BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of the Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid for Authorization to Permit Their Existing Base Tariff Rates to Remain in Effect During the Year Ending March 31, 2028, and Other Related Relief	)	Case 26-G-0384

COMMENTS OF ALLIANCE FOR A GREEN ECONOMY

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National Grid's petition seeks extraordinary authority to keep customers' rates artificially high and lock in even higher rates in the future. National Grid asks the Public Service Commission ("Commission" or "PSC") to grant this request without going through the normal process for setting rates, in an attempt to skirt the transparency, scrutiny, and public participation that the Public Service Law requires. The utility essentially asks for a credit card to continue expanding and reinforcing its gas system, and for the right to keep customers on the hook for paying the bill starting in 2028 and for years to come. At its core, the petition is National Grid's attempt to disguise a massive rate hike as a benevolent gift.

As detailed below, granting the petition would violate the legal requirement to conduct a full rate case for any major change in utility rates, run afoul of the PSC's standard for allowing costs to be kicked down the road, and contravene New York's climate law by allowing for massive gas system investments without assessing their climate and environmental justice impacts. The PSC should reject National Grid's attempt to pull the wool over its eyes and deny the petition.

I. Introduction

Alliance for a Green Economy ("AGREE"), a non-profit organization working for safe, affordable energy and the development of a green economy in New York State, respectfully submits these comments to the Commission in response to the Verified Petition of the Brooklyn Union Gas Company d/b/a National Grid NY ("KEDNY") and KeySpan Gas East Corporation d/b/a National Grid ("KEDLI") for Authorization to Permit Their Existing Base Tariff Rates to Remain in Effect During the Year Ending March 31, 2028 and Other Related Relief (the "Petition"). In requesting approval of their Petition, KEDNY and KEDLI (together, "the Companies") seek permission to collect hundreds of millions of dollars from their customers through a variety of different rate recovery mechanisms, all while avoiding the scrutiny and public input of New York's traditional rate case process. For the reasons that follow, the Commission should deny the Petition in its entirety.

The Petition was filed with the Commission on May 29, 2026 and noticed in the State Register on June 24, 2026.[1] The Companies ask the Commission to establish regulatory

[1] Verified Petition of the Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid for Authorization to Permit Their Existing Base Tariff Rates to Remain in Effect During the Year

liabilities equivalent to the levelization amounts in their current rates, nearly $250 million, so that the Companies can create regulatory assets in the form of new capital projects and programs between April 1, 2027 and March 31, 2028 ("Rate Year 4").[2] The Companies also ask the Commission to "direct" them to pursue their proposed capital plan and then allow them to defer up to $150 million in capital investments, $23 million in operation and maintenance costs, and millions of dollars in under-recovery of uncollectible expenses.[3] Additionally, the Petition proposes a surcharge mechanism to compensate the Companies for costs associated with property taxes and site investigation and remediation ("SIR") accrued during the Rate Year, which would be capped at 2.5% of the Companies' annual operating revenues and added to rates every year until the Companies have recovered those costs.[4] The Petition also asks the Commission to weaken the Companies' leak-prone pipe replacement and leak repair commitments during the Rate Year.[5]

The Petition is not in the public interest because it seeks to bypass the normal ratemaking process to keep rates high and to guarantee rate increases in future years. Granting the Petition would violate the Public Service Law's requirement that the PSC hold a rate case before approving any rate increase of more than 2.5% of a utility's aggregate revenues. Approving the Petition would also violate the Climate Leadership and Community Protection Act ("CLCPA"), because the Companies' filing does not provide the information that the Commission needs to analyze and mitigate the rate request's greenhouse gas and environmental justice impacts as required by the law. Moreover, by circumventing the rate case process, the Companies ask for enormous sums of rate recovery and carte blanche to pursue their capital plans without the transparency and participation opportunities that the Public Service Law promises to New Yorkers. In asserting that the Commission has authority to grant the Petition outside of a rate case, the Companies rely entirely on cases in which either 1) the Commission issued an order after a full rate case, the very process that the Petition would avoid, or 2) the Commission allowed for temporary relief due to extraordinary circumstances, and specified that its actions

Ending March 31, 2028 and Other Related Relief, Case No. 26-G-0384 (May 29, 2026) (hereinafter "Petition"); Notice Establishing Comment Deadline, Case No. 26-G-0384 (June 23, 2026).

[2] Petition at 1.

[3] Petition at 8–9.

[4] *Id*. at 20–21.

[5] *Id*. at 19–20.

should not be treated as precedential. Accordingly, the Companies have failed to provide any support for the proposition that precedent exists for granting the Petition. For these reasons, AGREE respectfully urges the Commission to deny the Petition.

II. The Companies Seek a Major Change in Rates, Which the Commission Cannot Approve Without a Rate Case

The Petition asks the Commission to approve significant increases in the Companies' revenue over the course of Rate Year 4 and beyond. Under the Public Service Law, outside of a rate case, the Commission may not approve a utility's request for cost recovery that increases its revenue by more than 2.5%. Approving the Petition through a notice-and-comment process would run afoul of this requirement in at least one of three ways.

First, granting the Petition would allow each Company to raise revenues by more than 2.5% above the level that they would otherwise fall to in Rate Year 4, the year the petition seeks to address.

Second, the Petition seeks approval to recover costs that amount to far more than 2.5% of the Companies' current aggregate revenues. Even if that recovery would not occur until future years, the Public Service Law prohibits the Commission from approving such a large rate increase now without conducting a rate case.

Third, at a minimum, because the full impacts of granting the Petition are unclear, the Commission cannot possibly guarantee that doing so would not result in an unlawful major change in rates, and the possibility of violating the Public Service Law is sufficient to deny the Petition.

A. The Commission May Not Approve an Increase in the Companies' Aggregate Revenues of More than 2.5% Outside of a Rate Case

Before the Commission may approve a "major change" in a utility's rates, the Public Service Law requires a rate case, which entails a number of steps including the posting of plain language information about the rate request and an evidentiary hearing.[6] In a rate case, the utility files detailed written testimony explaining how ratepayer money will be spent over the course of

[6] PSL § 66(12)(c), (f)(i), (*l*)(i).

the rate term,[7] as well as exhibits, including white papers, providing background and justification for each of the utility's proposed capital programs and projects. After the utility files the rate request, the Commission must publish key information about the request in plain language for the public to access.[8] Members of the public can submit comments, participate in a public hearing, or become formal parties to the rate case with the opportunity to participate in discovery and file testimony.[9] Typically two administrative law judges are assigned to oversee discovery disputes and other procedural matters that arise. The parties often enter into settlement negotiations, after which the utility, Department of Public Service Staff ("Staff"), and some number of parties sign a joint proposal, and parties file statements to support or oppose the joint proposal. Following the filing of the joint proposal, or if no joint proposal is reached, the Commission holds an evidentiary hearing where parties have the opportunity to cross-examine each other's witnesses.[10] The utility has the burden of proof of showing that the requested rate is just and reasonable.[11] In ruling on a rate request, the Commission must explain how the information in the record created by the utility and the parties supports its determination.[12]

A "major change" is defined as "an increase in the rates and charges which would increase the aggregate revenues of the [utility] more than the greater of three hundred thousand dollars or two and one-half percent."[13] The Commission has explained that "[t]he meaning of 'aggregate' is not specifically defined in the statute; however, a common dictionary definition is 'a sum, mass, or assemblage of particulars; a total or gross amount.'"[14] The Commission recently clarified that "it is the impact of a proposed change on the utility's aggregate revenues, not on customers' bills[,] that qualifies a change in a rate or charge as a 'major change.'"[15] The Commission similarly stated in a 2014 order that a utility could avoid requesting a "major change" in rates within the meaning of the Public Service Law by limiting the rate request to

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[7] The Public Service Law requires an evidentiary hearing before any major change in rates can occur and the Commission rules instruct that direct testimony should be provided in written form. PSL § 66(12)(c), (f)(i); 16 NYCRR 4.5(b).
[8] PSL § 66(12)(*l*)(i).
[9] *See* 16 NYCRR 5.1(a), 5.3, 5.8.
[10] *See* 16 NYCRR 4.5(a).
[11] PSL § 66(12)(g).
[12] *Id*. § 66(12)(f)(ii).
[13] *Id*. § 66(12)(c).
[14] Order Granting in Part and Denying in Part Requests for Reconsideration and Petitions for Rehearing at 18, Case No. 14-M-0565 (Feb. 17, 2017) (citing http://www.dictionary.com/browse/aggregate).
[15] Order Denying Petitions for Rehearing at 47, Case No. 24-G-0248 (Dec. 22, 2025).

2.5% of operating revenues.[16] In other words, the incremental revenue requirement that a utility seeks, rather than the impacts on customers' rates, determines whether a rate case is required.

The meaning of the term "major change" arose in the Commission's proceeding on National Grid's Long-Term Gas Plan, where the Commission found that National Grid needs a more reliable source of supply, which the Northeast Supply Enhancement Project ("NESE") could provide.[17] A party to the proceeding sought rehearing on the grounds that, in deeming NESE necessary, the Commission had improperly approved a "major change" in rates outside of a rate case.[18] In denying rehearing, the Commission explained that NESE's net impacts on National Grid's aggregate revenues had not been established, because the pipeline's costs could be offset by the elimination of alternative supply options or other countervailing factors.[19] The Commission explained that it could not possibly have authorized cost recovery for the pipeline, because its net costs were not known.[20]

Here, by contrast, even if the Commission cannot know the exact amount of cost recovery for which the Companies seek approval, as explained below, that amount will inevitably be greater than 2.5% of the Companies' aggregate revenues if the Commission grants the Petition.

B. Granting the Petition Would Unlawfully Increase Revenues Above the Level to Which They Would Otherwise Default

The Petition improperly seeks approval to raise each Companies' Rate Year 4 revenues by more than 2.5% above the amount to which they would fall in the absence of any Commission action. The Joint Proposal that the Commission adopted in 2024 allowed the Companies to levelize, or spread out, the costs of major investments over the three years of the rate term.[21] The Joint Proposal provides that "[i]f the Companies do not have new rates in effect at the end of the

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[16] *See* Order Determining Revenue Requirement and Rate Design at 1–2, Case No. 14-E-0267 (Oct. 24, 2014); *see also* Order Determining Revenue Requirement at 3–4, Case No. 25-W-0553 (Apr. 17, 2026) (explaining that water utility proposed to limit its requested revenue increase so that its request would not qualify as a major change to rates under analogous statutory provision).
[17] Order Regarding Long-Term Natural Gas Plan and Requiring Further Actions at 3, Case No. 24-G-0248 (Sept. 18, 2025).
[18] Order Denying Petitions for Rehearing at 46, Case No. 24-G-0248 (Dec. 22, 2025).
[19] *Id*. at 46–47.
[20] *Id*.
[21] *See* Joint Proposal at 10, Case Nos. 23-G-0225, 23-G-0226, 23-G-0200 (Apr. 9, 2024) (emphasis added) ("2024 Joint Proposal").

rate plan, the rates that would be in effect on April 1, 2027 . . . are based on the *unlevelized* Rate Year Three revenue requirement."[22] In other words, the Companies' levelization will expire at the end of Rate Year 3 because the associated costs will be paid off, and under the current Joint Proposal the Rate Year 4 rates would be equal to the Companies' Rate Year 3 revenue requirements minus levelization.[23] The result would be a $2.965 billion revenue requirement for KEDNY and a $1.928 billion revenue requirement for KEDLI in Rate Year 4.[24]

Instead, the Companies ask for approval to "establish" regulatory liabilities to increase their approved collections for Rate Year 4 above what was approved in the Joint Proposal so that revenues for Rate Year 4 match the higher Rate Year 3 levelized revenue requirement.[25] That difference, according to the Companies' petition, amounts to $161.9 million for KEDNY and $86.1 million for KEDLI.[26] As a result, the Petition asks for an increase in aggregate revenues of $161.9 million for KEDNY, a 5.4% increase from $2.965 billion; and an increase in aggregate revenues of $86.1 million for KEDLI, a 4.4% increase from $1.928 billion. Because the Petition seeks an increase of more than 2.5% for each Company, it cannot be approved without a rate case.[27]

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[22] *See* 2024 Joint Proposal at 12 (emphasis added).
[23] *See* 2024 Joint Proposal, App. 3, Sched. 2, pp. 1 (KEDNY's revenue requirement is $2.965 billion in Rate Year 3 and Post Year 3); *id*. at App. 4, Sched. 2, pp. 1 (KEDLI's revenue requirement is $1.928 billion in Rate Year 3 and Post Year 3); *see also* Order Approving Terms of Joint Proposal and Establishing Gas Rate Plans, with Minor Modification and Corrections at 46, Case Nos. 23-G-0225, 23-G-0226, 23-G-0200 (Aug. 15, 2024) ("[I]f the Companies do not have new rates in effect April 1, 2027, the unlevelized revenue requirement for RY3 will apply . . ."); *id*. at 18 (the Joint Proposal's terms generally continue beyond Rate Year 3).
[24] 2024 Joint Proposal, App. 3, Sched. 2, pp. 1 (KEDNY's revenue requirement is $2.965 billion in Rate Year 3 and Post Year 3); *id*. at App. 4, Sched. 2, pp. 1 (KEDLI's revenue requirement is $1.928 billion in Rate Year 3 and Post Year 3).
[25] Petition at 1.
[26] *Id*. at 1, 8; *see also* Companies' Response to AGREE-023, attached as Exhibit 1.
[27] *See* PSL § 66(12). Taken together, the Companies ask for an increase of $248 million from approximately $5 billion billion, an increase of 5.1%. Even assuming the baseline is the forecasted Rate Year 3 revenues—which are higher than the revenue requirement for each Company—the requested change is still greater than 2.5% (a 7.3% increase from $2.196 billion for KEDNY and a 5.8% increase from $1.476 billion for KEDLI). *See* Order Approving Terms of Joint Proposal and Establishing Gas Rate Plans, with Minor Modification and Corrections at 37, Case Nos. 23-G-0225, 23-G-0226, 23-G-0200 (Aug. 15, 2024).

The table below compares the revenue requirements approved by the Commission in the 2024 Joint Proposal with the increase the Companies seek in the Petition.

Company	Approved Rate Year 4 Revenue Requirement	Requested Change	Percent Change
KEDNY	$2.965B	$161.9M	5.4%
KEDLI	$1.928B	$86.1M	4.4%

The Companies suggest that they do not seek a rate increase because granting the Petition would simply hold rates constant. However, the baseline against which the rate change should be measured is not the Companies' Rate Year 3 revenues, which include revenues not approved for Rate Year 4, but what the Companies would be entitled to collect in Rate Year 4 in the absence of any action by the Commission. If the Companies stayed out and did not file for any rate increase, they could only collect base rates, not levelized rates. Indeed, the Companies recognize that the 2024 Rate Order does not permit them to recover costs associated with incremental capital expenditures beyond Rate Year 3.[28] Unless the Commission grants the Petition, the Companies are not entitled to recover the full costs of their capital plan for the Rate Year. Accordingly, granting the Petition allows a major increase above the rates to which the Companies are entitled under the terms of the Joint Proposal currently in effect.

C. Granting the Petition Would Unlawfully Lock in Future Rate Recovery of More than 2.5% Above the Companies' Revenues

Alternatively, the additional costs for which the Companies seek eventual cost recovery constitute a major change in rates regardless of whether the Commission treats the Rate Year 3 base rates or the Rate Year aggregate revenues (which include levelization) as the baseline. In Rate Year 3, KEDNY's forecasted revenue is $2.2 billion and KEDLI's is $1.5 billion.[29] Any increase greater than 2.5% of those amounts—$54.9 million for KEDNY and $36.9 million for KEDLI—constitutes a major change within the meaning of the Public Service Law.[30] The

[28] Petition at 3.
[29] Order Approving Terms of Joint Proposal and Establishing Gas Rate Plans, with Minor Modification and Corrections at 37, Case Nos. 23-G-0225, 23-G-0226, 23-G-0200 (Aug. 15, 2024); *see also id*. at 39 (finding the revenue forecasts reasonable).
[30] PSL § 66(12)(c).

Petition asks for far more. The Companies ask the Commission to "direct" them to "implement the Rate Year 4 Capital Expenditure Program," which the Petition states will create incremental revenue requirements of $116.1 million for KEDNY and $84.1 million for KEDLI,[31] along with carrying charges based on a weighted average cost of capital of more than 9%.[32] The Petition also seeks authorization to defer recovery of $23.1 million in incremental operation and maintenance expenditure for KEDNY and millions of dollars in under-recovered uncollectibles,[33] also with carrying charges.[34]

Finally, the Companies propose to implement a surcharge starting in April 2028 to recover the costs of property taxes and SIR deferral activities that would be incurred during the rate year.[35] The surcharge would be capped at 2.5% of each Company's total operating revenues in the prior year,[36] and therefore appears designed to avoid creating a major change in rates.[37] However, taken together, the requested cost recovery far exceeds 2.5% of the Companies' aggregate revenues.

Nor would the surcharge be marginal. In the illustrative example of the surcharge the Companies provided, the surcharge would amount to $112.5 million in Fiscal Year 2029 and increase to $137.5 million by Fiscal Year 2031,[38] on top of the recovery for the deferrals requested in the Petition, as well as any additional costs approved in for spending in future years. In response to a discovery request from AGREE, the Companies stated that "the operating revenue figures reflected in Exhibit 6 are illustrative only. They are used solely to demonstrate the mechanics of the Rate Stabilization Mechanism and are not intended to represent the Companies' actual forecast of future revenues."[39] Accordingly, the surcharge could be in place

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[31] Petition at 1, 11; Errata Filing at 12 (July 16, 2026).
[32] Companies' Response to AGREE-028, attached as Exhibit 2.
[33] Petition at 9–10, 18. The Companies seek to defer recovery of 80% of under-recovered collectibles in the rate year. *Id*. at 18. The Companies under-recovered approximately $12.6 million in uncollectibles in Rate Year 1 and approximately $27.6 million in Rate Year 2, indicating that 80% of the under-recovered uncollectibles for the rate year will be in the millions. *Id*. at 17–18.
[34] Companies' Responses to AGREE-028 and AGREE-029, attached as Exhibits 2 and 3.
[35] Petition at 10. The Companies would also recoup over 9% in carrying charges on the deferred property tax costs. Companies' Response to AGREE-030, attached as Exhibit 4.
[36] Petition at 21.
[37] *See* PSL § 66(12)(c).
[38] Petition Ex. 6.
[39] Companies' Response to AGREE-038, attached as Exhibit 5.

beyond 2031, and the Companies will continue to accrue carrying charges until Rate Year 4 property taxes and SIR costs are recovered.[40]

For purposes of determining whether granting the Petition would result in a major change in rates, it is irrelevant that the deferred costs and surcharge would not appear on customer bills until a future rate term. Under the Public Service Law, when a major change is "filed with the [C]ommission," an evidentiary hearing is required; and "within ten days of the commencement of any matter involving a major change in a rate," the Commission must publish information about the rate request.[41] In other words, the requirement for a rate case is triggered when a utility requests a major change in rates, regardless of whether that change would come into effect in the rate year at issue or at a later date.

In fact, the Companies recognize that granting the Petition would allow for cost recovery to which they are not entitled, and which they would otherwise need to seek in a rate case. As the Companies explained in response to discovery requests by the Utility Intervention Unit, without the two-way tracker requested by the Petition, shareholders would bear the costs of any incremental capital-related revenue requirement above base rates unless and until cost recovery is approved in a subsequent rate case.[42] Without the relief requested in the Petition, the Companies' shareholders would bear all property tax under-recoveries not approved for cost recovery in the 2024 Rate Order as well as the incremental City/State construction operation and maintenance costs.[43] Granting the Petition would also allow the Companies to charge ratepayers for 80% of under-recoveries of uncollectibles, whereas otherwise the Companies' shareholders would bear all uncollectible expense exceeding the amounts approved in the 2024 Rate Order.[44] By the Companies' own admission, granting the Petition would allow for cost recovery that they would otherwise not receive.

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[40] In one of many examples of the difficulty of obtaining clear and accurate information, the Companies provided conflicting information to Staff regarding the illustrative example of the SIR surcharge. In response to a discovery request by Staff, the Companies stated that the sales forecast used for the illustrative example "reflects the Companies' annual retail sales forecast developed by the Gas Load Forecasting Team. The Company used the recent forecast to calculate the illustrative surcharge impact." Companies' Response to DPS-022, attached as Exhibit 6 (referring to Attachment 6 of Companies' Response to DPS-001, attached as Exhibit 7, workpapers for the illustrative example of the SIR surcharge).
[41] PSL § 66(12)(f)(i), (*l*)(i).
[42] Companies' Response to UIU-014, attached as Exhibit 21.
[43] *Id*.
[44] *Id*.

Moreover, because the annual surcharge is capped at 2.5%, rate increases in future rate years are guaranteed to exceed 2.5% unless the Commission approves no additional costs. In other words, granting the Petition commits the Commission to future major changes in rates in multiple future years, unless the Commission denies cost recovery for *all* deferred costs after approving the Companies' present request for those very deferrals, a simply implausible scenario. In fact, the Companies ask the Commission to "direct the Companies to implement the Rate Year Four capital expenditure programs" that the Petition describes.[45] Directing the Companies to pursue certain investments would essentially require the Commission to later determine that those investments were prudent, and therefore, that cost recovery must be granted.[46]

New York law provides that statutes should be read to address the problem the Legislature sought to solve, and should "not be construed as to render them ineffective."[47] By requiring a rate case for a major change in rates, the Legislature plainly intended to ensure that the Commission, ratepayers, and other stakeholders would have the opportunity to understand, scrutinize, and become a party to any decision making process related to a utility's proposal that could result in an increase in aggregate revenues of more than 2.5%. If approved, the Petition guarantees such an increase in future years. Treating the Companies' Petition as anything other than a request for a major change in rates and allowing the Companies to circumvent the rate case process would fly in the face of the Legislature's intent to protect ratepayers from unexamined rate hikes.

In sum, the Companies ask for authority to make investments and recover costs by increasing their aggregate revenues by more than 2.5%. Regardless of whether those costs appear on customer bills now or in 2028, the Commission may not authorize their recovery outside of a rate case, and granting the Petition would do just that.

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[45] Petition at 8–9.
[46] *Matter of Abrams v. PSC*, 104 A.D.2d 135, 137–138 (3d Dep't 1984) (concluding that cost recovery cannot be denied for a prudent investment).
[47] Statutes Law § 144; *see also* Statutes Law § 95 ("The courts in construing a statute should consider the mischief sought to be remedied by the new legislation, and they should construe the act in question so as to suppress the evil and advance the remedy.").

D. The Commission Cannot Guarantee that Granting the Petition Will *Not* Result in a Major Change in Rates

At a minimum, the Commission cannot be sure, or reassure the public, that granting the Petition will not result in a major change that triggers the requirement for a rate case. As described in the Utility Intervention Unit's Motion for Procedural Relief filed on August 14, 2026, it is impossible to assess the full impacts of granting the Petition without access to information such as the projected dollar amount of each component of the Petition, which stakeholders have been unable to obtain. Even if Staff has gained access to that information without stakeholders' knowledge, the Commission has not had the benefit of receiving and incorporating public and party input, including expert testimony, that could ultimately inform its determination. While AGREE submits that the Petition does on its face seek a major change in rates for the reasons discussed, at a minimum, the Commission cannot be confident that granting the Petition will *not* result in an unlawful major change in rates. Nor can the Commission demonstrate as much to the public. The possibility that granting the Petition might violate the Public Service Law is enough to justify its denial.

III. The Companies' Proposed Deferrals Do Not Meet the Demanding Standards for Deferred Accounting and Must Be Denied.

As discussed above, the Companies have asked the Commission for approval to defer up to $150 million in capital investments, $23 million in operation and maintenance costs, and millions of dollars in under-recovery of uncollectibles.[48] But there is no real dispute that these are all ordinary types of costs that are regularly addressed in rate cases, and therefore, they are not appropriate for deferral.

The Third Department has explained that deferred costs can only be approved if they meet a demanding standard of review and satisfy each of the three prongs for deferred cost accounting:[49]

(1) Is the expense incremental to costs in the rates?

(2) Is the deferred cost material and extraordinary in nature?

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[48] Petition at 8–9.

[49] *See Matter of Corning Nat. Gas Corp. v. PSC*, 221 A.D.3d 1075, 1083 (3d Dep't 2023); *see also, e.g.*, Order Determining Revenue Requirement and Rate Design, Denying Deferral of Costs Associated with Cost of Service Study and Costs Associated with Future Testimony at 4–5, Case Nos. 23-E-0717, 24-E-0262 (Mar. 21, 2025); Order Denying Deferral Request at 2, Case No. 24-G-0363 (Dec. 20, 2024).

(3) Is the company overearning? Earnings must be below the authorized rate of return on common equity.

We note at the outset that the Petition does not attempt to answer these questions. The Companies seem to assume they can obtain the Commission's approval by generically citing to "widespread concerns about the affordability of utility rates."[50] But when are affordability concerns *not* present? The Companies do not cite any case in which customer affordability concerns justified deferring the company's routine capital and operating costs. Rate cases exist, in large part, for the very purpose of assuring that rates are reasonable and justified. It would be Kafkaesque if a utility could avoid a rate case simply by highlighting how unaffordable its rates are.

Prong 1: The Petition fails the first prong because the future costs for which the Companies are seeking deferral are not incremental. For the purpose of the three-prong deferral test, incremental costs are those costs incurred by a utility above the amount permitted to be recovered in the applicable rate plan[51]—meaning that the costs must first be incurred to be considered incremental. As the Commission identified in its Order Denying Deferral Request in Case No. 24-G-0363, future costs not yet incurred are definitionally not incremental and should not be eligible for deferral.[52]

Here, none of the costs which the Companies request permission to defer have been incurred. Each of the different categories of expenses that the Companies are seeking to defer will be incurred in the future, during the Rate Year beginning April 1, 2027 and ending March 31, 2028. Because none of these costs have been incurred, the Petition cannot meet the requirement of the first prong.

Prong 2: The Petition fails the second prong because the categories for which it requests deferred accounting treatment are not extraordinary and are routinely handled in rate case proceedings. In assessing deferral requests, the Commission has applied the Federal Energy

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[50] Petition at 3.

[51] *See* Order Authorizing Deferral and Establishing Escrow Accounts at 8., Case No. 19-W-0783 (Aug. 19, 2020) (Table 2, titled Emerald Green 2019 Deferral Calculation, shows the relevant incremental expense as 'Total 2019 Expenses - Net of Adjustments' minus the actual rate allowance.)

[52] Order Denying Deferral Request at 5, 8, Case No. 24-G-0363 (Dec. 20, 2024) (denying Corning Natural Gas Corporation's request to defer incremental interest costs for a rate year period that had not yet ended, and applying the three-prong test only to the incremental costs incurred during the two rate years that had already ended).

Regulatory Commission's 's Uniform System of Accounts for Class A Gas Companies, which defines "extraordinary items" as:

> Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.[53,54]

Here, there is nothing "extraordinary" about routine rate case expenses such as City/State construction, operation and maintenance expenses, and uncollectibles.

An example of routine, but very significant, costs that the Companies propose to defer are major capital investments for their controversial Greenpoint Energy Center, which are discussed in more detail in Section IV(C) below. The Petition appears to seek deferral of over $60 million in capital projects to prop up this deteriorating liquefied natural gas ("LNG") facility, in effect seeking a new lifespan for the facility without going through a rate case.[55] Putting aside whether any of these investments are necessary right now, all of this is the meat and potatoes of a litigated rate case, and such costs are not subject to deferred accounting treatment. Not a dollar of it is extraordinary or unexpected. Indeed, virtually all of these costs result from decades of degrading equipment and systems. As such, they cannot be subject to deferred accounting treatment.

In contrast, the Commission has rejected proposed deferrals even where there are specific claims of extraordinary circumstances. For example, in *Corning Natural Gas Corp.*, the Appellate Division upheld the Commission's denial of cost deferral for a leak survey and repairs where the company testified that the costs were necessitated by "severe frost conditions" that resulted in 55% more leaks than in the preceding three years.[56] The Commission found that it

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[53] *Id.* at 6–7.
[54] 18 C.F.R. Pt. 201.
[55] *See* Companies' Response to DPS-003, Attachment 1, attached as Exhibit 8; KEDNY Petition White Papers at *139–70 (Greenpoint LNG projects) (produced as part of the Companies' Response to DPS-014), attached as Exhibit 9; Companies Response to DPS-005 Attachment 1, attached as Exhibit 10 (see Excel sheet rows 75–91, which appear to be related to the Greenpoint LNG facility and total over $62,876,319, though not all amounts and descriptions correspond to the Greenpoint LNG White Papers in Exhibit 9, which total $60,040,920).
[56] 221 A.D.3d at 1084.

was a common occurrence for some winters to be colder than others, and not an extraordinary circumstance that justified deferral.[57] Further, in a separate Corning matter, the Commission found that increases in the utility's debt interest rates was attributable to the "inherent nature of risk associated with the financial markets in general" and that rate increases of between 3% and 5.5% on certain Treasuries was "within the realm of possible outcomes and not extraordinary in nature as a result."[58]

Here, the Companies have offered the Commission far less evidence to consider with respect to the extraordinary circumstances prong. The Companies have offered no indication that any of the costs in the Petition are extraordinary, and customer affordability is not part of the Prong 2 analysis. As such, the costs in the Petition are not extraordinary and cannot be deferred.

Prong 3: Under the final prong, earnings must be below the authorized rate of return on common equity. Here, the costs for the sought deferrals have not yet been incurred, and the Commission has rejected deferral of future costs under these circumstances. "The third prong of the Commission's deferral test specifies that a utility cannot be overearning in the period in which the costs were incurred. Given that the costs will be incurred in a future period, there is no way to evaluate that prong of the test."[59]

The Petition fails all three prongs for deferred accounting, and the Companies' deferral requests must be denied.

IV. The Companies' Proposal Cannot Be Adequately Evaluated in Compliance with the Climate Leadership and Community Protection Act and Therefore Must be Denied

Approving the Petition would also violate the Climate Leadership and Community Protection Act ("CLCPA"). New York enacted the CLCPA in 2019, recognizing that climate change is adversely affecting New York and finding that a statewide reduction in greenhouse gas ("GHG") emissions will reduce those adverse effects.[60] The CLCPA mandates transformative change in the fossil fuel-dominated building sector in furtherance of its broader climate mandates. The CLCPA requires steep statewide emissions reductions starting this decade[61] and

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[57] *Id.*
[58] Order Denying Deferral Request at 4, 6–7, Case No. 24-G-0363 (Dec. 20, 2024).
[59] Order Determining Revenue Requirement and Rate Design at 22, Case Nos. 23-E-0717, 24-E-0262 (Mar. 21, 2025).
[60] CLCPA § 1(2)(a).
[61] ECL 75-0107.

calls for the adoption of measures to reduce GHG emissions from appliances such as gas-fired stoves and heating equipment.[62] To achieve these requirements, the Legislature ordered all state agencies—including the PSC—to evaluate each permit, license, or other administrative decision or approval through the lens of the CLCPA.[63]

In meeting its responsibilities under the CLCPA, the PSC must consider whether its decisions are inconsistent with or will interfere with achieving the CLCPA greenhouse gas reduction targets, and if so, to provide a detailed justification and identify alternatives or mitigation.[64] The PSC must also analyze the effects of its decisions to ensure that they do "not disproportionately burden disadvantaged communities"[65] ("DACs") and must affirmatively "prioritize reductions of greenhouse gas emissions and co-pollutants" in DACs.[66] These requirements apply to this proceeding, in which the Companies seek a decision and approval of their Petition.[67] The CLCPA is not merely aspirational. To meet the CLCPA's mandates to reduce greenhouse gases and to avoid and ameliorate impacts on DACs, all state agencies, including the PSC, must implement the law diligently.

This Petition, and the additional information the Companies have provided, demonstrate instead that the Companies' investments would prolong the life of the gas system, increasing greenhouse gas emissions and pollution burdens on DACs. However, the Companies' decision to seek a so-called rate stabilization plan, rather than pursue its costs through the normal process of a litigated rate case, has made it difficult, if not impossible, for commenters and the PSC to adequately evaluate the proposal's compliance with the CLCPA. Notably, the Petition itself

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[62] ECL 75-0103(13)(f), (g).
[63] Specifically, CLCPA Section 7(2) directs that: "In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law."
[64] CLCPA § 7(2).
[65] CLCPA § 7(3).
[66] *Id.* "Co-pollutants" are non-greenhouse gas air pollutants that are also produced by greenhouse gas emission sources. ECL 75-0101(3).
[67] The PSC has recognized that it is "the Legislature's intent that Section 7(2) of the CLCPA be broadly construed," and that "[t]he same analysis applies to Section 7(3) of the CLCPA." *See* Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements at 69–70, Case Nos. 19-G-0309, 19-G-0310, & 18-M-0270 (Aug. 12, 2021); *see also id*. at 70 ("Commission orders in rate cases fall within the ambit of Section 7(2)'s application to 'other administrative approvals,' notwithstanding the absence of a direct correlation to any item provided in the list of examples, as such list is preceded by the phrase 'including, but not limited to.'"); *Matter of Clean Air Coalition of W. N.Y., Inc. v. PSC*, 249 A.D.3d 1446, 1451 (3d Dep't May 28, 2026) (applying Section 7(2) of the CLCPA broadly to cover PSC declaratory rulings).

contains a generic threadbare discussion of the CLCPA, greenhouse gas emissions, and the proposal's anticipated impacts on DACs.[68] At the very least, approving additional investments in new or upgraded fossil fuel infrastructure, without a detailed justification and identification of alternatives and mitigation, would run afoul of the CLCPA's mandates.

A. Approving the Petition Would Violate CLCPA Section 7(2)

The Companies have not provided the PSC with the information required to conduct a proper analysis under Section 7(2) of the CLCPA; therefore, the Commission cannot approve the Petition without violating the law. As discussed, Section 7(2) of the CLCPA requires the PSC to consider whether its "decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits," and if so, to issue a detailed statement of justification and identify alternatives or mitigation measures. The Companies have not provided the information that would be necessary to take all of those steps and make a finding that approving the Petition is compliant with Section 7(2).

As an initial matter, the PSC and stakeholders lack the data necessary to assess the Petition's potential greenhouse gas consequences. While the Companies attached a "GHG Emissions Analysis for Capital Programs" as Exhibit 7 to the Petition ("GHG Analysis"), this exhibit simply gives high-level emissions estimates for fiscal year 2028 by project category for KEDNY and KEDLI. In keeping with the surface-level explanations through the Petition, the Companies have not provided any underlying data, methodology, or other information on how they calculated the projected GHG emissions, or explained the baseline from which they are comparing the emissions, making it impossible for the Commission and stakeholders to assess their claims. In response to a question from AGREE about the methodology the Companies used to calculate GHG estimates, the Companies responded that they used a 20-year global warming potential, but did not explain how they accounted for biogenic emissions, out-of-state emissions, or other variables that would impact the ultimate calculations.[69] Strikingly, the short narratives in the GHG Analysis do not describe a single gas project as increasing emissions, instead repeatedly describing projects that are intended to extend the useful life of gas infrastructure as

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[68] Petition at 6 (referencing continuation of CLCPA-related terms in the previously approved Joint Proposal).
[69] Companies' Response to AGREE-014, attached as Exhibit 11.

"required for reliability" and "not anticipated to result in material GHG emissions."[70] These investments, however, will increase GHGs in the long run by propping up the gas system. Additionally, notwithstanding the Companies' characterization of project emissions, the GHG Analysis identifies several projects in rows with "negative values," and admits that they *will* increase GHG emissions.[71] This incomplete and conflicting information is inadequate for a proper analysis of whether granting the Petition would be inconsistent with or interfere with achieving the CLCPA's GHG targets as required by Section 7(2).

The information provided by the Companies does not demonstrate any genuine effort to reduce emissions beyond addressing normal operational issues such as fixing leaks. Instead, the Petition maintains the status quo and makes no effort to advance the State's climate goals through emission reductions or by facilitating the State's transition to clean energy. As the State makes the investments required for CLCPA compliance, demand for gas should drop in the Companies' service territories over the coming decades. The PSC has already accepted that, rationally, "meeting the CLCPA's emissions reductions targets for the entire economy will require emissions reductions from the gas distribution system."[72] Similarly, the Climate Action Council's Scoping Plan recommends utility-specific forecasts for reducing gas sales and decreasing the number of gas customers over time, and calls for applying greater scrutiny to investments in the gas distribution system to ensure that investments do not result in stranded assets that make it even more expensive to reduce GHG emissions in the future.[73] Nonetheless, the Companies have proposed to spend millions of dollars building new customer connections and reinforcing their gas system.[74]

The Companies propose significant investments into polluting facilities without identifying the alternatives or mitigation measures that would allow for Section 7(2) compliance. The Commission has explained that "[a]lthough a Commission rate order approves only an overall capital expenditure plan and not the specific projects that were reviewed to provide evidentiary support for the utility's rate recovery, absent Commission approval of that rate

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[70] Petition Ex. 7 at 2–4.
[71] *Id*. at 1; Companies' Response to AGREE-014, attached as Exhibit 11.
[72] Order Adopting Gas System Planning Process at 4, Case No. 20-G-0131 (May 12, 2022).
[73] Scoping Plan at 350, 353, 360, 362.
[74] *See* Petition Exs. 1 & 2.

recovery, such projects would likely not be pursued by the utility."[75] Similarly, here, "absent Commission approval of" the deferred costs that the Companies seek, they would be unlikely to pursue the projects proposed in the rate request. Accordingly, the Commission should deny the proposed investments that clearly have GHG consequences, because the Companies failed to provide a detailed justification and did not identify alternatives and mitigation measures for those projects. For example, the Companies request millions of dollars to extend the life of the Greenpoint Energy Facility and Holtsville LNG plant, which are significant sources of GHG emissions, but propose no meaningful alternatives or mitigation measures.[76]

In the past, the Companies have recognized that commitments to advancing non-pipeline alternatives ("NPAs") are consistent with the CLCPA, and in the Petition the Companies tout the NPA provisions from the last Joint Proposal.[77] Although they have filed two annual reports describing their efforts to pursue NPAs, it is not possible based on the available information to ascertain whether any proposed capital projects underlying the Petition that should have been considered for NPAs per the 2024 Joint Proposal have been adequately screened or considered, and therefore, whether they are prudent or could be avoided in order to advance the CLCPA mandates.[78] In AGREE's experience, determining whether these projects could have been or could still be avoided through an NPA would require formal discovery, as well either discussions in settlement or the opportunity to cross-examine the Companies' subject matter experts. The absence of these opportunities in this proceeding hinders the ability of stakeholders and the Commission to ensure the Companies are using the tools available to align their investments with the CLCPA and that customers are not paying for unnecessary gas infrastructure. Instead, the parties and the Commission are essentially left to consider the Companies' White Papers, in which they claim that nearly all of their projects are unsuitable for NPAs through a box-checking process.[79]

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[75] Order Approving the Joint Proposal, as Modified, and Imposing Additional Requirements at 70, Case Nos. 19-G-0309, 19-G-0310 & 18-M-0270 (Aug. 12, 2021).
[76] Petition Ex. 7 (showing an increase in emissions resulting from Holtsville Plant Modernization and various LNG projects); Companies' Response to AGREE-042, attached as Exhibit 12 (Companies are requesting $73.416 million for the Holtsville Plant Modernization project despite projecting, in the last rate case, a Fiscal Year 2028 budget of $15.264 million).
[77] *See* Petition at 6–7; Companies' Statement in Support of Joint Proposal at 11, Case Nos. 23-G-0225, 23-G-0226, 23-G-0020 (May 1, 2024).
[78] 2024 Joint Proposal at 39–46.
[79] *See generally* KEDNY Petition White Papers, attached as Exhibit 9. For example, although the Companies' White Papers indicate that their blanket reinforcement program is not suitable for NPAs, in their response to Staff's fifth

On the current limited record, the Commission cannot adequately: (a) evaluate if the Companies' GHG emission estimates are accurate; (b) assess the impact of emission increases on meeting the State's GHG emission targets; or (c) provide a detailed justification or identify alternatives and mitigation where necessary. Additionally, the Petition simply offers more of the same: installing gas mains, fixing leaks, and repairing and upgrading gas infrastructure to maintain the status quo, thereby extending New Yorkers' dependence on fossil fuel combustion that accelerates climate change and disproportionately burdens DACs. Because the Commission cannot adequately assess the Petition's GHG impacts, provide a detailed justification, or identify alternatives or mitigation based on the Companies' filings, approving the Petition would violate CLCPA Section 7(2).

B. Approving the Petition Would Violate CLCPA Section 7(3)

The Companies have not provided the Commission with information demonstrating that granting the Petition would not disproportionately burden DACs. The Petition makes sweeping unsupported statements, such as that "the Companies have taken several steps to identify, consider, and mitigate the impacts of their capital programs and projects on DACs, including determining on a project-by-project basis whether there are ways to reduce project-related impacts on such communities."[80] However, the Petition does not discuss specific projects attached to any particular community, the pollution that would impact DACs, nor the alternatives or mitigation measures evaluated.[81]

As a general matter, the Companies' limited discussion of DACs and how they would be impacted by the proposed projects does not provide an evidence-based analysis that would be useful to the Commission in conducting a CLCPA-compliant review of the Petition. For

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discovery request they stated that they have screened or will screen that program for an NPA. KEDNY Petition White Papers at *7–8; KEDLI Petition White Papers at *10–11, attached as Exhibit 19; Companies' Response to DPS-005, attached as Exhibit 13, and Attachments 1 & 2, attached as Exhibits 10 & 14. When AGREE requested a list of the projects covered by the blanket reinforcement program and asked which projects have been or will be screened for NPAs, the Companies simply referred AGREE back to their White Papers and the response to Staff's fifth discovery request. Companies' Response to AGREE-043, attached as Exhibit 15.

[80] Petition at 12.

[81] Petition at 12–15 (discussing general categories of projects, such as main replacement, city/state construction, and Integrity Management Programs).

example, in response to discovery requests regarding project impacts on DACs and the Companies' analysis of the impacts, they responded:

> Much of the Companies' service territory is located within [DACs], and the proposed investments will upgrade infrastructure in these areas – reducing leaks and local greenhouse gas emissions, improving air quality, and enhancing the safety and reliability of gas service. Using the NYSERDA Disadvantaged Communities Map, the Companies identify projects located in DACs and assess potential impacts, project alternatives, and opportunities to mitigate adverse effects.[82]

This, of course, could be said to justify the maintenance of the Companies' gas infrastructure in perpetuity, but it certainly is not consistent with the CLCPA and its mandate to transition off fossil fuels in order to mitigate climate change and reduce co-pollutant emissions in DACs.

The Companies' failure to provide the Commission with adequate information is compounded by the fact that by filing a petition, rather than a rate case, they have reneged on even the modest commitments they made to DACs in the Joint Proposal adopted in the last rate case.[83] Under the 2024 Joint Proposal, for any capital project in the next rate case with an estimated cost of $1 million or greater (which describes virtually all the projects underlying the Petition's capital plan), the Companies agreed to determine whether some or all of the project is located in a DAC or could reasonably be expected to impact a DAC, *and* to provide the following project-specific information:

a) an identification of GHG and co-pollutant emissions increased or reduced from the investment that would affect the impacted DAC.
b) the potential or projected contribution of the investment to existing pollution burdens in the community from GHG and co-pollutants; and
c) proposed project design considerations including a description of actions to be taken to eliminate disproportionate burdens associated with GHG or co-pollutant emissions.[84]

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[82] Companies' Response to AGREE-005, attached as Exhibit 11.
[83] *See* 2024 Joint Proposal at 51–52.
[84] *Id*.

The Companies did not meet these requirements. Here, at most, the Petition and materials provided in informal discovery do not go beyond identifying projects located in a DAC and, in some cases, potential impacts.[85] While, as discussed above, the Companies filed a perfunctory GHG emissions summary, they have not provided information concerning the many co-pollutants that commonly accompany natural gas infrastructure and combustion, which cause detrimental health impacts that disproportionately burden DACs. The Petition contains no analysis of potential or projected contributions to existing pollution burdens in DACs. Significantly, the Petition does not contain a single measure designed to eliminate or even mitigate the pollution burdens that will stem from the Companies' ever-growing investment in their bloated, aging gas infrastructure.

AGREE's attempts to obtain additional information revealed that the Companies have not taken steps to mitigate impacts on DACs, nor have they provided the Commission with the data needed to conduct a proper CLCPA Section 7(3) analysis. AGREE asked the Companies if any proposed investments involve infrastructure in or near a DAC, and if so, to provide any analysis of whether the infrastructure would disproportionately burden DACs.[86] The Companies directed AGREE to the White Papers they provided to Staff, and asserted that for projects located in DACs, they had assessed "potential impacts, project alternatives, and opportunities to mitigate adverse effects."[87] AGREE then requested the assessments of "potential impacts, project alternatives, and opportunities to mitigate adverse effects" on DACs that the Companies had identified.[88] The Companies objected on the grounds that "the requested information is not readily available in the form requested and responding would require the creation of new analyses, compilations, or reports,"[89] suggesting that Companies have not, in fact, conducted the analysis they claimed to have performed. This is yet another area of inquiry that should properly be examined through testimony in a rate case, where the Companies could not hide behind their objections.

What little discussion is contained in the White Papers on DAC impacts is almost entirely generic and conclusory and does not provide the information that would be needed to ensure

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[85] *See generally* KEDNY Petition White Papers, attached as Exhibit 9.
[86] *See* Exhibit 11 at 2–3, 5 (AGREE-005(d) and AGREE-011(d)).
[87] *Id*. at 3, 5.
[88] Companies' Response to AGREE-017 and AGREE-018 at 3, attached as Exhibit 16.
[89] *Id*.

Section 7(3) compliance.[90] For example, with respect to DACs in KEDNY's White Papers, the box indicating that a project is located in a DAC is checked "yes" for 44 out of 53 projects (>83%),[91] but most of the summaries do not even identify the names or specific locations of the impacted DAC(s). They also do not identify mitigation measures to ensure that the PSC's decision will "not disproportionately burden DACs" as required by the CLCPA. In fact, the White Papers merely provide a checklist for the types of impacts that a project might have, meaning that the Companies have acknowledged that many of their proposed capital investments are in DACs and could create diesel combustion emissions, noise pollution, dust from demolition, among other burdens, and yet, they have not even attempted to propose mitigation measures that would eliminate or avoid those burdens.[92] Advocates for these faceless DACs, and this Commission, are left to wonder who they are, what the specific adverse impacts to them will be, and how they can be protected as required by the CLCPA.

There is no evidentiary foundation from which the PSC can conduct an adequate analysis of impacts on DACs, and therefore, the PSC cannot possibly determine that approving the Petition would comply with Section 7(3) of the CLCPA.

C. The Example of the Greenpoint LNG Facility Demonstrates that Granting the Petition Would Violate Section 7(3)

If the Commission were to press forward with issuing a decision on the merits of the Petition, notwithstanding the improper process and inadequate record, it could only conclude that the Petition is inconsistent with the CLCPA and must be denied. What can be gleaned from the Petition and limited discovery in this matter are a handful of projects that can be geographically identified in specific DACs, several of which are particularly concerning.[93] For example, there are large capital projects in the Petition that prolong the longstanding and ongoing environmental harm caused by the Companies' massive LNG facility in Greenpoint, Brooklyn. This facility

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[90] *See, e.g.*, KEDNY Petition White Papers at *150–152, attached as Exhibit 9 (identifying a Greenpoint LNG facility project as impacting DACs, and in terms of "emission control considerations" simply checking a box to "coordinate work, where practicable"); *id.* at *48–50 (main replacement program impacting DAC with numerous impacts checked off, but only checking off "dust suppression measures").

[91] Additionally, the Companies indicate that 23 out of 38 projects (>60%) on Long Island are located in DACs. *See* KEDLI Petition White Papers attached as Exhibit 19.

[92] *See, e.g.*, KEDNY Petition White Papers at *2–5, attached as Exhibit 9 (recognizing that customer connections program will take place partly in DACs and create the impacts listed above, but not proposing mitigation measures).

[93] *See* DPS-003 Attachment 1, attached as Exhibit 8 (Excel sheet listing projects, including those in DACs such as Coney Island, Greenpoint, and Prospect Heights/Clinton Hill (Fulton Avenue and Grand Street)).

takes up a large area of prime waterfront property in a DAC that has long suffered the consequences of air emissions and other severe environmental hazards.[94] The Petition proposes over $60 million in capital projects to prop up this deteriorating LNG facility, in effect seeking a new lifespan for the facility, which is a major source of GHG and co-pollutant emissions whose future necessity is in doubt.[95] The unfortunate theme of the Greenpoint projects, as the Companies explain them, is to make major equipment and facility upgrades to extend the useful life of the facility.[96] Reading the Companies' information in context, the message is "we are here to stay." For example, the Companies request:

- $3.91 million to replace obsolete or deteriorating equipment and systems, which will "extend the service life of critical production facilities;"
- $6.71 million for upgrading plant controls, including hardware and software throughout the facility;
- $8.28 million for replacing a nitrogen supply system that is roughly 60 years old;
- $3.64 million for relocating maintenance and control facilities to a new building to "ensure a more cohesive work environment and improve communication" and,
- $14.7 million to replace a roughly 60-year-old tail gas compressor.

As discussed above in Section III, none of these costs can be properly deferred because they are not extraordinary. What's worse, the Companies are seeking these massive investments in LNG infrastructure in a DAC for a facility that may no longer be needed given the forthcoming additional gas supply from NESE, as well as for costs that the Companies have unsuccessfully sought to recover in a rate case.[97] Specifically, in its September 18, 2025 Order Regarding Long-Term Natural Gas Plan and Requiring Further Actions ("LTP Order") the

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[94] In addition to the Companies' LNG operations in Greenpoint, contamination of the area extends back to the 19th century and Greenpoint is the unfortunate host of several Superfund sites, including EPA's Newtown Creek and Meeker Avenue Sites, and New York State's Greenpoint Oil Spill and Nuhart Sites. Greenpoint was also the site of one of the largest oil spills in United States history.

[95] *See* Companies' Response to DPS-003, Attachment 1, attached as Exhibit 8; KEDNY Petition White Papers at *138–168, attached as Exhibit 9 (Greenpoint LNG projects); Companies' Response to DPS-005 Attachment 1, attached as Exhibit 10 (see Excel sheet rows 75–91, which appear to be related to the Greenpoint LNG facility and total over $62,876,319, though not all amounts and descriptions correspond to the Greenpoint LNG White Papers in Exhibit 9, which total $60,040,920).

[96] *See* Companies' Response to DPS-003, Attachment 1, attached as Exhibit 8; KEDNY Petition White Papers at *137–168, attached as Exhibit 9.

[97] For example, in the last rate case KEDNY sought cost recovery for a control room at the Greenpoint facility, which was ultimately excluded from the Joint Proposal. *See* Direct Testimony of GIOP Panel, Exhibit __ (GIOP-5) at 131, Case Nos. 23-G-0225, 23-G-0226 (Apr. 28, 2023).

Commission found that "the capacity provided by NESE would create an opportunity to further consider the potential for decommissioning the Greenpoint LNG plant and right-sizing National Grid's supply stack in the coming years."[98] This Commission extensively discussed the Greenpoint LNG facility in the context of NESE's expected impact on supply and after ordering the Companies to provide information that would "permit a comprehensive review" of the continued need for the facility.[99]

In the LTP Order, the Commission discussed extensive community opposition to the facility, the Companies' admission that it adversely impacts community health, and the need for continued assessment of the need for the facility beyond the near term.[100] The Commission directed the Companies to work with the local Community Board on the future of this controversial facility. The Commission certainly did not direct National Grid to try to slip a massive capital plan that would extend the life of the facility by decades past ratepayers through an informal petition process.[101]

After concluding last September that the Companies might be able to decommission the Greenpoint facility soon, the Commission should not now allow KEDNY to invest tens of millions of dollars to extend the facility's life by decades without allowing for any real scrutiny, analysis, expert testimony, or public input. In fact, given the Commission's finding in the LTP Order that NESE could allow them to shed some costs associated with peaking sources, AGREE asked the Companies if their capital plan reflects any of those avoided costs.[102] The Companies objected to the discovery requests on the basis that they had not requested to increase base delivery rates and directed AGREE back to the LTP Order.[103] The Commission should not allow the Companies to avoid reasonable questions about their alignment with the LTP Order by circumventing the rate case process.

If the Companies succeed in abusing the petition process, and obtain their improper deferrals from this Commission, they will likely saddle Greenpoint with decades of harmful emissions and associated human suffering. To make matters worse, the Petition itself says

[98] LTP Order at 4.
[99] *Id.* at 83–92.
[100] *Id.* at 89–92
[101] *See id*. at 92.
[102] *See* Exhibit 1 (AGREE-019 through AGREE-022).
[103] *Id*.

nothing about the Greenpoint LNG facility upgrades, so it is unclear if the host community and its most vulnerable members are even aware that the Companies are requesting massive capital investments that would significantly extend the controversial facility's lifespan. These details were only obtained through discovery, following objections and delay, not shown in documents to which the general public has access.

As discussed above, the deficiencies in the Petition's treatment of DACs go far beyond Greenpoint. The Companies have not provided information related to potential burdens on DACs or proposed mitigation, and therefore, CLCPA Section 7(3) does not permit the Commission to grant the Petition.

V. Approving the Petition Would Set a Dangerous Precedent

Apart from the legal infirmities discussed above, granting the Petition would set a harmful precedent for utilities to spend ratepayer money without the transparency, public participation, and scrutiny that the Public Service Law is designed to guarantee. While purporting to ask for a rate freeze, the Companies in fact seek to lock in cost recovery that keeps rates higher than those currently approved, will lead to ballooning bills for ratepayers in future years, and will circumvent the rate case process that would allow Staff and intervenors to reduce their rate request. The Companies do not propose to slow down their spending in the rate term, but rather, simply ask the Commission to kick the can down the road and recoup the much of the costs from ratepayers later. Moreover, the Petition asks the Commission to approve a capital plan of over a billion dollars without providing the testimony, exhibits, and discovery responses about their projects and programs that would be required in a rate case. Parties are also deprived of the opportunity to offer their own expert testimony and to cross-examine the Companies' experts under oath. As a result, the Commission and stakeholders are constrained in their ability to understand and assess the potential economic and environmental impacts of the Companies' complex and opaque proposal. The Commission should reject the Companies' attempt to avoid the required process in pursuit of a blank check.

A. Approving the Petition Will Lead to Rate Hikes, Not Long-Term Rate Relief

Approving the Petition would commit ratepayers to significant rate hikes in future years. By contrast, in a rate case, Staff and intervening parties would almost certainly be able to reduce the Companies' requested rate increases through a negotiated settlement or litigation.

In the last rate case, for Rate Year 1 KEDNY asked for a capital budget of $1.008 billion and KEDLI asked for a capital budget of $665 million; their capital budgets for Rate Year 1 were ultimately reduced to $924 million and $645 million, respectively, in the Joint Proposal.[104] In the instant proceeding, approving the Petition would deprive stakeholders and the Commission of the ability to interrogate and reduce the Companies' rate request, which will result in significant increases in the coming years. Under the Companies' proposal, they would be entitled to collect deferred costs of capital, plus an annual surcharge of up to 2.5% of operating costs every year until they fully recover the costs of property taxes and SIR accrued during the rate year.[105] As discussed, the Companies expect the surcharge alone to exceed $100 million annually and the surcharge could be in place for many years.

The Petition proposes terms that unduly favor the Companies while asking ratepayers to shoulder additional costs and risk, including terms that Staff has previously rejected. For example, the Petition asks for full symmetrical reconciliation of property taxes, under which customers would bear the full cost.[106] By contrast, in the last rate case Staff rejected the same proposal in testimony, and the Joint Proposal provided that each rate year differences will be shared 90%/10% between customers and the Companies.[107]

In addition to locking in future rate hikes, granting the Petition would simply delay the difficult but important decisions and steps that the Commission needs to take in order to protect New Yorkers' health and pocketbooks during the ongoing energy transition. New Yorkers need sustainable, long-term solutions that will reduce their utility bills, not short-sighted can-kicking measures that keep bills high and ensure they will rise even higher in the future. Moreover, meeting the greenhouse gas reduction targets of the CLCPA, including 60% reduction by 2040

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[104] Staff Gas Infrastructure and Operations Panel Testimony, Exhibit __ (SGIOP-2) at 6, 21, Case Nos. 23-G-0225 & 23-G-0226 (Sept. 1, 2023); 2024 Joint Proposal, App. 1, Sched. 4, pp. 3; *Id*., App. 2, Sched. 4, pp. 2.
[105] Petition Ex. 8 at 4.
[106] *Id*. at 16.
[107] 2024 Joint Proposal at 65.

and an 85% reduction by 2050, necessarily requires shrinking the gas distribution system.[108] As the Commission explained in its Gas Planning Order, gas utilities need to engage in long-term planning that minimizes infrastructure investments while ensuring safe and reliable service that is consistent with the CLCPA.[109] The Commission encouraged utilities to take a "neighborhood approach" to removing leaking and leak-prone infrastructure and address demand through alternatives such as weatherization and electrification.[110] By asking the Commission to blindly approve a $1.7 billion capital plan without any meaningful opportunity for stakeholder input, the Companies make it impossible to ensure that this kind of planning will occur during the rate term.

More importantly, without long-term planning and a managed downsizing, the gas distribution system will simply evolve in ways that will hurt low-income ratepayers the most. In an unmanaged transition, per-customer costs will increase as fewer ratepayers shoulder the costs of maintaining the distribution system.[111] Because exiting the gas system requires customers to make upfront investments in energy efficiency and electrification measures, the system costs will increasingly fall to low-income ratepayers.[112] By contrast, a managed transition that moves away from pipeline gas in phases through targeted pruning—and frontloads investments in low- to moderate-income households and disadvantaged communities—will avoid ballooning costs and minimize burdens to ratepayers.[113] Approving the Petition would allow a year to go by without the planning and targeted transition projects that the gas distribution system and ratepayers urgently need, and will allow for new spending that will result in stranded gas infrastructure assets over an even longer period of time.

B. Approving the Petition Would Allow the Companies to Make Significant Gas System Investments Without a Record Justifying Those Investments

The Petition seeks approval to recover significant costs without providing the Commission or the public with the information and explanation that would be required in a rate

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[108] *See* ECL 75-0103; Scoping Plan at 350, 353.
[109] Order Adopting Gas System Planning Process at 2–3, Case No. 20-G-0131 (May 12, 2022).
[110] *Id*. at 39.
[111] Michael J. Walsh & Michael E. Bloomberg, Building Decarbonization Coal., *The Future of Gas in New York State* 46–48 (Mar. 2023).
[112] *Id.* at 26–27, 46–48.
[113] *Id*. at 53–54.

case. As discussed, the Companies seek to be directed to implement a $1.7 billion capital plan[114] but have not set forth comprehensive information about planned projects and programs. In a rate case, the Companies would be required to file testimony and create a record that would justify their capital plan. Although AGREE has been able to obtain some information through discovery requests, the Companies have taken the position that parties are not entitled to discovery and have only agreed to voluntarily respond to "certain requests."[115] In fact, the Companies have objected to and refused to respond to some discovery questions on the basis that they have "not filed a request to increase base delivery rates."[116] The Companies have also claimed that a number of discovery responses are confidential[117] and, unlike in a rate case, in this proceeding parties do not have the option to sign a protective order to gain access to confidential materials or to raise disputes to an ALJ regarding whether information has been properly marked as confidential. As a result, the Companies' choice to file a petition rather than initiate a rate case has allowed them to withhold information that stakeholders are seeking. Moreover, whereas in a rate case all parties would have access to all discovery, Staff refused to share the responses that the Companies provided to their discovery requests,[118] and AGREE only received access to the Companies' discovery platform two months after the Petition was filed.[119] Although AGREE now has access to the exhibits and workpapers underlying the Companies' capital plan, without direct testimony providing a narrative explanation it is difficult to ascertain the scope, potential impacts, or justification of many projects and plans. The lack of opportunity to cross-examine witnesses also limits AGREE's ability to fully develop the record.

In responding to Staff discovery responses, the Companies determined that their incremental revenue requirement for the rate year is $50 million higher than they had represented in the Petition, as reflected in the errata they filed a month and a half after filing the Petition.[120] The Companies' belated realization of this massive discrepancy begs the question of what else

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[114] Petition at 12.
[115] *See, e.g.*, Companies' Response to AGREE-001, attached as Exhibit 11 ("The Companies' voluntary response to certain requests should not be construed as an acknowledgment that discovery is available in this proceeding."); *see also* Companies' Response to AGREE-017 and AGREE-018, attached as Exhibit 16 (refusing to provide Companies' assessment of the potential impacts of projects located in disadvantaged communities and project alternatives and mitigation).
[116] *See, e.g.*, Companies' Response to AGREE-019 and AGREE-020, attached as Exhibit 1.
[117] *See, e.g.*, Companies' Response to DPS-0027, available on DREAM.
[118] 16 NYCRR 5.3(a), (c); Email from Peter Hilerio to Hillary Aidun (June 30, 2026) (on file with authors).
[119] Email from Tessa Kajdi to Hillary Aidun (July 30, 2026) (on file with authors).
[120] *See* Errata Filing.

could come to light if parties were given a full opportunity to seek information in the context of a rate case.

C. The Petition Deprives the Public of Basic Information About the Companies' Capital Plan and Potential Bill Impacts

The Companies are depriving the public of the notice and information that must be provided in a rate case. Utility ratemaking is highly technical and complex, and members of the public cannot be expected to understand how a rate request will affect their bills. Accordingly, when a rate case begins, the Commission is required to publish certain key information in plain language so that the public understands the implications of the utility's request. Specifically, the Commission must publish information regarding:

a) the proposed rate term;
b) the total proposed rate change, in both percentage change from prior rate year and absolute requested tariff value, including yearly or sliding scale breakdown if applicable;
c) the average proposed rate change for a residential, commercial, and industrial ratepayer, including yearly or sliding scale breakdown if applicable;
d) an explanation of why the rate changes are requested and a summary of how the proposed revenue will be spent;
e) the proposed return on equity in both percentage and absolute value over the total rate term;
f) an estimated timeline of relevant hearings, comment periods, and deadlines;
g) an explanation of how to submit public comment; and
h) any other information the commission finds relevant.[121]

Here, by contrast, the public does not have the benefit of a plain-language explanation of the Companies' request, the potential impacts on rates, the justification, or opportunities to provide input.

On the contrary, the Companies have told the public that rates will remain steady through March 2028, without providing information about the Companies' proposed surcharge and deferrals and the impacts those would have on rates in the future. Additionally, the Companies

[121] PSL § 66(12)(*l*)(i).

have not disclosed that the "freeze" they are asking for would hold rates higher than they are otherwise entitled to collect under the existing Commission order. After the Companies filed the Petition, Governor Hochul posted on social media that she was "pleased to announce National Grid and the Department of Public Service found a way to hold the line on rate hikes for nearly 2 million gas customers," suggesting that granting the Petition would simply prevent a rate increase without providing any information about the bill impacts that will occur in future years.[122] The Companies have also emailed their customers that they planned to keep gas delivery rates constant through March 31, 2028, but omitted information about the less appealing components of the Petition.[123] The Companies even placed a paid story in a local newspaper titled "National Grid Seeks to Freeze Gas Delivery Rates Through 2028" which also excludes any reference to the proposed surcharge and deferrals.[124] In sum, the Companies have hidden the ball from ratepayers and the general public, and should be held accountable through the rate case process.

D. Approving the Petition Would Deprive Stakeholders of the Ability to Provide Meaningful Input on the Companies' Capital Plan

The Companies might respond that the Commission will still need to approve any rate recovery in a future rate case, but the Commission's retroactive review is no substitute for the upfront scrutiny and stakeholder input that a rate case is designed to provide. As a preliminary matter, as discussed above, granting the Petition would unlawfully allow for a major change of rates regardless of whether the rate increase occurs in 2027 or 2028. Additionally, when determining whether to approve cost recovery for expenditures that a utility has already made, the Commission applies a deferential standard that considers whether the utility's decision was prudent, meaning that the utility acted reasonably based on the information that it had and the circumstances at the time.[125] The Court of Appeals has explained that "[t]he PSC cannot overturn a prudent decision by a utility because it believes that another course of action would have been preferable," and "[a] decision may be viewed as prudent even though a different

[122] Governor Kathy Hochul (@GovKathyHochul), X (May 29, 2026, at 9:09 PM ET), https://x.com/GovKathyHochul/status/2060529006047318352.
[123] Companies' Response to UIU-010 and Attachments, attached as Exhibit 17.
[124] Nat'l Grid, *National Grid Seeks to Freeze Gas Delivery Rates Through 2028*, amNY (July 8, 2026), https://www.amny.com/sponsored/national-grid-seeks-to-freeze-gas-delivery-rates-through-2028/.
[125] *Matter of Nat'l Fuel Gas Distrib. Corp. v. PSC*, 16 N.Y.3d 360, 368–69 (2011); *Abrams*, 104 A.D.2d at 137–138.

course of action would ultimately have been more advantageous to the utility or its ratepayers."[126]

In a rate case—unlike in this proceeding—parties have the opportunity to push the utility towards that "different course of action" that would be more advantageous or preferable. The settlement process that the PSC encourages during rate cases allows parties to work creatively with utilities to design alternatives that serve customer needs, allow a reasonable rate of return, and advance other policy priorities and stakeholder objectives. For example, AGREE signed the joint proposal in the recent upstate National Grid rate case because it addressed a number of the organization's concerns, including energy and pollution burdens on disadvantaged communities, the need for greater commitments to non-pipeline alternatives, and the costs and environmental impacts of biomethane interconnections.[127] Even for a party that opposes a joint proposal, the rate case process provides an opportunity to advocate for guardrails on utility investments to protect parties' interests and advance their objectives. For example, in the 2019 KEDNY/KEDLI rate case, KEDNY requested rate recovery for the final phase of the Metropolitan Reliability Infrastructure Project and two vaporizers at the Greenpoint Energy Center.[128] Following opposition by parties and commenters, the joint proposal required the Companies to petition for approval to proceed with the projects.[129] The Commission ultimately denied cost recovery for the vaporizers and KEDNY has not sought cost recovery for the final phase of the Metropolitan Reliability Infrastructure Project.[130] In another example of parties successfully advocating for environmental and financial guardrails on capital projects through the rate case process, in the 2023 KEDNY/KEDLI rate case, WE ACT for Environmental Justice opposed the joint proposal and raised concerns about the potential impacts on disadvantaged communities of four proposed biomethane interconnections.[131] Although the Commission adopted the joint proposal, to address WE ACT's concerns, the Commission modified the joint proposal to require the Companies to

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[126] *Matter of Nat'l Fuel Gas Distrib. Corp.*, 16 N.Y.3d at 360, 369.
[127] Statement of Alliance for a Green Economy in Support of the Joint Proposal at 11–15, 18–24, 25–30, Case Nos. 24-G-0323, 24-E-0322 (May 14, 2025).
[128] Direct Testimony of Gas Infrastructure and Operations Panel, Exhibit __ (GIOP-1), at 2, Case No. 19-G-0309 (Apr. 30, 2019).
[129] Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements at 64–65, 68, 117–122, Case Nos. 19-G-0309, 19-G-0310, 18-M-0270 (Aug. 12, 2021); Order Denying Cost Recovery for the Vaporizers 13 & 14 Project at 3, Case Nos. 19-G-0309, 19-G-0310 (Mar. 16, 2023).
[130] Order Denying Cost Recovery for the Vaporizers 13 & 14 Project at 2, 30, Case Nos. 19-G-0309, 19-G-0310 (Mar. 16, 2023).
[131] WE ACT Statement in Opposition to the Joint Proposal at 13, Case Nos. 23-G-0225, 23-G-0226 (May 1, 2024).

analyze potential impacts on disadvantaged communities before beginning construction on the interconnections.[132]

While the Companies and Staff may have met to discuss the Petition,[133] without the opportunity for a negotiated settlement, the parties cannot propose alternatives or reach a compromise with the Companies. For example, as discussed above, AGREE has a number of concerns with the Companies' proposed capital plan, including but not limited to: investments in the Greenpoint Energy Center, disproportionate burdens on DACs, and the need to further advance NPAs. In a rate case AGREE would have a greater opportunity to obtain information, make proposals, and then hold the Companies accountable to their commitments.[134] By filing a petition rather than going through the normal rate case process, the Companies are depriving stakeholders of the opportunity to understand and provide input on their proposal, and to ultimately shape the outcome of the proceeding.[135]

E. Granting the Petition Would Create a Precedent for Utilities to Renege on Safety Commitments Without Justification or Scrutiny

The Commission should not allow the Companies to quietly backtrack on their leak repair commitments without any evidentiary record justifying the change. While the Companies claim that the Petition would preserve the customer protections afforded by the Joint Proposal currently in effect,[136] the Petition in fact seeks to weaken the Companies' commitments to ensuring customer safety by repairing leaking pipes. Under the terms of the 2024 Joint Proposal, the Companies will incur negative revenue adjustments if they fail to meet leak backlog

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[132] Order Adopting Joint Proposal and Establishing Gas Rate Plans, With Minor Modifications and Corrections at 111, Case Nos. 23-G-0225, 23-G-0226, 23-G-0200 (Aug. 15, 2024) (the Joint Proposal's terms generally continue beyond Rate Year 3)

[133] *See* Errata Filing at 1 ("Following discussions with Department of Public Service Staff regarding the plant model underlying the Petition . . . .").

[134] In response to a discovery request about the Companies' compliance with their NPA commitments, they responded that "[t]he Companies' compliance with the NPA-related provisions of the Joint Proposal in Cases 23-G-0225 and 23-G-0226. Those commitments are not at issue in this capital expenditure petition proceeding." Companies' Response to NRDC-014, attached as Exhibit 18.

[135] For these and other reasons discussed in this Section, AGREE is concerned by recent language from the Commission in its Order in Case 26-G-0304 suggesting that customers can benefit from petitions for cost recovery submitted by utilities in lieu of full rate cases because such petitions "avoid the expense of a full rate case." In AGREE's experience, the regulatory process of a full rate case, and the scrutiny of rate case participants, routinely results in dramatic reductions in proposed costs that more than make up for a utility's costs associated with rate case participation that are eventually passed on to customers. *See* Order Authorizing a System Modernization Tracker Reconciliation Mechanism at 11, Case No. 26-G-0304 (Aug. 17, 2026).

[136] Petition at 7.

targets.[137] The Calendar Year 2026 targets are 800 for KEDNY and 1250 for KEDLI, and the Joint Proposal provides that the leak backlog targets will decrease annually at a rate of 200 leaks for KEDNY and 750 leaks for KEDLI,[138] meaning that in Calendar Year 2027 the targets would be 600 for KEDNY and 500 for KEDLI.[139] The Petition proposes to weaken those targets to 780 for KEDNY and 960 for KEDLI in Rate Year 4.[140] The Companies ask to be released from their current commitment without incurring the financial penalties that would apply under the Joint Proposal, depriving customers of the safety benefits of leak repairs as well as the financial benefits that would result from a negative revenue adjustment. The Companies' attempt to weaken the leak backlog target is yet another reason why the Petition is not in the public interest.

VI. The Companies' Claim that Precedent Exists for Granting the Petition Is Unsupported

The Companies cannot point to any precedent for the sweeping relief that they seek. Although the Companies cite several Commission orders for the proposition that the Commission has granted similar requests in the past, all of the cases cited are inapposite and none support the claim that the Commission has the authority to grant the Petition.

Even though the Companies seek cost recovery outside of a rate case, the Petition relies almost entirely on cases in which the Commission issued a rate order following the completion of full rate proceedings, including the filing of testimony, the opportunity for parties to conduct discovery pursuant to the Commission's rules, numerous settlement discussions culminating in a joint proposal, and an evidentiary hearing.[141] What the Commission has granted after conducting a full rate case has no bearing on the Commission's authority to approve the Petition in a notice-and-comment proceeding.

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[137] *See* 2024 Joint Proposal at 76–77.
[138] *Id*. at 77.
[139] Companies' Response to PULP-014, attached as Exhibit 20.
[140] Petition at 20; Companies' Response to PULP-014, attached as Exhibit 20.
[141] *See* Petition at 4 (citing Case Nos. 15-E-0050, 19-E-0378); *id*. at 17 (citing Case No. 25-E-0072, et al.); *id*. at 18 (citing Cases No. 24-E-0223, et al.); *id*. at 20 (citing Case No. 06-G-1185); Order Adopting Terms of Joint Proposal to Extend Electric Rate Plan, Case No. 15-E-0050 (Jun. 19, 2015); Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, with Modification, Case No. 19-E-0378 (Nov. 19, 2020); Order Adopting Terms of a Joint Proposal and Establishing Electric and Gas Rate Plans, Case No. 25-E-0072 et al. (Jan. 22, 2026); Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, with Modifications, Case No. 19-E-0378 et al. (Nov. 19, 2020).

For example, in support of their request for a surcharge to covered deferred property tax and SIR costs, the Companies cite a Commission Order from Case 06-G-1185.[142] Setting aside the significant difference in circumstances between Case 06-G-1185 and this Petition,[143] the Commission adopted the surcharge mechanisms in Case 06-G-1185 only after reviewing a full evidentiary record that included testimony, rebuttal, public statements, and multiple joint proposals.[144] The order cannot support the Companies' claim that the Commission has the authority to allow them to impose a recurring annual surcharge outside of the strictures of a rate case.

In arguing that the Commission has granted similar relief in the past, the Companies in their Petition erroneously cite to two rate cases in which utilities were permitted to offset rate increases using customer credits or regulatory liabilities *already owed to customers*.[145] The Companies cite to a similarly inapposite order in their August 24, 2026 Response in Opposition to the Utility Intervention Unit's Motion for Procedural Relief,[146] in which the Commission permitted National Fuel Gas ("NFG") to offset rate increases related to leak-prone pipe removal costs with regulatory liability deferrals previously approved in the utility's most recent Rate Order.[147] Specifically, in NFG's 2024 Rate Order, the Commission approved the collection of $12.8 million per Rate Year in amortized deferral costs. The 2024 Rate Order allowed NFG to continue collecting $12.8 million following the end of Rate Year 3 and the full amortization of deferral costs, and to record this over-collection as a regulatory liability to be refunded in a future rate case.[148] The Commission then allowed NFG to begin using the over-collected $12.8

[142] Petition at 20.
[143] After recognizing the potential for a "hockey stick" increase in rates at the end of 2012 "upon the exhaustion of one-time monies," and after finding the efforts of the Joint Proposal signatories to be insufficient in avoiding that outcome, the Commission included the surcharge mechanism in this case on its own volition. Order Adopting Gas Rate Plans for Keyspan Energy Delivery New York and Keyspan Energy Delivery Long Island at 62-68, Case No. 06-G-1185 (Dec. 21, 2007).
[144] *Id*. at 3–5.
[145] Petition at 4, n.6.
[146] Companies' Response in Opposition to Motion of the Utility Intervention Unit et al. for Procedural Relief at 5, n.6, Case No. 26-G-0384 (Aug. 24, 2026).
[147] "The Company states that the deferral offset effectively repurposes revenues already collected in base rates to fund LPP removal associated with the SMT reconciliation mechanism[.]" Order Authorizing a System Modernization Tracker Reconciliation Mechanism at 9, Case No. 26-G-0304 (Aug. 17, 2026).
[148] Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plan with Minor Modifications at 43, n.168 Case No. 23-G-0627 (Dec. 19, 2024)

million after Rate Year 3—funds already approved in a rate order and earmarked for the benefit of customers—to cover LPP removal costs.[149]

Conversely, here the Companies do not propose to use regulatory liabilities that were already approved and earmarked for customers, but rather seek authority to *establish* regulatory liabilities that they can convert into regulatory assets.[150] The Companies are not using ratepayer funds that they have leftover from a previous rate term; they instead ask the Commission for new authorization to keep rates high so that they can use that pot of money for new investments upon which they will earn a rate of return. The Companies cannot point to any precedent for a proposal of this kind outside the traditional ratemaking process.

Apart from the rate cases discussed above, the Companies cite to two other proceedings that, as the Commission has explained, presented extraordinary circumstances and should not be treated as precedential. In Case 14-G-0214, the Commission did grant a new deferral mechanism to KEDLI outside the confines of a traditional rate case, but noted that its decision was "due to the extraordinary circumstance of KEDLI's inability to file for a base rate increase."[151] That proceeding arose because KEDLI was unable to file a full rate case due to "[t]he Company's mostly self-created problems with its accounting books and records."[152] Additionally, in allowing KEDLI to track costs for potential future collection, the Commission stressed that "this relief is extraordinary in nature," and that its decision was "not intended to create a departure from established precedent disfavoring authorization for future deferral."[153]

The Companies' reliance on Case 15-M-0744 is similarly misplaced.[154] In that proceeding, the Commission granted cost recovery outside of a rate case only because Niagara Mohawk had experienced sufficient difficulties relating to its accounting software to justify the relief granted.[155] The Commission emphasized its preference for "a holistic look at a utility's books and records and a full rate case review," and explained that "[s]uch preference will only be

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[149] Order Authorizing a System Modernization Tracker Reconciliation Mechanism at 9, Case No. 26-G-0304 (Aug. 17, 2026).
[150] Petition at 1, 8.
[151] Order Directing Investments and Allowing, in Part, Deferral Authority for Costs Associated with Incremental Capital Expenditures and Establishing a Surcharge at 2, Case No. 14-G-0214 (Dec. 15, 2014).
[152] *Id*. at 19.
[153] *Id*. at 22.
[154] Order Granting Incremental Cost Relief, in Part, and Authorizing the Issuance of Securities, Case No. 15-M-0744 (May 19, 2016).
[155] *Id.* at 6.

bypassed in extraordinary circumstances."[156] Furthermore, the Commission noted that "no additional surcharge or bill impact is imposed here on Niagara Mohawk's customers."[157] Here, the Companies do not even attempt to identify any extraordinary circumstances that would warrant a departure from the Commission's well-established precedent, and do request approval to impose an additional surcharge as well as millions of dollars of deferred costs. Accordingly, the Companies have not provided any support for the claim that the Commission has granted similar petitions in the past or has the authority to do so here.

The Companies have not identified any precedent for the manner of relief requested in this Petition. The Commission should deny the Petition and require the Companies to adhere to the proper, established procedures for requesting a major change in their rates.

VII. Conclusion

While purporting to ask for a rate freeze, the Companies ask for extraordinary authority to establish new costs on customers by continuing to collect nearly $250 million in levelization that would otherwise expire, to increase their capital budget, and lock in massive rate hikes for years to come—all without the transparency, scrutiny, or the public participation that would be provided by a rate case. Granting the Petition would violate the CLCPA, allow the Companies to circumvent the legally required process for approving a major change in rates, and set a dangerous precedent for utilities to expand gas system investments, alter cost-sharing mechanisms to favor shareholders, and shift more risks and rate burdens onto customers. The Commission should deny the Petition.

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[156] *Id.* at 22–23.
[157] *Id*. at 6.

List of Exhibits

Exhibit 1: Companies' Response to AGREE-019 through AGREE-024

Exhibit 2: Companies' Response to AGREE-028

Exhibit 3: Companies' Response to AGREE-029

Exhibit 4: Companies' Response to AGREE-030

Exhibit 5: Companies' Response to AGREE-038

Exhibit 6: Companies' Response to DPS-022

Exhibit 7: Companies' Response to DPS-001, Attachment 6

Exhibit 8: Companies' Response to DPS-003, Attachment 1

Exhibit 9: FY28 KEDNY Petition White Papers

Exhibit 10: Companies' Response to DPS-005, Attachment 1

Exhibit 11: Companies' Response to AGREE-001 through AGREE-014

Exhibit 12: Companies' Response to AGREE-042

Exhibit 13: Companies' Response to DPS-005

Exhibit 14: Companies' Response to DPS-005, Attachment 2

Exhibit 15: Companies' Response to AGREE-043

Exhibit 16: Companies' Response to AGREE-015 through AGREE-018

Exhibit 17: Companies' Response to UIU-010

Exhibit 18: Companies' Response to NRDC-014

Exhibit 19: FY28 KEDLI Petition White Papers

Exhibit 20: Companies' Response to PULP-014

Exhibit 21: Companies' Response to UIU-014