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October 17, 2007

Hon. Jaclyn A. Brilling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Cases 06-G-1185 and 06-G-1186

Dear Secretary Brilling:

Enclosed please find an original and five copies of National Grid plc and KeySpan Corporation's Statement in Support of the Gas Rates Joint Proposal filed on October 11, 2007 in these proceedings.

Thank you for your attention to this matter.

Very truly yours,

Catherine L. Nesser / tnd

Catherine L. Nesser

cc: Hon Gerald L. Lynch
Active Parties

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 06-G-1185	**Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service**
Case 06-G-1186	**Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a/ KeySpan Energy Delivery Long Island for Gas Service**

STATEMENT OF NATIONAL GRID plc AND KEYSPAN CORPORATION IN SUPPORT OF GAS RATES JOINT PROPOSAL

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STATEMENT OF KEYSPAN CORPORATION AND NATIONAL GRID plc IN SUPPORT OF GAS RATES JOINT PROPOSAL

In accordance with the procedural schedule established in the above-captioned proceedings, National Grid plc ("National Grid") and KeySpan Corporation ("KeySpan") (collectively "the Petitioners") hereby submit this Statement in Support of the Gas Rates Joint Proposal filed on October 11, 2007 (hereinafter "Gas Rates Joint Proposal"). The signatories to the Gas Rates Joint Proposal include The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("KEDNY") and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KEDLI") (collectively, the "Companies"), the Staff of the New York State Department of Public Service ("Staff"), the Consumer Protection Board ("CPB"), Natural Resources Defense Council, IBEW Local Nos. 1049 and 1381, the City of New York, Pace Energy Project, Small Customers Marketer Coalition, New York State Energy Marketers Coalition and the Public Utility Law Project .

I. APPROVAL OF THE GAS RATES JOINT PROPOSAL WOULD SET RATES EFFECTIVE JANUARY 1, 2008 AND INSTITUTE NEW REPORTING AND FILING REQUIREMENTS FOR KEDNY AND KEDLI.

Approval of the Gas Rates Joint Proposal would permit the Companies to design and set rates and allocate revenue in a manner that is within the range of reasonably likely results if both proceedings had been litigated and submitted for decision and is consistent with Commission precedent. This Joint Proposal contains, *inter alia*, the following major provisions which, together with the provisions of other joint proposals previously approved and/or modified by the Commission in Cases 06-G-1185, 06-G-1186 and 06-M-0878, create comprehensive five-year rate plans for KEDNY and KEDLI to become effective on January 1, 2008:[1]

> (a) provisions that would permit for the recovery of commodity-related costs in the Gas Adjustment Clause ("GAC") and/or Transportation Adjustment Clause ("TAC") instead of gas delivery rates;[2]
>
> (b) provisions that would allow manufactured gas plant ("MGP") site investigation and remediation ("SIR") costs to be recovered in gas delivery rates, with the possibility for a re-opener in Rate Year 4;[3]
>
> (c) provisions that would allocate revenue and design rates;[4]
>
> (d) provisions that would enhance KEDNY's low-income rates and establish low-income rates for KEDLI and establish a discrete balancing account to match low income credits to budgeted program costs;[5]
>
> (e) provisions that would revise KEDNY's depreciation rates and authorize KEDNY to charge

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[1] Unless otherwise stated, each provision is applicable to both KEDNY and KEDLI.
[2] Gas Rates Joint Proposal at 6, 21.
[3] *Id.* at 12, 26-27.
[4] *Id.* at 12, 27.
[5] *Id.* at 13, 27-28.

the cost of removal to the Reserve for Accumulated Depreciation;[6]

(f) provisions that would permit recovery of state income taxes through gas delivery rates;[7]

In addition, the Gas Rates Joint Proposal requires the parties to hold collaborative discussions regarding non-interim energy efficiency programs and budgets, a revenue decoupling mechanism[8] and transportation and balancing issues.[9] The Gas Rates Joint Proposal also commits KEDNY and KEDLI to work collaboratively with energy service companies ("ESCOs") and interested parties to develop a purchase of receivables program.[10]

The Gas Rates Joint Proposal, together with the other joint proposals approved in these proceedings and in Case 06-M-0878, comprehensively resolves, or provides a framework for resolving, all issues raised by the Companies' October 3, 2006 rate case filings ("October 3 Rate Filings"), and the proposed acquisition of KeySpan's stock by National Grid.[11] National Grid and KeySpan filed their Joint Petition of National Grid plc and KeySpan Corporation for Approval of Stock Acquisition and Other Regulatory Authorizations on July 20, 2006 ("Merger Joint Petition").[12]

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[6] *Id.* at 15.
[7] *Id.* at 18-19, 33.
[8] *Id.* at 7-10, 22-26.
[9] *Id.* at 16-17, 31-32.
[10] *Id.* at 18, 33.
[11] The issues addressed in the Gas Rates Joint Proposal include, but are not limited to, the reserved issues identified in Section II of the Merger Joint Proposal. From the Petitioners' perspective, the list of reserved issues set forth in the Merger Joint Proposal was not intended to be comprehensive. It was merely a list of major issues left unresolved by the Merger Joint Proposal.
[12] It should be noted that the Gas Rates Joint Proposal finalizes the terms associated with a number of proposals in the Merger Joint petition, including those associated with energy efficiency, the extension of low income rates and retail access.

II. PROCEDURAL BACKGROUND[13]

On May 31, 2007, several of the parties to these proceedings filed a Joint Proposal for Interim Energy Efficiency Programs ("Interim Energy Efficiency Joint Proposal") with the Commission. The Commission issued an order on July 18, 2007, adopting many of the terms of the Interim Energy Efficiency Joint Proposal. On August 17, 2007, a number of parties to these proceedings filed a Joint Proposal for Gas Safety, Reliability and Customer Service Performance Requirements ("Gas Safety and Reliability Joint Proposal").

On July 6, 2007, National Grid, KeySpan, Staff and other parties filed a Merger & Gas Revenue Requirement Joint Proposal ("Merger Joint Proposal"), reflecting the settlement of issues raised regarding the Merger Joint Petition. The Commission issued an abbreviated order adopting the terms of the Merger Joint Proposal and the Gas Safety and Reliability Joint Proposal, subject to conditions, on August 23, 2007 ("August 23 Order").[14] National Grid and KeySpan closed the transaction on August 24, 2007. On September 17, 2007, the Commission issued the "long order" in Case 06-M-0878 ("Merger Long Order").[15]

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[13] The procedural background of these proceedings is discussed in detail in the Merger & Gas Revenue Requirement Joint Proposal filed on July 6, 2007 and the Statement of National Grid plc and KeySpan Corporation in Support of the Merger & Gas Revenue Requirement Joint Proposal filed on July 11, 2007.
[14] *Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island,* Case 06-M-0878, dated August 23, 2007.
[15] *Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations For KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island,* Case 06-M-0878, dated September 17, 2007.

III. The Gas Rates Joint Proposal Is Consistent with the Commission's Guidelines Governing Settlements, Is Fully Supported By the Record And Is Otherwise In the Public Interest

A. Standard of Review

The Gas Rates Joint Proposal is the result of lengthy and complex negotiations among normally adversarial parties that fully complied with the Commission's settlement rules[16] and offered all parties the opportunity to participate. The Commission's "Procedural Guidelines for Settlements"[17] set forth the following criteria for determining whether a joint proposal is in the public interest:

> (a) A desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
>
> (b) In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.

As discussed herein, applying these guidelines, it is clear that the Gas Rates Joint Proposal meets the public interest standard. The Gas Rates Joint Proposal is the result of months of negotiations among parties with diverse interests, including Petitioners, Staff, the CPB, and various public interest groups. The Commission should give considerable weight to the fact that the Gas Rates Joint Proposal is supported by parties having normally adverse interests. In addition, as demonstrated below, the compromises

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[16] 16 NYCRR § 3.9(a).

[17] *See Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C 11175; In the Matter of the Rules and Regulations of the Public Service Commission Contained in 16 NYCRR, Chapter I, Rules of Procedure – Proposed Amendments to Subchapter A, General, Part 2, Hearings and Rehearings by the Addition of a New Section 2.6, Settlement Procedures, filed in C 11175,*" Cases 90-M-0225 and 92-M-0138, Opinion 92-2, dated March 24, 1992, at Appendix B.

memorialized in the Gas Rates Joint Proposal produce results that are within the range of results that could have arisen from litigation of these proceedings.[18]

B. The Gas Rates Joint Proposal Designs and Sets Rates and Allocates Revenue in a Manner That is Consistent with Commission Precedent.

1. The End Result Of These Proceedings Are Gas Delivery Rate Revenue Requirements That Are Clearly Justified By The Record

Under the five-year rate plans that would result from approval of the Gas Rates Joint Proposal, KEDNY's gas delivery revenue requirement will remain unchanged through the end of 2012,[19] while KEDLI's gas delivery rate revenue requirement will increase by $60 million in Rate Year One and then remain unchanged through 2012.[20] These results are fully justified by the record. In this regard, Staff, the only party other than KEDNY and KEDLI that filed prepared testimony supporting comprehensive cost of service studies for KEDNY and KEDLI, recommended that KEDNY's base delivery rates be increased by $8.729 million and that KEDLI's base rates be increased by

[18] Petitioners are aware that the Gas Rates Joint Proposal contains General Provisions in Article IV that are identical to provisions that were modified in the Commission's orders on joint proposals that previously have been reviewed and acted upon by the Commission in these proceedings. Petitioners believe that these general provisions set forth principles that have governed settlements that have been reviewed and approved by the Commission for many years in different types of proceedings. At the same time, Petitioners recognize that a "Joint Proposal" is not viewed in precisely the same way as a settlement and that Commission practice with respect to Joint Proposals may be evolving. Accordingly, while Petitioners continue to believe that the General Provisions set forth in Article IV can and should govern Commission-approved Joint Proposals, Petitioners have not objected to the modifications to these provisions the Commission has made with respect to the joint proposals previously submitted in these proceedings.

[19] While the gas delivery rate revenue requirement will remain unchanged, KEDNY's total non-gas margin revenues are projected to increase as a result of the net impact of the fact that (i) certain costs currently recovered in gas delivery rates will now be recovered through the GAC and/or the TAC, as described in Section BIII2 below, and (ii) certain other costs such as state income taxes will now be recovered in base delivery rates or in a manner different from the way such costs are currently recovered.

[20] In addition to the $60 million annual gas delivery rate revenue requirement increase, KEDLI is also projected to recover greater non-gas margin revenues as a result of the net impact of the changes in costs recovered through gas delivery rates as opposed to the GAC and/or TAC. The same types of changes described for KEDNY in the previous footnote are also applicable to KEDLI.

$61.137 million, both on a one-year basis.[21] Thus, the five-year rate plans provide a better result to customers – even in the first year – than the litigation positions of both of the Companies and Staff on a one-year basis in the stand alone rate cases.

The five-year rate plans also provide a better result than the three-year stand alone revenue requirements that were agreed to in principle by a significant number of active parties including the Companies, Staff, CPB, and the City of New York.[22] These three year revenue requirements, which were included as Appendices 2 and 3 to the Merger Joint Proposal, were based on rate case quality forecasts of expenses, investments and revenues that were derived from the record of the stand alone rate cases. While the five-year rate plans also reflect the impact of the savings arising from the Petitioners' merger as approved by the Commission, it is nonetheless clear that the end results of the Gas Rates Joint Proposal are gas delivery revenue requirements for KEDNY and KEDLI that are fully supported by the record.

2. *The Five Year Rate Plans Provide For Recovery Of Unbundled Costs In The GAC/TAC.*

In their October 3 Rate Filings, KEDNY and KEDLI proposed to include commodity-related uncollectible expense, purchased gas working capital and return requirements on gas in storage in the GAC and/or TAC. (Lukas KEDNY Direct at 16; Lukas KEDLI Direct at 16). Staff's Unbundling Panel ("SUP") filed testimony recommending that, in addition to those costs, gas procurement expense and allocated credit and collections and sales and promotion expense should also be included in the GAC. (SUP at 10). No other party filed testimony on this issue. The Companies agreed

[21] *See* Prepared Testimony of the Staff Accounting Rates Panel (KEDNY), dated January 29, 2007 at 7, lines 18-20, Prepared Testimony of Staff Accounting Rates Panel (KEDLI), dated January 29, 2007 at 7, lines 14-16.
[22] *See* Appendices 2 and 3 to the Merger Joint Proposal.

to Staff's proposal on rebuttal. (Lukas Rebuttal at 22). The Gas Rates Joint Proposal memorializes this agreement by providing for recovery of the return on gas in storage through the GAC/TAC and providing for the recovery of the following commodity-related costs from the GAC instead of through gas delivery rates: return on gas purchase-related working capital, uncollectible expense associated with gas costs, gas procurement expenses, an allocation of sales promotion expenses and an allocation of credit and collection expenses.[23]

3. *SIR Costs Will Be Recovered In Gas Delivery Service Rates and May Be Revisited During the Term of the Rate Plans.*

The Merger Joint Proposal provided for an annual amortization and reconciliation of SIR costs for the Rate Period. Under the Merger Joint Proposal, the amortization of SIR costs would remain constant in Rate Years 1 through 3 and increase in Rate Year 4.[24] The Gas Rates Joint Proposal includes a re-opener that would permit any party to petition the Commission to revisit the level of SIR costs to apply in Rate Year 4 and thereafter for both Companies.[25] This provision would enable the parties to address concerns about potential increases after Rate Year 5.[26]

While the County of Suffolk filed testimony indicating its belief that the Companies should not be permitted to recover SIR costs until they have shown that they can "develop [an] expeditious and lowest cost remediation plan," and raised questions as to the adequacy of the SIR costs reflected in KEDNY's and KEDLI's rates (Radigan at 22-24), the County offered no evidence that any SIR cost incurred to date by KEDNY or

[23] Gas Rates Joint Proposal at 6, 21.
[24] *See* Gas Rates Joint Proposal at 11, 26.
[25] Gas Rates Joint Proposal at 12, 27.
[26] This provision is consistent with the Merger Long Order, which suggested that the parties to the KEDNY and KEDLI rate cases may wish to address a reallocation of benefits to reduce upward pressure on rates at the end of five years. Merger Long Order at 121-122.

KEDLI was imprudent. On rebuttal, the Companies provided evidence that their SIR activities are consistent with the regulations and orders of the New York State Department of Environmental Conservation ("DEC"). (Bodanza Rebuttal at 18-21.) In its Merger Long Order, the Commission confirmed that the DEC is the agency responsible for the pace and level of expenditures relative to MGP site remediation.[27] The provisions of the Merger Joint Proposal and the Gas Rates Joint Proposal are fully consistent with applicable Commission precedent[28] and should be adopted without modification.

4. *Revenues Will Be Allocated And Rates Designed Largely Based On The Recommendations Of Staff.*

Staff and CPB filed testimony regarding KEDNY's and KEDLI's proposed revenue allocation and rate design. CPB was particularly concerned with the rate increases low-usage residential customers would experience as the result of the proposed increases to their minimum charges and recommended that any increase be implemented gradually over the Rate Period. (Niazi at 23-26). Similarly, Staff recommended that revenue be allocated and rates be designed such that (i) the increases to each service class would be "related to the overall net percentage increase," (ii) the ECOS study would guide the direction of service class increases, (iii) current rate classes would be maintained and (iv) similar service classes would have similar block structures. (Rider at 19-20).

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[27] Merger Long Order at 113-114.

[28] *See* Case 03-G-1671, *Proceeding on Motion of the Commission to the Rate, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Services*, "Order Adopting the terms of A Joint Proposal" (Issued and Effective September 27, 2004); *See* Joint Proposal at p. 20, Case 97-M-0567, *Joint Petition of Long island Lighting Company and The Brooklyn Union Gas Company For Authorization Under Section 70 of the Public Service Law to Transfer Ownership To An Unregulated Holding Company and Other Related Approvals*, "Opinion and Order Adopting Terms of Settlement Subject To Conditions and Charges" (Issued and Effective April 14, 1998) Appendix A at 63-64.

The Gas Rates Joint Proposal provides for the allocation of revenue among and within service classes in a manner that aligns rates more closely with the embedded cost of service studies and is consistent with the recommendations of CPB and Commission Staff, as shown in the appendices to the Proposal.[29] The Gas Rates Joint Proposal further provides that the parties will discuss how to move toward the eventual implementation of more cost-based rate designs in the context of revenue decoupling in the revenue collaborative to be undertaken in connection with the energy efficiency provisions of the Gas Rates Joint Proposal.[30]

5. *KEDNY Will Increase The Low Income Discount and Make The Discount Available To More Customers and KEDLI Will Adopt A Similar Low Income Discount Structure.*

Several parties filed testimony regarding low income rates. In the Merger Joint Petition, National Grid proposed to increase the low-income discount and customer participation in KEDNY's service territory and to introduce a similar low-income program in KEDLI's service territory.[31] In their October 3 Rate Filings, the Companies filed testimony supporting these changes. (Cianflone KEDNY Direct at 13; Cianflone KEDLI Direct at 10-12). Staff's Consumer Services Panel ("CSP") indicated that it did not support KEDNY's proposals regarding the changes to the low income discount, although it did support increasing participation in the discount rate to up to 60,000 customers for KEDNY and establishing participation at 30,000 customers for KEDLI. (CSP at 19-23). The Panel recommended continuation of KEDNY's discount to the minimum charge, but suggested that for both KEDNY and KEDLI a residential reduced rate should be based on volumetric usage. (CSP at 21-22). CPB supported KEDNY's

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[29] *Id.* at 12, 27; Appendices B and C.
[30] Gas Rates Joint Proposal at 9, 25.
[31] Merger Joint Petition at 42.

proposed low income rate and proposed the implementation of a similar structure for KEDLI. (DeVito at 25-26). PULP recommended several changes to the Companies' programs, including increasing the discount available, expanding the eligibility criteria, removing the cap on participation in the discount, providing for automatic enrollment in the programs and providing a further discount to the low-income heating rate to those customers with the lowest household income. (Oppenheim at 12).

At Appendix D, the Gas Rates Joint Proposal provides low-income rates that are a reasonable compromise of these positions.[32] KEDNY's low-income discount is enhanced and participation is increased to 60,000 customers.[33] KEDLI will implement a similar low income program, with participation not expected to exceed 30,000 customers.[34] All of KEDNY's and KEDLI's firm sales and transportation customers will share the rate impact of the low income discounts.[35] The Joint Proposal also establishes discrete balancing accounts that will match actual credits applied to bills to budgeted program costs. If at the end of Rate Year 2 either balancing account has a positive balance of over $2 million for KEDNY or $1 million for KEDLI, any party may petition the Commission for the use of such balance towards enhancements to the low income program(s). Each Company will file an annual report on low income participation.

6. *KEDNY's Revenue Requirement Reflects Funds Necessary to Hire Additional Employees to Meet the Gas Leak and Odor Calls Safety Measure.*

Under the Gas Safety and Reliability Joint Proposal, KEDNY is required to respond to seventy-five percent of gas leak and odor calls within 30 minutes or be subject

[32] Appendix D sets forth reduced volumetric rates that would apply on a seasonal basis in the second block of the residential heating classes for KEDNY and KEDLI.
[33] Gas Rates Joint Proposal at 13.
[34] *Id.* at 27-28.
[35] *Id.* at 13, 27-28.

to rate adjustments for its failure to do so. To assist in meeting this target, KEDNY had proposed to add 19 full time equivalent ("FTE") employees and sought the inclusion of the costs of such additional personnel in the revenue requirement. (Haran Rebuttal at 26-27). The Staff Safety Panel filed testimony indicating that it was not convinced that KEDNY in fact required the additional personnel to meet the established targets. (Safety Panel at 40). The 19 FTEs are included in KEDNY's merger revenue requirement.

The Gas Rates Joint Proposal resolves this issue by requiring KEDNY to file an annual report documenting the number of FTEs added to perform these functions. If fewer than 19 FTEs are added, KEDNY will record a credit due customers for the revenue requirement effect of the difference between 19 and the number of FTEs added.[36]

7. *KEDNY's Customers Currently Being Billed Bi-Monthly Will Now Be Billed Monthly.*

Per the testimony of Company witness Nancy Cianflone (Cianflone KEDNY Direct at 7), KEDNY proposed to bill on a monthly basis customers currently being billed every other month. No other party filed testimony regarding this issue. The Gas Rates Joint Proposal requires KEDNY to implement monthly billing.[37]

8. *KEDNY's Depreciation Rates Will Be Revised.*

Staff's Plant and Depreciation Panel ("PDP") was the only party that filed testimony responding to the Companies' depreciation studies. Based on its review of the studies, the Panel proposed adjustments to the depreciation rates, including changes to the average service lives and net salvage rates. (PDP at 17-30). In addition the Panel recommended that KEDLI maintain main and service accounts in the same manner as KEDNY, namely, to break accounts into sub-accounts based on material type. (PDP at

[36] *Id.* at 14.
[37] *Id.*

30). Finally, the Panel recommended that KEDNY and KEDLI be required to file a full depreciation study with their next rate case filing. (PDP at 7, 30).

The Gas Rates Joint Proposal adopts several of Staff's recommendations. Consistent with Staff's testimony, Depreciation Rates for KEDNY will be revised as set forth in Appendix E to the Joint Proposal. There will be no change in KEDLI's depreciation rates. In addition, KEDNY will charge the cost of removal to the Reserve for Accumulated Depreciation.[38] Both Companies will maintain records of gas mains and services by material type, and file a depreciation study with their next rate case, including a calculation comparing the book and theoretical depreciation reserves, considering all amortizations.[39]

9. *Lost And Unaccounted For Factors Will Be Revised Per The Recommendations Of Staff.*

The Staff Sales Panel proposed to change KEDNY's lost and unaccounted for (LAUF) rate to 2.34%, and KEDLI's LAUF rate to 2.73%. Staff calculated these rates based on a four-year average. (Sales Panel at 25, 31). In addition, Staff proposed that KEDNY and KEDLI employ the same LAUF factor for both sales and transportation customers. (*Id.*). Company Witness Bodanza agreed with Staff's approach to calculating LAUF, but asserted that the factor should be based on the most recent three years of experience, consistent with Commission precedent. (Bodanza Rebuttal at 22, 24). In addition, Mr. Bodanza proposed that the Companies recover their overstated losses for the years 2002-2006 through the GAC, by amortizing the amount of over-recovery over five years. (*Id.* at 25).

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[38] *Id.* at 15.
[39] *Id.* at 15, 29-30.

The Gas Rates Joint Proposal sets the LAUF factors for KEDNY and KEDLI at the Staff recommended rates of 2.34% for KEDNY and 2.73% for KEDLI. In addition, the Companies may petition the Commission, within four months of an order in these proceedings, for past LAUF incentive amounts in accordance with the Commission's order in Case 06-G-1168.[40]

10. The Price Cap for Interruptible Customers Will Be Revised And The Companies Will File A Report Demonstrating Their Compliance With The Annual Price Caps For Rates Charged To Temperature Controlled And Interruptible Customers.

In their October 3 Rate Filings, KEDNY and KEDLI proposed to eliminate the price cap on sales to temperature controlled ("TC") customers. (Lukas KEDNY Direct at 8; Lukas KEDLI Direct at 8). Staff's Sales Panel disagreed with this approach, recommending instead an annual reconciliation for all TC and interruptible customers to determine whether they paid more than they would have paid as firm customers and to provide a credit for any excess. (Sales Panel at 41-42). The Companies argued against this proposal on rebuttal that it would be administratively infeasible and would decrease TC margins by forcing arbitrary discounts. (Lukas Rebuttal at 10). Suffolk County also opposed the Companies' proposal to eliminate the price cap. (Radigan at 12).

The Merger Joint Proposal eliminated the monthly price cap for KEDNY's and KEDLI's TC service classifications and replaced it with an annual price cap based on the revenues, including all surcharges, that would have been derived had the customers received service under SC-2.[41] The Gas Rates Joint Proposal clarifies the appropriate subclass, and provides that the annual price cap for KEDNY's and KEDLI's TC services will be equal to the annual revenue, including surcharges, from providing service to

[40] *Id.* at 15, 30.
[41] Sections IX (D) (1) and X (D) (1).

KEDNY's SC 2-2 customers and KEDLI's SC 2-B customers. The Gas Rates Joint Proposal further provides that the same caps will apply to the Companies' interruptible service classifications. The Gas Rates Joint Proposal requires KEDNY and KEDLI to file a report after each Rate Year demonstrating their compliance with these annual caps.[42]

11. Power Generation Margins Will Be Credited To The GAC.

In the Companies' October 3 Rate Filings, KEDNY and KEDLI proposed to credit 100% of margin derived from all power generation customers to core customers through the GAC. (Lukas KEDNY Direct at 10; Lukas KEDLI Direct at 10). Suffolk County opposed this proposal. (Radigan at 13-14). The Gas Rates Joint Proposal establishes that both Companies will credit margins received from power generation customers served under SC 18 and SC 20 to the GAC.[43]

12. Weather Normalization Provisions Will Be Revised.

KEDNY and KEDLI proposed to implement a 1% deadband around normal weather and a fixed, 20-year average heating degree day (HDD) normal winter for their Weather Normalization Clauses (WNC). (Feinstein KEDNY Direct, at 8-9; Feinstein KEDLI Direct at 7-10.) Staff's Sales Panel recommended that both KEDNY and KEDLI utilize a rolling 30-year average, move KEDNY's WNC to be effective from October 1st through May 31st and employ a 2.2% deadband, correcting bills using the WNC to the outside of the deadband. (Sales Panel at 13). CPB also testified that there is no reason to change to a 20-year degree day average and that the 30-year average should be retained for purposes of normalizing sales and revenue projections. (Larkin Associates at 6).

[42] Gas Rates Joint Proposal at 19-20, 34.
[43] *Id.* at 16, 31.

The Gas Rates Joint Proposal provides for a compromise of these positions and requires (i) the adoption of a 2.2% deadband for KEDNY, consistent with KEDLI's, (ii) adjustments to margins for weather variances to the outside limit of the deadband, (iii) modification of the definition of normal weather for both Companies to a static 30-year period ending June 30, 2006, and (iv) for KEDNY's WNC to be effective October 1st through May 31st.[44]

13. Sharing Percentages For Revenues Received From Capacity Release And Off-System Sales Will Be Revised.

In their rate case filings, KEDNY and KEDLI did not propose any changes to their Gas Cost Incentive mechanisms, under which the Companies share with customers 80% of the revenues they receive from capacity release transactions and off-system sales. Nevertheless, Staff Witness Sano recommended that the Companies shift their sharing percentage to 85%/15%. (Sano at 5-6). CPB Witness Elfner recommended that KEDNY's and KEDLI's 80/20 sharing mechanism be eliminated in favor of imputing a target level of margins for off-system transactions. (Elfner at 9-11). On rebuttal, the Companies argued that the proposals of both Staff and CPB should be rejected. (Lukas Rebuttal at 3).

The Gas Rates Joint Proposal adopts the recommendation of Staff witness Sano and modifies the gas cost incentive mechanisms to employ an 85%/15% sharing of net capacity release and off-system sales margins.[45]

[44] *Id.* at 16, 31. SC-18 and SC-20 are KEDNY's power generation service classifications. KEDLI's power generation service classes are SC-7 and SC-14 and margins from service to these classifications will flow through KEDLI's GAC.
[45] *Id.* at 17-18, 32-33.

14. The Companies Will Revise Their Billing and Payment Processing Fees and Merchant Function Charges.

In their October 3 Rate Filings, the Companies calculated unbundled rates for potentially competitive services consistent with the Commission's guidelines in Case 00-M-0504 – Unbundling Track. Company witness Lukas proposed to charge ESCOs a billing and payment processing fee of $0.76 per bill for KEDNY and $0.65 per bill for KEDLI, and to credit these amounts to the bills of customers enrolled with ESCOs participating in the consolidated billing program. (Lukas KEDNY Direct at 17; Lukas KEDLI Direct at 16-17). Staff's Unbundling Panel agreed with these proposals. (SUP at 7). The Gas Rates Joint Proposal memorializes this agreement.[46]

KEDNY and KEDLI also proposed to display the merchant function charge ("MFC") as both a credit to delivery charges (for procurement, credit and collections and sales promotion expense) and as a component of the GAC (for commodity-related costs). (Lukas KEDNY Direct at 12-13; Lukas KEDLI Direct at 12-13). Staff agreed with the amount of the MFC, but recommended that the Companies develop a MFC that is wholly contained in the GAC. (SUP at 8). The Gas Rates Joint Proposal adopts the recommendation of Staff's Unbundling Panel.[47]

15. Provisions Regarding Recovery Of State Income Taxes And Deferred Special Franchise Taxes.

a) State Income Taxes

The Companies proposed to stop reconciling and deferring the difference between actual state income taxes and certain surcharges and instead to recover state income taxes through base rates, consistent with the Commission's June 28, 2001 order in Case 00-M-

[46] *Id.* at 18, 33.
[47] *Id.*

0556. (Bodanza KEDNY Direct at 21, 26; Bodanza KEDLI Direct at 21, 23). Staff's Accounting Panels agreed with this proposal, although they recommended adjustments to the deferred State Income Tax expense for both Companies. (Accounting Panel Rates (KEDNY) at 48-50; Accounting Rates Panel (KEDLI) at 41-44).

The Gas Rates Joint Proposal provides that, as of January 1, 2008, state income tax expense will be recovered through delivery service rates.[48] KEDNY and KEDLI will continue filing annual reconciliations up until the date that State Income Tax expenses are fully included in delivery service rates. Any remaining unrecovered tax balances will continue to be surcharged or credited.[49]

b) Deferred Special Franchise Taxes

In its October 3 Rate Filing, KEDNY proposed to reflect in rates the recovery of deferred special franchise taxes and to amortize these expenses over seven years. (Bodanza KEDNY Direct at 18-19). Staff's Accounting Panel did not agree with this proposal and proposed to reverse KEDNY's deferral. (Accounting Panel Rates (KEDNY) at 5, 10-15).

The Gas Rates Joint Proposal represents a compromise between these positions and provides that the deferred special franchise tax expense balance as of March 31, 2007, less a $22.5 million write off, is amortized over a seven-year period in the revenue requirement approved with the Merger Joint Proposal. In addition, KEDNY is authorized to defer 90% of the difference between its annualized special franchise tax expense and

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[48] *Id.* at 18-19, 33.
[49] *Id.*

the annualized amount of $45.128 million during the period April 1, 2007 through September 30, 2007.[50]

16. Distributed Generation Rates Will Be Revised.

The Gas Rates Joint Proposal requires the Companies to revise and file distributed generation rates for commercial and industrial customers. This requirement is consistent with the Commission's directives in Case 02-M-0515.[51]

17. Additional Deferrals and Recoveries

The Gas Rates Joint Proposal includes a number of provisions that concern the Companies' rights to seek additional deferrals and recoveries and the nature of such deferrals and recoveries.[52] KEDNY and KEDLI had proposed to include in revenue requirements expenses for several large capital projects that had been expected to be completed within the Rate Year. (Haran KEDNY Direct at 8-10, Haran KEDLI Direct at 8-18). Because several of these projects are delayed, Staff recommended that the associated capital expenditures be removed from the Companies' revenue requirements. (Plant and Depreciation Panel at 9-12). The Gas Rates Joint Proposal permits KEDNY and KEDLI to petition for deferral of costs for new, large capital projects not already included in revenue requirement.[53]

18. Tariff Provisions Regarding Business Incentive And Area Development Rates Will Be Revised.

The Gas Rates Joint Proposal requires the Companies to amend their tariff provisions regarding Business Incentive and Area Development Rates ("BIR/ADR") to provide that customers that fail to reach the applicable increase in consumption because

[50] *Id.* at 19.
[51] *Id.* at 19, 33-34.
[52] *Id.* at 14, 19-20, 24, 34. The Gas Rates Joint Proposal also requires the deferral by the Companies of the costs and savings of automated meter reading if they implement or expand the use of such devices.
[53] *Id.* at 19, 34.

of the installation of new energy efficient equipment will be or will remain eligible for the BIR/ADR rate.[54] This is consistent with Commission policy encouraging conservation, as noted recently in Case 07-M-0548.[55]

C. KEDNY and KEDLI Will Implement Non-Interim Energy Efficiency Programs That Will Benefit All Customers.

In the Merger Joint Petition,[56] KEDNY and KEDLI proposed to implement energy efficiency programs modeled on the program established for KeySpan's New England utilities, with program budgets of $20 million and $10 million for KEDNY and KEDLI, respectively. (Johnson Rebuttal at 1-8). Several parties filed testimony regarding KEDNY's and KEDLI's energy efficiency proposals. NRDC proposed significant increases to the total program budgets for both Companies of $150 million over three years ($30 million in Year 1, $50 million in Year 2 and $70 million in Year 3), with one-third allocated to KEDLI's service territory and two-thirds allocated to KEDNY's service territory. (NRDC at 20). Staff supported the initiation of energy efficiency programs and encouraged the use of collaboratives to address specific program components, funding and program evaluation. (Coonan at 6). CPB also supported KEDNY's and KEDLI's energy efficiency program proposals, including the proposed budgets, and encouraged the use of collaboratives to develop the details of the programs. (Elfner at 20-22).

On July 18, 2007, the Commission approved, with conditions, a Joint Proposal for Interim Energy Efficiency Programs for both KEDNY and KEDLI, which provided for interim energy efficiency programs to be implemented until such time as non-interim

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[54] *Id.* at 20, 34-35.

[55] *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard*, Order Instituting Proceeding, dated May 16, 2007.

[56] *See* Merger Joint Petition at 40-41.

programs had been developed and approved.[57] The Gas Rates Joint Proposal sets forth the terms of a non-interim energy efficiency program for both utilities, including program budget, recovery of operating costs and reporting requirements.[58] Program budgets will be set at $20 million and $10 million annually for KEDNY and KEDLI, respectively, for the first year. The Program Design Collaborative, discussed below, will explore whether these budgets should be modified for subsequent Rate Years. Operating costs up to the annual budgeted amount will be recovered through a uniform System Benefits Charge ("SBC") applied as a surcharge on the delivery portion of the utility bill. KEDNY and KEDLI will be required to maintain books and records regarding the recovery of the SBC and also will be required to provide quarterly reports to the active parties detailing energy efficiency measures installed, projected gas savings to customers, projected lost revenue to the Companies and any other energy efficiency program-related costs for which the Companies intend to seek recovery.[59]

The Gas Rates Joint Proposal also establishes a collaborative to address program design, revenue decoupling and other rate design issues, incentive targets and program budgets. This collaborative began on September 18, 2007 and will conclude its work on program design and report to the Commission by January 11, 2008.[60] The revenue decoupling component of the collaborative is to conclude March 7, 2008.[61]

The Gas Rates Joint Proposal reflects a compromise position that permits the Companies to continue to implement energy efficiency programs with an appropriate

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[57] *Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals*, Cases 06-G-1185 and 06-G-1186, dated July 18, 2007.
[58] Gas Rates Joint Proposal at 6-10, 21-26.
[59] *Id.* at 6-8, 21-24.
[60] *Id.* at 6-7, 9-11, 21-23, 24-25.
[61] *Id* at 9, 25.

budget and recovery mechanism that will not burden future rates. Meanwhile, discussions among the parties will continue to develop specific design elements, incentive targets, a revenue decoupling mechanism and future budgets. This aspect of the Gas Rates Joint Proposal represents a reasonable resolution of the issues and is within the range of likely litigation outcomes.

D. Retail Access

1. KEDNY and KEDLI Will Implement Purchase of Receivables Programs.

In its October 3 Rate Filing, KEDNY proposed to implement a Purchase of Receivables ("POR") program for ESCOs participating in consolidated billing within nine months. (Cianflone KEDNY Direct at 8). KEDLI did not propose to implement a POR program on its existing billing system, which is "at the end of its useful life," and proposed to wait until after its billing system was replaced. (Cianflone KEDLI Direct at 9). As part of the settlement process, KEDLI has agreed to implement a POR program in its territory by April 1, 2009.[62] KEDNY will implement a POR program in its territory by October 1, 2008.[63] Development of the terms of the Companies' POR programs, including a customer dispute mechanism and a billing services agreement, will be determined in collaboration with ESCOs and interested parties.[64] To the extent not recovered through other means, KEDNY and KEDLI will recover their POR program implementation costs from participating ESCOs.[65]

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[62] *Id.* at 33.
[63] *Id.* at 18.
[64] *Id.* at 18, 33.
[65] *Id.* at 20, 34.

2. *Net Revenue Lost Due To Customer Migration to ESCOs Will Be Calculated and May Be Deferred For Recovery Through the Balancing Account.*

KEDNY and KEDLI had proposed avoided cost curves to calculate lost revenue and to recover net lost revenues resulting from customer migration to ESCO commodity service through their respective balancing accounts. (Lukas KEDNY Direct at 18-19; Lukas KEDLI Direct at 17-18). Staff's Unbundling Panel recommended that 50% of lost revenues be recovered from sales customers, as part of the GAC reconciliation, and the other 50% from delivery customers from the GAC/TAC. (SUP at 13).

The Gas Rates Joint Proposal reflects a compromise position. In the case of each Company, once 30% of customers have migrated to ESCO-supplied commodity, interested parties will meet to develop short-run avoided cost curves for procurement, credit and collection, and sales promotion expense to be used to identify costs avoided by the Companies as a result of customer migration to ESCO service. These avoided costs will offset migration-related lost revenues.[66] Any remaining lost revenues will be deferred to the Companies' Balancing Accounts.

E. The Companies' On-Track Programs Will Be Revised To Expand The Number Of Participating Customers And Reduce The Minimum Arrearage Threshold.

In their October 3 Rate Filings, KEDNY and KEDLI proposed to double participation in their On-Track Programs from 1,200 to 2,400 participants in KEDNY's territory and from 200 to 400 participants in KEDLI's territory. (Cianflone KEDNY Direct at 3; Cianflone KEDLI Direct at 3). Staff's Consumer Services Panel and PULP supported these changes. (CSP at 19; Oppenheim at 11-12). CPB Witness DeVito recommended several other modifications to the Companies' On-Track Programs,

[66] *Id.* at 19, 34.

including lowering the minimum arrears threshold for program participation, increasing total arrears forgiven per participant, increasing the term of the programs from 18 to 24 months, determining the maximum number of participants on a rolling 12-month basis, limiting administrative expenses to 7% of overall program costs and instituting a comprehensive review of program performance and costs. (DeVito at 18-25). On rebuttal, Company Witness Cianflone agreed to reduce the minimum arrears threshold to $400 and to report on program costs and achievements, but disagreed with the remainder of CPB's suggestions. (Cianflone Rebuttal at 5-6).

As part of the changes to KEDNY's and KEDLI's low-income programs, the Gas Rates Joint Proposal adopts a blend of these proposals – program participation will be increased to 2,400 for KEDNY and 400 for KEDLI and the minimum arrears threshold will be reduced to $400 for both Companies.[67]

F. KEDNY and KEDLI Will Hold A Collaborative Regarding Transportation And Balancing Rules And Procedures.

Staff Witness Sano filed testimony recommending changes to KEDNY's and KEDLI's transportation and balancing rules and procedures. (Sano at 14-17). Mr. Sano recommended that these changes be the subject of a collaborative among interested parties. (*Id.* at 15). The Gas Rates Joint Proposal requires that the transportation and balancing collaborative discussions begin no later than March 1, 2008 and that the results of this collaborative are to be filed no later than July 1, 2008.[68]

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[67] *Id.*

[68] *Id.* at 16-17, 31-32.

G. KEDNY and KEDLI Will Submit Other Plans and Reports.

1. Integration Efforts

As part of the Merger Joint Petition, National Grid identified efficiency improvements and synergy initiatives to be undertaken as part of the integration of National Grid and KeySpan.[69] Some of these efforts will result in work-force reductions. The Gas Rates Joint Proposal requires KEDNY and KEDLI to submit, by February 1, 2008, a report to the parties in Case 06-M-0878 detailing work force reductions, including the Companies' efforts to "ensure appropriate knowledge transfer and a smooth transition."[70] In addition, by May 31, 2011, the Companies will submit to the parties a comprehensive report regarding the results of the identified integration efforts.[71]

2. Bill Formats and System Integration

In their initial filings, KEDNY and KEDLI explained that, consistent with the Commission's Order on bill formats,[72] they intended to defer bill reformatting on their existing billing systems, pending the expected replacement of those systems following the merger with National Grid. (Lukas KEDNY Direct at 20; Lukas KEDLI Direct at 19-20). Staff Witness Berger challenged this plan, arguing that the Companies should not delay compliance with the Commission's Unbundled Bill Format Order pending integration of billing systems. (Berger at 5-11). On rebuttal, the Companies agreed to plan for the necessary bill format changes, but not to implement any changes until after system consolidation had been completed. (Lukas Rebuttal at 27-28).

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[69] *See* Merger Joint Petition at 15-20.
[70] Gas Rates Joint Proposal at 13-14, 28-29.
[71] *Id.*
[72] Case 00-M-0504—*Unbundling Track* "Order Directing Submission of Unbundled Bill Formats" (February 18, 2005).

The Gas Rates Joint Proposal provides that KEDNY and KEDLI will implement a reformatted bill, consistent with the Commission's Unbundled Bill Format Order, by October 1, 2008 (for KEDNY) and July 1, 2008 (for KEDLI).[73]

The Gas Rates Joint Proposal notes that both Companies plan to complete conversion of their billing systems by December 31, 2012. KEDNY and KEDLI will consult with Commission Staff regarding their plans to convert their billing systems and will report to the parties by January 1, 2009 on their plans to replace the billing systems or integrate such systems with that of National Grid. Should that date change, the Companies will promptly report such change to the Commission. The Companies will meet with Staff at least annually to report on their progress with respect to conversion.[74]

IV. THE GAS RATES JOINT PROPOSAL IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED WITHOUT MODIFICATION.

As demonstrated above, the Gas Rates Joint Proposal is the result of extensive and lengthy negotiations among adversarial parties. The provisions of the Joint Proposal represent significant concessions by all parties to arrive at a negotiated resolution to the issues raised. Finally, all of the provisions of the Gas Rates Joint Proposal are within the range of reasonably likely outcomes that could have resulted from litigation of these proceedings. Consequently, the Joint Proposal is in the public interest and the Commission should approve it without modification.

[73] Gas Rates Joint Proposal at 20, 35.
[74] *Id.* at 21, 35.

Respectfully submitted,

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Dated: October 17, 2007