More than 8,000 comments have been filed with the Commission's Secretary, including several by elected representatives in the Companies' service territories. Approximately half of those comments appeared after the Joint Proposal was filed and consist of an identically worded complaint regarding affordability submitted by members of AARP New York, many of whom reside outside the Companies' service territories, and many of whom filed the same comment more than once.[7] Nearly all the comments are in opposition to the requested rate increases. Commenters are mainly concerned with overall affordability, the Companies' quality of customer service, and customers' experiences with errors in billing.

IV. REGULATORY FRAMEWORK AND MOTION TO DISMISS

Pursuant to the Public Service Law, the Commission has jurisdiction to supervise the manufacture, sale and distribution of electricity and gas in New York State.[8] Specifically, the Commission regulates electric and gas rates to ensure that all charges are just and reasonable and that the rates produce sufficient revenue for the utility to provide safe and adequate service.[9] Where, as here, the filings under consideration represent a "major change" in rates as defined by the Public Service Law, such determinations may be reached only after hearings held upon notice to the public.[10]

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[7] Of the approximately 4,000 comments submitted after the Joint Proposal was filed, about 200 were from individuals not affiliated with AARP New York.

[8] PSL §5(1)(b); §66(1).

[9] PSL §65(1).

[10] PSL §66(12)(c).

A. Motion to Dismiss

In March 2023, the Climate and Consumer Parties, AARP New York, and PULP filed a motion to dismiss the Companies' rate filings. The moving parties argued that the rate filings were "deficient as a matter of law" because the Companies continuously failed to provide "legally required cost histories, budget specifics, and rational spending priorities needed to evaluate" the rate increase requests.[11] According to the moving parties, the Companies therefore had failed to satisfy their burden of demonstrating entitlement to any rate increase and urged the Commission to dismiss the rate filings and set temporary rates pending the Companies' submission of new filings.[12]

In response, the Companies asserted that their rate filings fully complied with the Commission's filing requirements, found in 16 NYCRR Part 61, as well as the Statement of Policy on Test Periods in Major Rate Proceedings.[13] While acknowledging that DPS Staff had expressed in its initial testimony certain concerns regarding the need for additional information, the Companies asserted that the motion ignored the Companies' rebuttal filings and several months' worth of Information Requests (IRs) that addressed Staff's concerns directly and "cured any perceived deficiencies" in the filings.[14] The Companies noted that the relief requested by the moving parties – dismissal of the rate cases – was a drastic remedy for which there was no precedent, and, in any event, the filings

[11] Motion to Dismiss, filed March 1, 2023, pp. 1-2.

[12] Id., pp. 1-2.

[13] Companies' Response to Motion to Dismiss, pp. 2-3; See Case 26821, Statement of Policy on Test Periods in Major Rate Proceedings, 17 NY PSC 25-R (November 23, 1977).

[14] Companies' Response to Motion to Dismiss, p. 4.

could not be dismissed prior to a hearing before the Commission.[15]

DPS Staff also opposed the motion to dismiss, stating that it was "clear that a rate increase is necessary," based upon a review of all the Companies' filings and discovery request responses.[16] Staff argued that dismissal of the rate case would be procedurally improper and, in any event, not in the best interests of the ratepayers.

It is well-established precedent that, where a major change in rates is proposed by a utility in its rate filings, the Commission lacks the authority to summarily dismiss the filing after only a review of the filing by DPS Staff; rather, the statute requires the Commission to conduct a hearing concerning the propriety of the proposed rate changes prior to making any order with respect thereto.[17] Inasmuch as no hearing had been held regarding the Companies' rate filing at the time the motion to dismiss was made, the relief requested was not authorized under the law and the motion was legally premature.[18] Moreover, to the extent a hearing on an application for new rates establishes that a utility has not met its burden of proof, the proper remedy is a denial of the requested increase rather than dismissal of the action.

Further, contrary to the moving parties' argument, the Companies were not required in their initial filings to

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[15] Id., p. 5, citing Matter of New York Tel. Co. v. Public Serv. Commn. of State of N.Y., 59 A.D.2d 17, 19 (3d Dept. 1977), appeal denied 42 N.Y.2d 810 (1977).

[16] Staff's Response to Motion to Dismiss, p. 2.

[17] PSL §66(12); see Matter of New York Tel. Co., supra, at p. 19.

[18] See Case 05-E-1222, NYSEG - Rates, Ruling Denying Motion to Dismiss (issued February 10, 2006), p. 7.

demonstrate an entitlement as a matter of law to the requested rate increases. Thus, the question as to whether the Companies had demonstrated an entitlement to rate increases would not be the appropriate inquiry on a motion to dismiss for failure to state a cause of action. Rather, in considering such a motion, the facts as asserted by the Companies in their various filings must be assumed to be true, any factual determinations must be made in favor of the Companies, and the Companies must be given the benefit of every favorable inference that can be drawn from the rate filing.[19] In view of that standard, even if dismissal of the rate filings had been an option in March 2023, the Companies' initial rate filings, as supplemented by the various additional filings, as well as IR responses to the parties, would have provided a sufficient basis to deny the motion to dismiss.

To the extent that the moving parties continue to request dismissal of the rate filings, again asserting various alleged procedural deficiencies, by not withdrawing the motion once the JP was filed, the motion is denied as being moot. Under the Commission's settlement guidelines, when the sponsoring parties filed the JP, they each abandoned their separate litigated positions to advocate instead for the Commission's adoption of a proposed settled rate plan. This procedural milestone also resets the burden of proof which becomes a collective one that rests on the signatory parties.[20] At that point, Staff's collection of supporting documentation as appended to its pre-filed testimony in the form of sponsored exhibits worked to satisfy the burden, not to point out

[19] See New York Civil Practice Laws and Rules (CPLR) 3211(a)(7).

[20] Settlement Guidelines, p. 6 (stating that the "burden of proving that a proposed settlement is in the public interest rests on the parties proposing the settlement").

deficiencies in the initial filing even if those deficiencies existed.

B. Evaluation of the Joint Proposal

In establishing utility rates, the Commission may consider any factor and assign whatever weight it deems appropriate.[21] Commission determinations of rates are not to be set aside unless they are without any rational basis or reasonable support in the record.[22] In cases, such as these, where the terms of a JP have been submitted for Commission consideration, we must determine if such terms, when viewed as a whole, produce a result that is in the public interest. In doing so we follow our Settlement Guidelines, and consider whether the terms appropriately balance protection of consumers, fairness to investors, and the long-term viability of the utility.[23] The result of any negotiated proposal should be consistent with the environmental, social, and economic policies of the Commission and the State; and it should produce results that are within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding.

In their Statement in Opposition, the Climate and Consumer Parties argue, among other things, that these rate proceedings lack "procedural soundness" and the resulting JP

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[21] Matter of Abrams v. Public Service Com., 67 N.Y.2d 205, 212; 501 N.Y.S.2d 777, 779-780; 492 N.E.2d 1193, 1195-1196 (1986).

[22] Id.

[23] Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) (Settlement Guidelines Order), p. 30; Appendix B, pp. 7-9.

does not satisfy the Commission's settlement guidelines.[24] These parties further contend that settlement negotiations were "variably disorganized, rushed, delayed, rigid, at times disparaging and insulting, and overall disconcerting."[25] These parties also argue that the JP does not reflect an outcome that is within the range of outcomes that could have resulted from litigation because the Rate Year 1 non-levelized rate increases are only slightly lower than DPS Staff's initial litigation position.[26] They also argue that, had the cases been fully litigated, "the burden of proof for the rate hikes would have fallen solely on the Companies to defend ... and the Companies would not have had the luxury of months of [DPS] Staff helping them do their homework to try to justify their rate increases."[27] In addition, the Climate and Consumer Parties claim that the terms of the JP do not fairly balance the interests of the ratepayers against those of the shareholders and the long-term viability of the Companies, given the significant increased costs to ratepayers weighed against the allegedly poor management of the Companies.[28]

Complaints about the process also are found in various parties' post-hearing briefs. RCI alleges that neither the Companies nor DPS Staff "negotiated in full faith with all parties" and that the Climate and Consumer Parties were subject to different standards for cross examination at the evidentiary

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[24] Climate and Consumer Parties' Statement in Opposition, pp. 4-7.

[25] Id., p. 5.

[26] Id., p. 20.

[27] Id., p. 21.

[28] Id., p. 23.

hearing.[29] FFT echoes concerns about the settlement process in its post-hearing brief, alleging that "the cloak of confidentiality afforded to everything that takes place in settlement proceedings does not serve the public interest and has resulted in a JP that does not meet the burden of proof required by the Settlement Guidelines."[30] Specifically, FFT complains that confidentiality rules prohibited it from eliciting cross examination testimony from witnesses regarding information that was shared during settlement negotiations.[31] FFT also contends that the confidentiality rules unfairly prohibit the parties from discussing alleged procedural problems with how negotiation "meetings were conducted how agendas were set and by whom, the timing and scheduling of meetings, the availability of materials before, during or after meetings, audio/visual quality, etc."[32] For its part, AARP New York complains that, when it attempted to obtain information through discovery that the Companies shared with DPS Staff during settlement, DPS Staff and the Companies declined to disclose the information, citing the confidentiality rules of settlement.[33]

PULP argues that the JP lacks the support of "normally adversarial parties", pointing out that certain signatory parties support the JP only in part and "only the Companies, [DPS] Staff, IBEW Local 10, and Walmart signed on to the entirety of the JP."[34] The Climate and Consumer Parties similarly state that the JP "does not represent a meaningful

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[29] RCI's Post-Hearing Brief, pp. 5-9.

[30] FFT's Post-Hearing Brief, p. 4.

[31] Id., p. 5.

[32] Id., p. 5.

[33] AARP New York's Post-Hearing Brief, p. 3.

[34] PULP's Statement in Opposition, p. 3.

compromise among adversarial parties" and "does not compare favorably with the likely result of litigation."[35] AARP New York voices a similar position.[36]

For its part, MI contends that the JP does not satisfy the Settlement Guidelines to the extent that it does not result in affordable rates and, therefore, is inconsistent with "the economic policies of the State."[37] Specifically, MI argues that the proposed delivery revenue increases do not constitute "just and reasonable rates."[38] In addition, MI is not "confident" that the gas and electric revenue requirement terms of the JP compare favorably to the likely result of litigation, unlike its experience in other rate cases.[39] MI further opines that it is skeptical that the JP fairly balances the interests of the ratepayers against the long-term viability of the Companies and their investors' interests because the JP "prioritizes increased spending in virtually all areas" but does not prioritize affordability for all customers.[40] Finally, MI shares the Climate and Consumer Parties' concerns that the JP is not supported by a broad range of parties with diverse interests.

The Companies categorize the Climate and Consumer Parties' allegations that the rate case process is unfair and biased as "spurious" and claim that every party has been provided a full opportunity to participate in each aspect of the

[35] Climate and Consumer Parties' Statement in Opposition, pp. 3, 19-20.

[36] AARP New York's Letter Response to Statements in Support of and in Opposition to JP.

[37] MI's Reply Statement, p. 12.

[38] Id., pp. 13-14.

[39] Id., p. 14.

[40] Id., p. 15.

proceedings, including settlement negotiations.[41] According to the Companies, all meeting notices for settlement sessions complied with the Settlement Guidelines and 16 NYCRR 3.9, and that the "times and dates [for meetings] were discussed among all parties and agreed to at the end of each negotiating session [and then] confirmed by e-mail to all parties to the proceeding."[42] This claim is supported by Convergent Energy, which similarly reports that the Companies "routinely" provided appropriate notice of meetings to all parties.[43]

In addition, the Companies claim that "several settlement sessions were dedicated to addressing specific issues raised by intervenor parties."[44] In fact, according to the Companies, the signatory parties agreed to include in the JP certain provisions advanced by PULP in its initial testimony, despite the fact that PULP was unwilling to support the JP as a whole.[45] This, states the Companies, shows that the signatory parties were willing to negotiate in good faith with all parties in an effort to garner broad consensus support for the JP. The Companies state that it is not surprising that the JP lacks support from the Climate and Consumer Parties, AARP New York, and PULP, given the positions taken in their joint motion to dismiss.

DPS Staff takes issue with allegations that the JP does not satisfy the Settlement Guidelines in that it is not supported by a broad range of parties. Staff notes that, while a broad spectrum of consensus among competing interests is

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[41] Companies' Post-Hearing Brief, pp. 2-3.

[42] Companies' Reply Statement, p. 3, n. 7.

[43] Convergent Energy's Statement in Support, p. 3.

[44] Companies' Reply Statement, p. 4.

[45] Id., p. 5.

favored, there is no "minimum threshold" to be met, and, in any event, the JP is supported by parties representing a spectrum of interests.[46] According to DPS Staff, the fact that the JP is not supported by the Climate and Consumer Parties does not demonstrate that the JP is flawed or otherwise not in the public interest.

DPS Staff also contends that arguments regarding dilatory tactics during settlement negotiations are unfounded. According to Staff, the Companies' initial filings, like most utilities' initial rate filings, required additional information to permit a thorough review, and the Companies appropriately provided information during discovery and during the settlement negotiations.[47] According to DPS Staff, the JP reflects an appropriate balance between the interests of ratepayers and the Companies' investors and the long-term viability of the Companies. Staff notes that, even with the proposed increases, the Companies' rates for residential customers "will remain among the lowest in the State," demonstrating that the rate mitigation provisions of the JP "will help keep rates affordable for customers."[48]

For its part, Walmart states that the JP represents a "just, reasonable, and fair resolution of the issues" and is in the best interests of the ratepayers.[49] Convergent Energy similarly believes that the JP represents "compromise positions" of parties with "a broad range of interests," is supported by a "robust" evidentiary record and, therefore, satisfies the

[46] DPS Staff's Reply Statement, p. 3.

[47] Id., p. 8.

[48] DPS Staff's Post-Hearing Brief, p. 4.

[49] Walmart's Statement in Support, p. 2; Walmart's Post-Hearing Brief, p. 2.

Settlement Guidelines.[50] Nucor Steel reports that the negotiating parties recognized that "material increases" in delivery rates were "to a large extent inevitable" and the circumstances were "exceptionally challenging."[51] According to Nucor Steel, the JP "reflects a creditable balancing of reliability, customer service, state energy policy mandates and other concerns, even though the outcome is not pretty."[52] Nevertheless, Nucor Steel "firmly asserts that the overall package is in the public interest."[53]

The rate case process is inherently complex, involving complicated and interrelated financial, technical and policy issues and the Commission's Settlement Guidelines, in place since 1992, have provided an appropriate framework for resolution of these often highly contentious issues between parties with vastly diverse backgrounds and interests.[54] We understand that the products of such negotiations may not satisfy all parties on all issues.

As stated in the Settlement Guidelines, in determining whether a proposed settlement is in the public interest, we must consider whether the terms balance the interests of the ratepayers and the investors and ensures the long-term viability of the utility.[55] In addition, to be in the public interest, the settlement must be consistent with the environmental, social, and economic policies of the State, and the outcome should be within the range of results that likely would have arisen out of

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[50] Convergent Energy's Statement in Support, p. 2-3.

[51] Nucor Steel's Statement in Support, p. 4.

[52] Id., p. 4.

[53] Id., p. 5.

[54] 2020 Rate Plan, supra, p. 28.

[55] Settlement Guidelines, p. 8.

litigation.[56] Notably, while it is true that the Commission must "give weight to the fact that a settlement reflects the agreement by normally adversarial parties", the fact that a proposal is not be supported by a wide variety of normally adversarial parties does not require the Commission to apply a more stringent public interest analysis, as certain parties here suggest.[57]

With respect to claims that confidentiality rules prohibited certain parties from obtaining relevant and material evidence from the Companies and Staff via discovery, if those parties believed that the Companies and Staff improperly withheld information in discovery, the remedy would have been for those parties to raise objections to the discovery responses to the ALJs, who could have provided relief, if appropriate,

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[56] Id., p. 8.

[57] Id., p. 8. Contrary to how the issue of support has been presented by the intervenors opposing the JP, the Commission's examination of whether a proposed settlement is contested is not in itself dispositive of any public interest finding but is simply used as a guide in assessing whether the elements of the public interest standard have been met. Settlement Guidelines Order, p. 30. The term "adversarial" simply means that the parties represent adverse, i.e., different, interests and does not indicate hostility. Here, the Signatory Parties presented differing and diverse positions regarding a variety of issues in their initial testimonies and ultimately negotiated many compromise positions, which are reflected in the JP. We further reject the opposing parties' argument that Staff and the Companies do not constitute normally adversarial parties. Among other things, article 4 of the PSL confers upon the Commission the right to conduct proceedings to establish the rates charged by electric and gas utilities. In the context of those rate proceedings, Staff, as represented by the Office of General Counsel, is charged by law with representing interests of "the people of the state and the [C]omission" in rate proceedings (PSL §12). Thus, the rate case process is inherently "adversarial" as between Staff and the utilities.

rather than to wait until post-hearing briefing to raise objections.

An analogous situation exists with respect to claims that settlement was an inefficient process that was unfairly managed by the Companies or other parties. Again, no party raised these concerns to the ALJs at the time negotiations were ongoing. Instead, parties waited to raise specific claims of misconduct until negotiations were complete and the JP was filed, thereby depriving the ALJs of an opportunity to address the complaints at a time when a remedy, such as the assignment of a settlement judge to assist in the scheduling and conduct of negotiation meetings, could have been implemented.[58]

In any event, it nevertheless remains that general "challenges to our rate case settlement guidelines and rate case processes are beyond the purview of these proceedings and are more appropriately the subject of a generic proceeding where all interested parties may be heard."[59] Moreover, certain issues, such as making intervenor funds available in rate cases or other proposed changes to the statutory provisions that govern rate case processes, require legislative action.

We are confident that our review process ensures that all parties' positions are considered, that rate plans provide for the provision of safe and adequate utility service at just and reasonable rates, and that a proposed rate plan adopted by the Commission, when viewed as a whole, is in the public interest.

V. THE JOINT PROPOSAL

The JP, with attached appendices, contains more than

[58] Hearing Transcript (Tr.), pp. 346-350.

[59] 2020 Rate Plan, p. 28.

660 pages. The descriptions below are generalizations intended to provide an overview of various provisions of the JP rather than a comprehensive description of every provision. Opposition to the terms of the JP is addressed within the relevant section.

A. Term and Effective Dates

The JP proposes three-year rate plans for each Company's electric and gas businesses running from May 1, 2023, through April 30, 2026.[60] Rate Year One (RY1) would be the 12-month period beginning May 1, 2023 and ending April 30, 2024; Rate Year Two (RY2) would be the 12-month period beginning May 1, 2024 and ending April 30, 2025; and Rate Year 3 (RY3) would be the 12-month period beginning May 1, 2025 and ending April 30, 2026. The JP states that its provisions would continue after RY3 unless and until they are changed by Commission order and any targets would continue at RY3 levels.[61]

B. Revenue Requirements

The JP would increase the Companies' delivery service rates and charges for electric and gas customers over the three rate years and would levelize the rate increases with the stated goal of providing rate stability over the term of the rate plans. As levelized, JP's rates and charges are designed to produce additional revenue for each business as follows:

	Rate Year 1 (million)	**Rate Year 2 (million)**	**Rate Year 3 (million)**
NYSEG Electric	$137.3	$160.7	$200.6
NYSEG Gas	$11.7	$12.4	$12.9
RG&E Electric	$50.9	$56.6	$65.3
RG&E Gas	$18.2	$20.1	$22.4

[60] JP, p. 5.

[61] JP, p. 73.

For a typical residential customer,[62] the approximate total monthly bill dollar increases and percentage increases under the terms of the JP, including the revenue requirement recovery associated with the extension of the suspension period through October 18, 2023,[63] are:

	Rate Year 1	Rate Year 2	Rate Year 3
NYSEG Electric	$9.94 (10.3%)	$8.88 (8.4%)	$11.34 (9.9%)
NYSEG Gas	$4.96 (3.6%)	$2.13 (1.5%)	$4.10 (2.9%)
RG&E Electric	$6.47 (7.4%)	$5.98 (5.5%)	$6.90 (6.0%)
RG&E Gas	$5.29 (4.6%)	$5.44 (4.5%)	$5.41 (4.3%)

The provisions of the JP would also allow the Companies to be made whole and recover shortfalls and refund over-collections resulting from the extension of the suspension period in these proceedings from May 1, 2023. Revenue adjustments to NYSEG and RG&E electric delivery rates resulting from the extension of the suspension period will be collected or refunded through a separately stated delivery revenue make-whole rate, plus interest at the pre-tax weighted average cost of capital.[64] Revenue adjustments to NYSEG and RG&E gas delivery rates resulting from the extension of the suspension period also

[62] The typical residential customer refers to an electric customer using 600 kWh per month and a residential gas heating customer using 100 Therms per month. Actual bill impacts will vary by customer class based on the revenue allocation and rate design proposed in the JP.

[63] These typical residential bill impacts reflect a November 1, 2023, effective date. The typical residential bill impacts contained in the JP reflect an October 1, 2023, effective date. As such, the Companies are directed to file updated appendices to the JP to reflect a November 1, 2023, effective date.

[64] JP, p. 11 and Appendix CC.

will be collected or refunded through a separate make-whole rate, plus interest at the other customer capital rate.[65] The make-whole rates would become effective in this proceeding from the date on which new rates go into effect through: April 30, 2026, for NYSEG Electric and RG&E Electric; April 30, 2025, for RG&E Gas; and April 30, 2024, for NYSEG Gas.[66] The JP provides for longer periods for recovery of RY1 shortfalls, except for NYSEG Gas, to moderate the rate impact to customers experiencing higher bill impacts.

Revenue adjustments for competitive service rates, including the administrative and credit and collections components of Merchant Function Charges, and the credit and collections component of Purchase of Receivables Discount Percentages, resulting from the make-whole provision will be reconciled through each respective rates' annual reconciliation process.[67] Separate delivery rate credits will be applied to customer bills for electric service customers that are currently exempt from paying Energy Efficiency (EE) and Electric Heat Pump (EHP) program costs. Any differences in the make-whole amounts required to be collected and the actual amounts collected will be reconciled through the appropriate Company's Revenue Decoupling Mechanism.

Discussion

MI, PULP, and the Climate and Consumer Parties oppose the rate increases proposed in the JP as being too high and

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[65] JP, p. 11 and Appendix EE.

[66] JP, p. 12. The make-whole recovery periods for NYSEG (Electric and Gas) and RG&E (Gas) are longer than in past rate cases, in which the Companies recovered all RY1 revenue shortfalls by the end of RY1.

[67] JP, p. 12.

resulting in unaffordable rates.[68] MI states that the proposed delivery revenue increases, if approved, would be the highest, on a percentage basis, that have ever been authorized in the State.[69] MI is particularly critical of the fact that the proposed delivery rate increases are higher than those proposed in the JP from the prior rate case, which the Commission determined required modification due to the economic crisis related to the COVID pandemic. According to MI, the economic situation in the Companies' service territories is still "challenging" and ratepayers cannot afford the proposed increases now any more than they could have afforded them three years ago.[70] MI also questions the cost associated with the Companies' use of "outside services", which MI claims has grown at a concerning rate since 2016.[71]

Citing lingering economic impacts related to the COVID pandemic, PULP states that many customers already struggle to pay their utility bills and urges the Commission to require "direct outreach to residential customers due to the Company's [sic] proposed rate increases."[72] Insofar as the Customer Service provisions of the JP (discussed infra) already require the Companies to engage in outreach activities, and considering that PULP did not identify what assistance should be provided during its requested outreach or what benefit the additional

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[68] MI's Statement in Partial Opposition and Partial Support, pp. 6-35; PULP's Statement in Opposition, pp. 4-5; Climate and Consumer Parties' Statement in Opposition, pp. 20-21. See MI's Post-Hearing Brief, pp. 1-5.

[69] MI's Post-Hearing Brief, p. 2.

[70] MI Post-Hearing Brief, p.

[71] MI's Statement in Partial Opposition and Partial Support, pp. 27-29.

[72] PULP's Statement in Opposition, pp. 4-5.

outreach would provide to ratepayers, we decline to modify the JP to include a term requiring outreach beyond that which is already included.

The Companies and DPS Staff point out that the JP's recommended RY1 revenue requirement is lower than both the Companies' initial request and Staff's litigation position, representing a reasonably negotiated result by the Signatory Parties that is lower than the range of possible outcomes after litigation, as well as a significant concession by the Companies. In addition, the JP proposes a three-year rate plan that incorporates rate moderation, including levelization, which would not be possible in a litigated proceeding.

The Companies' initial filing, as amended in August 2022, requested a one-year revenue increase for NYSEG electric of $278.5 million,[73] DPS Staff originally proposed an increase of $220.5 million, and the JP reflects a RY1 increase of $204.0 million, before levelization.[74] For NYSEG gas, the Companies requested a one-year increase of $30.5 million, DPS Staff proposed an increase of $9.9 million,[75] and the JP reflects a RY1 increase of $9.5 million, before levelization.[76] For RG&E electric, the Companies requested a one-year increase of $95.5 million, Staff recommended an increase of $73.7 million,[77] and the JP reflects an increase of $71.9 million, before levelization.[78] Finally, for RG&E gas, the Companies requested a one-year increase of $33.1 million, Staff recommended an

[73] Hearing Exs. 63 (Attachment 4) and 140, p. 13.

[74] JP, p. 10 and Appendices A and D.

[75] Hearing Exs. 63 (Attachment 4) and 140, p. 13.

[76] JP, p. 10 and Appendices A and D.

[77] Hearing Exs. 63 (Attachment 4) and 140, p. 14.

[78] JP, p. 10 and Appendices A and D.

increase of $24.9 million,[79] and the JP reflects an increase of $21.6 million, before levelization.[80]

The Companies' need for revenue increases is attributable to, among other things, operation, and maintenance expenses, including revenue for EE and EHP programs; electric excess depreciation reserve (EDR) amortizations; major and minor electric storm costs; electric transmission and distribution vegetation management programs, including the danger tree and circuit reclamation programs; property taxes and sales and use taxes; and inflation.

For all four companies, the most significant identified driver for the proposed revenue requirement increases is the residual rate pressure resulting from rate moderation efforts in the Companies' current rate plans, approved in the 2020 Rate Plan to help ameliorate the bill impacts to ratepayers during the economic crises caused by the COVID pandemic. Notably, the 2020 Rate Plan modified the joint proposal filed in that case by, among other things, significantly reducing the annual base rate cost recovery for EE programs and vegetation management programs, and by extending the amortization of certain regulatory assets. As a result of those rate moderation efforts, many necessary costs to the Companies were deferred for future collection. Those costs cannot continue to be deferred indefinitely, however, and the JP proposes to recover some of those costs in the proposed three-year rate plan. In addition, the 2020 Rate Plan excluded certain plant investments and included the application, as rate moderators, of tax credits that are expiring and therefore unavailable for any further rate moderation. The Signatory Parties acknowledge that the proposed

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[79] Hearing Exs. (Attachment 4) and 140, p. 14.

[80] JP, p. 10 and Appendices A and E.

rate increases are significant and attest that they explored many options to moderate the impact to customers' bills, to the extent practicable, and have proposed various methods in the JP.

Many elements of the revenue requirement represent a compromise of various litigated positions and cannot be evaluated individually in a vacuum, as MI suggests. We find that the revenue requirement proposed in the JP compares favorably with the likely result of a litigated outcome. Moreover, the revenue requirements have been thoroughly scrutinized by DPS Staff and other parties and have been deemed by those parties to be reasonable to provide sufficient funding for the Companies to continue to maintain their systems, operate them safely, and deliver reliable service to customers. We agree. The revenues will fund capital projects, make improvements to information technology and billing systems, fund safety programs, and advance the State's CLCPA goals, among other things. We also note that, through settlement, the revenue requirements will fund programs that may not otherwise be possible through a litigated proceeding.

We are cognizant that the bill impacts described in the JP do not capture the full scope of charges that customers are responsible for paying in consideration of the various surcharges that are included on customers' bills. Several parties opined that having a full appreciation of bill impacts, including those surcharges, would enhance the record. While we acknowledge that some of those costs are outside the scope of the rate proceedings, we agree that such information could enhance the record, as well as the parties' and our own understanding of utility-related costs customers are facing. Therefore, when the Companies next file major rate cases, they are directed to file a comprehensive summary of all charges to be included on customers' bills and the associated impacts.

C. Capital Structure, Cost of Capital, and Disposition of Earnings

The JP proposes an allowed ROE of 9.2% and a capital structure with a common equity ratio of 48% for each of the businesses.[81] The JP also includes an earning sharing mechanism (ESM) pursuant to which ratepayers will share annual earnings exceeding 9.7%.[82]

For each Company's electric business, for earnings above the ESM thresholds in any year, the Company will apply 50% of its share to reduce its respective outstanding storm-related regulatory asset deferral balances, if any. In addition, for each Company's electric and gas business, for earnings above the ESM thresholds in any rate year, the Company will apply the full amount of the customers' share of earnings, which otherwise would have been deferred for the benefit of customers (see JP §VII), to reduce various outstanding regulatory asset deferral balances.[83]

Discussion

The opportunity to earn a fair return on a utility's prudently incurred infrastructure investments used to serve the public is a fundamental requirement of a rate order.

PULP argues that the JP's 9.2% ROE is not in the public interest, both by its amount relative to Staff's pre-filed testimony and because it is "fixed" over the three-year term of the rate plan. PULP attributes the JP's outcome, which it opposes, to what it believes to be a flawed multi-year settlement framework. PULP maintains that the Commission's settlement guidelines are outdated and have resulted in rate

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81 JP, p. 13.

82 Id.

83 JP, p. 14.

plans for the Companies that have created an additional delivery rate burden on customers of approximately $300 million since 2010. PULP cites a 10.0% ROE included in the Commission's 2010 rate order.[84] PULP notes that over the six years the Companies collected rates from the 2010 rate order, the Commission issued several rate orders for other utilities that included significantly lower ROEs. PULP maintains that had the 2010 NYSEG and RG&E rate plans required an annual recalculation of the ROE, customers would have experienced rate reductions.

Putting aside the negotiated nature of a joint proposal's ROE, PULP neglects to mention that the 2010 rate order explains that the ROE in that case was aligned with contemporaneous rate orders that were issued for Consolidated Edison Company of New York, Inc. (Con Edison) and Central Hudson Gas & Electric Corporation. Presumably, the Commission had issued rate orders that contained lower, and perhaps significantly lower, ROEs at some time prior to 2010 that were effective during the rise in Staff's recommendations. While it is unclear whether PULP has considered that a recalculation of a rate plan's ROE could allow for an increased ROE, as we see it, it is possible that a recalculated ROE in these cases could be higher, rather than lower, than Staff's pre-filed testimony recommendation. Because of this uncertainty, it cannot be said that the use of fixed ROE renders that term, let alone the entire proposed rate plan, contrary to the public interest.

PULP also neglects to recognize the Commission's authority and obligation to protect consumers from excessive rates. The Public Service Law requires both that utility rates be just and reasonable and that the Commission take corrective

[84] Cases 09-E-0715 et al., NYSEG and RG&E Rate Cases, Order Establishing Rate Plan (issued September 21, 2010).

action when it suspects that any previously allowed rate is no longer reasonable. To the extent that a utility is suspected of collecting excessive rates from customers, the Commission must require that utility to demonstrate why its rates are reasonable and should not be reduced.[85]

As for PULP's assertion that the fixed ROE is problematic and not in the public interest, we note that the JP's terms are negotiated in conjunction with all the other terms of the proposed rate plan. While it is possible that the settling parties considered an ROE adjustment mechanism, such a term was not included in the JP. Therefore, no fully developed proposal to establish an adjustable ROE is before us.

MI also contends that the ROE provided for in the JP is excessive. To support its position, MI notes that the ROE has increased by 40 basis points from the rate allowed in the Companies' previously adopted rate plans. While evidence of the allowed ROE in a utility's previous rate plan may be informative, it is not evidence as to whether the ROE proposed in a subsequent rate case is reasonable. Moreover, MI ignores the elements in the generic finance methodology. More informative, although also not dispositive, is the evidence offered by DPS Staff regarding ROEs most recently approved in other utilities' rate cases.

AARP New York similarly contests the JP's ROE as excessive and criticizes the Companies' testimony in which they posited that the JP's ROE was the bare minimum for what is

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[85] See Case 13-G-0136, National Fuel Gas - Rates, Order Instituting Proceeding and to Show Cause (issued April 19, 2013) (requiring National Fuel Gas to show cause why the company's rates should not be made temporary subject to refund while the Commission conducted a rate proceeding because it was suspected of achieving earnings in excess of a reasonable return).

required to access the debt and capital markets. According to AARP New York, the JP appears to use as a base ROE DPS Staff's recommendation included in its pre-filed testimony as calculated using the Generic Financing Methodology. AARP New York nevertheless complains that the Companies and Staff apparently rely on a combination of the base ROE and an undisclosed added amount as a "stay-out" premium as the primary evidentiary support for the JP's proposed ROE.

Staff's pre-filed testimony recommended a ROE of 8.85% as of September 2022, but Staff acknowledges in its Statement in Support that, since then, equity return recommendations in more recently filed rate proceedings generally have increased. In addition, the ROE constitutes one element of a negotiated rate plan to be evaluated in the context of the entire proposal under the public interest standard. Under the Commission's Settlement Guidelines, the public interest standard is applied to the entirety of the JP - not to each term individually. Although the Commission tends to favor negotiated ROEs that are demonstrated to be the product of the Generic Finance Methodology, such a showing is not required where the proposed ROE is supported by evidence to be just and reasonable and in the public interest. That standard is met in these cases.[36]

Public Service Law §65 requires the Commission to establish just and reasonable rates for the Companies. It is well settled that a public service utility cannot be deprived of the fair opportunity to earn a reasonable return on its investment, and that to do so is an unconstitutional

[36] Compare Case 16-G-0257, National Fuel Gas - Rates, Order Establishing Rates for Gas Service (issued April 20, 2017), pp. 52 - 58 (demonstrating how a fully litigated rate plan ROE was calculated in adherence with the Generic Financing Methodology).

confiscation of property.[87] Given the extensive evidence presented in this matter regarding the issue of a fair return, it cannot be said that the JP's negotiated provisions establishing an ROE of 9.20%, fixed over a three-year rate plan, are contrary to the public interest.

Finally, the fact that the proposed ROE is the result of a procedurally sound settlement process is important to note. The Settlement Guidelines Order provides context for the Commission's adoption of the Settlement Guidelines and that order contains a discussion of the scope of permissible settlement topics.[88] Notably, consideration was given to a provision that would have prohibited settling parties from conditioning a joint proposal on the Commission's full acceptance of the parties' negotiated terms for rate of return and rate design. Had the provision been included in the Settlement Guidelines, those two issues likely would have been fully litigated regardless of the willingness of the parties to settle. The Commission ultimately concluded that such a provision would have had a chilling effect on the settlement process, given how integral those terms are to a rate plan. The Commission nevertheless noted that, when offered in a JP, those two terms may be scrutinized to ensure that the settlement is, overall, in the public interest.

Here, the ROE and its resulting rate of return are clearly fair. The figure selected by the supporting parties falls well within the litigation bounds established in the pre-filed testimony and compares favorably to what likely would have been Staff's litigated position. This negotiated result is not

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[87] Matter of New Rochelle Water Co. v. Public Serv. Commn., 31 N.Y.2d 397, 407 (1972); Matter of Abrams v. Public Serv. Commn., 67 N.Y.2d 205, 212-15 (1986), supra.

[88] Settlement Guidelines Order.

entirely unexpected as the parties likely perceived some litigation risk, given that, in litigation, the Commission previously has favored Staff's ROE calculations that were based on the Generic Financing Methodology.[89] In addition, the JP's ROE compares favorably to the most recently adopted returns authorized in rate plans for Liberty Utilities (St. Lawrence Gas) Corp. and Con Edison.[90]

We consider the proposed ROE in the same manner by which we consider the other terms in the JP — as a whole, cognizant that each term in the proposal is the product of negotiation and may be a material element to one or more of the sponsoring parties. Absent a clear demonstration that a specific, negotiated term contained in a JP is unjust and unreasonable, the Commission is reluctant to require adjustments to individual terms. Given the foregoing, we so no reason to either modify the JP, or to remand the matters to the parties for additional proceedings on the JP's ROE or other cost of capital provisions.

D. Revenue Allocation and Rate Design

Inasmuch as the Signatory Parties could not reach an agreement concerning an embedded cost of service (ECOS) methodology, the revenue allocation proposed in the JP does not

[89] See Cases 20-G-0101 et al., Corning Natural Gas Corporation - Rates, Order Establishing Rates and Rate Plan (issued May 19, 2021), pp. 40 - 47.

[90] Cases 22-E-0064 et al., Con Edison - Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023) (adopting a 9.25% proposed ROE on a three-year rate plan); Case 21-G-0577, Liberty Utilities (St. Lawrence Gas) Corp. - Rates, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plan (issued June 22, 2023) (adopting a 9.20% proposed ROE on a three-year rate plan).

use or reflect an ECOS study sponsored by any party.[91] Rather, the Signatory Parties agreed to an allocation of revenue increases for individual service classifications, with separate allocations to service classes for EE and heat pump costs and residual revenue requirement allocations.[92] The Signatory Parties further agreed that the calculation of competitive service rates – the discount rates applicable to the merchant function charge, the purchase of receivables, and the bill issuance and payment processing charge – will be based on the ECOS studies filed by the Companies.[93]

No party opposes or otherwise takes issue with the agreed-upon revenue allocation or rate design provisions of the JP. In addition to DPS Staff and the Companies, Walmart, Nucor Steel, UIU, and MI each specifically support the revenue allocation results presented in the JP. We find that both the electric and gas revenue allocations and rate designs recommended in the JP are just and reasonable and in the public interest. The proposed revenue allocations and rate design are supported by the parties' ECOS studies, are more reasonable than what could have been achieved by using any one ECOS methodology, and fairly allocate revenue requirements among the service classes consistent with cost-of-service principles. We also find that the rate design and revenue allocation provisions are within the range of reasonable outcomes were the cases fully litigated.

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[91] JP, Appendix BB, pp. 1-2. See also JP, Appendices CC, DD, and EE.

[92] JP, Appendix BB, p. 2.

[93] JP, Appendix BB, p. 1; Hearing Exs. 71; 72 and 148, p. 47.

E. Electric, Gas, and Common Capital Expenditures and Net Plant Reconciliations

The JP's revenue requirements are based, in part, on forecast additions to and retirement from plant-in-service, which are derived from the Companies' capital expenditure plans for each Company's electric and gas businesses. The capital expenditure forecasts are contained in Appendix R to the JP. The JP supports planned electric capital spending for NYSEG of approximately $567 million in calendar year (CY) 2023, $728 million in CY 2024, and $781 million in CY 2025, and $824 million in CY 2026. For NYSEG gas expenditures, the JP anticipates the Company will spend approximately $80 million in CY 2023, $84 million in CY 2024, $80 million in CY 2025, and $74 million in CY 2026.

For RG&E, the JP provides for planned electric capital spending of approximately $256 million in CY 2023, $285 million in CY 2024, $297 million in CY 2025, and $258 million in CY 2026. For RG&E's gas expenditures, the JP anticipates capital spending of $68 million in CY 2023, $57 million in CY 2024, $64 million in CY 2025, and $64 million in CY 2026.

As for planned common capital investments, the JP anticipates NYSEG electric spending about $107 million CY 2023, $105 million in CY 2024, $75 million in CY 2025, and $81 million in CY 2026. For NYSEG gas, the JP anticipates spending of about $26 million in CY 2023, $26 million in CY 2024, $18 million in CY 2025, and $20 million in CY 2026. As for RG&E electric, the JP provides for about $37 million in CY 2023, $41 million in CY 2024, $34 million in CY 2025, and $35 million in CY 2026. For RG&E gas, the common capital budgets are approximately $15 million in CY 2023, $16 million in CY 2024, $13 million in CY 2025, and $14 million in 2026.

The JP adopts the Companies' initial proposal, which was supported by DPS Staff in its testimony, to share common plant costs between the electric and gas businesses at ratios of about 80%/20% electric/gas for NYSEG and 71%/29% electric/gas for RG&E.[94]

The downward-only net plant reconciliation mechanism currently in place under the 2020 Rate Plan is proposed to continue, with exception of two NYSEG gas projects (the Hebron Station/Line J Retirement Project and the Winney Hill Regulator Station Project), one RG&E gas project (the Mendon Gas Station), the resiliency categories for both Companies' electric businesses, and AMI at all four businesses. These expenditures will have individual downward-only net plant reconciliations with separate net plant targets, as well as separate status reporting requirements.[95]

As is common in utility rate plans, the JP provides the Companies flexibility to adjust their spending based on the need to modify the type, timing, nature and scope of its capital programs and projects to address evolving situations. This flexibility provides the Companies the ability to adjust its plans to maintain safe, adequate, and reliable service, especially where situations develop during a rate plan that require a shift in resources. To satisfy the Commission's oversight requirements and to assure the Commission that the capital expended is prudent and necessary to serve ratepayers, the JP provides for the continuation of the reporting requirements outlined in the 2020 Rate Plan but requires more details with respect to certain programs and projects.[96]

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[94] JP, Appendix GG. See Hearing Exs. 7, p. 76; and 162, p. 11.

[95] JP, p. 54.

[96] JP, pp. 56-60.

The net plant targets are based on the rate year electric and gas net plant amounts identified in Appendix S to the JP. The annual reconciliations are to be calculated separately for each of the four businesses, and the JP proposes requiring the Companies to defer for future ratepayer benefit the revenue requirement difference of the actual net plant balance to that of the established target values.

Discussion

Citing historical data from 2016 onward, MI takes issue with the proposed capital expenditures for NYSEG's electric business, stating that the proposed expenditures increase over the rate plan at "an extraordinary and alarming rate."[97] MI is concerned that the rising capital expenditures for NYSEG electric also is higher than the rise in capital expenditures for NYSEG gas as well as RG&E electric and gas. MI asserts that it did not evaluate the costs and benefits of all NYSEG's proposed capital expenditures, but nevertheless believes that the Company's ratepayers should not be expected to fund the level of increases proposed in the JP.[98] MI proposes that the Commission either identify capital projects to reject or postpone or establish different budgets for such projects.

While we understand MI's concerns regarding the amounts budgeted in the JP for the Companies' capital expenditures, this level of funding will allow the Companies to fund capital projects necessary to remedy deteriorating service quality and improve reliability, including various infrastructure repairs and replacements. These projects include those necessary to improve system resiliency and to advance

[97] MI's Statement in Partial Opposition and Partial Support, pp. 20-23.

[98] MI's Statement in Partial Opposition and Partial Support, p. 23.

targets identified in the CLCPA, as well as those necessary to comply with Federal Energy Regulatory Commission requirements.[99] Notably, the JP excludes various projects initially proposed by the Companies that were identified as being non-critical to immediate system reliability and safety needs or those that were not otherwise sufficiently justified by the Companies, thereby resulting in a lower capital expenditure budget than proposed by the Companies in their initial filings.[100] As compared to the Companies' original proposal, the JP capital expenditures budget for calendar years 2024 through 2026 is about $2.28 billion less for NYSEG and $280 million less for RG&E. Further, the JP's downward-only reconciliation mechanism will protect ratepayers from unnecessary costs by assuring that the Companies will not benefit from spending less capital than the forecasted amounts.

Finally, the JP requires the Companies to keep detailed records with respect to their calculations and methodologies used to estimate future gas capital projects and to provide this information in future rate cases.[101] This requirement not only addresses concerns raised by DPS Staff and others regarding the Companies' initial cost estimates in this case, but also will ensure that Staff is equipped to audit the Companies' capital project spending in future rate filings.

F. Storm Expenses

The JP reflects the recovery of previously deferred storm costs for each Company's electric business — approximately $371.0 million for NYSEG and $54.6 million for RG&E — composed of unamortized and unrecovered regulatory assets remaining from prior rate plans, as well as costs charged to the Major Storm

[99] JP, Appendix R, pp. 2, 6.

[100] See DPS Staff's Statement in Support, p. 82.

[101] JP, p. 60.

Reserve during the 2020 Rate Plan.[102] Remaining previously deferred storm-related regulatory assets, both major storm and non-major storm, are being amortized for future recovery.

The JP also increases the Companies' Major Storm rate allowance over the term of the Rate Plan to align the allowances with actual costs and to support the Companies' credit metrics. The Major Storm rate allowances for NYSEG Electric are: $31.5 million in RY1, $41.5 million in RY2, and $46.5 million in RY3.[103] For RG&E Electric, the Major Storm rate allowances are: $4.5 million in RY1, $6.0 million in RY2, and $7.6 million in RY3.[104] The Minor Storm allowance for NYSEG Electric is $4.9 million annually, and for RG&E Electric is $1.1 million annually.

Discussion

MI asserts that, while some increase in rate allowances for Major Storm costs "appears justifiable", the proposed increases are nevertheless substantial.[105] MI posits that, if these increases are a priority for the Companies, then other proposed rate drivers need to be "deprioritized" to maintain affordability.[106] If possible, MI believes that the increases proposed to storm costs should be moderated to mitigate customer rate impacts.

The Companies counter that the Major Storm cost increases proposed in the JP are reasonable and necessary, given the increasing level of storm activity. The Companies contend

[102] JP, §IX. See JP Appendix B, Schedule H, and Appendix D, Schedule H.

[103] JP, p. 19.

[104] Id.

[105] MI's Statement in Opposition, p. 24.

[106] Id.

that the increases provide an adequate level of funding that is better aligned with actual costs, while also modulating rate impacts to customers.[107] The Companies support the continuation of the Major Storm Reserve because restoration costs after unpredictable major storms can be significant and not always adequately able to be forecasted.[108]

For its part, DPS Staff recognizes that the major storm cost levels incorporated in the 2020 Rate Plan were not sufficient, which resulted in the build-up of substantial regulatory asset balances.[109] Staff asserts that the escalation of major storm allowances proposed in the JP is necessary to avoid the build-up of future regulatory asset balances by better aligning the Companies' allowances with actual costs.[110]

The increases proposed in the JP represent a compromise between the litigated positions of the Companies, which proposed to maintain rate allowances set in the 2020 Rate Plan ($25.60 million annually for NYSEG and $3.40 million annually for RG&E), and DPS Staff, which proposed to increase the allowances to $46.47 million annually for NYSEG and $7.55 million annually for RG&E.[111] Further, the increases better align funding levels with historic actual costs, which will result in more stable and predictable rates for customers. Therefore, we find that the proposed increases are in the public interest and reflect a reasonable balance between moderating rate impacts to customers and providing the Companies with an appropriate level of funding.

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[107] Companies' Statement in Support, p. 34.

[108] Id., p. 35.

[109] DPS Staff's Statement in Support, p. 29.

[110] Id., p. 27.

[111] Hearing Exs. 50, p. 36, and 140, p. 68.

G. Electric Vegetation Management

Electrical outages are commonly caused by trees or branches falling on power lines, and thus a robust vegetation management program (VMP) is necessary for maintaining overall system reliability and ensuring that customers receive safe, adequate service. Currently, RG&E's VMP consists of a five-year routine trimming cycle for the maintenance of all its circuits and a danger tree program to remove dead or dying trees deemed a hazard to its overhead power lines.[112]

NYSEG's VMP includes a five-year trimming cycle in the Company's Brewster Division, but it lacks a full routine trimming cycle elsewhere; it also has a danger tree program and a reclamation program targeting overgrown circuits that are "out of cycle" – i.e., those that have not been trimmed in more than five years.[113] The latter two programs were established in the 2020 Rate Plan, which increased NYSEG's total VMP budget from $30.0 million to $57.2 million.[114] Since then, tree related outages in the Company's service territory have decreased by approximately 8%, and NYSEG has reclaimed an additional 3,094 miles of circuits.[115] More specifically, 9,779 of NYSEG's 29,259 total system miles were out of cycle on May 1, 2023, compared to the 12,873 system miles that were out of cycle on December 31, 2019.[116]

Here, in their initial filings, the Companies

[112] Hearing Ex. 171, p. 12.

[113] Id., pp. 12-13; Hearing Ex. 54, pp. 8-9.

[114] 2020 Rate Plan, supra, pp. 77-78.

[115] Hearing Ex. 171, p. 15; Hearing Ex. 54, pp. 8-9; Hearing Ex. 381, p. 2.

[116] Hearing Ex. 54, pp. 8-9; Hearing Ex. 381, p. 2.

requested a total of $10.7 million for RG&E's VMP - $9.0 million for routine trimming and $1.70 million for danger trees – reflecting a minor increase in funding based on inflation.[117] For NYSEG, the Companies proposed that VMP funding be increased to $75.6 million, with $40.0 million allotted to routine trimming and additional services,[118] $10.8 million to the danger tree program, and approximately $25.0 million for continuation of the reclamation program.[119] The Companies also proposed that NYSEG transition to a system-wide, five-year full-cycle maintenance program, which it contended would be consistent with industry practices and improve service reliability for customers.[120]

Staff agreed with the foregoing funding levels for RG&E's VMP and for NYSEG's danger tree program, but recommended that the NYSEG routine trimming program, with the additional services, be funded at $35.0 million, and that its reclamation program be allotted $20.8 million.[121] Noting that many of NYSEG's circuits are presently trimmed on a cycle extending between 10 and 12 years, Staff also recommended that the Company move to a six-year full-cycle maintenance program rather than the proposed five-year cycle. According to Staff, this would reduce annual VMP expenses and enable NYSEG "to spread out the

[117] Hearing Ex. 171, pp. 8-9.

[118] Additional services include pruning, wood removal and hot spot trimming – where a limited area of vegetation is trimmed due to safety issues or consumer complaints – which are necessary to ensure reliability until reclamation is complete (Id., p. 19).

[119] Id., pp. 8-9.

[120] Hearing Ex. 54, pp. 6-8.

[121] Hearing Ex. 171, pp. 9-10.

remaining circuit miles to be reclaimed across an additional year."[122]

Although the Companies reiterated their assertion that a five-year routine trimming cycle would be preferable in rebuttal testimony,[123] the JP adopts Staff's recommendation of a six-year cycle.[124] More broadly, the JP would increase RG&E's VMP spending to $10.7 million in all three rate years, while NYSEG's would rise to approximately $66.0 million in RY1, approximately $68.0 million in RY2, and approximately $70.0 million in RY3.[125] To protect customers of both Companies, the JP continues a cumulative downward-only reconciliation for each component of the respective VMPs (i.e., the danger tree program, the reclamation program, or the routine trimming program, separately), such that any underspending from funding level targets will be deferred for use in subsequent rate years.[126]

The JP also requires that, beginning in calendar year 2023, any negative revenue adjustments (NRAs) assessed on NYSEG for failing to meet its System Average Interruption Frequency Index (SAIFI) performance metric will be used to accelerate the reclamation program.[127] In such an instance, NYSEG's reclamation program funding in the ensuing rate year would increase by the NRA amount, and the resulting increased funding level would be

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[122] Id., pp. 22-23.

[123] Hearing Ex. 105, p. 6.

[124] JP, Appendix I, p. 1. This would include the Company's Brewster Division, where circuits have shown considerable improvement and adding an additional year will enable NYSEG to focus attention on higher priority reclamation areas (Hearing Ex. 171, p. 25).

[125] JP, pp. 15-16.

[126] Id.

[127] Id.

subject to the cumulative downward-only reconciliation associated with NYSEG's reclamation program.[128]

Discussion

The Climate and Consumer Parties acknowledge the foregoing "substantial revenue increase in the VMPs" and characterize the reinvestment of SAIFI NRAs back into the reclamation program as a "good development," but nevertheless argue that NYSEG's[129] VMP is underfunded, as does AARP New York.[130] The Climate and Consumer Parties likewise claim that the record lacks adequate justification for a six-year routine trimming cycle at NYSEG.[131]

Contrary to both assertions, the JP's electric vegetation management provisions appropriately balance reliability concerns with the need to moderate rate increases, and they are consistent with prior Commission efforts to incrementally enhance NYSEG's VMP. In this regard, we echo Staff's observation that many of NYSEG's circuits have not been trimmed in over 10 years, and the transition to a six-year cycle, while a significant improvement, is itself a challenge. This is particularly so given the number of system miles that remain to be reclaimed, which the JP creatively seeks to accelerate as set forth above. We also agree that the NYSEG revenue increases are substantial; indeed, by year three of the rate plan that we approve today NYSEG's VMP spending will amount to $40.0 million more than 2020 funding levels, or a 133.0% increase. When viewed together, the higher investment in

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[128] Id.

[129] There is no controversy surrounding any aspect of RG&E's VMP.

[130] Climate and Consumer Parties' Statement in Opposition, p. 25; AARP New York's Statement in Opposition p. 12.

[131] Climate and Consumer Parties' Statement in Opposition, pp. 25-26.

reliability and extended trim cycle reflect a sensible approach for maximizing VMP benefits while minimizing rate impacts to the extent practicable. Accordingly, we find the JP's electric vegetation management provisions to be reasonable and in the public interest.

H. Earnings Adjustment Mechanisms

The JP contains four earnings adjustment mechanisms (EAMs): (1) solar distributed energy resource (DER) utilization MW (based on solar installations); (2) storage DER utilization MW (based on storage installations); (3) demand response (combined for the Companies and based on the amount of operationally available load relief measured in a given year in excess of a baseline); and (4) electric vehicle (EV) CO_2 reduction (based on tons of lifetime CO_2 reduced).[132] The total annual maximum incentive is 48 basis points for each Company across the four EAM categories, though the demand response EAM is combined for NYSEG and RG&E with a total maximum incentive of 12 basis points, such that NYSEG and RG&E cannot both achieve 48 basis points in the same year. The corresponding dollar values for the EAMs, as well as the details about each EAM measurement, achievement standard, target level, and applicable basis points, are set forth in Appendix X to the JP. Generally, if NYSEG attained the highest metric levels for each of the three electric EAMs, it would earn an additional $9.0 million in RY1, $10 million in RY2, and $11.10 million in RY3, and RG&E potentially would earn $5.30 million in RY1, $5.70 million in RY2, and $6.20 million in RY3.[133] For demand response, the Companies combined could earn an additional $2.60 million in

[132] JP §XXIII.

[133] JP, Appendix X, pp. 2-3.

RY1, $2.90 million in RY2, and $3.20 million in RY3 for attaining the highest metrics.[134]

Discussion

In their initial testimony, the Companies proposed 15 EAMs — six energy efficiency metrics, three DER utilization metrics, three peak load reduction metrics, and three beneficial electrification metrics – with a maximum incentive of 100 basis points for NYSEG and 96 basis points for RG&E.[135] DPS Staff rejected out of hand most of the EAMs proposed by the Companies, and suggested modifications to various proposed EAM metrics, including a reduction of the total maximum available basis points to 36 annually for each Company.[136] Thus, the four EAMs and associated performance levels proposed in the JP reflect a compromise between Staff and the Companies' respective litigation positions.

Nevertheless, MI argues that the proposed EAMs are contrary to the public interest and should be rejected.[137] MI opposes the EAMs because they are unnecessary considering CLCPA mandates regarding solar generation, storage capacity and other State policy goals with respect to demand reduction and EV adoption. According to MI, the EAMs therefore reward the Companies at customer expense for taking actions they already are required to do and provide general outcomes that already are required by the Commission and State law.[138] Specifically, MI notes that the solar DER EAM incentivizes the Companies based upon the amount of solar capacity that is installed and

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[134] JP, Appendix X, p. 4.

[135] Hearing Ex. 22, pp. 11-12.

[136] Hearing Ex. 46, p. 90.

[137] MI's Post-Hearing Brief, pp. 6-10.

[138] Id., p. 7.

interconnected in their service territories, which is an activity that DPS Staff acknowledged is already required by law and funded by ratepayers and developers.[139] MI makes a similar argument with respect to the storage DER EAM.[140]

With respect to the demand response EAM, MI notes that the Companies already administer a demand response program and takes issue with the fact that the Companies would get credit for ratepayer participation in the Companies' demand response programs as well as for participation of their customers in a demand response program administered by the New York Independent System Operator. MI also takes issue with the EV EAM, alleging that the Companies are not required to do anything to earn the EAM, since the Companies do not manufacture, sell, or otherwise market EVs. MI highlights that the Companies already have an opportunity to earn an EAM incentive for the installation of EV charging infrastructure through the Commission-mandated EV Make-Ready Program, which is a ratepayer-funded program, and the Companies also earn a return on equity on the installed infrastructure.[141]

In response, both the Companies and DPS Staff assert that the proposed EAMs appropriately incentivize the Companies to perform the identified activities at levels that exceed the

[139] Id., p. 7, citing Tr. 191-193, 191.

[140] Id., pp. 7-8.

[141] MI's Post-Hearing Brief, p. 9. See Case 19-E-0138, Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure, Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs (issued July 16, 2020). This additional 15-basis point EAM opportunity is acknowledged in the JP, Appendix X.

CLCPA-required minimum levels and, therefore, further the State's clean energy goals and are in the public interest.[242]

The Commission finds that, contrary to MI's assertions, the EAM incentives would not be available to the Companies for simply performing activities that they already are required to perform. Rather, the EAMs are paid to the Companies only if they achieve target levels that exceed the obligations imposed by existing state law and policy. As was testified to at the hearing, the Companies' revenue requirement is designed to provide sufficient funding for the Companies to meet baseline requirements.[243] The baselines for the proposed EAMs were identified based upon statewide policy goals, or the utilities' historical performance where a statewide goal has not been set, and the EAM target performance metrics were designed to exceed those baseline levels.[244] As an example, the baseline target for NYSEG solar connections for RY1 is 52.11 MW. To achieve the minimum level of solar DER EAM, NYSEG would need to reach 52.71 MW of installed solar in RY1 and would need to reach 73.86 MW to achieve the maximum EAM incentive.[245] Thus, the proposed EAMs will not reward the Companies for performing existing obligations but, rather, will incentivize the Companies to achieve performance levels that are beyond "business as usual."

The EAMs in the JP are the product of negotiation, within the range of outcomes in pre-filed testimony, and aligned with the State's clean energy goals, including the requirements set forth in the CLCPA. The proposed EAMs will provide

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[242] Companies' Post-Hearing Brief, pp. 8-10; DPS Staff Post-Hearing Brief, pp. 5-6.

[243] Tr. 225-228.

[244] Tr. 225-228, 233-234.

[245] Hearing Ex. 146, p. 44; JP, Appendix X, p. 7.

appropriate financial incentives for the Company to encourage greater penetration of solar energy generation and battery energy storage systems within the Companies' service territories, encourage additional participation and performance in demand response programs, and facilitate CO_2 emission reduction associated with the deployment of EVs in their territories.

Further, the EAMs recommended in the JP align with the Commission's stated preference for outcome based EAMs that encourage a broader range on beneficial effects, rather than focusing on discrete utility activities.[126] The proposed EAMs appropriately balance the interests of the ratepayers and the Companies' shareholders, as well as consider the environmental policy and goals of the State and align the Companies' business interests with such. Notably, none of the proposed EAMs conflict with findings in the Order Directing EE/Beneficial Electrification Proposals recently issued in Cases 14-M-0094 et al.[127] In this context, we find the EAMs in the JP are reasonable, and we adopt them as proposed.

I. Climate Leadership and Community Protection Act

The CLCPA requires the 2030 statewide total greenhouse gas (GHG) emissions levels to be 40% below 1990 levels, and the

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[126] See, e.g., Case 14-M- 0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016), pp. 61-65; Cases 16-M-0429 et al., Matter of Earnings Adjustment Mechanism and Scorecard Reforms Supporting the Commission's Reforming the Energy Vision, Order Eliminating Interconnection Earning Adjustment Mechanisms (issued April 24, 2019), p. 15.

[127] Cases 14-M-0094 et al., Clean Energy Fund, Order Directing EE/BE Proposals (issued July 20, 2023).

2050 GHG emissions levels to be 85% below 1990 levels.[148] The CLCPA further requires all State agencies to consider the impacts that any final agency actions will have on GHG emissions and disadvantaged communities (DACs). Specifically, pursuant to Section 7(2), all State agencies must consider whether their administrative approvals and decisions "are inconsistent with or will interfere with the attainment of statewide greenhouse gas emissions limits" established in ECL Article 75. Section 7(3) of the CLCPA requires all State agencies to ensure that their decisions will not "disproportionately burden disadvantaged communities" and to "prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities."[149]

In December 2022, the New York State Climate Action Council[150] released a Final Scoping Plan in which the Council makes recommendations on regulatory measures and other state actions for attainment of the statewide GHG emissions limits established by the CLCPA. The Final Scoping Plan states that the achievement of the CLCPA's emission limits will entail a substantial reduction of natural gas usage with a corresponding downsizing and decarbonization of the natural gas infrastructure system. The Final Scoping Plan notes that such gas reductions will require coordination among multiple sectors, including the buildout of local electric transmission and distribution systems

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[148] Environmental Conservation Law (ECL) §75-0107(1).

[149] The CLCPA defines "disadvantaged communities" as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111" of the ECL. The Climate Justice Working Group approved final disadvantaged communities criteria on March 27, 2023.

[150] See ECL §75-0103(13).

to meet anticipated increases in demand for electricity, increases to demand reduction measures for fossil natural gas, and the identification of strategic opportunities to retire existing pipelines as demand declines.[151] The Final Scoping Plan also recognizes, however, that investments in traditional infrastructure will still be necessary during the transition to decarbonized systems to maintain system reliability and safety, although it cautions against creating unnecessary stranded assets.[152]

The Commission has commenced various proceedings to implement policies and programs designed to achieve the CLCPA's objectives. For example, the Commission has funded programs to support the electrification of both heating load in buildings and the transportation industry, supported large scale and distributed clean energy project development, funded programs to reduce natural gas and electricity usage in the State, and instituted a coordinated planning process to evaluate local

[151] Final Scoping Plan, pp. 350-351.

[152] Id., p. 351.

transmission and distribution system needs to support the State's transition to renewable energy generation.[153]

In March 2020, the Commission commenced a generic gas planning proceeding, in which it seeks to ensure, among other things, that gas utilities implement improved planning and operational practices to meet customer needs, minimize infrastructure investments that may have long-term greenhouse gas emissions and ratepayer implications, and conduct such practices consistent with the CLCPA (Gas Planning Proceeding).[154] Thereafter, the Commission adopted the Gas System Planning Process Proposal filed by the Department of Public Service, with

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[153] See, e.g., Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015); Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016); Case 15-M-0252, In the Matter of Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Gas Energy Efficiency Portfolios for Implementation Beginning January 1, 2016 (issued June 19, 2015); Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020); Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020)(2020 NENY Order); Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order on Phase 1 Local Transmission and Distribution Project Proposals (issued February 11, 2021); Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (issued September 9, 2021).

[154] See Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Instituting Proceeding (issued March 19, 2020), pp. 4-10.

modifications to reflect stakeholder input.[155] Among other things, the Gas Planning Proceeding Order requires the utilities to file long-term plans that include demand forecasts incorporating energy efficiency, electrification, demand response and non-pipe alternatives (NPAs), as well as reporting GHG emissions for all proposed solutions to meeting gas supply and demand. The order established a flexible and transparent gas system planning process that includes significant stakeholder participation to ensure that gas utilities continue to provide safe and reliable gas service while reducing gas infrastructure and GHG emissions in a manner consistent with the CLCPA.[156]

In May 2022, the Commission also established a proceeding to monitor progress made in meeting the CLCPA's decarbonization targets, review existing Commission policies, and develop new policies to further the goals of the CLCPA.[157] The Commission directed the State's major electric and gas utilities to work with DPS Staff to develop proposals for a GHG Emissions Inventory Report that includes an inventory of total gas system-wide emissions and an assessment of direct and indirect GHG emissions, and a GHG Emissions Reduction Pathways Study that analyzes the scale, timing, costs, risks, uncertainties, and customer bill impacts of achieving

[155] Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Adopting Gas System Planning Process (issued May 12, 2022)(Gas Planning Proceeding Order).

[156] Gas Planning Proceeding Order, pp. 29, 35-37.

[157] Case 22-M-0149, In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Protection Act, Order on Implementation of the Climate Leadership and Protection Act (issued May 12, 2022)(CLCPA Implementation Order).

significant and quantifiable reductions in GHG emissions from the use of gas delivered by the utilities. In addition, the Commission directed "all Utilities in future rate filings to include an assessment of the GHG emissions impacts of each specific investment, capital expenditure, program, and initiative included in their rate filings."[158]

The Commission continues to address policy concerns regarding the achievement of CLCPA goals in other generic proceedings. For example, in September 2022, the Commission initiated a proceeding to fulfill the objectives of the Utility Thermal Energy Network and Jobs Act, which was enacted into law on July 5, 2022.[159] In doing so, the Commission recognized that it is essential to transition away from natural gas use in New York's building stock to reduce or eliminate GHG emissions from combustion of fuels in buildings to meet CLCPA goals in a way that ensures continuation of safe and reliable utility service. Among other things, the Commission directed the State's seven largest utilities to submit for Commission review between one and five proposed pilot thermal energy network projects, with each utility to propose at least one of the projects in a disadvantaged community.[160]

Discussion

The Climate and Consumer Parties maintain that the JP does not adequately demonstrate compliance with the CLCPA. They note that, although the JP was filed four years after the

[158] CLCPA Implementation Order, p. 16.

[159] Case 22-M-0429, Proceeding on Motion of the Commission to Implement the Requirements of the Utility Thermal Energy Network and Jobs Act, Order on Developing Thermal Energy Networks Pursuant to the Utility Thermal Energy Network and Jobs Act (issued September 15, 2022) (Thermal Energy Network Implementation Order).

[160] Thermal Energy Network Implementation Order, pp. 10-12.

State's adoption of the CLCPA, the Companies have made no progress toward greenhouse gas reductions. While the Climate and Consumer Parties acknowledge that the Companies have "slowed their gas growth" over that period, the parties contend that slowed growth alone does not constitute sufficient CLCPA compliance in 2023. The Climate and Consumer Parties claim that because the gas utilities' primary business is to deliver methane, the CLCPA necessitates that the Companies significantly change the trajectory of their business.

The Climate and Consumer Parties cite the Final Scoping Plan to note that heat pumps are anticipated to make up most new purchases for space and water heating by 2030, with an increasing market share thereafter. These parties discuss the expectation laid out for electrification in the State, as represented in a NYSERDA press release along with a Governor's statement that the Department of Public Service should strive to ensure that gas utilities minimize gas infrastructure investments and demand and engage disadvantaged communities in the gas transition.

In addition, the Climate and Consumer Parties cite the Final Scoping Plan's recommendations regarding new building and energy codes and the expectation that by 2050 "nearly every building" will be all electric. The parties also cite the Final Scoping Plan's recommendation that the Department lead the development of a coordinated plan to meet GHG emissions reductions targets, including developing utility specific plans for reductions in both emissions and customer sales. The Climate and Consumer Parties rest their opposition to the JP largely on their contention that the JP maintains the status quo and fails to incorporate an emissions inventory. The Climate and Consumer Parties maintain that the Companies' Natural Gas and Grid Modernization Study demonstrates that the utilities are not on track for meeting the CLCPA mandates for their gas businesses.

The Climate and Consumer Parties also challenge the JP as being noncompliant with the CLCPA's provisions regarding the impact of agency decisions on DACs. The parties maintain that the CLCPA requires agencies to ensure that their actions do not "worsen the burdens on disadvantaged communities" and that agencies prioritize reductions of GHG emissions and co-pollutants in such communities. AARP New York and PULP similarly oppose the JP maintaining that it fails to address CLCPA §7(3)'s provisions regarding disadvantaged communities. However, these two parties rely on the alleged disproportionate economic burden the JP's rate increases place on DACs rather than on a GHG emissions burden.

We find the arguments related to the JP's CLCPA compliance advanced by the opposition parties to be conclusory and lacking a comprehensive analysis. Notably, despite their numerous citations to the CLCPA in support of their arguments, the parties omit any citation to or discussion of the Public Service Law in either their initial opposition statements or their various replies. As some of these parties acknowledge, however, this issue is not one of first impression in rate proceedings and the same arguments have been advanced during the evaluation of other joint proposals that have been adopted since the CLCPA's enactment. As the Commission repeatedly has explained, our application of the CLCPA to the actions before us cannot be done in a vacuum but, rather, must be balanced against and consistent with the legal mandates of the Public Service Law, which requires the provision of safe and reliable service at just and reasonable rates.

In arguing that the Companies or Commission are not doing enough to reduce gas usage from the Companies' system, the

Climate and Consumer Parties focus only on supply. Inasmuch as their arguments ignore the demand or customer side of the equation — and the utilities' and Commission's corresponding legal obligations to provide safe and reliable service in response to all reasonable service requests[161] — they have not demonstrated that the JP's provisions are contrary to the public interest. The utilities simply cannot legally refuse gas utility customer service requests. In fact, PSL §30 specifically states that the provision of gas service to any residential customer without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest.

Despite acknowledging it as an achievement, the Climate and Consumer Parties downplay the significant slowing of gas growth on the Companies' systems as not representing compliance with the CLCPA. However, the question posed by the CLCPA is not whether gas utilities are reducing gas transmission and distribution, but whether an agency's action is consistent with the CLCPA greenhouse gas emission goals and, if inconsistent, has the agency adequately justified its action. We find that adopting the JP here is consistent with the CLCPA.[162] It takes reasonable actions consistent with all the currently applicable and relevant statutes and ensures a proper course of action is being taken that can address any legislative changes and existing legal obligations.

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[161] PSL §§30, 31. See also Transportation Corporations Law §12.

[162] However, even were such adoption inconsistent, it is not prohibited by the CLCPA because the need to provide gas in a safe and reliable manner to customers who are entitled to it by law for essential purposes such a home heating, cooking meals, and other essential daily living tasks is justified as a matter of law pursuant to Public Service Law §§65, 30, and 31.

As Staff observes in its Statement in Support, "[w]hile the Companies must by law provide gas and electric service to all who request it, the Joint Proposal commits NYSEG and RG&E to reducing the environmental impact of the utility service they provide to customers."[163] The Joint Proposal reduces, as much as legally permissible, the Companies' expansion of gas service, while maintaining its infrastructure at a level necessary to meet their Public Service Law obligations. At the same time, it provides the means for the Companies to facilitate the increased need for electrification infrastructure to assist in the transition to increased reliance on renewable energy options.

For electric, the Joint Proposal diversifies the Companies' energy efficiency portfolios, establishes a streetlight dimming pilot program, supports the development of non-wires alternative projects to avoid or defer conventional transmission and distribution infrastructure, provides for the establishment of battery energy storage systems, and institutes electric vehicle charging make-ready work. For gas, the Joint Proposal supports the Companies' efforts to reduce natural gas end-use through energy efficiency programs and promotes the pursuit of NPA projects to avoid or defer conventional natural gas infrastructure investments.[164] Based on the foregoing, the JP supports the attainment of the CLCPA's emissions reductions goals.

Contrary to the arguments made, the JP does not disproportionately impact DACs. First, the CLCPA does not

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[163] DPS Staff's Statement in Support, p. 12.

[164] Pages 16 - 18 of the Companies' Statement in Support contains a comprehensive list of the JP's provisions supporting the CLCPA's emissions goals and the Commission's findings herein that the JP is consistent with CLCPA §7(2).

require agencies to determine whether its action produces some impact on DACs. Instead, CLCPA §7(3) requires that agencies assess any impacts to determine whether its action creates a disproportionate burden on DACs. As the Commission has stated, it will adopt a JP consistent with the CLCPA where the proposed rate plan allows the utility at issue to continue providing safe and reliable service and the impact of the proposed rate plan is consistent with ratemaking and revenue allocation principles.[165] Moreover, the JP provides for the same type of consumer protections to low- and moderate-income customers as JPs which we previously have found consistent with the CLCPA's DAC provisions. The JP here provides for bill payment assistance consistent with the Commission's Energy Affordability policy to help offset the impacts of the rate increases. Finally, the JP does not fund capital projects that create disproportionate construction or operational burdens on DACs. As such, the adoption of the JP before us is consistent with CLCPA §7(3).[166]

1. Energy Efficiency and Heat Pump Program Costs

MI takes issue with the level of funding in the JP for NYSEG's electric EE and EHP program costs.[167] In its criticism of the JP's inclusion of significant funding for the Companies' EE programs, MI notes that such funding is collected through the Companies' rates and that such amounts are in addition to amounts paid by ratepayers for NYSERDA's energy efficiency

[165] See Case 19-G-0309 et al., The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid - Rates, Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements (issued August 12, 2021), p. 81.

[166] See id., pp. 81-82.

[167] MI's Statement in Partial Opposition and Partial Support, pp. 25-27.

programs through the System Benefits Charge. MI contrasts the escalated program cost increases for RG&E's programs, which it considers to be "moderate", with NYSEG's, which MI asserts are proportionally much larger year-over-year. MI complains that the inclusion in the rate plans of such substantial funding for the programs at a time when ratepayers already are facing substantial increases, due in large part to the prior rate plan, is asking too much of the Companies' customers.

MI is careful not to challenge the inclusion of EE and EHP in the Companies' rate plans and does not challenge the inherent value of such programs. Instead, MI focuses on the impact of the costs being passed on to customers during the term of the rate plan. This is an important distinction to note inasmuch as these programs are necessary to achieve the State's and the Commission's long-term energy efficiency goals and climate change measures. The Commission recently reviewed its general energy efficiency requirements and budget directives and affirmed the importance of continuing both the NYSERDA and utility roles in achieving the State's energy efficiency and electrification goals serving necessary functions for reaching the CLCPA's GHG emission reduction targets.[168] In the July 2023 EE Order, the Commission also set budgets for the utilities through 2025. The Joint Proposal's budgets are within the expected range required to make progress toward the Commission and State's energy efficiency goals. As such they are adopted.

The Commission explained in its 2018 Order Adopting Accelerated Energy Efficiency Targets that its overarching principle in adopting accelerated targets with the necessary

[168] Case 18-M-0084 et al., Comprehensive Energy Efficiency Initiative, Order Directing Energy Efficiency and Building Electrification Proposals (issued July 20, 2023)(July 2023 EE Order), pp. 58-72, 87-89.

corresponding increases in cost recovery is to support the State's aggressive GHG emission reduction goals while prioritizing cost-effectiveness in program administration and implementation.[169] The Commission recognized that achieving the levels of efficiency required by the State Energy Plan would necessarily require efforts beyond sustaining program commitments at their historic funding levels.[170] The work started by the Commission has only elevated in importance given the State's adoption of the CLCPA in 2019. We acknowledge the burdens faced by ratepayers as the important work of combating climate change effects continues and note that the Commission is advocating for options to find contributions to help offset some of the expected costs that are to come.[171]

Here, we cannot say that the JP's budgets are not warranted, let alone that they are excessive. In adopting the 2020 Rate Plan, the Commission noted that because of the uncertainties surrounding the nascent COVID-19 pandemic the JP established budgeted amounts for Energy Efficiency and Heat Pumps that were 85% of the levels required by the Commission's Energy Efficiency Order "with the difference allocated to the post-Rate Plan period."[172] In addition, the Commission capped collections at the levels established for the first rate year of the 2020 Rate Plan.[173] We decline to take similar action here where this Order demonstrates clearly the negative ratepayer

[169] Case 18-M-0084, Comprehensive Energy Efficiency Initiative, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018), pp. 15-16.

[170] Id., p. 18.

[171] July 2023 EE Order, pp. 87-94.

[172] 2020 Rate Plan, p. 47

[173] Id., pp. 52-54.

impact such deferred collections can have in the future and where the impacts from the pandemic are better understood.

J. Safety and Reliability

1. Electric Reliability

The JP contains three Electric Reliability Performance Measures (ERPMs): a system-wide frequency performance metric measured by the SAIFI; a system-wide duration performance metric measured by the Customer Average Interruption Duration Index (CAIDI); and a Distribution Line Inspection (DLI) Program metric for Level II deficiencies.[72] Under the JP, the Companies retain the right to petition the Commission to request that non-utility control outages be exempt from SAIFI and CAIDI calculations. The ERPM target levels, associated NRAs, and applicable reporting requirements are set forth in Appendix K to the JP.

The target levels and NRAs for RG&E were not disputed in testimony and remain the same as set in the last rate case. With one exception, NYSEG's target levels and associated NRAs adhere to Staff's testimonial position by keeping the target levels and NRAs the same as in the last rate case. As requested by NYSEG in pre-filed testimony, however, NYSEG's Tier II SAIFI metric target level is adjusted from the current target level of 1.26 to 1.37. In addition, as discussed in more detail later in this Order, beginning in calendar year 2023, any NRA assessed on NYSEG for failing to meet its SAIFI metric will be used to

[72] JP, p. 20. Level II deficiencies represent electric system conditions that are likely to fail prior to the next inspection cycle and represent a threat to safety and/or reliability should a failure occur prior to repair. Case 04-M-0159, Proceeding on Motion of the Commission to Examine the Safety of Consolidated Edison Company of New York, Inc.'s Electric Transmission and Distribution Systems, Order Adopting Changes to Electric Safety Standards (issued December 15, 2008), p. 16.

accelerate NYSEG's reclamation program, as requested by NYSEG in testimony.[175]

No party contests the JP's electric reliability provisions. The Companies maintain that the adjustment to NYSEG's Tier 2 SAIFI target more accurately reflects current circumstances, which they say have changed significantly since the target was originally set 20 years ago, and will continue to be a challenge for NYSEG to meet.[176] The SAIFI target levels and treatment of NRAs are the result of compromise between the Companies and DPS Staff and fall within the range of reasonable litigation outcomes.[177] We approve and adopt the JP's electric reliability provisions as reasonable and in the public interest because they maintain the Companies' focus on electric safety and reliability.

2. Gas Safety

a. Gas Safety Performance Metrics

The JP continues the Companies' gas safety performance mechanisms for leak backlog management, emergency response times, damage prevention, leak prone main (LPM) retirement, and compliance with various gas safety regulations and procedures.[178] Each Company would be subject to a maximum annual potential NRA of 150 basis points for failing to meet the minimum levels of pipeline performance standards and would have the ability to earn a maximum of 16 basis points in PRAs annually for exceeding the targeted levels.[179] Within sixty days after the end of each

[175] JP, p. 17 and Appendix L.

[176] Companies' Statement in Support, p. 39.

[177] See Hearing Ex. 5, pp. 30-40, 101-102; Hearing Ex. 77, pp. 20-22; and Hearing Ex. 133, pp. 128-131.

[178] JP, p. 20 and Appendix L.

[179] JP, Appendix L, pp. 1-4.

calendar year, the Companies each would file with the Secretary a report on gas safety performance for the prior calendar year period.

For the leak management metric, the JP establishes total annual leak backlog targets (Types 1, 2, 2A, and 3) of 30 for each Company in each of calendar years 2023, 2024 and 2025. The Companies will incur an NRA of 15 basis points in each calendar year they miss those target levels. The JP also provides for the continuation of PRAs, up to a maximum of six basis points annually for achieving a total leak backlog between zero and three. The leak management program is more aggressive than the current annual target of 100 total leaks. The metrics and applicable NRAs and PRAs will benefit ratepayers by improving system safety and will benefit the environment by resulting in lower methane emissions.

The proposed emergency response performance mechanism maintains the current statewide emergency response targets and promotes public safety by incentivizing the Companies to respond quickly to emergency reports. The Companies each must respond to a minimum of 75% of emergency reports within 30 minutes, 90% within 45 minutes, and 95% within 60 minutes. The mechanism includes NRAs of 12, eight and five basis points, respectively, for failure to achieve those targets. Under defined circumstances, certain emergency reports resulting from mass area odor complaints, major weather-related events, or major equipment failure that are not caused by the Companies may be excluded from the metric.

The proposed damage prevention performance mechanism, designed to protect and prevent damage to natural gas pipes, establishes a tiered approach combining all damage prevention categories in a single measure applicable to calendar years 2023 through 2025. For a damage rate from 2.01 to 2.25 per 1,000 one-call notifications, the Companies would incur an NRA of five basis points; for a damage rate from 2.26 to 2.50, the Companies would incur an NRA of 10 basis points; and for a damage rate greater than 2.50, the Companies would incur an NRA of 20 basis points. To encourage further improvements, the Companies can earn PRAs of up to a maximum of 10 basis points for meeting stricter targets set forth on page 4 of Appendix L.

For the LPM removal metric, the Companies each must remove a minimum of 30 miles of LPM in 2023, 27 miles in 2024, and 24 miles in 2025. Failure to meet the annual target will subject the applicable Company to an NRA of 15 basis points. If a Company does not meet an annual target, it may satisfy the LPM removal metric by removing a cumulative of 81 miles of LPM for calendar years 2023 through 2025; failure to meet that cumulative target would subject the Company to an NRA of 45 basis points. The JP eliminates PRAs previously available under the LPM mechanism. In addition, the JP expressly recognizes that the Companies can satisfy the LPM metric by any method that terminates use of the LPM while still serving the customer, including the use of non-pipe alternatives. The metric requires the use of a risk-based prioritization model, ensures that the Companies' on-site inspection efforts will be commensurate with their LPM removal targets, and allows for the Companies to count removal of pre-1971 wrapped steel to meet the LPM removal metric by providing Staff with adequate justification and supporting documentation.

The Companies state that the proposed LPM targets will allow them to replace all remaining cast/wrought iron and bare steel main by 2030.[180] We agree with the Companies that the proposed LPM removal targets appropriately balance their

[180] Companies' Statement in Support, p. 40.

obligation to maintain a safe and reliable gas distribution system with the interest to mitigate cost impacts on customers and the State's goals to decrease greenhouse gases from the environment.

The metric for non-compliance with certain gas pipeline safety-related regulations, as identified in Staff field and record audit letters, establishes targets for "high risk" and "other risk" categories and associated NRAs for exceeding those thresholds. The Companies are subject to NRAs of up to a maximum of 75 basis points per year. Violations subject to a separate penalty proceeding are not included in this metric. The JP identifies procedures for the Companies to cure record deficiencies, detail actions they have taken or will take to remediate identified instances of non-compliance, and dispute Staff's conclusions as to non-compliance or appropriateness of NRAs. The metric provides a strong financial incentive for compliance with minimum pipeline safety regulations and promotes the safe and reliable operation of the Companies' natural gas systems.

b. Other Gas Safety Provisions

The JP also requires the Companies to continue to work with Staff, local fire departments, and emergency management organizations to adopt the principles of the Pipeline Emergency Responders Initiative and to conduct scenario and hands-on drill training for first responders.[181] In addition, the JP requires the Companies to continue their Residential Methane Detection (RMD) programs, funded by NRAs to the extent available, to provide RMDs to targeted customers, starting with residential Home Energy Assistance Program (HEAP) recipients.[182] These

[181] JP, pp. 36-37.

[182] JP, pp. 21-23.

provisions, as well as other gas safety provisions related to inside service line inspections, the treatment of inactive accounts, and outside meter relocations and pilot program, appropriately foster public health and safety and, in certain instances, helps reduce costs to customers.

K. Customer Service Provisions

1. Customer Service Performance Metrics

The JP includes the following customer service quality metrics for each Company: PSC Complaint Rate, based on the number of escalated complaints per 100,000 customers; Customer Satisfaction Survey; Call Answer Rate, measured by the percent of calls answered in 30 seconds by a customer service representative; and Percent of Estimated Bills.[183] Specific target levels and associated NRAs are listed on page 2 of Appendix P.

The JP imposes more stringent metric targets for Estimated Bills to reflect the Companies' implementation of AMI, which DPS Staff states will "eliminate the need for estimated bills."[184] Otherwise, the JP maintains metric targets at levels established in the 2020 Rate Plan, which is the result of compromise among the signatory parties compared to the testimonial positions of the Companies, DPS Staff and UIU.

With respect to the PSC Complaint Rate metric, the JP requires the Companies to address the current backlog of complaints by assembling an internal team and using external customer service venders at shareholder expense to augment Company staff until the Companies complaints have reached target levels for a minimum of five months.[185] In addition, the JP

[183] JP, pp. 26-31 and Appendix P.

[184] DPS Staff's Statement in Support, p. 46.

[185] JP, Appendix P, p. 4.

requires the Companies to take measures to address employee turnover in their call centers, including working with working with IBEW on solutions. The JP also requires the Companies to report the results of Customer Satisfaction Survey obtained through both telephone calls and emails as a blended survey mechanism, rather than through telephone calls alone.[186]

In testimony, the Companies proposed to maintain the current NRA amounts of up to a maximum of $9.5 million for NYSEG and $5.9 million for RG&E and to continue assessing NRAs in dollar amounts rather than in basis point values.[187] The JP, however, adopts DPS Staff's and UIU's testimonial positions to assess NRAs in pre-tax basis points and adopts DPS Staff's recommendation for a combined electric and gas basis point value.[188] Under the JP, NYSEG is subject to NRAs of up to a combined electric and gas basis point level of 69.52 basis points in CY 2023, or approximately $20.3 million, and up to 76 basis points in CY 2024, or approximately $25.0 million. RG&E is subject to a combined electric and gas basis point level of 68.93 basis points in CY 2023, or approximately $12.9 million, and up to 76 basis points in CY 2024, or approximately $15.4 million. The basis point values for the Companies' CY 2025 NRAs depend on their performance from May 2023 through CY 2024.[189] If the Companies fail to meet a single metric target during that time period, each Company will remain subject to NRAs of up to

[186] JP, Appendix P, p. 5.

[187] Hearing Ex. 20, p. 23; Hearing Ex. 67, pp. 14-15.

[188] Hearing Ex. 144, p. 38; Hearing Ex. 527, pp. 13-14, 22.

[189] The May 2023 date is used because RY1 begins on May 1, 2023. The metric targets for customer service established by the 2020 Rate Plan therefore would apply from January 2023 through April 2023. Under the JP, the applicable NRA dollar values for that period have been converted to basis points. Appendix P, p. 2.

76 basis points for CY 2025. If the Companies meet all metric targets for that time period, each Company will be subject to a maximum NRA of 60 basis points in CY 2025, or approximately $21.7 million for NYSEG and $13.0 million for RG&E. Under the JP, subject to certain conditions, NRAs for an individual metric will be doubled for CYs 2024 and 2025 if the Company misses any target levels for that particular metric for two consecutive calendar years.

The JP's customer service performance metrics provide reasonable targets and more stringent earnings consequences, as well as imposing additional requirements on the Companies, where appropriate, to improve the experience of the Companies' customers. These provisions fall within the range of results that could have been expected if these cases were litigated and are in the public interest.

2. Negative Revenue Adjustments for CYs 2021 and 2022

The Companies failed to meet certain customer service performance metric targets established under rate plans approved by the Commission in 2016[190] and in the 2020 Rate Plan. With respect to the customer service performance metrics established by the 2016 Rate Order, the Companies failed to meet the maximum target levels for their Estimated Meter Reads metric in CY 2020. The Companies requested a waiver of the associated NRAs of $1.4 million for NYSEG and $900,000 for RG&E, asserting that their failure to meet the metric targets resulted from impacts from the COVID-19 pandemic because they discontinued reading indoor meters during the pandemic. The Commission granted the petition on the ground that, after considering the "Companies'

[190] Cases 15-E-0283 et al., NYSEG and RG&E – Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued June 15, 2016) (2016 Rate Order).

performance from prior years and the other utilities' performance, it [was] clear that the COVID-19 pandemic ... had an impact on the Companies' actual Percent of Estimated Meter Reads performance in calendar year 2020" in "ways that could not be foreseen at the time the metrics were developed."[191]

With respect to the metrics established by the 2020 Rate Plan, as relevant here, the Companies failed to meet target levels established for their Percent of Estimated Bills metric in CY 2021 and for all four customer service performance metrics in CY 2022, subjecting them to NRAs of $16.5 million in 2021 and $16.9 million in 2022. The Companies' petitions requesting waivers of those NRAs, which also attribute their inability to meet the applicable target levels to the COVID-19 pandemic, are pending before the Commission in the 2020 rate case dockets.

In testimony, DPS Staff recommended that those NRA amounts be used to moderate rates in these cases pending the Commission's determination of the Companies' waiver petitions.[192] The Companies disagreed, asserting that the more appropriate assumption would be that the Commission would grant their pending waiver requests, making the NRA amounts unavailable to moderate rates, because those waivers requests, like the earlier waiver request granted by the Commission, were based on impacts from the COVID-19 pandemic.

Under the JP, the Companies agree to withdraw their pending petitions for waiver of the NRAs associated with their performance on customer service metrics in 2021 and 2022 and to "use the deferred regulatory liabilities for 2021 NRAs ($1.65 million) and 2022 NRAs ($16.92 million) for rate moderation

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[191] Cases 15-E-0283 et al., supra, Order Granting Petition to Waive Certain Customer Service Revenue Adjustments, (issued August 20, 2021), pp. 2, 11.

[192] Hearing Ex. 144, p. 21; see also, Hearing Ex. 67, p. 6.

during the term of the Rate Plan[s]."[193] We agree with the Companies and DPS Staff that this provision should be adopted as beneficial to customers.

3. Protections During Periods of Extreme Cold and Heat

The JP continues and enhances protections for customers during the cold weather period of November 1 through April 1 (Cold Weather Period), including (1) continued or restored service regardless of the amount due and/or the customer's payment status when a HEAP payment has been accepted by the Companies during the Cold Weather Period; (2) treating acceptance of any Regular and Emergency HEAP payment as entitling the customer to a fair a reasonable deferred payment agreement (DPA) regardless of any previous DPA defaults; (3) continuing a voluntary moratorium on winter terminations for customers whose accounts are coded as elderly, blind, or disabled; and (4) refraining from scheduling service terminations in a geographic operating region on days when the wind chill values as shown on www.weather.gov are at or below freezing temperature (32 degrees) in that geographic operating region.[194] The last provision expands the current cold weather protection, which applied only on days when the temperature was forecasted to be at or below freezing, addressing concerns raised in testimony by UIU.[195] These provisions will mitigate health and safety risks to residential customers facing service terminations during cold weather.

The JP modifies the current extreme heat protections provided by the Companies by requiring the Companies to suspend residential terminations in a geographic operating region on

[193] JP, p. 45.

[194] JP, pp. 35-36.

[195] Hearing Ex. 527, pp. 19-20.

days when temperatures are forecast at or above 85 degrees in that geographic operating region.[196] PULP had recommended various changes to the Companies' current extreme heat protections,[197] which prohibited residential terminations for non-payment during a heat advisory when the heat index is forecasted at 95 degrees for two or more consecutive days and/or when the heat index is forecasted at 100 degrees for one or more consecutive day. Although the JP does not adopt PULP's specific recommendations, the extreme heat protection provisions appropriately protect customers from the loss of utility service when cooling may be necessary for customers health and safety during periods of extreme heat.

4. Senior Study

Pursuant to the 2020 Rate Plan, the Companies conducted a study to identify potential partnerships for senior customer outreach concerning energy efficiency opportunities, low-income discounts, and other senior customer-related opportunities. The JP requires the Companies to implement the following actions that were recommended as part of that study: (1) increase marketing and communications for the Low-Income Home Energy Assistance Program, including partnering with organizations like AARP and the New York State Office for Aging that service seniors to identify opportunities to better reach this demographic; (2) communicate programs and services through digital and traditional means, including modifying outreach to target email and text messages regarding programs available to seniors; and (3) work with various age-specific groups to offer efficiency rebates, programs and services.[198] These provisions

[196] JP, p. 36.

[197] Hearing Ex. 500, pp. 66-67.

[198] JP, pp. 37-38.

will allow the Companies to improve outreach to senior customers about relevant services and programs.

L. Energy Affordability Program and Low-Income Assistance

The Companies did not request or propose changes to their respective low-income programs in their initially filed testimonies, since any changes to these programs are anticipated to be made in the Commission's generic Energy Affordability Proceeding.[199] Thus, the JP proposes to continue the Companies' Energy Affordability Programs (EAP), which are fully described in Appendix P, with proposed budgets of $27.5 million for NYSEG and $23.0 million for RG&E.

EAP eligibility will include all HEAP grant recipients, as well as any customer who is denied a HEAP grant but self-enrolls in EAP by providing confirmation (via a HEAP grant denial letter) that they are HEAP-eligible.[200] The Companies will continue to file-match with the Office of Temporary and Disability Assistance (OTDA) and automatically enroll any matching customer. In addition, the JP proposes to expand EAP eligibility to any customer who provides proof of enrollment in a myriad of low-income assistance programs, including Supplemental Security Income, Supplemental Nutrition Assistance Program, Medicaid, and Veteran's Pension and Survivor Benefits. EAP participants are referred to NYSERDA's Empower program for energy efficiency and/or budget counseling, or similar programs.

The monthly bill discount levels proposed in the JP are consistent with the guidance in the Energy Affordability

[199] See generally Case 14-M-0565, Energy Affordability Proceeding, Order Instituting Proceeding (issued January 9, 2015).

[200] JP, Appendix P, p. 8.

Proceeding and will be recalculated and adjusted annually as necessary to maintain the budget cap and energy burden for customers that is consistent with the guidance in the Energy Affordability Proceeding.[201]

In addition, the JP proposes to expand the Companies' outreach activities related to the EAP to include, at a minimum, outbound call campaigns, bill messages, EnergyLines bill inserts, website posts, e-mail, and interactive voice response messaging. The Companies will also expand community, agency, and municipal outreach to ensure new groups of low-income or vulnerable customers are aware of assistance programs and payment options. To identify new groups of potentially eligible customers, the Companies will compare EAP participation by county against census information to identify areas where additional outreach may be necessary in communities with lower-than-expected EAP enrollment.

In response to Staff's recommendation, the Companies' Arrears Forgiveness Program (AFP) will be phased out over the term of the Rate Plan as enrolled customers complete, default, or voluntarily remove themselves from the program.[202] New enrollments in the AFP will be discontinued 30 days after a final order in these proceedings.[203] Funding previously used for this program will be used to maintain the bill discount levels for EAP customers.[204]

Notably, no party opposes or challenges these provisions of the JP. We find that the JP's provisions regarding EAP are reasonable and advance the public interest.

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[201] JP, Appendix P.

[202] JP, p. 40.

[203] JP, p. 40.

[204] Hearing Ex. 144, pp. 85-86.

The JP appropriately implements the parameters set forth in the Energy Affordability proceeding, by, among other things, continuing the OTDA file-matching process to automatically enroll qualified customers, and by expanding eligibility criteria and outreach activities. These provisions will extend bill-paying assistance to more customers who may struggle to afford their utility bills, while ensuring that the Companies comply with the requirements of the Energy Affordability Proceeding.

M. Management and Operations Audit

Public Service Law §66(19) requires the Commission to conduct management and operations audits every five years on the State's gas and electric corporations. The audits are specifically directed at the utility's construction program planning in relation to the needs of its customers for reliable service, an evaluation of the efficiency of the utility's operations and recommendations with respect to the same, and the timing with respect to the implementation of such recommendations, with the authority to investigate any other relevant matters. The Commission must include its findings as to a utility's compliance with the Commission's directions and recommendations made as a result of the most recent management and operations audit in its order when that utility has filed for a major rate increase.[205] This section details our findings.

During these proceedings, Staff provided testimony regarding NYSEG and RG&E's compliance with the recommendations resulting from its management and operations audits. In that testimony, Staff noted that the Companies were subject to a 2013 audit, for which the Companies have completed implementation of the recommendations, a 2016 audit for which the Companies are

[205] PSL §66(19)(a) and (c).

currently implementing recommendations, and a 2018 audit that is still pending. Staff reports that under Case 13-M-0449, which focused on internal staffing levels and the use of contract labor for certain core functions, the Commission directed the Companies to implement 15 recommendations that were in the final audit report.[206] Since the Companies' last rate proceedings, the Companies have completed implementation of those recommendations, as acknowledged by an April 22, 2020 letter to the Companies from the DPS Director for the Office of Accounting, Audits and Finance.

The final report for the Companies' most recent comprehensive management and operations audit in Case 16-M-0610 was issued February 7, 2019. It contained 83 recommendations which the Commission ordered the Companies to implement.[207] Staff notes that the Companies have fully implemented 81 of those recommendations, with compliance for one of the outstanding recommendations currently under Staff review and the other scheduled to be completed in 2024.

In addition, the Companies were included in the Commission's operations audit regarding the income tax accounting practices of several utilities in Case 18-M-0013.[208]

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[206] Case 13-M-0449, Focused Operations Audit of the Internal Staffing Levels and the Use of Contractors for Selected Core Utility Functions, Order Approving Implementation Plans (issued December 15, 2017).

[207] Case 16-M-0610, NYSEG and RG&E - Comprehensive Management and Operations Audit, Order Approving an Implementation Plan (issued August 8, 2019).

[208] See Case 18-M-0013, Focused Operations Audit to Investigate the Income Tax Accounting of Certain New York State Utilities, One Commissioner Order Approving and Issuing the Request for Proposals Seeking a Third-Party Consultant to Perform Audits to Investigate the Income Tax Accounting of Certain New York State Utilities (issued January 11, 2018) (confirmed by order issued January 22, 2018).

This income tax accounting audit is focused on allegations of errors related to income tax accounting, whether ratepayers received the benefit of lower income tax expenses in rates as a result of the alleged errors, and whether correcting adjustments were accurate, reasonable, and consistent with the Commission's accounting rules, tax rules, and policies. The income tax audit has produced no recommendations as of the date of this Order.

Based on the foregoing, we determine that the Companies have demonstrated satisfactory compliance with the Commission's directives resulting from the most recent management and operations reports that have been issued and adopted. No further action is necessary at this time. The Companies remain subject to the Orders that have been issued in the cases identified in this section to the extent that those Orders have continuing obligations.

VI. CONCLUSION

Based upon the record, we find that the JP appropriately balances the interests of ratepayers, the Companies, and their investors. The JP contains a significant revenue reduction from the Companies' initial rate request, while still providing sufficient funding for them to maintain safe and reliable service and attract the necessary capital to ensure their long-term viability. The terms of the JP are consistent with the Commission's environmental, social, and economic policies, as well as those of the State, including the CLCPA. Accordingly, consistent with our discussion in this Order, we find that the rate plans adopted herein provide just and reasonable rates, terms and conditions and are in the public interest.

The Commission orders:

1. The rates, terms, conditions, and provisions of the Joint Proposal dated June 14, 2023, filed in these proceedings, and attached hereto as Attachment 1, are adopted and incorporated herein to the extent consistent with the discussion herein.

2. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are directed to file cancellation supplements, effective on not less than one day's notice, on or before October 17, 2023, cancelling the tariff amendments and supplements listed in Attachment 2.

3. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are directed to file, on not less than five days' notice, to take effect on November 1, 2023, on a temporary basis, such tariff changes as are necessary to effectuate the terms of this Order for Rate Year 1, the twelve-month period ending April 30, 2024, and are further directed to file, within 30 days of the date of this Order, all necessary revised Appendices to the Joint Proposal, including, but not limited to, CC, EE, and FF to reflect the Multi-Year Rate Plan established by this Order.

4. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation shall serve copies of their filings on all active parties to these proceedings. Any party wishing to comment on the tariff amendments may do so by electronically filing its comments with the Secretary to the Commission and serving its comments upon all active parties within 10 days of service of the tariff amendments. The amendments specified in the compliance filings shall not become effective on a permanent basis until approved by the Commission and will be subject to refund if any showing is made that the revisions are not in compliance with this Order.

5. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are directed to file such further tariff changes as are necessary to effectuate the terms and provisions for Rate Year 2, the twelve-month period ending April 30, 2025, and for Rate Year 3, the twelve-month period ending April 30, 2026. Such changes shall be filed on not less than 30 days' notice to be effective on a temporary basis until approved by the Commission.

6. The requirements of the Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 that newspaper publication be completed prior to the effective date of the amendments for Rate Year 1 are waived; provided, however, that New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation shall file with the Secretary to the Commission, no later than six weeks following the effective date of the amendments, proof that a notice to the public of the changes set forth in the amendments and their effective date has been published once a week for four consecutive weeks in one or more newspapers having general circulation in their service territories. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 are not waived for tariff changes necessary to implement the rate plans in Rate Years 2 and 3, or with respect to tariff filings in compliance with this Order made in subsequent years.

7. 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.

8. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are directed to file a comprehensive summary of all charges to be included on

customers' bills and the associated impacts when they next file major rate cases.

9. These proceedings are continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

JOINT PROPOSAL ATTACHMENT 1

BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service	Case 22-E-0317
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Gas Service	Case 22-G-0318
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service	Case 22-E-0319
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Gas Service	Case 22-G-0320

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JOINT PROPOSAL

June 14, 2023

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JOINT PROPOSAL

I. INTRODUCTION

This Joint Proposal ("Proposal," "Joint Proposal" or "Rate Plan") is made this 14th day of June 2023, by and among New York State Electric & Gas Corporation ("NYSEG"), Rochester Gas and Electric Corporation ("RG&E," and together with NYSEG, the "Companies"), the New York State Department of Public Service Staff ("Staff"), Convergent Energy and Power, LP, International Brotherhood of Electrical Workers, Local Union 10, Multiple Intervenors, the New York Power Authority, Nucor Steel Auburn, Inc., Utility Intervention Unit of the Division of Consumer Protection at the Department of State, Walmart Inc., and other parties whose signature pages are or will be attached to this Proposal (collectively referred to herein as the "Signatory

Parties").[1] This Proposal settles all contested issues among the Signatory Parties in the above-captioned cases except as otherwise noted herein and/or on the signatory page for each respective signatory.

This Proposal reflects extensive and ongoing efforts of the Signatory Parties to balance the competing interests of affordability and the obligation to provide safe and reliable service for customers. The Signatory Parties acknowledge the significant challenge associated with balancing rising costs to maintain safe and adequate service, affordable rates, and the state's forward-looking energy policies. This Joint Proposal seeks to achieve that balance while also addressing residual rate pressures to avoid creating undue future rate pressure for customers.

II. PROCEDURAL HISTORY

The Companies are operating under the Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, With Modifications that established the terms of a three-year and 14-day electric and gas rate plan for the period from April 17, 2020 through April 30, 2023 ("2020 Rate Plan"). On May 26, 2022, the Companies filed new tariff leaves and testimony with the New York State Public Service Commission ("Commission" or "PSC") in support of proposed increases to their respective electric and gas delivery revenues to become effective on May 1, 2023. Consistent with Commission practice, two administrative law judges ("ALJs") were appointed to conduct the rate proceedings to review the Companies' rate filings. Parties to these proceedings engaged in extensive discovery and the Companies responded to nearly 1,300 multi-part discovery requests.

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1 To the extent a Signatory Party is not signing on to the Joint Proposal in its entirety, it is indicated on their signature page.

On August 15, 2022, the Companies filed an update to their May 26, 2022 filing. On or around September 26, 2022, Staff and other parties filed testimony in response to the Companies' filings. The Companies filed rebuttal testimony on October 18, 2022. Staff and other parties also filed rebuttal testimony on October 18, 2022.

Consistent with the Commission's Settlement Guidelines[2] and Title 16 of the New York Codes, Rules and Regulations ("NYCRR"), Section 3.9, the Companies filed with the Commission and served on all parties a Notice of Impending Settlement Negotiations on October 19, 2022. On October 19, 2022, the Companies also requested that the evidentiary hearing that had been scheduled to commence on November 2, 2022, be postponed by 60 days to allow the parties time to negotiate a settlement. As part of their request, the Companies agreed to a 60-day extension of the suspension period through and including June 20, 2023, subject to a make-whole provision that would keep the Companies and their customers in the same financial position they would have been absent the extension. By Notice Rescheduling Evidentiary Hearing issued on October 25, 2022, the evidentiary hearing was postponed until January 3, 2023.

Settlement negotiations began on November 2, 2022, and continued on November 30, 2022; December 21, 2022; January 25 and 26, 2023; February 9, 2023; April 4 and 19, 2023; and May 3, 8, and 9, 2023. The settlement negotiations also included numerous additional "working group" meetings on specific issues that were held with the consent of all parties.[3] All negotiations were held either in person or via videoconference (with teleconference capabilities),

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[2] 32 NYPSC 71, Cases 90-M-0255 et al. - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (Mar. 24, 1991) ("Settlement Guidelines").

[3] There were over 50 working group meetings.

or both. All settlement negotiations were subject to the Commission's Settlement Guidelines and 16 NYCRR § 3.9, and appropriate notices for all negotiating sessions were provided.

By letter dated December 22, 2022, the Companies requested a further 60-day postponement of the evidentiary hearing and agreed to further extend the suspension period through and including August 19, 2023, subject to a make-whole provision. Pursuant to the Notice Rescheduling Evidentiary Hearing issued on December 22, 2022, the evidentiary hearing was postponed until March 6, 2023. By letter dated February 16, 2023, the Companies requested a further 30-day postponement of the evidentiary hearing and agreed to further extend the suspension period through and including September 18, 2023, subject to a make-whole provision. Pursuant to the Notice Rescheduling Evidentiary Hearing issued on February 22, 2023, the evidentiary hearing was postponed until April 17, 2023. By letter dated April 11, 2023, the Companies requested a further 30-day postponement of the evidentiary hearing and agreed to further extend the suspension period through and including October 18, 2023, subject to a make-whole provision. Pursuant to the Notice Postponing Evidentiary Hearing issued on April 13, 2023, the evidentiary hearing was postponed until further notice.

On April 20, 2023, the Commission issued an Order on the Extension of Maximum Suspension Period of Major Rate Filings granting the extension of the suspension period through and including June 30, 2023, and granting the make-whole from April 22, 2023 until the Commission issues a final rate decision in these proceedings.

The parties' settlement negotiations were successful and resulted in this Joint Proposal, which is presented to the Commission for its consideration. The Signatory Parties have developed a comprehensive set of terms and conditions for three-year rate plans for NYSEG and RG&E electric and gas services. The terms of this Joint Proposal, as set forth below and in the attached Appendices, balance the varied interests of the Signatory Parties including, but not limited to, maintaining and improving system reliability, mitigating rate impacts to customers, and advancing state policy and climate goals.[4]

III. TERM AND EFFECTIVE DATE OF RATE CHANGES

The Companies filed tariffs for these rate cases with the expectation that, following the Commission's statutory suspension period, they would become effective on May 1, 2023. During the period from May 1, 2023 to the date new tariffs are implemented, the Companies will be made whole as noted in Section V.D.

The Rate Years ("RY") for purposes of this Proposal will coincide with calendar months. The term of this Proposal is three years, commencing May 1, 2023 and continuing through April 30, 2026. For purposes of this Proposal, Rate Year 1 ("RY1") means the 12-month period starting May 1, 2023 and ending April 30, 2024; Rate Year 2 ("RY2") means the period starting May 1, 2024 and ending April 30, 2025; and Rate Year 3 ("RY3") means the period starting May 1, 2025 and ending April 30, 2026.

Various provisions in this Proposal will reflect a Rate Year basis while others will reflect a calendar year basis. Except as otherwise specified herein, all provisions of this Proposal will remain in effect until superseding rates and related terms become effective.

IV. ACTIONS PURSUANT TO THE CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

The Proposal contains provisions consistent with, supportive of, and in furtherance of the objectives of the Climate Leadership and Community Protection Act ("CLCPA").[5]

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4 Appendices A through JJ are appended to and expressly incorporated by reference into this Proposal.

5 Chapter 106 of the Laws of 2019.

The Companies may be affected during the Rate Plan by new measures implemented pursuant to the CLCPA and any related proceedings, requirements, regulations, proposals or activities.

A. CLCPA and Disadvantaged Communities Report

The Companies will file a report with the Commission on the data enumerated in subsections (1) through (4) below within 120 days of the end of each Rate Year. Each report will include a narrative discussion of the data reported on, including how the Companies tracked and collected the data, any assumptions relied on in the report and, for energy efficiency and building electrification programs marketed by the Companies, descriptions of the Companies' efforts to reach disadvantaged communities and low income customers, including program implementation and outreach strategies targeted towards such populations. The Companies will begin compiling the information required by this section within 90 days of a final Commission order approving this Proposal.

For purposes of this annual report, the Companies will use the disadvantaged community criteria required by the Commission for the relevant program at the time of reporting.

1. Clean Energy Spending

For each of their energy efficiency and building electrification programs, including new programs instituted during the period covered by this Proposal, the Companies will report the information identified below:

a. Total number of incentive dollars spent;

b. Total number of incentive dollars spent in disadvantaged communities;

c. Total energy savings achieved;

d. Total energy savings achieved in disadvantaged communities;

e. Total number of participants;

f. Total number of participants in disadvantaged communities;

g. Average savings and incentives by participant;

h. Average savings and incentives by participant in disadvantaged communities;

i. Total installations by measure category (i.e., System Energy Efficiency Plan) and Clean Heat Annual Report categories); and

j. Total installations by measure category in disadvantaged communities.

2. Electric Vehicle ("EV") Make-Ready Program ("MRP")

For light-duty and medium- and heavy-duty EVs, the Companies will report the:

a. Total amount of MRP incentive funding spent;

b. Total amount of MRP incentive funding spent in disadvantaged communities; and

c. Total number of EV charging plugs under the MRP installed in disadvantaged communities.

3. Demand Response ("DR")

For each of the Companies' demand response programs, the Companies will report:

a. Total program participants per DR program;

b. Total program participants in disadvantaged communities per DR program;

c. Total demand response (in MW) committed and delivered per DR program;

d. Total demand response (in MW) committed and delivered by participants; and

e. Total demand response (in MW) committed and delivered by participants in disadvantaged communities and low-income customers participating in the Companies' Energy Affordability Programs.

4. Distributed Energy Resources ("DER")

For distribution-interconnected DER projects, including community distributed generation, remote crediting, and net-metered projects, the Companies will report:

a. Total number of projects;

b. Total number of projects in disadvantaged communities;

c. Total capacity installed (in MW); and

d. Total capacity installed (in MW) in disadvantaged communities.

For all community distributed generation and remote crediting projects, the Companies will report:

a. Total number of subscribers; and

b. Total number of subscribers who are low-income customers participating in the Companies' Energy Affordability Programs.

For all net metering projects, the Companies will report:

a. Total number of projects;

b. Total number of projects installed for low-income customers participating in the Companies' Energy Affordability Programs;

c. Total number of projects in disadvantaged communities;

d. Total capacity installed (in MW);

e. Total capacity installed (in MW) for low-income customers participating in the Companies' Energy Affordability Programs; and

f. Total capacity installed (in MW) in disadvantaged communities.

If in a different proceeding the Commission orders the Companies to report on data covered in this Section IV.A, the Companies will follow the form and content of the reporting required by the Commission in that proceeding for the relevant data.

V. REVENUE REQUIREMENTS

The Signatory Parties agree to the rate changes for each of the Companies for the Rate Years described in this Proposal and the Appendices incorporated herein. The Signatory Parties expressly note that the Companies' revenue requirements and base delivery rates include costs for Energy Efficiency ("EE") programs and Heat Pump programs that are administered by the Companies. In addition, the revenue requirements in this Proposal continue to reflect the impacts of the Tax Cut and Jobs Act of 2017 as shown in Appendices B, C, D, E, and J.

Customers taking electric service from the Companies that are currently exempt from paying EE and Electric Heat Pump program costs will continue to receive an exemption from costs associated with EE and Heat Pump programs through a delivery rate credit that will be listed on those customers' bills.

A. NYSEG Electric and Gas Rate Levels

1. NYSEG Electric Revenue Requirement

The dollar amount and percentage increase in NYSEG Electric delivery revenue requirements, with and without levelization, are shown on Appendix A.[6] The delivery revenue requirement increases to be implemented for NYSEG Electric were levelized in RY1, RY2, and RY3 as depicted in Appendix A. NYSEG Electric's levelized revenue requirements for RY1, RY2, and RY3 are also shown on Appendix B.

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[6] Appendix A also includes the overall rate increase with and without rate levelization (subject to the make-whole provision in Section V.D. Individual service class rates and bill impacts will differ for all businesses (NYSEG Electric, NYSEG Gas, RG&E Electric, and RG&E Gas) from Appendix A to reflect changes associated with specific rate designs identified in Appendices BB, CC, DD and EE.

2. NYSEG Gas Revenue Requirement

The dollar amount and percentage impact on NYSEG Gas delivery revenue requirements, with and without levelization, are shown on Appendix A.[7] The delivery revenue requirement increases for NYSEG Gas for RY1, RY2, and RY3 are depicted in Appendix A. NYSEG Gas's levelized revenue requirements for RY1, RY2, and RY3 are also shown on Appendix C.

B. RG&E Electric and Gas Rate Levels

1. RG&E Electric Revenue Requirement

The dollar amount and percentage increase in RG&E Electric delivery revenue requirements, with and without levelization, are shown on Appendix A.[8] The RG&E Electric delivery impacts have been levelized in RY1, RY2, and RY3 as shown on Appendix A. RG&E Electric's levelized revenue requirements for RY1, RY2, and RY3 are also shown on Appendix D.

2. RG&E Gas Revenue Requirement

The dollar amount and percentage impact on RG&E Gas delivery revenue requirements, with and without levelization, are shown on Appendix A.[9] The RG&E Gas delivery impacts have been levelized in RY1, RY2, and RY3 as shown on Appendix A. RG&E Gas's levelized revenue requirements for RY1, RY2, and RY3 are also shown on Appendix E.

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[7] See id.

[8] See id.

[9] See id.

C. Description of Revenue Requirement

The major provisions and narratives describing the key issues driving the NYSEG and RG&E Electric and Gas Revenue Requirements are provided in Appendix F, including electric and gas common allocation factors, which are also provided in Appendix GG.

D. Make-Whole Provisions

Commission approval of RY1 rates will occur after May 1, 2023. The Companies have requested, and the Signatory Parties have agreed to, a make-whole provision whereby the Companies will recover shortfalls and refund over-collections such that the Companies and their customers would be in the same position had RY1 rates gone into effect on the effective date of May 1, 2023.[10] Revenue adjustments to NYSEG Electric and RG&E Electric delivery rates resulting from the make-whole provision for the period May 1, 2023, through the date at which new rates are effective, plus interest at the pre-tax weighted average cost of capital, will be recovered or refunded through separately stated delivery revenue make-whole rates for NYSEG Electric and RG&E Electric, as reflected in Appendix CC. Revenue adjustments for NYSEG Gas and RG&E Gas delivery rates resulting from the make-whole provision for the period May 1, 2023, through the date at which new rates are effective, plus interest at the other customer capital rate, will be recovered or refunded through separate delivery revenue make-whole rates for NYSEG Gas and RG&E Gas, as reflected in Appendix EE. The make-whole rates by service classification will be shown in separate statements to be included in each Company's respective tariff. The make-whole rates will be in effect for each business as follows:

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[10] Revenue adjustments for delivery rates for the make-whole period will be calculated as the difference between: (1) delivery revenues NYSEG and RG&E would have billed at RY1 delivery rates during the make-whole period; and (2) delivery revenues billed at current delivery rates during the make-whole period.

- The make-whole rates will be in effect from the date rates become effective in this proceeding through April 30, 2026, for NYSEG Electric and RG&E Electric, at which point the make-whole rates shall expire.
- The make-whole rates will be in effect from the date rates become effective in this proceeding through April 30, 2025, for RG&E Gas, at which point the make-whole rates shall expire.
- The make-whole rates will be in effect from the date rates become effective in this proceeding through April 30, 2024, for NYSEG Gas, at which point the make-whole rates shall expire.

Separate delivery rate credits on the make-whole amounts will be applied to customer bills for those customers taking electric service from the Companies that are currently exempt from paying EE and Electric Heat Pump program costs. Any differences in the make-whole amounts required to be collected and the actual amounts collected will be reconciled through each Company's Revenue Decoupling Mechanism ("RDM").

Revenue adjustments for competitive services rates, (i.e., the administrative and credit and collections components of Merchant Function Charges, and the credit and collections component of Purchase of Receivables Discount Percentages) resulting from the make-whole provision for the period May 1, 2023 through the date at which new rates are effective, will be reconciled through each respective rates' annual reconciliation process.

VI. RETURN ON EQUITY, COMMON EQUITY RATIO, AND COST OF LONG-TERM DEBT

The allowed rate of return on common equity ("ROE") for NYSEG Electric, NYSEG Gas, RG&E Electric, and RG&E Gas (individually, "Business" and collectively, "Businesses") will be 9.20%. The common equity ratio for setting rates for each Business will be 48.00%. The long-term cost of debt for setting rates for NYSEG will be 3.81% in RY1; 4.05% in RY2; and 4.16% in RY3. The long-term cost of debt for setting rates for RG&E will be 4.33% in RY1; 4.42% in RY2; and 4.59% in RY3.

VII. EARNINGS SHARING MECHANISM

A. Earnings Sharing Levels

The Earnings Sharing Mechanism ("ESM") applicable to each Business will be based on Rate Year ESM thresholds as set forth in the following table and as further described below:

Customers / Shareholders	Earned ROE
No Sharing	ROE ≤ 9.70%
50%/50%	ROE > 9.70% and ≤ 10.20%
75%/25%	ROE > 10.20% and ≤ 10.70%
90%/10%	ROE > 10.70%

The first 50 basis points (between 9.20% ROE and 9.70% ROE) will be the deadband threshold with no sharing. One-half of the revenue requirement equivalent of the first additional 50 basis points of any shared earnings above 9.70% but less than or equal to 10.20% will be deferred for the benefit of customers and the remaining one-half of any such earnings will be retained by the Companies. Customers and the Companies will share (75/25, respectively) the revenue requirement equivalent of the next 50 basis points of any shared earnings (in excess of 10.20% but less than or equal to 10.70%). Customers and the Companies will share (90/10, respectively) the revenue requirement equivalent of all other shared earnings equal to or in excess of 10.70%.

B. Disposition of Earnings

For each Company's Electric business, for earnings above the related ESM thresholds in any Rate Year, the Company will apply 50 percent of the Company's share to reduce its respective outstanding storm-related regulatory asset deferral balances to the extent such balances exist.

To help minimize future residual rate pressure, for each Company's Electric and Gas businesses, for earnings above the related ESM thresholds in any Rate Year, the Company will apply the full amount of the customers' share of earnings above the sharing threshold that would otherwise be deferred for the benefit of customers under this Section VII, to reduce the Company's respective outstanding regulatory asset deferral balances. For each Company's Electric business, the customers' share of earnings will first be applied to their respective outstanding storm-related asset deferral balances and then to their respective vegetation management deferral balances and unfunded future income tax. Any additional sharing will remain as a deferred regulatory liability for future disposition by the Commission.

For each Company's Gas business, the customers' share of earnings will be applied to their respective NPA Lansing regulatory asset deferral balance and unfunded future income tax or remain as a deferred regulatory liability for future disposition by the Commission.

In the event the amount of shared earnings available to reduce their respective outstanding regulatory asset deferral balances exceeds the amount of such deferred balances, the Companies will defer such excess as a regulatory liability for the future benefit of customers until final disposition is determined by the Commission.

C. Common Equity Ratio

For purposes of determining earnings above the earnings sharing threshold, ROE calculations for each Business will reflect the lesser of: (1) each Company's aggregate actual average common equity ratio; or (2) 50 percent. Each Company's common equity ratio will be calculated based on a 13-month average excluding Other Comprehensive Income.

D. Applicability to Future Years

The earnings sharing thresholds set forth herein for each Company will continue for future Rate Years at the same levels identified for RY3 until new delivery rates and terms are set by the Commission. Such calculations will continue to be performed on a Rate Year basis in the same manner as set forth above.

E. Annual ESM Compliance Filings

The Companies shall compute and submit to the Secretary to the Commission the ROE for NYSEG Electric, NYSEG Gas, RG&E Electric, and RG&E Gas consistent with the methodology set forth in Appendix G.

VIII. ELECTRIC VEGETATION MANAGEMENT

The NYSEG Electric distribution vegetation management spending, which includes the Reclamation Program and Danger Tree program, will increase to a total of approximately $66 million in RY1 and will include the elements noted below. NYSEG Electric routine distribution vegetation management spending will be approximately $34 million in RY1. In addition, NYSEG Electric will continue its distribution vegetation management Reclamation Program with planned spending of approximately $21 million in RY1. The distribution vegetation management expenditures for the Reclamation Program will be used to reclaim the circuits identified in Attachment 1 to Appendix I. In addition, NYSEG Electric will continue its Danger Tree program to address danger trees outside of the distribution right-of-way, including but not limited to, ash trees. The planned spending for NYSEG Electric's Danger Tree program is approximately $11 million in RY1. NYSEG's Reclamation and Danger Tree program costs will continue to be deferred and amortized, but over the term of the Rate Plan NYSEG will begin transitioning away from current levels of deferral and amortization to provide more current cost recovery for these programs, as shown in the table below.

NYSEG Electric	$ Thousands		
	RY 1	RY 2	RY 3
Current Recovery:			
Routine	$34,235	$35,263	$36,320
Reclamation	-	1,000	2,000
Danger Tree	6,300	7,620	9,000
Total - Current	**$40,536**	**$43,883**	**$47,321**
Deferred Recovery - Amortized Over 10 years:			
Routine	$ -	$ -	$ -
Reclamation	20,752	20,375	20,016
Danger Tree	4,500	3,500	2,450
Total - Deferred	**$25,252**	**$23,875**	**$22,466**
Total Routine	$34,235	$35,263	$36,320
Total Reclamation	20,752	21,375	22,016
Total Danger Tree	10,800	11,120	11,450
Grand Total	**$65,788**	**$67,758**	**$69,787**

The RG&E Electric distribution vegetation management spending will increase to a total of approximately $10.7 million in RY1 and will include the elements noted below. RG&E Electric's routine distribution vegetation management rate allowance will be approximately $9 million in RY1. In addition, RG&E Electric will continue its Danger Tree program to address danger trees outside of the distribution right-of-way, including but not limited to, ash trees. The planned spending for the Danger Tree program is approximately $1.7 million for RY1. RG&E's Danger Tree program costs will no longer be deferred and amortized.

As set forth in Appendix I, for each Company, each of the identified distribution vegetation management programs will be subject to cumulative downward-only reconciliation, with carryover calculated at the end of RY3.

Beginning with calendar year 2023, if NYSEG is assessed a negative revenue adjustment ("NRA") for failing to meet its annual System Average Interruption Frequency Index ("SAIFI") performance metric, NYSEG will use such NRA(s) for purposes of accelerating its Reclamation Program. The use of such NRAs shall be applied to the reclamation circuits set forth in the Companies' annual distribution vegetation management report and in consideration of electric reliability performance. For any NRAs used to accelerate reclamation, NYSEG's reclamation funding in the next subsequent Rate Year would increase by the NRA amount and this increased funding level would be subject to the cumulative downward only reconciliation for NYSEG's Reclamation Program calculation.[11] The Signatory Parties agree that using NRAs to accelerate NYSEG's Reclamation Program will reduce the number of remaining miles that will be subject to reclamation in NYSEG's next general rate case.[12] If the Reclamation Program funding included in delivery rates, plus any NRAs used to accelerate reclamation, exceed the total cost NYSEG needs to reclaim its entire distribution system, the Company will defer the excess as a regulatory liability for the benefit of customers until final disposition is determined by the Commission.

NRAs not used to accelerate the Reclamation Program will be deferred by the Company as a regulatory liability for the future benefit of customers until final disposition is determined by the Commission.

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[11] For example, if NYSEG incurs a $3.5 million NRA for failing to meet its Tier 1 SAIFI metric in calendar year 2023 that is used to accelerate reclamation, then the Rate Year 2 (i.e., the twelve months ending April 30, 2025) total reclamation spend subject to cumulative downward-only reconciliation would be approximately $24.875 million.

[12] The Signatory Parties acknowledge that the goal of the Reclamation Program is to reclaim all of the circuits listed in Attachment 1 to Appendix I by no later than May 2029. It is the understanding of the Signatory Parties that the use of any NRAs for reclamation will reduce the time necessary to reach full reclamation.