposure to such incentives to a materially-lower percentage of net benefits, especially when the majority of benefits result from emission reductions.

POINT II

PAYMENT OF A 30% "INITIAL INCENTIVE" TO LDCs IS NEITHER NECESSARY NOR WARRANTED

In the Joint Filing, the State LDCs seek a 30% "Initial Incentive" for agreeing to implement NPAs. (Filing at 4.) Pursuant to this proposal, the Initial Incentive would be calculated based on benefits and costs projected prior to implementation. (*Id.*) In fact, LDCs would be entitled under their proposal to start recovering the Initial Incentive once 70% of the NPA portfolio is operational. The proposed Initial Incentive is neither necessary nor warranted, and should be rejected.

Initially, Multiple Intervenors is not opposed to LDCs retaining a reasonable share of net benefits associated with the successful implementation of NPAs. For the reasons set forth in Point I, *supra*, the proposed 50% maximum incentive amount is excessive and should be reduced, particularly so when the majority of the benefits are in the form of emission reductions, as opposed to economic savings for customers. Additionally, it is not at all clear why LDCs should be entitled to a 30% Initial Incentive, or that the payment of such incentive should commence prior to the successful completion of the NPA(s) in question.

To the extent LDCs are entitled to an incentive for the successful implementation of one or more NPAs, such incentive should be calculated at the time implementation is complete and the NPAs enter service. At that point in time, the costs of the NPAs should be known with much-greater certainty as compared to some time prior to the start of implementation. While the benefits associated with NPAs necessarily are based on projections, analyses of expected benefits are likely to be more accurate when implementation is complete than prior to the start of implementation. If NPA incentives are calculated when implementation is complete, there is no compelling need to calculate, or award to LDCs, an Initial Incentive.[9]

Moreover, why should customers be responsible for paying an Initial Incentive that has yet to be earned? LDCs should be required to consider and evaluate NPAs as alternatives to traditional infrastructure projects. This function should be treated as a normal part of an LDC's business operations, and base delivery rates paid by customers already compensate LDCs for the labor costs associated with personnel performing such functions. The actions of soliciting RFP proposals, evaluating those proposals, and contracting to move forward with one or more proposals does not warrant a lucrative or prepaid financial incentive funded by customers. Rather, any shareholder incentive should be focused on the successful implementation of NPAs resulting in net benefits to customers. Financial incentives based solely on pre-implementation projections are

[9] Thus, while the decision to proceed with an NPA necessarily must rely on projections of benefits and costs, the payment of an NPA incentive, to be funded by customers, should be based on actual costs to implement and a post-implementation projection of benefits.

unnecessarily premature and likely inaccurate as to the actual net benefits, if any, that ultimately will be realized by customers.

Additionally, there is no compelling reason why payment of NPA incentives should commence upon 70% of the NPA portfolio being operational, as opposed to when they are 100% operational. When LDCs implement traditional infrastructure projects, they do not start earning a return thereon until such projects are complete and enter service. Accordingly, to the extent NPA incentives are earned, customers should not be required to start paying them until the underlying NPAs actually have entered service.

<u>POINT III</u>

IT IS NOT CLEAR WHY THE FLOOR FOR NPA INCENTIVES SHOULD BE CONSTRAINED TO $0

The State LDCs advocate that NPA incentives as high as 50% of projected net benefits be authorized, but also propose to utilize a $0 floor for such incentives (Filing at 4), irrespective of whether an LDC's implementation of an NPA proves harmful to customers. It is not clear to Multiple Intervenors why the floor for NPA incentives should be constrained only to $0 (*i.e.*, no chance of financial penalty), especially if, *arguendo*, the Commission allows LDCs to reap large financial rewards where implementation of NPAs produce projected net benefits.

LDCs are responsible for soliciting NPAs where appropriate and evaluating them for installation. LDCs also are responsible for the selection and the rejection of individual, proposed NPAs and, where NPAs are selected, LDCs further are responsible for administering their implementation. When implemented NPAs achieve projected net benefits, and the need for traditional infrastructure is postponed or eliminated, it is appropriate for LDCs to share in said benefits. If, however, LDCs fail to fulfill one or more their roles well, such that implemented

NPAs produce net costs to customers and/or fail to postpone or eliminate the need for additional infrastructure, then it is appropriate for LDCs to similarly share in those net costs, at least to some extent. It strikes Multiple Intervenors as inequitable to customers to accord LDCs a large financial "upside" (at customer expense) when NPAs go well while, at the same time, exposing them to none of the "downside" that surely will be experienced by customers when NPAs being implemented by the State LDCs do not go well.

Multiple Intervenors contends that the floor for NPA incentives should not be established without regard to the ceiling, and *vice versa*. Even where NPAs are projected to produce net benefits, they still might be economically costly to customers, for a variety of reasons including, but not limited to: (a) a material portion of the projected benefits are related to emission reductions, potentially resulting in the economic costs of the NPA exceeding the economic benefits even before an NPA incentive is paid by customers; and (b) the costs of the NPA may be recoverable over a shorter period of time than the alternative infrastructure project, resulting in larger rate impacts to customers. If NPA incentives to LDCs are moderate in magnitude, it may be appropriate to constrain the floor to $0. If, however, LDCs are to be accorded much-greater upside to share materially in the projected net benefits associated with the successful implementation of NPAs, then it would be appropriate to require LDCs also to share in the projected net costs experienced when NPA implementation is unsuccessful.

POINT IV

NPA COSTS SHOULD NOT BE RECOVERED THROUGH A RAM

In the Filing, the LDCs propose to recover certain NPA costs (*e.g.*, carrying charges, NPA incentives) through a RAM. (Filing at 5-6.) Multiple Intervenors opposes this approach.

NPA costs and incentives should be treated as a regulatory asset until such time that they are reflected in base rates when the subject LDC's rates are next reset. For several reasons, RAMs are not appropriate mechanisms for the recovery of NPA costs and incentives.

Initially, RAMs have been utilized for certain utilities to reconcile a very limited subset of costs (or credits) in between rate proceedings. Their terms have been negotiated in individual rate proceedings, as opposed to being imposed upon customers by the Commission. Expansion of RAMs is counterproductive to the negotiation of multi-year settlements. From the customer perspective, one of the primary benefits of the settlement process is the opportunity to achieve rate stability and predictability over a multi-year period. RAMs, while utilized in certain circumstances, have the effect of frustrating rate stability and predictability for customers, resulting in surcharges, and rate impacts, in excess of the delivery rate increases that may have been negotiated and anticipated.

Additionally, to the extent practicable, the Commission should strive to have NPA-related cost recovery be comparable to that of traditional infrastructure projects. Where an LDC addresses a system need through the construction of a pipeline, for example, it typically does not recover either the cost of the pipeline, or a return on its investment, through a RAM.

Multiple Intervenors notes that the State LDCs' proposal also fails to advance any limitations with respect to cost recovery via a RAM. For instance, certain RAMs contain specific limitations on the amount of costs that can be recovered (or credits that can be passed-back) during a one-year period. Even if, *arguendo*, the Commission is inclined to authorize the recovery of certain NPA-related expenses via a RAM notwithstanding Multiple Intervenors' opposition thereto, such recovery should be subject to existing constraints on collections through a RAM incremental to base delivery rates. In other words, under no conditions should existing limitations on RAM recoveries from customers be enlarged in this proceeding.

Finally, NPA costs and incentives should be allocated to customer classes in a fair and equitable manner, as addressed, *infra*, in Point V. Merely proposing to recover costs from customers generally through a RAM fails to explain how such recovery would be implemented, nor does it provide any assurances whatsoever that such recovery would be equitable on an interclass basis.

For the foregoing reasons, the Commission should reject that portion of the State LDCs' proposal seeking to rely on RAMs for the recovery of NPA costs and/or incentives.[10]

POINT V

COSTS RELATED TO NPAs SHOULD BE ALLOCATED IN THE SAME MANNER AS THE INFRASTRUCTURE PROJECTS THAT NPAs ARE INTENDED TO POSTPONE OR ELIMINATE

The Joint Filing does not address cost allocation issues in the slightest. Rather, it advances proposals intended to ensure that LDCs recover NPA costs and incentives from customers. The Commission, however, should address cost allocation. If and to the extent NPAs are utilized with greater frequency in the coming years, it becomes increasingly important that the costs associated therewith, including incentives, are allocated equitably to customers.

Multiple Intervenors asserts that LDCs should allocate the costs of NPAs (including any incentives) in the same manner as the alternative infrastructure projects that the NPAs are

[10] Multiple Intervenors advocates no position here with respect to previously-approved RAMs that already may include some form of NPA cost recovery. Rather, the focus of this argument is opposing the possible creation or expansion of RAMs to address NPA costs and incentives.

intended to postpone or eliminate. Such approach should be consistent with cost-of-service principles, ensure fairness to customers of all types, and avoid situations where cost recovery is different depending on whether an infrastructure project or an NPA is pursued to address the same system need.

Electric and gas infrastructure projects traditionally are allocated pursuant to cost-of-service principles, as reflected in utility cost-of-service studies. For example, to the extent a gas system is constrained in a particular region, an infrastructure project to address that constraint ordinarily would be allocated to the responsible service classes based on some measure of demand, consistent with cost causation. The specific allocation methodology employed may differ based on the LDC and/or the particular project (*e.g.*, in some cases average demand may be utilized; in other cases, peak demand). In any event, whatever allocation methodology that would be employed by an LDC for an identified infrastructure project also should be employed if, instead of that project, one or more NPAs are implemented. Irrespective of the particular solution(s) pursued, the same factors are responsible for the need to implement an infrastructure project or one or more NPAs and, therefore, the same methodology should be used to allocate the resulting costs, including any incentives.

This approach ensures fairness to customers of all types. It utilizes the same cost allocation methodology that the LDC has employed, probably for decades, in allocating the costs of infrastructure projects. It also is linked directly to cost causation, which is an equitable measure to utilize, and recognizes that the system need exists for certain reasons irrespective of whether the solution is a traditional infrastructure project or one or more NPAs.

Finally, the Commission should avoid adopting a cost allocation for NPAs that differs from that of the underlying infrastructure project. Such an approach not only would be contrary to cost causation principles and likely inequitable, but also could increase opposition or resistance to NPAs. Where an LDC has a system need and both infrastructure and NPA solutions are under consideration, that selection should be focused on what is best for customers as a whole, not on which classes would pay differing amounts based on the chosen solution. In either case, the alternatives are being considered because there is a system need, and, therefore, the costs of the solution should be allocated in a manner equitable to the classes responsible for that need. Utilizing different cost allocations for NPAs would add a level of controversy to their selection which need not – and should not – exist.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to resolve issues relating to NPA costs and incentives in a manner consistent with these Comments.

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Respectfully submitted,

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